



COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

SENATE

ECONOMICS LEGISLATION COMMITTEE

Estimates

(Public)

WEDNESDAY, 30 MAY 2018

CANBERRA

CONDITIONS OF DISTRIBUTION

This is an uncorrected proof of evidence taken before the committee.
It is made available under the condition that it is recognised as such.

BY AUTHORITY OF THE SENATE

[PROOF COPY]

INTERNET

Hansard transcripts of public hearings are made available on the internet when authorised by the committee.

To search the parliamentary database, go to:

<http://parlinfo.aph.gov.au>

SENATE

ECONOMICS LEGISLATION COMMITTEE

Wednesday, 30 May 2018

Members in attendance: Senators Abetz, Bernardi, Bushby, Colbeck, Hume, Keneally, Ketter, Leyonhjelm, McAllister, Patrick, Pratt, Rice, Siewert, Steele-John, Stoker, Whish-Wilson, Williams.

TREASURY PORTFOLIO

In Attendance

Senator Cormann, Minister for Finance and Special Minister of State

Senator McGrath, Assistant Minister to the Prime Minister

Department of the Treasury

Mr John Fraser, Secretary

Macroeconomic Group

Mr Nigel Ray, Deputy Secretary

Dr Jim Hagan, Division Head, Macroeconomic Modelling and Policy Division

Dr Michael Kouparitsas, Principal Adviser, Macroeconomic Modelling and Policy Division

Dr John Swieringa, Principal Adviser, Macroeconomic Modelling and Policy Division

Ms Megan Edwards, Principal Adviser, Macroeconomic Modelling and Policy Division

Ms Lisa Elliston, Division Head, International Policy and Engagement Division

Mr Chris Legg, Chief Adviser, International Policy and Engagement Division

Dr Angelia Grant, Division Head, Macroeconomic Conditions Division

Ms Laura Berger-Thomson, Principal Adviser, Macroeconomic Conditions Division

Corporate Services and Business Strategy Group

Mr Matthew Flavel, Deputy Secretary

Mr Robert Twomey, Chief Financial Officer, Chief Financial Officer Division

Ms Shannon Kenna, Division Head, Communications and Parliamentary Division

Miss Phoebe Burgess, Head of HR, Risk and Governance, People and Organisational Strategy Division

Mr Michael Webb, Chief Information Officer, Information Services Division

Mr Andre Remmers, Security Adviser, Information Services Division

Fiscal Group

Mr Michael Brennan, Deputy Secretary

Mr Jonathan Rollings, Division Head, Budget Policy Division

Mr Adam McKissack, Principal Adviser, Budget Policy Division

Mr Kieran Davies, Principal Adviser, Budget Policy Division

Ms Vicki Wilkinson, Division Head, Social Policy Division

Ms Joanne Evans, Principal Adviser, Social Policy Division

Mr Nathan Dal Bon, Principal Adviser, Social Policy Division

Ms Jessica Carew, Principal Adviser, Social Policy Division

Mr Robert Jeremenko, Division Head, Retirement Income Policy Division

Mr Darren Kennedy, Principal Adviser, Retirement Income Policy Division

Mr Ian Beckett, Principal Adviser, Retirement Income Policy Division

Ms Michelle Dowdell, Principal Adviser, Retirement Income Policy Division

Ms Kate Phipps, Division Head, Commonwealth-State Policy Division

Markets Group

Mr John Lonsdale, Deputy Secretary

Ms Diane Brown, Division Head, Financial System Division

Mr James Kelly, Chief Adviser, Financial System Division

Mr Warren Tease, Chief Adviser, Financial System Division

Mr Tony McDonald, Principal Adviser, Financial System Division

Ms Julie Greenall-Ota, Principal Adviser, Financial System Division

Ms Elizabeth Williamson, Division Head, Consumer and Corporations Policy Division

Ms Emily Martin, Principal Adviser, Consumer and Corporations Policy Division
Ms Kate O'Rourke, Principal Adviser, Consumer and Corporations Policy Division
Ms Lucy Vincent, Principal Adviser, Consumer and Corporations Policy Division
Mr Roger Brake, Division Head, Foreign Investment Division
Ms Victoria Anderson, Chief Adviser, Foreign Investment Division
Ms Jessica Robinson, Principal Adviser, Foreign Investment Division
Mr Shaun Anthony, Principal Adviser, Foreign Investment Division
Mr Simon Writer, Acting Division Head, Law Design Office

Structural Reform Group

Ms Meghan Quinn, Deputy Secretary
Mr Hamish McDonald, Chief Adviser
Mr Dan Andrews, Chief Adviser
Mr Tom Dickson, Principal Adviser
Ms Louise Butler, Acting Principle Adviser
Mr Simon Milnes, Manager

Revenue Group

Ms Maryanne Mrakovic, Deputy Secretary
Mr Graeme Davis, Acting Division Head, Tax Framework Division
Mr Paul McCullough, Division Head, Corporate and International Tax Division
Mr Brendan McKenna, Principal Adviser, Corporate and International Tax Division
Mr Geoff Francis, Principal Adviser, Corporate and International Tax Division
Ms Marisa Purvis-Smith, Division Head, Individuals and Indirect Tax Division
Mr Patrick Boneham, Principal Adviser, Individuals and Indirect Tax Division
Mr Murray Crowe, Principal Adviser, Individuals and Indirect Tax Division
Mr Simon Writer, Acting Division Head, Law Design Office
Mr Matthew Brine, Division Head, Tax Analysis Division

Royal Australian Mint

Mr Ross MacDiarmid, Chief Executive Officer

Australian Charities and Not-For-Profits Commission

Dr Gary Johns, Commissioner

Australian Taxation Office

Mr Chris Jordan, Commissioner of Taxation
Mr Neil Olesen, Second Commissioner, Client Engagement Group
Mr Andrew Mills, Second Commissioner, Law Design and Practice Group
Mr Ramez Katf, Chief Information Officer, Enterprise Solutions and Technology
Ms Jacqui Curtis, Chief Operating Officer, Corporate and Enabling Services Group
Ms Melinda Smith, Chief Service Delivery Officer, Service Delivery Group
Ms Frances Cawthra, Chief Finance Officer
Mr Jeremy Hirschhorn, Deputy Commissioner, Public Groups
Ms Deborah Jenkins, Deputy Commissioner, Small Business
Mr James O'Halloran, Deputy Commissioner, Superannuation
Mr Jonathon Todd, ATO General Counsel, ATO Corporate
Ms Michelle Crosby, Deputy Registrar, Business Reporting and Registration

Australian Competition and Consumer Commission

Mr Rod Sims, Chair

Ms Rayne de Gruchy, Chief Operating Officer
Ms Jeanne Pratt, Executive General Manager, Merger and Authorisation Review Division
Mr Marcus Bezzi, Executive General Manager, Specialised Enforcement and Advocacy Division
Mr Scott Gregson, Executive General Manager, Enforcement Division
Mr Tim Grimwade, Executive General Manager, Consumer, Small Business and Product Safety Division
Mr Michael Cosgrave, Executive General Manager, Infrastructure Regulation Division
Mr Richard Fleming, General Manager, Enforcement, New South Wales and Australian Capital Territory
Mr Peter Maybury, Chief Finance Officer

Australian Energy Regulator

Ms Michelle Groves, Chief Executive Officer
Mr Peter Adams, General Manager, Wholesale
Ms Sarah Proudfoot, General Manager, Retail
Mr Warwick Anderson, General Manager, Networks
Mr Tim Mahony, General Manager, Strategic Communications and External Affairs

Australian Prudential Regulation Authority

Mr Wayne Byres, Chairman
Mrs Helen Rowell, Deputy Chairman
Mr Geoff Summerhayes, APRA Member
Mr Warren Scott, General Counsel
Mr Gideon Holland, General Manager, Diversified Institutions Division
Ms Heidi Richards, General Manager Policy Development
Mr Stephen Glenfield, General Manager, Specialised Institutions Division

Australian Securities and Investments Commission

Mr James Shipton, Chair
Mr Peter Kell, Deputy Chair
Ms Cathie Armour, Commissioner
Mr John Price, Commissioner
Mr Greg Kirk, Senior Executive Leader, Strategy
Mr David McGuinness, Senior Executive, Financial Services Enforcement
Mr Warren Day, Senior Executive Leader, Assessment and Intelligence
Ms Jane Eccleston, Senior Executive Leader, Investment Managers and Superannuation
Ms Louise Macaulay, Senior Executive Leader, Financial Advisers
Ms Sharon Concisom, Senior Executive Leader, Market Enforcement
Mr Chris Savundra, Chief Legal Officer

Productivity Commission

Mr Peter Harris, Chair
Ms Karen Chester, Deputy Chair
Ms Nina Davidson, Head of Office

Commonwealth Grants Commission

Mr Michael Willcock, Secretary
Mr Anthony Nichols, Assistant Secretary

Australian Bureau of Statistics

Mr David W Kalisch, Australian Statistician
Mr Randall Brugeaud, Deputy Australian Statistician, Corporate Services and Transformation Group
Ms Luise McCulloch, Deputy Australian Statistician, Statistical Services Group

Mr Jonathan Palmer, Deputy Australian Statistician
Ms Teresa Dickinson, Deputy Australian Statistician, Census and Data Services Group
Mr Bruce Hockman, Chief Economist
Ms Jacqui Jones, General Manager, Macroeconomic Statistics Division
Dr Paul Jelfs, General Manager, Population and Social Statistics Division
Ms Gemma Van Halderen, General Manager, Statistical Integration Data Division
Mr Lane Masterton, Acting General Manager, Statistical Business Transformation Division
Dr Siu-Ming Tam, Chief Methodologist, General Manager, Methodology Division
Ms Samantha Palmer, General Manager, People, Capability and Communication Division
Mr Chris Libreri, General Manager, Census and Statistical Services Division
Mr Steve Hamilton, Chief Information Officer, General Manager, Technology and Security Division
Ms Lily Viertmann, Chief Finance Officer and Chief Risk Officer, General Manager, Finance, Risk and Planning Division

Inspector-General of Taxation

Mr Ali Noroozi, Inspector-General of Taxation
Mr Andrew McLoughlin, Deputy Inspector-General of Taxation

Committee met at 09:02

CHAIR (Senator Hume): I declare open this meeting of the Senate Economics Legislation Committee. The committee will continue its examination of the Treasury portfolio with questions for Treasury's Revenue Group and the ATO. The hearing will then follow the order as set out in the circulated program. I would ask photographers and cameramen to follow the established media guidelines and the instructions of the committee secretariat as set out in the guidelines. Senators' and witnesses' laptops, phones, other devices and personal papers are not to be filmed.

Department of the Treasury Australian Taxation Office

[09:03]

CHAIR: I welcome back to the committee the Minister for Finance, Senator the Hon. Mathias Cormann, representing the Treasurer, and Mr Chris Jordan, the Commissioner of Taxation. Minister or Commissioner, would you like to make an opening statement?

Senator Cormann: I don't have one, but the commissioner does.

Mr Jordan: Good morning. I have been looking forward to this opportunity to talk about the important developments in the tax and super systems and, as usual, to provide you with an update about what's going on at the ATO. We're in the process of preparing for tax time 2018, and we're also in the lead-up to the implementation of a number of measures recently announced relating to the black economy, illicit tobacco, illegal phoenix activity, the superannuation guarantee amnesty for employers, work on modernisation of the business registers, and implementation of the single-touch payroll, amongst other things. These recent measures by government show we are continually refreshing our approaches to tax system integrity risks in this very dynamic environment. We see investments like these as a very strong indicator of confidence in our capabilities and ability to deliver results, and we are very proud of that.

We continue to perform well in the large and multinational markets, and we expect that large corporates will pay roughly \$10 billion more in company income tax for the 2018 year than they did in the previous year. Whilst this increase can be attributable to economic growth and commodity price changes, we know that we have contributed to some of this increase from better taxpayer compliance in this market, both voluntary and ATO assisted, which shows that our approaches to the large market are working well.

Five hundred and ninety taxpayers are currently under review or audit as part of the focus on wealthy individuals, including their associated groups, trusts and aggressive tax planning. For this year to the end of March we've raised almost \$1.5 billion in liabilities against wealthy individuals and associated groups.

Another success I wanted to mention since last time is the landmark case in the Supreme Court of New South Wales involving Michael Issakidis, who was sentenced to 10 years and three months for his involvement in the largest prosecuted tax fraud case in Australia's history. His co-conspirator, Anthony Dickson, was originally

sentenced to 11 years' jail, but when he appealed that was increased to 14 years, and it's the longest ever jail time for tax fraud and money laundering. Their scheme deliberately absorbed \$450 million of otherwise assessable income through falsely created losses to evade \$135 million in tax. This successful case was a result of us working effectively over a long period of time with other authorities, and it is a good public demonstration that we pursue those who are doing the wrong thing. While these cases are long and complicated, we will not give up, for the benefit of the system and for the benefit of all those people who are doing the right thing.

While we're talking about results of our compliance work, I also want to mention employer compliance with super guarantee obligations. We have nearly doubled our coverage and completion of cases compared with the same period last year. We've contacted nearly 20,000 employers as a result of reviews or audits. We've raised over \$660 million from all our super guarantee casework, compared with around \$480 million last year. We've also issued over 2,800 super guarantee charge director penalty notices, with a combined value of nearly \$275 million in relation to around 2,700 companies. With the ATO having been given funding for the SG task force from 1 July, and the announcement of the proposed 12-month SG amnesty, if ever there were a time to come forward to voluntarily disclose and pay outstanding super guarantee it is now. The SG amnesty is an opportunity to clear up outstanding matters and get things back on the right track.

Moving on to what will be an even bigger focus for us over of the coming year, the black economy. This year, we have already conducted over 6,700 reviews and audits resulting in nearly \$190 million in tax and penalties. We've been very active in areas with a prevalence of cash only and low use of merchant banking facilities, with almost 6,000 businesses visited in Cabramatta, Liverpool, Batemans Bay, Chatswood, Werribee, Glen Waverley, Sunnybank, Toowoomba, Mandurah, Glenelg and north-west Adelaide. It's interesting to note that in these visits we have found the full spectrum of behaviour that we see. From some simply not understanding their employer obligations—not registering for pay as you go, withholding on payments of salaries and not paying superannuation—to some not having proper records, to some not recording all their sales to those with absolutely no records at all. Then some who operate outside the whole system. They're not even registered for GST. They don't even have an ABN. What's interesting, and overwhelmingly when we have been in these locations, is people are willing to share local knowledge of those who appear not to be doing the right thing and, therefore, not operating on a level playing field, including paying cash wages and not recording all sales. It's so true that people want to know that we are holding others to account when they themselves are doing the right thing.

While we're talking about small businesses, I suppose it is time to mention the recent criticism of the ATO in the ABC, *Four Corners* and Fairfax Media. This came as quite a surprise to us, because our work over the past few years with the small business community and their representatives has been very constructive and positive, and we've been receiving pleasing feedback direct from clients and their agents. We are a large organisation. We run complex tax and superannuation systems. We have around 17 million tax returns lodged each year, and when you add in the BAS and activity statements, the number of lodgements is over 35 million. In such a large system human error will inevitably result in mistakes being made—however, nothing like the unsubstantiated claim that we get one in 20 things wrong. Based on the numbers I just gave you, that would mean we allegedly get wrong in the vicinity of 830,000 tax returns or 1.75 million lodgements each year. It just can't be.

There is absolutely no evidence for this, but I will say that we could probably be better at acknowledging our real mistakes, apologising, compensating for any actual financial loss and moving on. Having said that, we have very much enhanced our services to help small businesses. In particular we've introduced an after-hours call-back service, the small business newsroom, small business roadshows, community conversations and simplified BAS reporting requirements. We've made regular contact with all the state small business commissioners and other credible representatives and, more recently, introduced the cash-flow management coaching kit, which we white-label for accountants so they can use it with their clients, and we're about to digitise that because of its popularity.

We also promote our benchmarks so a business can compare how it's going against similar businesses, and we have introduced what we call dispute assist. This dispute assist service recognises that some taxpayers whose business may not be going well are also sometimes going through other stressful issues in their lives, such as a family break-up, or physical and mental health issues. This service is for unrepresented taxpayers. Our people are trained to recognise the signs, and we allocate a guide who helps them through the dispute process. As far as we can see this is the first of its kind among tax authorities anywhere in the world, and the feedback on this from the small business community and their representatives has been outstanding.

Like I've said many times before in speeches in here, our job is to collect money from people. Fortunately most people are willing to do the right thing, because the benefits of a functioning tax system are quite evident, especially when you compare Australia to countries where that is not the case, but not everyone does the right thing, and some, when caught out, go to great lengths to criticise the ATO. As I've acknowledged, sometimes the

way we go about our job is not perfect either, although we do compare well against other tax authorities around the world. Whilst acknowledging that we are not perfect and we make mistakes, the allegations that were raised in the *Four Corners* program and surrounding media commentary in the ABC and Fairfax gave a distorted picture of what is happening with and at the ATO—particularly without regard for those who do need to come forward and work with us to resolve issues in a constructive and cooperative way. Scaring or deterring anyone from facing up to their tax obligations and working with us to resolve those issues is simply irresponsible.

Disappointingly, we think the ABC produced a story contrary to the *ABC code of practice* and *ABC editorial policies*, where journalism is meant to meet standards that include:

- Independence, integrity and responsibility
- Accuracy
- Impartiality and diversity of perspectives
- Fair and honest dealing

Seriously, how appropriate is it to have the title of the *Four Corners* program 'Mongrel bunch of bastards'? It is highly offensive and inaccurate. Think of this for a moment: how would the staff of the ABC feel if News Limited splashed across its front pages that the ABC was simply a 'mongrel bunch of bastards'—or if they said the whole of Fairfax is nothing but a 'mongrel bunch of bastards'? I am sure the indignation would be palpable. Why did the ABC think it was okay to call the staff of the ATO a 'mongrel bunch of bastards'?

I can assure you that the people working at the ATO are not mongrels or bastards; they are normal people trying to do a good job for the benefit of the country. They do not systemically destroy small businesses, they do not pick on 100 per cent innocent, vulnerable people, they certainly don't slowly boil people until they are roasted to death, and they most certainly do not just make up debts, add 90 per cent penalties and sell people's homes without their being able to dispute the debt. These are such ridiculous allegations that it beggars belief that the ABC would present them as somehow the result of an investigation. For a start, you need a court order to seize a property; we can't just sell it from underneath people. Penalties of 90 per cent are extraordinarily rare, typically reserved for organised crime proceeds and severe offshore tax evasion. People don't get up at the ATO in the morning thinking: 'Whom can I destroy today? Whom can I boil to death?'—allegations all made in that program.

Senator Cormann: That's a relief.

Mr Jordan: It's so obvious, but I have to say it. I just don't understand why the ABC would simply pick up a dossier of five or six mostly old cases that were known to us and mostly also known to the Inspector-General of Taxation—compiled by an organisation which stands to make financial gain by scaring small businesses to join it, and small-business people are encouraged to buy different levels of membership with this organisation, including protected membership, which is in effect the purchase of insurance, called tax investigation insurance. I don't understand why an organisation that is purported to have small-business interests at heart wouldn't be focused more on helping small business get it right early and resolve disputes quickly than on selling membership or insurance cover. In our view there was no real investigation by *Four Corners*; just a regurgitation of some known, fairly extreme cases to achieve an overblown, sensational story.

Despite the manner in which this story has been created, our response has been to maintain our positive connections with key stakeholders in the small business community, and stay open to hearing feedback. We know this is important. However, in the interests of restoring confidence in the system and in the ATO, we have decided to take the following actions. We are implementing improvements to our administration of the Australian Business Register, the ABR, which we were already proceeding with but will now fast-track. Objections to do with ABN cancellations will be moved to our review and dispute resolution area in a business group managed separately by second commissioner Andrew Mills. This means that reviews of decisions are made independent of the original decision-maker, which is the case now for all objections. We are going to trial an independent review process for certain small business audits from 1 July, with the intention over time that businesses, regardless of size, have access and rights to a fit-for-purpose review prior to the finalisation of an audit. We have asked the Australian National Audit Office to review our whole debt-collection practice. We're also encouraging ideas through groups like our small business stewardship group to ensure a good client experience for small businesses.

Have there been cases we should look into to see how to resolve issues quicker or circuit-break a process that seems to be bogged down? Yes. Is there a systemic problem of abuse of small business? Absolutely not. In fact, our relationship with most small businesses and credible representatives of the small business community is healthy and robust, and none of them in our stewardship groups, including Kate Carnell, the Small Business and Family Enterprise Ombudsman, and state small business commissioners, have raised systemic abuse of small business. In all the scrutiny reviews done in the past five years or so while I have been commissioner, no finding

of systemic abuse of small business has been found. This is out of 44 reports, more than 4,700 pages of reports, and that's just from the Inspector-General of Taxation and the Australian National Audit Office; it does not include reviews or inquiries by the House of Representatives Standing Committee on Tax and Revenue or your own Senate inquiries. So none of our consultation processes or Small Business Stewardship Group members and none of the multitude of reviews done on us have found systemic abuse of small business. However, none of that fact was mentioned on *Four Corners*.

Since the *Four Corners* story aired and since the Small Business and Family Enterprise Ombudsman and the Inspector-General of Taxation publicly called on multiple occasions for people to come forward with complaints, a number of approaches have been received, but only 62 actual complaints have emerged since 9 April from all sources—the inspector-general, the Small Business and Family Enterprise Ombudsman and direct to ourselves. The majority of these came direct to us, and we've resolved about half of them already. Many of them have been able to be dealt with with just one phone call. Again, I reiterate that there has been no systemic issue of abuse found in these complaints. We do take complaints seriously. Inevitably, things do go awry every now and then, and we need to be quicker to acknowledge mistakes or misunderstandings, apologise if necessary, remedy and get things on track.

There is not much more to say, but the various cases you saw reported on *Four Corners* represent the spectrum of behaviour that we see: those who just don't understand what they're meant to do; those who get in a mess because they leave things too late or long; those who don't pay attention to their admin, put their head in the sand or are struggling without the right help; or, worse, those who are deliberately being evasive. Let me just explain some of the behaviours we saw in this group of mainly old cases. Some people claimed significant expenses and did not provide proof of their expenditure, in one case saying the invoices were secret, even though they were given the opportunity a number of times to show the necessary paperwork over a period of time. It would be all too convenient if invoices were secret from the tax office. In the same case, they couldn't show us the assets that related to these expenses. The assets had apparently been destroyed. They did not respond to repeated attempts by us to contact them or their agent. There was abuse of company and trust structures so that they did not pay tax on their income, and expenses were simply concocted and false invoices created.

So what do you expect us to do? Just let it go? Paying tax is not optional when you are in business and you're not a wage and salary earner, so our current strategies are focused on working with viable small businesses to help them and support them in meeting their obligations so they can survive and, hopefully, thrive. As you can appreciate, there are a small number of people who do not meet their obligations or pay the right amount. They resort to game playing and tactics to avoid paying taxes. It is in these circumstances we do need strong powers to be able to bring those kinds of people to account. Australians expect us to. You expect us to. And, by the way, our powers are consistent with tax authorities across the globe. We are no different. Much has been said about our so-called extraordinary powers, but nothing is new in this area and they are typical of the powers of revenue authorities around the world for the reasons I have mentioned.

So, I am, and we are, getting on with our job, rather than getting distracted or overreacting to this story. We will resolve the remaining small number of complaints and move on. We are happy to work with those legitimate representatives of small businesses who have the interests of small business at heart: those people who are in it for the good of the system and, in the interests of helping people and businesses, do the right thing. We are very happy to work with the Small Business and Family Enterprise Ombudsman, the state based small business commissioners, COSBOA, the minister for small business and, of course, the Inspector-General of Taxation.

Finally, I've appeared before you now for more than five years, openly answering questions as fulsomely and as helpfully as I can. I have made very clear my intentions and commitment to transform the ATO and the tax and super administration in Australia, and have regularly updated you on that progress. This transformation is not a short-term or easy project, but it has been going well and has been recognised as such by many in the community, stakeholders and scrutineers, which include very favourable worldwide comparisons. My officers and I are proud of the work we do, knowing we are not perfect. We are here, open and ready to answer any of your questions. Thank you.

CHAIR: Thank you very much, Mr Jordan. That was a very comprehensive opening statement and, as usual, you seem to have covered an awful lot of the questions that I know a lot of senators wanted to ask. However, there are many questions still to be asked. I just want to confirm that we have you until at least lunchtime?

Mr Jordan: I think we are scheduled until 12.30. I've even brought some dark chocolate so I can keep up my energy!

CHAIR: Good to know! I've got you down as here until 12.15, so I can assure senators: you will all get a chance to ask questions throughout the day. I'm going to kick off, using the chair's prerogative. I want to ask you,

and specifically the Treasury group more broadly, about some issues surrounding company tax. I'm wondering whether you can tell me what the recent ATO statistics tell us about who is currently paying company tax and how much tax is paid by the largest companies and the largest Australian companies?

Mr Jordan: I did mention that the large corporate market is expected to pay about \$10 billion extra this year than last year. Some of that's attributed to an increase in commodity prices; some, of course, to economic growth in the economy. But I do think some of it's also due to the work we've done over the last few years with the MAAL, the multinational anti-avoidance law, and the disputed profits tax, which we've never had to implement yet; it only came in on 1 July last year, so we haven't had a year yet to implement it. I think the work our people have done in that space has resulted in money being put back into the system. I've mentioned that over \$7 billion of sales income is now going to be returned in Australia—so no doubt we'll have an argument on the expenses against it, on transfer pricing, but at least the income's now booked here. Something like \$335 million of additional GST—I stand to be corrected on that figure—is also coming in, because those sales are now being booked here in Australia. So across the GST, with the digital services of delivery, with the restructuring of the sales to come into Australia and with \$7 billion of new income, I think we're starting to see that reflected in normal tax returns now. We feel pretty confident of our assurance over that sector.

CHAIR: Specifically with regards to company tax, though, can you tell me what proportion of all revenue comes from company tax?

Mr Jordan: It's going to be around \$70 billion this year, I think, or a bit more. It's usually around \$67 billion to \$70 billion. It is the second-highest proportion of total tax in the world, behind Norway. We have a high reliance on corporate tax relative to other countries, second only to Norway. I might hand over to my Treasury colleagues.

Ms Mrakovic: Just to reiterate the comments made by the commissioner: we do have a heavy reliance on corporate tax in Australia. Corporate tax as a share of Commonwealth tax receipts is around 23 per cent, and as a per cent of GDP just over five per cent; in fact, 5.2 per cent is estimated in 2017-18. I guess the other thing to note about our system is that it is heavily reliant on a small number of companies. If you look at the top 10 companies, they account for just under 30 per cent of all corporate tax receipts.

CHAIR: Thank you. Can I ask what the impact on Australia will be of company tax changes in other countries—particularly the United States, France and the UK—and the effect of those on Australia's competitiveness, and whether Treasury has provided any advice on that matter to government?

Ms Mrakovic: Certainly. There has been in recent years a downward trend in corporate tax rates. In fact, a few years ago Australia was sitting around the average of the OECD. Now we are well and truly above the OECD average. I go to OECD meetings every six months or so—the Committee on Fiscal Affairs—and I have to say that every meeting I attend seems to have about half an hour devoted to different countries announcing their most recent reductions in corporate tax rates. So we have definitely seen a downward trend in corporate tax rates. Interestingly, the IMF did some analysis; I think it was about a year ago. Essentially, it showed the impact of a reduction in corporate tax rates in the US, France and Germany—I'm relying on my memory here. It basically indicated that the cuts in corporate tax rates in those countries could lead to a one per cent reduction in GDP in other countries.

Senator Cormann: Essentially, what's happening here is as other countries are reducing the level of lead in the saddlebag of their businesses, those businesses are put in a position where they can grow stronger and faster. Of course, that comes at the expense of business here in Australia. If we keep our business tax high by international standards and higher than in other countries, we put businesses in Australia at a disadvantage with businesses in other parts of the world. As we do that, we are putting the many millions of working Australians who work for private sector businesses in Australia at a competitive disadvantage. We've always got to remember that nine out of 10 working Australians work for private sector business, and their future job opportunities, their future job security, their future career prospects and their future wage increases depend on the future success and profitability of the businesses that employ them. If we make it harder for those businesses to be successful and profitable into the future, that will have a negative effect on the economy and will have a negative effect on jobs for those many millions of Australians.

CHAIR: Thank you, Minister. I want to ask some questions about economic modelling on the benefits of company tax cuts and how they potentially flow through to productivity, to investment, to jobs and also to wages. What has Treasury modelling found with regard to those particular indicators?

Ms Mrakovic: As I've indicated in evidence to this committee before, we did undertake some modelling around the time of the announcement of the enterprise tax plan. Essentially, the modelling that was undertaken

showed that there was an increase in GDP in the order of one per cent. There was a strong pick-up in business investment associated with that; capital accumulation. Being a relatively small, open economy, most of the benefit, as you might expect, flows through to workers in the form of stronger employment prospects and real wages.

Senator Cormann: Real wages growth.

CHAIR: There was some alternative modelling done by Independent Economics. Can you tell us what that independent modelling might have found in comparison to the Treasury modelling?

Ms Mrakovcic: My recollection is that, in broad terms, it supported the modelling results undertaken by Treasury. I don't believe that there were significant departures. I don't know if Mr Davis has anything to add to that.

CHAIR: I was going to ask about KPMG modelling as well, so if there's anybody who's across the KPMG modelling and what that might have found—

Mr Davis: The modelling by Independent Economics generated essentially the same results as the Treasury modelling.

CHAIR: So three pieces of modelling have come up with the same—

Mr Davis: The KPMG results were very similar, yes.

CHAIR: Excellent; thank you. There's also been some analysis done by somebody named Janine Dixon that's been reported in the media. Is anybody familiar with that modelling?

Mr Davis: Yes.

CHAIR: Is the modelling used by that particular academic suitable for examining corporate taxation and investment subsidies? If so, or if not, how do the findings of that study compare to the accepted economic theory and observed outcomes?

Mr Davis: There's always a debate about what modelling is suitable or not suitable for particular purposes. That particular modelling is not actually modelling the policy; it's modelling something slightly different.

CHAIR: So it's not modelling the policy of the enterprise tax plan; it's modelling something entirely different?

Mr Davis: It doesn't model a number of things, but the key bit that it doesn't model is the thought that the policy's announced in advance of introduction. That particular modelling assumes that all businesses are not forward looking; it assumes they're backward looking so there's no reaction from anyone in the economy until the policy is introduced.

CHAIR: Mr Davis, I understand that a fellow named Peter Swan has also conducted some analysis, which was also reported in the media. Is the modelling used by that particular academic suitable, and how do the findings of his study compare to the accepted economic theory and observed outcomes?

Mr Davis: Professor Swan's work is really talking about: who is the marginal investor in the economy? He's looking at the thought that maybe the domestic investor is the marginal investor. That is unlikely to be completely true because, if we think about it for a little bit, direct foreign investors are going to make their choices for themselves, so they will be affected by the tax rate. His essential argument is that, because there's a market for shares, the benefits of what we call imputation credits are shared with foreigners. That can work, maybe, or partially, in the share market itself, just by the way the market works, not by a contract—and I'm sure our friends from the ATO can talk about what you can and can't do, legally, and there are some issues around that—but it's unlikely to hold in the extreme.

CHAIR: All right.

Senator Cormann: The important point here is: for Australia to continue to grow to its full potential, we need to continue to attract foreign investment into Australia. We compete globally for foreign investment into Australia with other destinations and potential investors as they are considering investment options. One of the key factors that they will consider is the expectations of future after-tax profits. People will say that tax is only one factor—and that is true; it's only one factor—but tax rates are a very visible factor, and it's a factor that is directly under our control. A whole range of other things that determine whether or not somebody will decide to invest in Australia are a given, whatever the tax settings are. In the mining sector, for example, global prices for key commodity exports are not going to be set by the government or by the Australian economy; they're going to be set by the world economy. We're price takers. The availability of resources or various other factors that will attract somebody to invest in Australia are a given that won't change based on our policy settings. But what we do have direct control over is the decision we make about the corporate tax rate that we set. If we have a substantially

higher tax rate than that which applies in other parts of the world, we make it harder for ourselves to attract the necessary investment to continue to grow our economy, which, self-evidently, would have a negative impact on jobs growth into the future. As fewer jobs are created, there would be less upward pressure on wages. That is why we say that if we continue to keep our corporate tax rate high by international standards then the people that will be hurt the most are working families around Australia.

CHAIR: Thank you, Minister. The deputy chair has a follow-up question, and then I've got one more.

Senator KETTER: Mr Davis, did the Treasurer's office ask you to review and analyse the modelling from Janine Dixon and Peter Swan?

Ms Mrakovcic: I might answer that question. I can't recall whether they would've asked us to, but I'm sure that we would've provided analysis of a whole range of modelling assumptions and results that were being produced by others. That would be part and parcel of our role as advisers. We basically keep—

Senator Cormann: We're happy to take it on notice, but I don't think that there's anything unusual about the government of the day seeking advice, if that's what happened on this occasion, or Treasury spontaneously offering advice in relation to analysis of this sort, which clearly is directly relevant to a conversation the government is involved in, in the context of legislation being pursued through the parliament. Whether it was initiated by Treasury or sought by the Treasurer's office, we'll find that out for you on notice. But, in any event, the work was done.

Senator KETTER: Thanks, Chair; I'm happy for that to be taken on notice.

Ms Mrakovcic: Yes, I'm happy to take it on notice, but I wanted to go back to the question that was asked, because I think it's important to understand—and this is a point that we've made repeatedly: there's a whole array of models out there that are basically used to analyse the reductions in corporate tax, and we have seen a number of these modelling results bandied to and fro in the media. I think the point that we would make is to look at some of the assumptions that are built into the modelling. This is the key thing: it's not just the model. Models essentially try to simplify reality, but you have to basically assume a number of things. That's part and parcel of any modelling exercise. When you look at some of assumptions that have been incorporated into some of the models, as Mr Davis has said, we have found that we certainly have question marks around some of those assumptions. For example, in some of the modelling, it's whether there's an assumption built in as to how much foreigners are prepared to finance, in terms of capital flows; whether a model is backward-looking or forward-looking and is able to take account of the pre-announcement of corporate tax plans; and, indeed, as Mr Davis pointed out, whether there is an assumption that the marginal investor is foreign or domestic. In the case of the latter, I would also point out that there has been quite a bit of analysis to suggest that, in a world with increasing mobility of capital and the fact that Australia accounts for a relatively small share of that huge amount of global capital, that would essentially suggest that you might anticipate that, while there is never a black-and-white answer to this, and no-one is ever talking about a polarised situation where it's entirely the foreign investor or entirely the domestic investor, you would have to, I think, reasonably assume that the marginal investor is likely to be, in the majority of cases, more likely a foreign investor.

Senator Cormann: The implication then is that, if we make it less attractive for the foreign investor to invest in Australia, we miss out on investment which will go to other parts of the world, helping to grow businesses in other parts of the world and create more employment in other parts of the world—employment that should be generated in Australia because the investment comes to Australia. That is the implication. If the Senate were to decide not to pass our business tax cuts in full, we would miss out on investment and jobs here in Australia.

CHAIR: Just on that last issue, Ms Mrakovcic, as to those two academics that I referred to, their research was referred to during a Senate economics inquiry, so I think it would be perfectly fair for Treasury to analyse them—considering, I think, that your analysis was also used in that same inquiry. Can I ask you finally about analysis from the Australia Institute, which appeared in the same inquiry. I don't know whether it could actually be described as economic modelling, but do you have any comments to make about the analysis that came out of the Australia Institute on company tax?

Ms Mrakovcic: I don't think I'd have anything to add to the comments that I made in general around the modelling.

CHAIR: Deputy Chair, I realise I went significantly over time, so I'm happy to allocate you 20 minutes.

Senator KETTER: Thank you. Senator Keneally—

Senator KENEALLY: I appreciate that. Thank you, Mr Jordan and the ATO, for being here this morning. I'd like to flag that we have some questions on corporate tax as well, and we will get to those shortly, but I'd like to go back to Mr Jordan's opening statement. Minister Cormann, did you have an advance copy of this statement?

Senator Cormann: No.

Senator KENEALLY: Mr Jordan, you've made a number of statements here regarding the ABC and their *Four Corners* report. In the wake of that report, did you lodge a complaint with the ABC?

Mr Jordan: No.

Senator KENEALLY: So you've come here today at estimates with a range of statements about the ABC's quality of reporting, but you haven't lodged a complaint with the ABC?

Senator Cormann: If I may—

Senator KENEALLY: It was a question to Mr Jordan.

Senator Cormann: If I may, on behalf of—

Senator KENEALLY: Did you launch a complaint with the ABC, Minister Cormann?

Senator Cormann: I haven't. The purpose of coming here, obviously, is to be accountable to the Australian people through the democratic process which is Senate estimates. It is entirely appropriate, given since we last met this particular story ran, for the commissioner to put the ATO's perspective on the public record. I think that was entirely appropriate. You would have been the first to complain if complaints had been lodged with the ABC, but, being in this forum, which is part of our democratic process, it is entirely appropriate for the commissioner to do what he did.

Mr Jordan: And I haven't ruled it out in the future, but, as the senator just said, I wanted to come here. I try, as I said, to give full and appropriate answers. I don't use weasel words. I don't duck and weave questions. I try to address your concerns directly. One thing I have thought of doing is to send extracts of this to all the directors and the CEO of the ABC and of Fairfax and ask if they would be happy for their people to be called a 'mongrel bunch of bastards' and what would be the staff reaction if that was the case—because I think it is just highly offensive the way that whole thing was pitched. It appeared to be an outcome, and everything that led up to that was filtered to support the outcome. I don't think that meets the ABC's code of practice and editorial policies.

Senator KENEALLY: So your statement today is laying out your case, essentially, that the ABC failed to meet its own editorial standards and policies?

Senator Cormann: That's what he's clearly said.

Mr Jordan: That's part of it, yes.

Senator KENEALLY: And it may well form the basis of a complaint to the ABC but you haven't decided yet whether or not you're going to do that?

Mr Jordan: Correct.

Senator KENEALLY: Have you lodged a complaint with ACMA?

Mr Jordan: No. I've been accused of becoming too sensitive, so I'm trying to balance not making complaints but being transparent with you here.

Senator KENEALLY: I note your language in your opening statement. You said that people at the ATO do not get up in the morning thinking, 'Who can I destroy today or boil to death?' Did the ABC assert that the ATO got up in the morning and sought to boil people to death?

Mr Jordan: There was a person on *Four Corners* who said that the people at the ATO—he had a bit of a mixed metaphor here—slowly boil people until we roast them to death. I can cook, so I know you don't roast when you boil, but nonetheless that's what he said. So, yes, he said that, and that was on the ABC *Four Corners* program—entirely inappropriate—

Senator KENEALLY: A person who was being interviewed said that.

Mr Jordan: to actually put someone on—notwithstanding who said it—to put a camera in front of someone, to say that we slowly boil people until they're roasted to death. How ridiculous. How ludicrous and absurd is such a statement.

Senator KENEALLY: Mr Jordan, were you invited to appear on the *Four Corners* program?

Mr Jordan: There were discussions as to who could or should appear. It was our decision that the head of the small business group, Debbie Jenkins, who's here today and can answer any of your questions, was the most appropriate person to do that, as she was head of the business area.

Senator KENEALLY: Why didn't you appear, as the head of the ATO, given that this was a fairly significant piece of journalism being done? Any time *Four Corners* devotes a whole episode to an issue—

Mr Jordan: I would dispute it's a significant piece of journalism.

Senator KENEALLY: You can argue about whether it's a significant piece of journalism, but I think we can agree that *Four Corners* is a significant media platform and that any time it devotes an entire show to something it's going to get a fairly significant airing. Given that you now have very strong feelings and views about the report, do you regret not appearing yourself in the report?

Mr Jordan: No, because when we found out that basically this was a regurgitation of a dossier that has been flogged around town for a number of years and the particular person behind that, I didn't think it was something I should engage with at that low level.

Senator KENEALLY: You thought the *Four Corners* report was a low-level report?

Mr Jordan: No. The person that was providing the information to *Four Corners*, we have tried to engage with over many years, with not much luck. He is someone who likes to throw stones, likes to criticise but doesn't like to engage. So I did not want the office of commissioner associated with that particular person.

Senator KENEALLY: But now you're in a circumstance, aren't you, that you've had to come here, devote more than half of your opening remarks to this Senate estimates to this issue? You have outlined a range of steps—fast-tracking improvements to the Australian Business Register, changing how objections to ABN cancellations are handled, trialling an independent review for small business audits and asking the ANAO to review your debt collection practices. This is all as a response to the *Four Corners* report.

Mr Jordan: Mostly, not all. We're not stupid. We listen to people. If there's concern, we react. What would you expect us to do? We don't stick our head in the sand. If people say that there are issues here, let's check them out. Let's get a credible scrutineer, the Australian National Audit Office, to go through an evidence based review of processes and policies and come up with an answer, and we will respect that work. A lot has been said about garnishee. People say, 'We just stick a garnishee on without even talking to the taxpayer.' They say, 'We really should ring them up before we do it.' Don't you think we've thought of that? It really is at the end of a process, multiple attempts, generally multiple times. A garnishee is only used if they have refused to engage in any way with us. Most people, if they've got a problem, will, in good faith, enter a payment plan, stick to the payment plan, get the debt done—all finished, move on. It's only if they won't enter the payment plan or if they do multiple payment plans and never meet their requirements that we give them notice that we are going to issue a garnishee order, and we do. We can't let the debt pile just keep growing and growing, because that would be irresponsible of us.

Senator KENEALLY: Mr Jordan, did you raise any of your concerns about the *Four Corners* and Fairfax coverage of the ATO within government to the Minister for Finance or the Treasurer?

Senator Cormann: I can speak for me: not with me. The first I heard of this explanation was today. Mr Jordan can talk about others.

Senator KENEALLY: Thank you, Minister Cormann. Did you raise it with any other government minister?

Mr Jordan: Not that I can recall, other than I might have mentioned to the Minister for Revenue and Financial Services that I thought it was a very one-sided report.

Senator KENEALLY: Did you raise it with any ministers' staff?

Mr Jordan: I can't recall; not this opening statement.

Senator KENEALLY: Your concerns about the *Four Corners* report.

Mr Jordan: I think I might have mentioned to the chief of staff of that minister that I thought it was a very one-sided report.

Senator KENEALLY: How about with Minister Fifield or his staff?

Mr Jordan: Sorry? Who?

Senator KENEALLY: The Minister for Communications.

Mr Jordan: No.

Senator KENEALLY: The Prime Minister's office?

Mr Jordan: No.

Senator KENEALLY: Minister Cormann—and you can take this on notice—did any minister or ministerial staff raise a complaint with the ABC regarding the ATO story that Mr Jordan has spoken about today on *Four Corners*?

Senator Cormann: I would have to take it on notice. I can answer for myself: I certainly did not—

Mr Jordan: And I'm not aware of anyone doing that, as I would have presumed they could have, or would have, checked with us first, but no-one has.

Senator KENEALLY: We've talked about the fact that you didn't appear in the report and you've mentioned some of the issues that you have with the report, and we will wait and see if you do use it as a basis of a complaint to the ABC or to Fairfax. Are you able to provide data for the past five financial years for how many audits the ATO has conducted, how many complaints were made about the audit process and when the complaints were made?

Mr Jordan: Probably.

Senator KENEALLY: Probably?

Mr Jordan: Well, I don't know in exactly that form, but we do report in our annual report every year the numbers of audits, the numbers of complaints—

Senator KENEALLY: We can take that on notice, then. It might be helpful to us in evaluating some of the statements—

Mr Jordan: I can tell you that the number of complaints has been going down significantly over the last few years—

Senator KENEALLY: Okay.

Mr Jordan: when we've moved to a better focus on the client experience and the staff experience. It's very important: if the staff has a good experience at their work then they're more likely to interact with clients also in a more empathetic way. We're trying to go upstream—

Senator KENEALLY: Yes—

Mr Jordan: And so rather than focus on disputes and objections we want to make sure that objections and—

Senator KENEALLY: Sure, I appreciate that, and you've covered all that in your opening statement—

Mr Jordan: that disputes are avoided in the first instance.

Senator KENEALLY: I appreciate that.

Mr Jordan: A lot of it is simply just misunderstanding of the law and that sort of thing.

Senator KENEALLY: All I'm asking for is information, Mr Jordan, and you've agreed to take that on notice. I appreciate that you've summarised some of that in your opening statement as well. Would you say that the relationship between you and any deputy commissioners and executives in the ATO has become strained in the past year? How do the higher management levels of the ATO deal with disputes about how to handle controversies like the *Four Corners* report?

Mr Jordan: No, not at all. There's no strained relationships, certainly that I'm aware of. The executive are here and they can maybe speak for themselves, if they feel they have. What was the second part? How do we—

Senator KENEALLY: How do the higher management levels of the ATO deal with disputes about how to handle controversies like the *Four Corners* report? You—

Mr Jordan: Generally, they have to talk me down from what I want to say to something flatter.

Senator KENEALLY: Were they not successful in that today?

Mr Jordan: Yes, they were very successful.

Senator KENEALLY: I would have liked to have seen your original statement then, sir!

Mr Jordan: I would have loved to have done it too, but I was talked down!

Senator KENEALLY: Okay. And were you talked down from appearing on the report?

Mr Jordan: No. We had a discussion. I do rely on advice from our in-house people, and that was the view: that it was better to be pitched at what it was about—small business—and from someone who knew more detail around what we're doing. I think Deb Jenkins spent about 3.5 or four hours with the ABC, and I think you would have seen about 20 seconds. You would probably know as much about that sort of thing as most others.

Senator KENEALLY: On 12 April this year, an email was circulated in the ATO titled 'An update from the ATO executive'. Was this in response to the matters raised by *Four Corners*?

Mr Jordan: I don't know which one you're referring to.

Senator KENEALLY: On 12 April, an email. It was, as I said, titled 'An update'. How often do you write to all—

Mr Jordan: Every Monday morning I do something.

Senator KENEALLY: Every Monday morning. So, the *Four Corners*—

Mr Jordan: It's called 'The commish'—

Senator KENEALLY: Can we take this on notice, to get a copy of that email from 12 April?

Mr Jordan: Yes, I will take that on notice. It might have been because the staff were very concerned about the allegations. This is not having a go at me, right? This is having a go at the frontline staff. This is having a go at the people that earn basic money trying to run their families, pay a mortgage and just do a decent job, and, by the way, most of whom think they're trying to do a good job for the country too. It's not always an easy job. It's not always a job that everyone particularly wants.

Senator LEYONHJELM: Mr Jordan, the point of the *Four Corners* program was in relation to small business and allegations of abuse of process for small business. You said in your opening statement that there's no systemic abuse of small business. You've also said you that don't use garnishees, that you seek a payment plan.

Mr Jordan: Don't use what?

Senator LEYONHJELM: You don't use garnishee orders as a first line of attack; you seek payment plans from the taxpayer. But one of the points of the program—and in individual cases that I'm aware of—is where the amount that the tax office asserts is owed is said by the taxpayer not to be owed.

Mr Jordan: That's probably why there's a dispute.

Senator LEYONHJELM: Indeed. Are you saying that the taxpayer should agree to a payment plan under those circumstances?

Ms Smith: What's important to understand, I think, is that the garnishee process is an instrument that is used only at the very end of quite a lengthy process to get the client to engage with us. We have 10 different steps, if you include using outsource collection agencies. We even send pre-emptive SMSs to nudge people that we know could potentially pay tax late—we sent 560,000 of those out. If, through this 10-step process or 10 different processes, we are unable to engage with the client, regardless of the origin of that debt, it's only then that we'll actually send them an advice that the next step is for us to introduce a garnishee.

Mr Jordan: It's mostly undisputed.

Senator LEYONHJELM: I see, so that's a somewhat different situation from the one I was referring to. I could understand you doing that where the tax owed is not in dispute; it's just you can't get them to pay and engage with you in terms of having that amount paid. What if the debt is owed? What are your steps at that stage?

Ms Smith: If the debt's in dispute?

Senator LEYONHJELM: What if the taxpayer says, 'No, I don't owe that amount of tax' and you say, 'Yes, you do.' They're engaging with you, they're ready to talk to you, and all they'll say to you is, 'No, I don't owe that tax.' Where does that leave you in terms of your remedy options?

Ms Smith: I might invite Andrew Mills to the table to talk about the process around disputed debt. Once the debt is in dispute, we would assign a case manager to that individual case to explore the circumstances around it. So, once the client has engaged with us, there's a number of mediation steps and probably Andrew Mills, my colleague, is best placed to talk about that.

Mr Mills: If I could just say, mostly, garnishees are on undisputed debt. It's been agreed, for some reason, they just can't pay it and they're not engaging in any attempt to pay it—that's in the vast majority of cases.

Ms Smith: Can I add that 50 per cent of clients, upon receiving the garnishee, actually engage with us, and we can then work with them on how we actually tailor a payment plan or an approach to help them.

Senator LEYONHJELM: But one of the issues that's come to my attention—and I think was raised on the *Four Corners* program—is where the taxpayer says, 'No, I don't owe that money.' The tax office says, 'Yes, you do.' Then the ATO engages in various steps, including potential litigation and so forth and says, 'Under the law, our version is appropriate; you must pay that' and then argue about it later.

Mr Mills: If I might just correct the record on that—I look after the disputes area amongst my portfolio. Wherever there is a dispute, we, as a general rule, do not proceed to recover the amount. The amount remains in abeyance until the dispute is resolved. If someone's saying they don't owe the amount, what they're saying is, 'I disagree with the assessment of the amount.' They tell us the reasons why they disagree with the assessment. They have formal objection options available to them and, during that period, while we are determining whether or not the objection should be upheld or disallowed, we do not go through, as a general rule, recovery processes except if there is a risk that the assets will be dissipated.

Senator LEYONHJELM: In that case, I'd be interested in your response to the fact that I am receiving complaints from people who tell me—similar to the *Four Corners* program—that they are being compelled to pay a tax debt assessed by the ATO which they don't agree with and it subsequently turns out that they were right and the ATO's assessment was incorrect. I know, in substantial detail, one case where they got their money back again, but two years later. It was very, very fortunate for that particular business that the amount wasn't so huge that it put the business into failure. It could easily have been a fatal blow to that business. And yet their impression was that they had no choice but to pay that money and argue about it afterwards, which indeed they did.

Mr Jordan: We're very, very happy to look at any of the cases that are brought to you and seek to resolve them. Sometimes it's just literally not understanding or not fully appreciating the process. But we're very open to examining these and seeing if we can expedite—

CHAIR: Senator Leyonhjelm, your additional comments have turned into six minutes worth of questions.

Senator LEYONHJELM: So you're saying that, where the amount claimed by the ATO is disputed by the taxpayer, you don't initiate recovery action?

Mr Mills: We don't. That doesn't mean people won't pay voluntarily or think that they need to pay if they don't understand that they can leave it outstanding while the dispute is resolved.

Senator LEYONHJELM: All right. I'll leave it there. Thank you very much.

Senator McALLISTER: Can I direct some questions to Revenue Group? I refer to the story on the front page of *The Australian* today around income tax cuts. Some of that story obviously relates to the material that was provided yesterday by the secretary in his opening remarks, but there is additional analysis which is described as 'government's analysis of the competing tax policies'. Is this analysis from Treasury?

Ms Mrakovcic: Sorry, Senator?

Senator McALLISTER: Have you seen the article on the front page of *The Australian*?

Ms Mrakovcic: I haven't.

Senator Cormann: I've got a document that I'm happy to table for you which explains where these numbers are from. As long as I can get the copy back, because I've only got one copy, I can table it. That way we can talk about the same information.

Senator McALLISTER: Yes, I think that would be useful. Ms Mrakovcic, have you seen the front page of *The Australian* today?

Ms Mrakovcic: I'm seeing it now.

Senator KENEALLY: You're seeing it now? You hadn't seen it before now?

Ms Mrakovcic: No, I hadn't had the chance to.

Senator Cormann: On the front page of *The Australian* tomorrow: 'Deputy secretary of Treasury does not read *The Australian* before coming to estimates!'

Senator KENEALLY: Given that there's a story on the front page about economic analysis of ATO data, apparently about Labor policies, we're trying to understand the familiarity the ATO might have of the provenance of that analysis. So it is of interest to us, Minister, as to whether today the ATO is aware of what's on the front page.

Senator Cormann: Ms Mrakovcic works as the deputy secretary of the Revenue Group in Treasury. Mr Jordan is the commissioner of the tax office. The tax office is on my right and Treasury is on my left.

Senator KENEALLY: So Treasury is unaware. Is the ATO aware of the story on the front page of *The Australian* today? Mr Jordan, have you seen it?

Mr Jordan: It did not come up in my media clips that I'm aware of, no.

Senator KENEALLY: Right.

Senator Cormann: You've got to talk to your media adviser.

Senator KENEALLY: So we've now established that neither Treasury nor the ATO is aware of the story on the front page of *The Australian*.

Senator Cormann: Maybe we should get a copy of *The Australian* delivered to the committee.

Senator KENEALLY: We're not going to reflect on *The Australian's* relevance to senior bureaucrats this morning.

Senator Cormann: It's a very important national media outlet, of course.

Senator McALLISTER: If you're listening, all Labor senators got up at six o'clock this morning and read *The Australian*.

Senator Cormann: There was a very important story on the front page of *The Australian* today. I commend it to all Australians.

Senator McALLISTER: Thanks, Minister, for tabling this information. Ms Mrakovcic, is this analysis a Treasury analysis?

Ms Mrakovcic: I'm unable to answer that question at this point.

Senator Cormann: We'll take it on notice.

Ms Mrakovcic: I'm happy to take it on notice.

Senator McALLISTER: Really? Minister, you're tabling it. It's your document. What is the source of the document that's been tabled?

Senator Cormann: I've been provided a copy of this document by one of my advisers this morning as I came up to estimates, and I've tabled it for your information. It explains where the data comes from. You can see it makes clear that the annual wage data is sourced from the earliest wage specified in relevant enterprise agreements or information relating to an enterprise agreement. If Labor disagrees with the accuracy of information in relevant enterprise agreements, you've got to tell us. Wages are assumed to grow, conservatively, at two per cent from the latest wage specified, so it's not exaggerating, as you might want to argue. It's taking a very conservative view to assess the comparative impact of the two income tax policy packages, and it's very transparently obvious. Under Labor, the top marginal rate, including the Medicare levy, will be 49 per cent. That's a matter of your policy. It's also a matter of fact that—

Senator KENEALLY: Who compiled this table, Minister?

Senator Cormann: I'll have to take on notice who specifically compiled that table.

Senator KETTER: Minister, if your adviser is in the room—

Senator Cormann: I did not compile the table. I don't think that I have any of my advisers in the room, actually.

Senator KETTER: They're listening to this.

Senator Cormann: I've taken it on notice and I'll provide that information on notice.

Senator KENEALLY: This is extraordinary.

Senator Cormann: But, in the meantime, I think you should focus on—

Senator KETTER: That's quite unreasonable.

Senator Cormann: Actually, what is relevant is whether the information is accurate or not. Are you disputing the wage information that comprises—

Senator KETTER: We'd like to know where it's come from.

Senator McALLISTER: There are a range of relevant questions, Minister. One of them is whether or not it's accurate—

Senator Cormann: The assumptions are published on a piece of paper.

Senator McALLISTER: but the other one is whether or not Treasury is involved in the production of this information, and that is a reasonable question for opposition senators to ask.

Senator Cormann: And we've taken that on notice.

Senator McALLISTER: Minister, it beggars belief that you would submit analysis of this kind to a major daily newspaper—

Senator Cormann: I haven't submitted it. I reject that completely.

Senator McALLISTER: Who did submit it?

Senator KENEALLY: Who did? Where did this story come from?

Senator Cormann: I take that on notice too. I certainly didn't, I can assure you of that.

Senator KENEALLY: I actually believe you on that.

Senator Cormann: Is the information wrong?

Senator KENEALLY: I believe you because you would do better than this.

Senator Cormann: Are you suggesting that the information is wrong?

Senator KENEALLY: You would have actual answers. This is not you. I believe you on that, Minister.

Senator Cormann: I promise you that I have not released this to *The Australian*. I'm not aware who released it to *The Australian*. Now that you've asked, 'Who has released it to *The Australian*?', I take that question on notice. What I would ask you is: are you asserting that the information that is published here in this document is wrong?

Senator KENEALLY: It didn't spontaneously appear.

Senator McALLISTER: I'm asking about the provenance of the information.

Senator Cormann: You're just going for the complete red herring. The question is: are you disputing the information that has been tabled?

Senator McALLISTER: Minister, we are not being distracted by your red hearings.

Senator Cormann: And are you disputing the effect of Labor's higher taxes on middle-income Australians?

Senator McALLISTER: Minister, we are not being distracted by your red hearings.

Senator Cormann: Middle-income Australians are going to pay through their noses—

Senator McALLISTER: It is actually not your job to ask questions. That is our job in this forum, Minister.

Senator Cormann: if Labor's tax policy is implemented. Every—

CHAIR: Order! Thank you, Minister. I think we've reached an impasse, and we might move on to different questions. Senator Whish-Wilson.

Senator WHISH-WILSON: Mr Jordan, in relation to your opening statement and your responses to Senator Keneally's questions about *Four Corners*, it looks like we have freedom of the press and they have the right to run those stories. You have the right to defend your many employees here today, and I respect that view. The government announced its commitment to establish a beneficial owners register in December 2016. Can you update us on that?

Mr Jordan: I can't. Is that a matter for Treasury? It's not your area? And that article wasn't in the press clips because it was a Treasury policy thing, not tax, so I didn't see—

Ms Mrakovcic: That question should probably be referred to Markets Group in Treasury. I'm happy to take it on notice for them.

Senator WHISH-WILSON: That was yesterday. My advice was that this was the appropriate place when my office looked at it. Why would it go to the Markets Group?

Ms Mrakovcic: Ms Purvis-Smith, do you have anything—

Senator WHISH-WILSON: It's company structures, right?

Ms Purvis-Smith: That's right. My understanding is that Markets Group have put out a consultation paper and are responsible for the legislation, so questions in relation to that should be referred to Markets Group.

Senator WHISH-WILSON: But it is an anti-tax-avoidance strategy, correct?

Ms Purvis-Smith: In relation to the material on companies—and again, I think this is best framed to Markets Group—it's relating to the change in the Corporations Act.

Senator WHISH-WILSON: If you could take that on notice, and I'll put some questions to them as well. I want to know what work's been done on it, and whether we're still going to see some kind of legislation. Mr Jordan, on page 1 of your statement today, you mentioned 590 taxpayers are currently under review or audit as part of the focus on wealthy individuals and associated groups, including trusts and aggressive tax planning, and that you've raised \$1.5 billion against liabilities. Is that mostly Operation Wickenby or is it broader?

Mr Jordan: No, and I'll ask Neil Olesen to answer that. It's part of that Tax Avoidance Taskforce. There were two elements. There were the multinational and large corporates, and I think we got funding, also, for high-wealth individuals and associated groups. So it's part of the Mark Konza—

Mr Olesen: Yes, that's correct.

Senator WHISH-WILSON: I ask this question every estimates around Panama Papers and the offshore papers. What's been progressed since we last chatted? Could you give an update on the number of people that have been investigated, what you've discovered and what kind of penalties have been laid around those two specific document leaks?

Mr Olesen: If I start with the Panama Papers, the headline is that we've completed 315 reviews or audits. We've got another 81 that are still in progress. We're hoping to have that whole piece of work completed by the end of this financial year or very shortly thereafter, so we're coming towards the end of that exercise. We've raised about \$65 million in liabilities in relation to those cases that we've completed. Collections are around \$10 million worth of cash at this stage. We've got three individuals who are under criminal investigations at the moment, resulting from the work we've done, not yet at the stage where we've referred anything to the DPP. So that's a headline on the Panama Papers. On the Paradise Papers, we're earlier in that process. We've had several tranches of information provided to us. We've compiled a master list of entities—Australian citizens or corporate entities—that have a connection, coming out of those papers. We're working with—

Senator WHISH-WILSON: Would you do that yourself? Would you compile that list of Australian—

Mr Olesen: We do it collaboratively with other agencies in the Serious Financial Crimes Taskforce. So we're working with the ACIC, AUSTRAC and ASIC as part of the task force to analyse this material. We do have good analytics in this space, too, to deal with the nature of the information you've got. You might understand that some of the quality of that data was variable, not structured. Dealing with large volumes of unstructured data and being able to make sense of that is complicated, but we've got a good capability in that area, as do the other partner agencies. Having compiled that master list, we're now working with those other agencies to work out which of those entities might require further investigation. We expect a lot of them won't require further investigation. There'll be some ordinary explanation, or they may have already come forward under Project DO IT or other disclosure initiatives that we've had. We're working through that at the moment. And it may be worth saying, too that we're also working internationally with our JITSIC forum, our joint international task force on shared intelligence and collaboration which the commissioner chairs. The last meeting was held in March of this year. We've got 37 member countries' tax administrations around the world participating in that. Equally, we're working through JITSIC to put together a multilateral strategy around what we find through these data sources that we've had access to. So it's a work in progress.

Mr Jordan: Also, if I could chip in, that last point is really important. Tax authorities have never worked together like that before. We set up this collaboration through that group, and it's amazing how, if you get over 30 countries all contributing ideas and ways of analysing unstructured data, you get a way better result than just us and trying to do it and everyone trying to do it individually. It's been a huge step forward for international tax issues and also focusing on the intermediaries—because who is putting the people in? We're working together to see who are the prime movers in it. Mossack Fonseca was just law firm in one place. It's really, who's putting the people into the financial planning structures that these people are just providing the companies and dummy directors and that sort of thing for? That's the really important part for us.

Senator WHISH-WILSON: Just because you're in the Panama Papers or the Paradise Papers or offshore papers doesn't necessarily mean you're committing tax evasion, does it?

Mr Olesen: No.

Senator WHISH-WILSON: What reason would someone have for using the British Virgin Islands for tax structures, as an example? What would be the primary reason for that?

Mr Olesen: That's not my field.

Mr Mills: One of the most common reasons for using places like that is in the funds management space. It's a place where entities from various countries around the world would invest into one place in order to invest out into others. Each of the companies or investors would have tax issues in their own jurisdiction. There'll be tax issues associated with the jurisdiction that the investment is going into, so rather than complicate things with a third set of tax issues, there tends to be a non-tax kind of jurisdiction, like BVI and so on, or Cayman Islands, which are designed to not add to the complexity, and the tax is dealt with either at the investing country or at the investor country.

Senator WHISH-WILSON: Have many people involved in, for example, Project Wickenby or what you've outlined there, in terms of the 315 reviews, 81 under progress, and the liabilities collected—\$65 million—would they have been uncovered because of their use of tax jurisdictions like the British Virgin Islands?

Mr Olesen: The cases where we've raised those assessments have been identified because of the Panama Papers, in that situation. Some of those people have come forward previously, voluntarily, through previous disclosure initiatives. That's not the case with all of them.

Mr Jordan: I think there are two really distinct things here. One—we're talking about pooled investment funds run from major organisations. They just go to these places because people say there's no sticky fingers, it's called, on the pass through of the income. You pay your tax in your home jurisdiction. The other one is the

wealthy individuals literally just trying to hide the money. They're two very different things: one's quite a legitimate business thing, one's—

Senator WHISH-WILSON: Would you be able to determine that, though, Mr Jordan? There is a specific person I wanted to ask you about. I'll perhaps put that to you on notice. How do you determine the wealthy individual versus the funds management model you're talking about? If there's an Australian taxpayer who has a series of companies that have been disclosed through these papers, these releases, how do you go about determining whether you get in touch with them first?

Mr Olesen: A key indicator is whether they've returned the income in their income tax return. Those wealthy Australians, or other Australians who might have used those services, who haven't declared the income in the return—that's the smoking gun, essentially, about whether or not they've done something mischievous. Whereas those Australians that are using services in those countries and do return the income that's theirs, then obviously there's not a tax issue from our perspective.

Mr Jordan: That's why it's a bit slow—you've got to go through each one pretty methodically.

Senator WHISH-WILSON: When you examine these databases, do you compare them with other databases like the sanctions database or national security databases? What other agencies are you working with?

Mr Olesen: As I mentioned before, we're working with our partner agencies in the Serious Financial Crime Task Force. So it's the Australian Criminal Intelligence Commission, AUSTRAC, and ASIC in particular. We have good connections with those other law enforcement agencies and we draw on their capabilities.

Senator McALLISTER: Ms Mrakovcic, putting aside the documentation that's been tabled this morning—you've taken some questions on notice about that—have you been asked by the Treasurer's office to do analysis of Labor's tax refund for working Australians?

Senator Cormann: Tax refund? All I know is about higher taxes that Labor wants to impose on Australians.

Senator McALLISTER: That would be the near doubling of the refund in the first four years—our proposal for the low- and middle-income tax rebate offset.

Senator Cormann: So this is a proposal which leaves middle Australians worse off.

Senator McALLISTER: No, it's the proposal which nearly doubles the benefit.

Senator McALLISTER: That's the one where you assert that it doubles the benefit but doesn't cost twice as much. You're asserting that it doubles the benefit—

Senator McALLISTER: I'm asking a process question. I'm asking a question about whether Treasury has been able—

Senator Cormann: How can something that doubles the benefit not cost twice as much? How does that work?

Senator McALLISTER: Minister, I'm asking a question. You're actually answering the questions.

Senator Cormann: It's a rhetorical question.

Senator McALLISTER: I'm asking the Treasury whether they've been asked to cost Labor policies, and I'd appreciate an answer.

Ms Mrakovcic: As I've indicated in evidence to the Senate committee before, Treasury will cost policies with specifications put to us by the government.

Senator McALLISTER: My specific question is, have you been asked to cost the Labor policy which goes to an increase to the low- and middle-income tax offset?

Senator Cormann: The officer has answered that question to the best of her ability today and yesterday. The government, from time to time, will ask Treasury to cost various policy options.

Senator McALLISTER: And have they costed this one?

Ms Mrakovcic: We've costed a variety of policy options in relation to—

Senator Cormann: I take on notice to see whether we can add to that.

Ms Mrakovcic: I really will take it on notice.

Senator McALLISTER: So you're taking it on notice?

Senator Cormann: I take on notice whether we can add to the answer. The answer, essentially—and we went through this before—is that governments of both political persuasions have asked Treasury at various times, and Finance for that matter, to cost certain policy options. At times, they may well—

Senator KENEALLY: Yesterday, you gave us an example from 2005. That was seven years before the Parliamentary Budget Office was created.

Senator Cormann: It was 2012.

Senator KENEALLY: Parliamentary Budget Office was created, I think, midway through 2012. Minister, this is a relevant question, because the Parliamentary Budget Office now exists to cost policies from other political parties. The opposition policies have been costed by the Parliamentary Budget Office. The question we had is, is the government using Treasury in a political fashion to cost what the government is describing as Labor policies?

Senator Cormann: Firstly, the answer to the last question is no, we're not using Treasury in a political fashion at all. But, as I've said yesterday—

Senator KENEALLY: Why are you—

Senator Cormann: You've asked the question. May I finish my answer. As I' also said yesterday, part of the proposition from Labor is that the government should adopt certain policy positions. Surely it would be irresponsible for the government to adopt any policy position without getting proper advice from its officials. Unless you're saying that you're just putting policy positions out there for no purpose at all, or just for the purpose of political conversation—if your intent really is to say to the government, 'These are policy positions that we think you should adopt,' it stands to reason that of course we ought to seek advice on them.

Senator KENEALLY: You've come here today and tabled a document which you say is a Labor policy, but you can't tell us where it came from, you can't tell us who did the analysis, you can't answer the most basic questions—

Senator Cormann: Do you dispute the data?

Senator KENEALLY: I don't even know where it's come from, and more importantly, Minister, you have no idea where this has come from.

Senator Cormann: I would like you to tell me whether the data is wrong.

Senator KENEALLY: You have tabled this document.

Senator Cormann: Show me one number in there that's wrong.

Senator KENEALLY: You have tabled this document today, and you can't even tell the committee where it has come from. You say a staffer handed it to you on the way in the room.

Senator McALLISTER: A staffer that you recognised, or just a random individual in a suit in a corridor?

Senator Cormann: Unlike others at this table, I did read the front page of *The Australian* today, and I thought it was important for me to be aware of the factual information that substantiated the assertions made in that article.

Senator KENEALLY: How do you know it's factual?

Senator Cormann: One of my advisers provided me that substantiation. You have asked who put it together. I've taken that on notice.

Senator KENEALLY: Did your adviser put it together?

Senator Cormann: No.

Senator KENEALLY: How do you know that?

Senator Cormann: I know that because he supplied information that clearly came from another part of government. I've taken on notice where that information was put together.

Senator KENEALLY: And you say this is the Labor policy.

Senator Cormann: You are not, obviously, prepared.

Senator KENEALLY: You say this represents a Labor policy, but you can't even tell us where it's come from.

Senator Cormann: I encourage you to tell me where this analysis is wrong. You tell me where it's wrong.

Senator KENEALLY: I encourage you to tell me why you say this is a Labor policy. You don't even know where it came from.

Senator Cormann: Do you dispute the marginal tax rate?

Senator KENEALLY: You can't even name the adviser who handed it to you.

Senator Cormann: Do you dispute that you will—

Senator KENEALLY: Will you give us the name of the adviser that handed it to you?

Senator Cormann: I'm not mentioning names of advisers. That is—

Senator KENEALLY: You brought up the adviser. We didn't.

Senator McALLISTER: Yes, that is true.

Senator Cormann: I'm not going to mention names of advisers. Labor ministers never would have.

CHAIR: Senator Keneally, I think you know that that's—

Senator KENEALLY: Then why did they minister bring it up?

Senator Cormann: Are you disputing that anyone who earns, say, \$149,000 a year would earn the top marginal rate of 37 per cent under Labor? Are you disputing the information that's contained?

Senator McALLISTER: We are, because to start with we don't know what the estimates are.

Senator Cormann: Are you disputing the information that is contained in the relevant enterprise agreements—

Senator KENEALLY: How do we know what the assumptions are?

Senator Cormann: for mine apprentices, school teachers, labourers, crane operators, riggers, a Queensland police sergeant?

Senator KENEALLY: Minister, we don't know the assumptions you've used.

Senator Cormann: Are you disputing the wage information in enterprise agreements?

Senator KENEALLY: What's the wage assumptions in this?

Senator Cormann: It makes that—

Senator KENEALLY: What are the wage assumptions in this? It projects ahead several years.

Senator Cormann: It makes it very clear. Read. Read the document.

Senator KENEALLY: What are the wage assumptions? What are the wage assumptions?

Senator Cormann: You can repeat the question a hundred—

Senator KENEALLY: What are the wage assumptions? Because you don't know—

Senator Cormann: Well you're wrong.

Senator KENEALLY: Because you don't know where this came from.

Senator Cormann: You're not letting me answer the question.

CHAIR: Order! I think we've probably had enough of that game. We've reached an impasse.

Senator Cormann: I mean, Senator Keneally, all you need to do—

CHAIR: I'm happy to remove the call from you Senator Keneally if you think we're not getting anywhere—

Senator Cormann: All you need to do is read.

CHAIR: and I can come back to you.

Senator McALLISTER: If that occurs there will be a problem.

CHAIR: I will certainly come back to you.

Senator Cormann: I was actually answering the question.

CHAIR: Minister, just a moment. I'm happy to remove the call if you think that we've reached an impasse and that we can't move on from this but let's not have a squealing match across the chamber.

Senator Cormann: I want to answer the question, because it actually, explicitly says on the document. If Senator Keneally goes to the bottom of the document: "Annual wage is sourced from the earliest wage specified in the relevant enterprise agreement or information relating to an enterprise agreement and wages are assumed to grow conservatively at two per cent from the latest wage specified in the relevant enterprise agreement," which means that, if anything, it most likely underestimates the negative impact of Labor's tax policy on those wage-earners.

Senator McALLISTER: Minister, Labor has made it clear that we support the first phase of the plan and, in fact, seek to enhance it by significantly increasing the low-and-middle income tax offset so that in the first four years of changes to personal income tax, under our plan, taxpayers will be substantially better off. We have said we are open-minded about phase 2, and we are interested to understand what the rationale is for phase 3, which

seems to deliver all of the benefits to the top 20 per cent of taxpayers. Now, I don't understand whether that position is reflected in this table, and I don't know if you can tell us.

Senator Cormann: I can tell you. Your position is reflected, because your position also includes maintaining the 37 per cent income tax bracket, which is clearly reflected in this table, which means that an AFP officer on band 8—

Senator McALLISTER: And a whole range of things on which we've made clear we have not made a decision.

Senator Cormann: would pay \$2,500 in extra tax under Labor.

Senator McALLISTER: On a whole range of questions for which there is no decision.

Senator Cormann: If you can put some holes into the assumptions, tell us about it.

Senator McALLISTER: I'm putting holes in your assumptions—

Senator Cormann: No, you haven't.

Senator McALLISTER: which are that the Labor has made a decision on either stage 2 or stage 3 of your tax plan.

Senator Cormann: So you're supporting the third stage, now?

Senator McALLISTER: We have made it clear we are waiting for the information.

Senator Cormann: I've got to say, if you're saying to me that you're making it very clear, that's the first time I've heard you that.

Senator McALLISTER: Well you have not been paying attention.

Senator Cormann: I've never heard you say that you're supportive of stage 3. Hallelujah!

Senator McALLISTER: And that is not what we are saying to them.

Senator Cormann: If support stage 3 of our income tax plan, there'll be peace in our times. Let's get it through the Senate quickly.

Senator McALLISTER: That is not what we are saying today.

Senator Cormann: Ah, okay.

Senator McALLISTER: We have referred it to a Senate committee—

Senator Cormann: Are you supporting it? Are you not supporting it?

Senator McALLISTER: so that information about this can be examined.

Senator KENEALLY: Are you not releasing the year-on-year? You have the year-on-year data.

Senator McALLISTER: And you choose not to release it. You told us yesterday you have the year-on-year data for stage 3, and you're not releasing it to the Senate. Are you releasing it or are you not releasing it, Minister?

Senator Cormann: We have released more data than governments have released on these matters in the past.

Senator KENEALLY: Why can't you release the year-on-year data?

Senator McALLISTER: Including data that he doesn't no idea where it comes from.

Senator KENEALLY: You can release data that you have no idea where it came from, but you cannot release data that you hold from Treasury on stage 3 of your tax plan!

Senator Cormann: This is in an abundance of helpfulness to make sure you better understand your own policy and that you understand what data is substantiating the story that appeared on the front page of the paper.

Senator KENEALLY: You're better than this, Minister Cormann.

Senator McALLISTER: He is better than this.

Senator Cormann: I understand that you're sensitive about the negative impact on aspirational middle Australia of your tax policy, but you've got to be held to account.

Senator KENEALLY: Doubles your own tax cut.

Senator McALLISTER: It nearly doubles your tax cut in that first four years, Minister.

Senator Cormann: But if you keep saying, which is wrong—and Bill Shorten is very shifty on these things—if you keep asserting that you double the benefit, explain to me how it doesn't come at twice the cost.

Senator Keneally interjecting—

Senator McALLISTER: The shifty ones!

Senator Cormann: These things don't add up. Your numbers don't add up. You can't say you're doubling the benefit over that initial four-year period and not have a cost that is twice as high.

CHAIR: All right, Thank you, Minister. Thank you, Senator Keneally. Senator Stoker.

Senator STOKER: Mr Jordan, I'd like to ask some questions to paint a bit of a picture of the landscape of who is paying tax in this country. What proportion of income tax is paid by those people who are on the top marginal tax rate? How much is that in dollar terms?

Mr Jordan: I know the top one per cent of taxpayers pay 17 per cent of the total individual tax, but we'd have to either take that on notice or—

Senator STOKER: Could you repeat those numbers, Mr Jordan? What was it? One per cent pays 17—

Mr Jordan: The top one per cent of taxpayers, I think it is, pay 17 per cent of income tax revenue of individuals, not in business, and then it goes up: 10 per cent pay a certain amount. I can find it on my thing here if you're—so the question again was what levels are paid by?

Senator STOKER: What proportion of the total income tax that's raised is paid by those who are on the top marginal tax rate? How much is that in dollar terms? I don't have those figures at hand—

Senator LEYONHJELM: If you'd like to put that on notice, I'd also welcome it.

Mr Jordan: Yes.

Ms Mrakovcic: We may be able to provide the information through Ms Purvis-Smith.

Senator STOKER: That would be great.

Senator LEYONHJELM: That would be very useful, thank you.

Ms Purvis-Smith: Using the 2015-16 taxation statistics that have come out recently, the top one per cent of taxpayers pay around 17 per cent of tax paid. In relation to those in the 45 per cent tax bracket—the over-\$180,000 bracket—there are 4.1 per cent of taxpayers in that bracket, which equals around 416 ,000 taxpayers. They pay around 30 per cent of the tax paid.

Senator STOKER: Do we know what that is in dollar terms?

Ms Purvis-Smith: I don't have the dollar terms with me. I can take that on notice, if you wish.

Senator STOKER: I'd be grateful. Thank you. Can we now think about people who are on the lower marginal income tax rates. What percentage of taxpayers do they make up? How much tax do they pay in dollar terms?

Ms Purvis-Smith: Again, I don't have the dollar terms for you, but I can take that on notice for you.

Senator STOKER: That would be great, thank you.

Ms Purvis-Smith: I do have some of that information if you would like me to provide that now.

Senator STOKER: Please.

Ms Purvis-Smith: In terms of taxpayers below \$18,201, so that's the tax-free threshold, there are 45,000 of those—they pay obviously 0 per cent of the tax paid—and there's 0.4 per cent of taxpayers in that bracket. Within the \$18,201 to \$37,000 bracket, the 19 per cent bracket, there's 22.5 per cent of taxpayers. They number around 2.3 million taxpayers, and they paid 2.3 per cent of personal income tax. In the next tax bracket, the 32.5 per cent tax bracket, between \$37,001 and \$87,000, there are 53.7 per cent, so around 54 per cent, of personal income taxpayers, so around 5.4 million taxpayers, and they pay around 32.5 per cent of personal income tax taxes. The remaining bracket, the 37 per cent bracket, between \$87,001 and \$180,000, there are just over 19 per cent, about 19.3 per cent, of personal income taxpayers in that bracket. They number about two million and they pay around 35 per cent of the personal tax paid in 2015-16.

Senator STOKER: How does Australia's top marginal tax rate compare to other advanced economies, such as Canada, New Zealand and the UK?

Ms Purvis-Smith: I can refer you to material in the budget papers as well on this. Our top marginal tax rate is relatively high, in relation to OECD countries, and it cuts in at a relatively low multiple of average full-time earnings. Our top marginal tax rate cuts in at around 2.2 times average full-time earnings. That compares with four times in Canada, and the UK, and around eight times in the US.

Senator STOKER: Do you have any data on New Zealand?

Ms Purvis-Smith: New Zealand has a much flatter system. I think their top marginal tax rate is 33 per cent. It cuts in at a lower multiple of average full-time earnings. Their system also does not have things like work related expenses, in terms of deductions, and doesn't have as many tax brackets as well, so it has a much flatter system.

Senator LEYONHJELM: What's their reliance on income tax compared to Australia's?

Ms Mrakovic: It's certainly clear that they have less reliance on income tax than Australia, simply because we know that they have a very broad based VAT system.

Mr Jordan: They've increased that rate to 15 per cent. This might be a little bit outdated but it applies to a base of around 96 per cent of consumption, whereas ours is 10 per cent on a 47 per cent of consumption. So that's a big difference.

Senator LEYONHJELM: That's what I thought.

Mr Jordan: There's a bit of churn in there because they tax it on government services as well, education and health, but they've chosen the wide, flat base with very few exemptions.

Senator STOKER: I'm concerned that if the current tax system is not changed individuals on average incomes will be impacted by bracket creep. Could you please outline what bracket creep is and why it's a problem, how it impacts upon the progressive nature of the tax system?

Ms Mrakovic: Certainly. Maybe I'll try my hand at it and then pass to Ms Purvis-Smith for additional information. Essentially, bracket creep refers to the fact that taxpayers will face higher average and marginal tax rates over time, even if their income has only been increasing by inflation. What happens is that as your income increases more of that income may be taxed at higher marginal tax rates. That ends up increasing your average tax rate, even if you do not go over another marginal tax rate. It is certainly the case that bracket creep year on year can add to the progressivity of the tax system. Can you please provide an overview of how the government's personal income tax plan announced in the budget will deal with that problem?

Ms Mrakovic: Certainly. Ms Purvis-Smith, do you want to take this one?

Ms Purvis-Smith: I can give you an overview of the parts of the tax plan. Step 1, as known as the low- and middle-income tax offset, provides a tax offset of various rates for various incomes. The benefit provides up to \$200 for taxpayers with taxable income of up to \$37,000. It phases in between \$37,000 and \$48,000, up to a maximum benefit of \$530. Taxpayers between taxable incomes of \$48,000 and \$90,000 are eligible for the maximum tax offset of \$530. It then phases out over the incomes of \$90,001 and just over \$125,000. That starts for the income year 2018-19 and continues for the income years 2019-20, 2020-21 and 2021-22. The low- and middle-income tax offset will be paid on assessment when taxpayers provide their tax returns. On 1 July 2018 also, the top threshold of the 32½ per cent personal income tax bracket will increase from \$87,000 to \$90,000.

Then from 1 July 2022, a range of things happen. The low-income tax offset increases from \$445 to \$645, and the 19 per cent personal income tax bracket increases from \$37,000 to \$41,000. That combination locks in and provides a similar amount of tax relief to that provided from the low- and middle-income tax offset. At the same time—from 1 July 2022—the \$90,000 bracket will be increased to \$120,000. As Ms Mrakovic mentioned in terms of bracket creep, moving the thresholds, in particular, will allow taxpayers to be able to not pay a higher marginal tax rate, when their earnings increase, even if their earnings are increasing by inflation.

Senator Cormann: I should just add to this that, today, the top 20 per cent of income earners in Australia pay 61 per cent of the income tax revenue generated by government. If our plan, the seven-year plan, is legislated in full, the top 20 per cent will still be paying 61 per cent of the income tax generated in Australia. If we don't legislate our plan in full, and if we don't address bracket creep, the burden on those taxpayers will continue to increase and, as more and more middle-income earners are pushed into the higher tax brackets, that will be a disincentive for people to work harder. And that would be bad for the economy and bad for jobs.

Senator WHISH-WILSON: So you're saying they're not working hard now because they might get taxed at a higher rate? What a load of rubbish.

Senator LEYONHJELM: Is that the top 20 per cent of individual income earners—

CHAIR: Order! Senator McAllister has the call.

Senator McALLISTER: Ms Mrakovic, yesterday the Treasury secretary indicated that Treasury had not undertaken any electorate-by-electorate analysis of the personal income tax package. Can you confirm that that's correct?

Ms Mrakovic: That's correct.

Senator Cormann: Ms Mrakovic was here at the table at the time.

Senator McALLISTER: Can I table a document, Chair? I've got a number of copies.

CHAIR: Yes.

Senator McALLISTER: Thank you. And it is relevant, I need the officers at the witness table to have access to copies.

Mr Jordan: Can I just address one question that was asked before about the total tax paid by individuals? I've got that figure here: it was 53 per cent of the total liabilities—individuals paid 53 per cent of total tax collected in the 2016 year. And, as I said, the top one per cent paid 17 per cent; the top three per cent paid 27 per cent; and the top 10 per cent paid 45 per cent of the total. And the minister just mentioned the top 20 per cent.

Senator McALLISTER: Thanks. Ms Mrakovcic, between 8 May and 11 May, 14 members of the Liberal Party—

Senator Cormann: Hardworking local representatives.

Senator McALLISTER: made public statements, either in the chamber or on their Facebook pages, about the number of electors in their electorates who they say will benefit from the government's tax packages.

Senator Cormann: Very important public information.

Senator McALLISTER: I assume that that information was not compiled by Treasury. Is that correct?

Ms Mrakovcic: That's correct.

Senator McALLISTER: Right. Minister, can you provide any insight into what basis these claims have been built on?

Senator Cormann: I'll take on notice what the source of the information is, but let me reassure the constituents in the electorate of the hardworking member for Petrie, Luke Howarth, that 66,223 taxpayers in Petrie stand to benefit from the low-and middle-income tax relief in the 2018-19 financial year if the parliament legislates our plan. For the constituents in the electorate of Banks, where the hardworking David Coleman is working very hard to deliver for working families, in this year's budget more than 66,000 people in Banks stand to benefit from low-and middle-income tax relief in the 2018-19 financial year—

Senator McALLISTER: So, Minister, you're personally guaranteeing those numbers. Did you provide them with those numbers?

Senator Cormann: Warren Entsch in Far North Queensland is of course very proud to be part of a government that will provide tax relief of up to \$530 per year—

CHAIR: Minister, I do think that we've tabled the document, so that will be on the record.

Senator Cormann: Given that I've been asked about it—

CHAIR: I understand—

Senator Cormann: I think it's very important to get that information into the public domain.

CHAIR: I understand, but I think the question was more pertaining to the source of the information as opposed to the content of the information.

Senator Cormann: I've taken that on notice.

Senator McALLISTER: In reading these out, are you personally guaranteeing that the information provided by these individuals is correct?

Senator Cormann: Unlike the Labor Party, the information that we put into the public domain is correct. I know that people know that when Bill Shorten tries to scare patients that somehow the coalition is attacking Medicare, that bulk-billing rates for patients going to GPs are at record highs. When Bill Shorten goes out and gives people a rolled gold guarantee that the vetting processes in the Labor Party are magnificent and foolproof, that can't be trusted. When Bill Shorten tells the Australian people that there is an \$80 billion tax giveaway—

Senator McALLISTER: This is an abuse of the standing orders—

Senator Cormann: to the big end of town, they know that that is not true.

CHAIR: Minister, in the few minutes we have left until the break, I think Senator McAllister is entitled to ask a couple of specific questions.

Senator McALLISTER: Minister, if these didn't come from Treasury, where could they possibly have come from?

Senator Cormann: I'm not going to answer. I'm not going to speculate. I've already taken on notice a question as to where that information is sourced from, and I will provide that information to the committee.

Senator McALLISTER: Minister, the tax changes that are proposed involve the introduction of a new offset and the change of the thresholds for the different tax brackets. It's reasonably complex to work out how many

people in 2018-19 will be incorporated into these changes. If it were not undertaken by Treasury, how could it possibly be accurate?

Senator Cormann: It's not actually that complex at all, so I would reject that assertion. We have put forward a seven-year plan to provide income tax relief to working families, prioritising low- and middle-income earners in the first instance through the low- and middle-income tax offset, which provides a tax cut, effectively, of up to \$530 a year. It's not that hard at all to work out how many people stand to benefit from these changes, when the information is, of course, very important public information.

Senator McALLISTER: Even though the actual package changes the number of people in each tax bracket?

Senator Cormann: Sorry, what—

Senator McALLISTER: Even though the nature of the intervention, the nature of the plan you propose to legislate, changes the number of people in each tax bracket—how could that possibly be—

Senator Cormann: We've provided information in budget papers and in related documentation about how our proposed changes benefit Australians in relevant tax brackets, and if you're in an income bracket from \$48,000 to \$90,000 a year then you will stand to benefit from those changes and, as a result of the low- and middle-income tax offset, you'll stand to benefit by the maximum amount of \$530. Then, of course, there is the additional benefit for people in the income bracket between \$87,000 and \$90,000 that comes from the lifting of the top income tax threshold for the 32½ per cent threshold.

Senator Cormann: Minister, you've taken on notice who produced this documentation, but you've asserted that all of this Liberal Party documentation is accurate. How can you stand by the numbers if you don't know who produced them?

Senator Cormann: We stand by the data that we put in the public domain, and I've already indicated to you that I'll be providing you further information on notice.

Senator McALLISTER: So, you know but you're not willing to tell us, and that's the basis on which you stand by it, or you don't know and you're standing by it anyway in some sort of weird gesture of blind faith?

Senator Cormann: We'll put our track record of telling the truth to the Australian people against Bill Shorten's shifty track record any day. People across Australia increasingly understand—

Senator McALLISTER: No cuts to schools, no cuts to hospitals—remember those promises?—no cuts to the ABC—

Senator Cormann: Well, actually, funding for hospitals is at a record high. Funding for schools is at a record high. People around Australia know that whenever Bill Shorten talks about cuts to hospitals he's lying.

CHAIR: Order!

Senator WHISH-WILSON: Point of order, Chair, on behalf of the Labor Party: it's unparliamentary to not use Mr Bill Shorten's full name.

Senator Cormann: Well, every time Mr Bill Shorten talks about cuts to hospitals and cuts to schools he's lying to the Australian people.

CHAIR: Thank you for that point of order, Senator Whish-Wilson. Senator McAllister, do you have another question in the last minute, before the bell goes?

Senator McALLISTER: In fact, I think we have gone as far as we can with the minister on this issue.

Senator KETTER: Perhaps I could move onto another issue. Mr Jordan, on 23 August last year the offices of the Treasurer and the Minister for Revenue and Financial Services requested that your media unit urgently check a joint media release allegedly about closing Labor's loopholes. You might be aware that this has been the subject of an FOI request. One of the claims that was highlighted in the information that was sent to the ATO was that Labor voted against the Multinational Anti-Avoidance Law—and just for the record, Labor voted against amendments negotiated between the Greens and the government; we didn't vote against the MAAL.

Senator WHISH-WILSON: You would have been excused for that thinking that, considering how hard they campaigned against it.

CHAIR: Order!

Senator KETTER: Is it a common occurrence for the government to request the ATO to fact-check partisan political claims?

Mr Jordan: I'm not aware of that August issue. I can check on that, if you like.

Senator WHISH-WILSON: It was on a billboard in Sydney.

CHAIR: Order! You haven't got the call, Senator Whish-Wilson.

Senator KETTER: I will come back on that.

CHAIR: Senator Leyonhjelm, why don't you take us through to the break—at 11, on the knocker.

Senator LEYONHJELM: I have just a quick one following up on Senator Whish-Wilson's questions relating to the Panama Papers. For the last 18 months I have tormented the Australian Federal Police about the bullion that they're holding. I think it's \$160 million worth of silver, if I recall correctly. I asked them what's happening, and they have said, 'Yes, we've still got it, and no, nothing is happening.' My feeling is that they're waiting for some advice from you as to what to do with it. So I'm making no progress other than, 'Yes, we've still got it.' That's the answer I keep getting. I'm wondering whether you might be able to throw some light on it. Is there an endpoint at which this bullion is no longer held by the Commonwealth? When does section 51(xxxi) of the Constitution, which is compensation for a seizure of property, kick in? At what point do you believe that this matter will be settled?

Mr Olesen: It's a matter for the AFP.

Senator LEYONHJELM: Oh, dear me! The AFP's got the call on it.

Mr Jordan: I think this was part of that week of action where there were some raids on accountants' premises and some others. Is that the one? And they found all this silver bullion there.

Senator LEYONHJELM: Yes. I thought it was linked to the Panama Papers?

Mr Jordan: Yes, it was a Panama Papers week of action. We did some joint raids on a couple of Queensland accountants I think and somewhere else. One of the properties had all this silver there. I presume, once the case is finalised and there's a brief done to the CDPP or whatever, that there would be—there has to be an endpoint, clearly.

Senator LEYONHJELM: Yes.

Mr Jordan: And I'm as frustrated as anyone else is about the period of time these criminal investigations take. I don't know what's normal in that situation—how they would deal with that.

Senator LEYONHJELM: So is it still anticipated that it will be tied up in the context of a criminal prosecution?

Mr Olesen: I'm not in a position to comment. The question is best put to the AFP. They're the ones who—

Senator LEYONHJELM: No, they won't answer either. I guess what I'm interested in ensuring is that due process occurs; \$160 million worth of property has been seized, and there have been no prosecutions around it, which they confirmed. My main concern is to ensure that there will be prosecutions so that it can be appropriately dealt with by law, or, if there isn't, then it's returned to its owners.

Mr Jordan: Maybe we can find out where that's up to, and report back or something.

Senator LEYONHJELM: Yes.

Mr Jordan: I'm happy to do that, because—

Senator LEYONHJELM: I'd appreciate that.

Mr Jordan: as I said, I also get very frustrated with the period of time these things tend to take. And, as you know, these ones I mentioned earlier were years—the Chevron case was eight years. They're not criminal ones. Criminal ones really take a lot of time.

Senator LEYONHJELM: Yes, you're right: the Chevron case took years, although that was primarily in the court. As far as I'm aware, nothing is in the court yet, and therefore the delay is harder to explain.

Mr Jordan: I think that's right. Yes. I will check on that and we can answer that on notice, as to where that is.

Senator LEYONHJELM: All right. Thank you.

Proceedings suspended from 11:00 to 11:15

CHAIR: We will now resume. Senator Patrick has the call.

Senator PATRICK: I have some questions for Commissioner Jordan. How do Australia's top companies deal with the ATO? Do they get a relationship manager?

Mr Jordan: I'll ask Jeremy Hirschhorn, who runs that large market—public companies, public groups, the top 1,000. You heard before about the concentration of tax? The top 10 corporate taxpayers pay about 30 per cent of the total corporate tax, so obviously it's important for us to be able to assure ourselves that we know what they're doing and they're doing the right thing.

Mr Hirschhorn: It is important to start off with the demographics of the large corporate population to understand how we engage with them. As the commissioner said, the top 10 companies in Australia pay about a third of all corporate tax, the top 100 pay about half and the top 1,100 pay two-thirds of all corporate tax. Overall, there are probably about a million companies but 1,100 companies pay the top third. So for the top 100 companies we deal with every year one-on-one, we have dedicated teams. We do something which is called a pre-compliance review, so we are talking to them about their tax return before they lodge it. In some ways, it's almost like a pre-audit but one done, in almost all cases, in a very collaborative way.

The next 1,000 companies, we are running through a new process which is funded through the Tax Avoidance Taskforce funding and that involves us doing a streamlined tax assurance review in order to achieve justified trust. In some ways, that is like a due diligence, in a commercial sense, or a little bit like an audit every four years—it straddles a four-year period. We have very sophisticated risk models as well which are running all the time on all the companies.

In terms of how we then engage, most large companies pay their tax. We're on record as saying that our most recent published statistics are that large companies pay about 91 per cent of their tax due and payable in their own return before we take any action. That gets up to 94 per cent after compliance action. So that's actually a very high level of tax performance and, since then, we are confident that has improved. What that means is that, for the vast bulk of large companies, our focus with these sort of periodic review processes is, as they have tough tax problems which come up—for example, if you do a transaction, you're doing something new—our focus is on working with them before the event, whether through a ruling or some other process, to help them know and have confidence as to how to lodge their tax returns.

Senator PATRICK: I want to get to the crux of this, because I'm pressured by time. Across those top companies, do they have a relationship manager that deals with them?

Mr Hirschhorn: The top 100 companies have a dedicated team. We don't call anybody a 'relationship manager', but they have a team that they deal with, so they will know they have somebody they can call who knows a lot about them. The next 1,000 companies will not have a dedicated relationship manager, but they will have something which is called a key client management group. They have access to a group of people who can assist them dealing in those, I suppose, tricky administrative areas of tax.

Senator PATRICK: Let's deal with the top 100 companies where there's a team. If someone outside of that team notices something unusual in the course of their own duties, do they have to go through that team to deal with the company if they see an indiscretion or something curious about the tax affairs of the company?

Mr Hirschhorn: Certainly that would be the usual course. We do administer multiple taxes, not just income tax. We are in a course of trying to integrate all taxes into, in a sense, one client-facing integrated team. We call that our key taxpayer engagement initiative, but generally for all income tax matters, you would expect the initial contact to be through that case team.

Senator PATRICK: Do you spot check to ensure that those top 100 companies are at least lodging a tax return?

Mr Hirschhorn: Yes. We're actually engaging with them before they lodge their tax return.

Senator PATRICK: Is there a penalty if they don't lodge their tax return on time?

Mr Hirschhorn: Yes. There are very significant penalties for not lodging your tax return on time, particularly if you are what is called a significant global entity. For a significant global entity the penalties were increased in the last year or so by a factor of 100, so it is actually possible for a large company to have a deferred breach without cause. Of course we do remit penalties when people have cause; we exercise our discretion. Without cause, a deferred breach of lodgement of a tax return for a significant global entity could have a penalty of up to \$525,000. That focuses the mind of even the largest companies.

Senator PATRICK: Can you, on notice, provide me with how much has been collected by way of those penalties for significant global entities over the last five years?

Mr Hirschhorn: Yes. I can take that on notice. I might give you an indication. In the past our estimate of the significant global entity population is that—again, this is just to give an order of magnitude—in a typical year we might have levied 2,000 penalties of which we remitted about 1,000 of them after application for omission, so for a good cause, so somebody says, 'Look, I was just a little bit late and there was a reason.' It's fair to say that since the introduction of these much larger penalties, which was from July last year, we have run a program of education and encouragement up until April. We have not seen cause to levy any of those very significant penalties yet, because they have been highly effective in reminding companies of their obligations to lodge on time.

Senator PATRICK: As a deterrent?

Mr Hirschhorn: Yes.

Senator PATRICK: It's come to the attention of my office that one of the largest banks which operates in Australia didn't file a tax return for about 12 years. Are you aware of that case?

Mr Hirschhorn: Offhand, I do not know that case. Can I say, it does surprise me that that is the case.

Senator PATRICK: The provenience of the information I have is pretty good. I'll tell you that the bank involved—I say this so that hopefully you can just say it's wrong—was Goldman Sachs, between 2000 and 2012. The information that's been presented to me was that they didn't file a tax return over that period.

Mr Hirschhorn: As a general comment, we do not talk about individual taxpayers.

Senator PATRICK: Just hold it there. I just want to make you aware of the rules and regulations of how this works. This is from Odgers, which is the authority on Senate procedure:

Unless a statutory secrecy provision expressly limits the powers of the Houses, it is subservient to parliamentary inquiry powers.

Because you are covered under privilege here, you can't be prosecuted for breaking the law, so I'm going to insist on an answer in respect of this. The bottom line is the Constitution overrides your act unless your act specifically says you don't have to tell us.

Mr Hirschhorn: Senator, I might just say that there has been a longstanding convention in this committee and committees of the other place that we do not talk about—

Senator PATRICK: Well, I think that's a matter for the committee. If you want to, we can go to a private meeting and we can talk about it. But that is the position of the Senate.

Mr Hirschhorn: I ask that that be referred to the Chair for consideration out of session because at this stage I'm not comfortable talking about individual taxpayers.

Senator PATRICK: Are you in a position to answer me if the committee were to insist upon it?

Mr Hirschhorn: I'll make a more general comment that, as Deputy Commissioner of Public Groups, Public Groups is very aware of the large companies operating in Australia. I would be extremely surprised if any large company could be in a position where it did not lodge a tax return for any period of time, let alone 12 years. But that's as far as I'll be able to go.

Senator PATRICK: All right. I ask you to take it on notice. Of course, the minister will have an opportunity to advance the public interest immunity, noting what I've just said. I put it to you that the public interest here in large companies paying their tax is significant. I will argue to this committee or, if necessary, to the chamber that that would override any public interest immunity, but of course I'm open to what you have to say.

Senator Cormann: You weren't here when the commissioner made his opening statement. One very significant part of the opening statement was that large corporations and multinationals are now expected to pay \$10 billion more in tax in 2017-18 than in the previous year, in part because of economic growth and commodity prices but also in part because of the enhanced compliance activities of the ATO. The government has pursued a whole range of reforms—the multinational anti-avoidance legislation, the diverted profits tax measures and various other measures that you are aware of. Combined with enhanced resourcing and enhanced focus by the ATO it is actually having an impact. But we'll see what else we can provide you with.

Senator PATRICK: Sure. I'm particularly interested in that. I laid it out on the table that someone has said that about Goldman Sachs. It would actually be fair if they respond if that's not the case. Also, without identifying other companies, irrespective of whether you have issued a fine or remitted it, could you please advise how many of the large 100s have not paid tax over, say, the last five years?

Mr Hirschhorn: I can certainly take that on notice. I am very happy to provide aggregated data. There is one exception to our taxpayer secrecy provision, and that is that we are mandated under the corporate tax transparency measure to publish three numbers about large companies—that is, public companies and foreign companies that earn more than \$100 million a year gross and Australian private companies that earn more than \$200 million a year gross. We have to publish: their total income per their tax return; their taxable income per their tax return, if any; and their tax payable per their tax return as lodged, if any.

Senator PATRICK: Does that go back to 2002?

Mr Hirschhorn: We've published that for the last three years, so the first year was 2013-14.

Senator Cormann: On that point: this is an important additional transparency measure but it has also been used and abused by some people to create a wrong impression. A number of people who are trying to push a

particular agenda are using gross income data and comparing it to tax paid and then making all sorts of assertions about how companies pay very low percentages of tax, when tax, of course, is paid on taxable income, on profits.

CHAIR: Senator Patrick, I think Mr Hirschhorn said he's going to take it on notice.

Mr Hirschhorn: In 2015-16 a company called Goldman Sachs Holdings ANZ Pty Ltd is disclosed in the corporate tax transparency report, which means they lodged a tax return for the 2016 year.

Senator PATRICK: The dates I'm referring to are from 2000 to 2012.

CHAIR: I think Mr Hirschhorn can take that on notice. For the benefit of senators, I thought I'd tell you how I'm going to break up the remaining time before the lunchbreak at 12.15. I'm going to give 10 minutes to the Labor Party, 10 minutes to the Greens, 10 minutes to the Coalition and then go back to Labor for the last 10 minutes. There's probably a little bit of wriggle room in there for switching, until we get to the lunchbreak.

Senator KETTER: Mr Jordan, I want to return to the last question I asked you in relation to the fact-checking that was done on a media release of 23 August 2017. You said you weren't familiar with it. I would like to table the documentation that was released under FOI in relation to that.

CHAIR: Yes, I'm happy for you to table that.

Senator KETTER: That media release made reference to \$4 billion in tax liabilities raised in the prior financial year. In correspondence with the shadow assistant treasurer, you confirmed that the ATO deployed division 13 of the Income Tax Assessment Act 1936, subdivisions 815-A and 815-B of the Income Tax Assessment Act and the general anti-avoidance rules of part IVA, noting in particular that some of those involve amendments to the previous government's Tax Laws Amendment (Countering Tax Avoidance and Multinational Profit Shifting) Bill 2013 and the Tax Laws Amendment (Cross-Border Transfer Pricing) Bill 2012 and that the assessment related to years prior to the implementation of the MAAL. Does the ATO agree with the government that any of this is related to alleged loopholes left by Labor?

Mr Jordan: I'll have to take that on notice. There's obviously a lot of material here. I've not seen this before. I don't know if anyone else is aware of it or has seen it?

Mr Hirschhorn: As a matter of course, we will fact-check comments on our administrative results, for example the liabilities raised through things like the MAAL. It is routine that before the Treasurer or ministers make comments about our results they check with us that they are fairly representing our results. We do not make comments on matters outside our expertise, and our expertise is what we did.

Senator KETTER: What was happening there was that the media release was entitled 'Crackdown on Labor's tax loopholes'.

Mr Jordan: We would've fact-checked, if that's what we did, things relating to our figures that were mentioned there. We wouldn't name the media release. We wouldn't add any commentary on any policy issue in there, and we certainly would not get involved in any partisan political issues resulting from that media release. If we were asked to check that some figures were correct, I presume we would do so, but it would be an objective analysis, not a subjective analysis of loopholes or whatever. That's a political slant of it. We deal with the bureaucratic, administrative matter.

Senator KETTER: The question is: why did the ATO allow the media release to be ticked off when it was so clearly erroneous?

Mr Jordan: We have no say over what a minister puts out as a press release. I think you're elevating us to a position that we don't have. Sometimes I might like that, but I think we don't have any influence over that at all. I don't think that would come as a great surprise.

Senator KETTER: Since the correspondence with the shadow assistant treasurer about the facts of the liabilities raised by the ATO, have you, Mr Jordan, or any ATO staff advised the government on modifying their claims?

Mr Jordan: Not that I'm aware of, no.

Senator KETTER: I refer specifically to the new figures that the ATO and the government cite—that the MAAL and the DPT regime are responsible for an additional \$7 billion in revenue being booked in Australia. Can you please table on notice all correspondence with the government and staff about using this figure.

Mr Jordan: I will take it on notice. That is a figure—\$7 billion. I mentioned it earlier, after my opening speech. That figure is a result of our work with these multinationals that were subject to the MAAL. They've restructured and put \$7 billion of income back into the Australian net. That's fact, yes. I said all that before.

Senator KETTER: How do you explain why you were asked to check the Labor Party's voting record in parliament?

Mr Jordan: I don't think we were ever asked to do that, because we wouldn't know. That's not in our expertise. We would know about the administrative aspects of the MAAL and what we were doing, but we would have no idea about the voting record. We would have to look up *Hansard* or something, and I'm sure the politicians are capable of doing that themselves. That's what they've got staff for.

Senator KETTER: I'm going to turn to another matter just very quickly, Mr Jordan. Dr Andrew Leigh and I wrote to you on 24 April in relation to fringe benefits tax and remote area exemptions, and you responded.

Mr Jordan: Yes.

Senator KETTER: You indicated that you understand the importance of the issue and that you're currently reviewing the matter. That was on 16 May. Just quickly, can I find out from you when we can expect a response and what work has been done in assessing that issue.

Mr Jordan: I can take that on notice. I will undertake to get a response to you as soon as we can.

Senator KETTER: I'll now move to the issue of dividend imputation. My question is to Ms Mrakovcic. What's your understanding of the government's policy with respect to dividend imputation refundability?

Ms Mrakovcic: I think the government's policy is as currently set out in the settings that apply to dividend imputation. I believe this question came up yesterday, and I recall that there was a comment made that the basic understanding that we would have of the government's policy position on any issue would be as reflected in current policy. And that is a system where, essentially, there is dividend imputation.

Senator KETTER: The government's policy is not to change the current arrangement?

Senator Cormann: That's right.

Ms Mrakovcic: That's a matter for the government to provide you an indication of—

Senator Cormann: I can confirm that. Yes, the government is not going to adopt Labor's retiree tax, because we think it is fundamentally unfair—

Senator KETTER: On that basis—

Senator Cormann: and it hits people who have worked hard all their life and saved for their retirement. Again, Bill Shorten is running this lie that he's wanting to target super millionaires—

Senator KETTER: Minister, I have limited time—

Senator Cormann: and the undeserving rich when he's actually hitting pensioners and self-funded retirees.

Senator KETTER: Is it fair, Ms Mrakovcic, to say that Treasury has done no work on proposals to reform dividend imputation over the past two years?

Ms Mrakovcic: I'd have to take that question on notice.

Senator Cormann: Let me say that, again. The government will not adopt Labor's retiree tax. We are fundamentally opposed, as a matter of principle, to Labor's attack on retirees. Labor, as part of its big-taxing, big-spending agenda, is wanting to impose about \$300 billion of higher taxes on Australians. Whether they're small- and family-business owners, retirees, income earners—

Senator KETTER: Minister, this does not relate to my question.

Senator Cormann: home owners or investors, no Australian is safe from Labor's tax attack, which will hurt—

Senator KETTER: Chair, my time is very limited, and the minister is—

Senator Cormann: the economy, hurt families and cost jobs. You've asked a question about what the government's policy is; I'm confirming that we fundamentally oppose, as a matter of principle—

Senator KETTER: I asked the Treasury a question.

Senator Cormann: Labor's tax attack on retirees.

CHAIR: Thank you, Minister.

Senator KETTER: I understand that Treasury has consulted stakeholders on options to reform dividend imputation in the last few budget cycles. Have you consulted with any stakeholders over the last few years on options to reform the refundability?

Ms Mrakovcic: Sorry, could you repeat that statement?

Senator KETTER: I understand that you've consulted with stakeholders on options to reform dividend imputation.

Senator Cormann: That appears to be news to Ms Mrakovcic, but we've already taken that question on notice.

Ms Mrakovcic: I'm not aware of it, but I will take it on notice.

Senator KETTER: On the Treasury website, in the so-called Harradine list of documents created between 1 January 2017 and 30 June 2017, there is a document called 2017RG-383-1341, Taxation and Income Support - Advice - Tax Policy - Dividend Imputation. Are you familiar with that document?

Ms Mrakovcic: I'm not familiar with that specific file, but I would simply make the observation that we provide advice to government on a whole range of policy issues.

Senator KETTER: That file contains 16 documents totalling 71 pages, according to FOI. Of those 71 pages in 16 documents, would any of them provide advice or entertain reform options or areas of further investigation?

Ms Mrakovcic: I'd have to take that question on notice.

Senator KETTER: Did any of those documents provide estimates on the revenue cost of refundable excess imputation credits?

Ms Mrakovcic: I'll have to take that question on notice.

Senator KETTER: Has the Treasurer's office given Treasury a request to cost any options to reform the refundability of dividend imputation?

Ms Mrakovcic: I'll have to take that question on notice.

Senator KETTER: Has Treasury ever looked at possible reforms in recent years to wind back the refundability of excess imputation credits?

Senator Cormann: That is a subset of a broader question that we've already taken on notice. Let me confirm it again for the avoidance of any doubt: the government has no plans to pursue a retiree tax, as proposed by the Labor Party, because we think it is fundamentally unfair to hit people so hard. They've worked hard all their lives to save for their retirements—

Senator KETTER: I just want to finish off with one further question.

CHAIR: Ms Mrakovcic has taken a lot of those questions on notice, so if there are more in a similar vein I think you're probably going to get the same answer.

Ms Mrakovcic: To go to the question you asked, I can imagine that the issue of dividend imputation would have been flagged in documentation such as *Re:think* and the Henry review. I find it hard to imagine—I could be wrong—that documents that basically looked at the tax system, such as the Henry review or *Re:think*, did not carry some conversation around the issue of dividend imputation. That's about the only contribution I can make at this point, other than to say that I'll take it on notice.

Senator KETTER: Earlier this year the Treasurer issued a transcript of a press conference where he was asked if Treasury was considering something similar to removing the refundability of excess imputation credits. The Treasurer said no. Was that response correct?

Senator Cormann: That response is absolutely correct, and it's the same response I've given on several occasions. I don't want to hold up the committee, so in the interests of time I will just keep it at that: the Treasurer's response is correct and consistent with the response that I've given on behalf of the government today.

Senator WHISH-WILSON: My questions are on the PRRT, the petroleum resource rent tax, also known as the petroleum resource rent tax. Can you give me an update on the current tax credits outstanding under the PRRT.

Mr Hirschhorn: We have not updated the numbers yet since the last time we reported.

Senator KETTER: Which was?

Mr Hirschhorn: I think the last numbers we reported were \$238 billion of carry-forward, effectively, losses. While this hearing is still going, I'll try to find that number.

CHAIR: Could you check that? I have some ATO taxation stats here that say for 2016-17 it's now \$278, 822,000,000.

Mr Brine: That's correct. I have a figure of \$279 billion, but that might just be rounded. That's from the very recently released tax statements.

CHAIR: When we're dealing with such large numbers, I'm happy to do a little rounding—let's make it \$279 billion. Previously, in 2015-16, that was roughly \$238 billion. Are you aware of the sort of average annual rate over the last five years that the PRRT tax credit offsets have grown at?

Mr Hirschhorn: This primarily reflects two factors. One is that there has been massive investment in these assets over the last few years. The second is uplifts, because there is a cumulative super profits tax. I'll take the exact numbers on notice, but I think it's roughly gone up by about \$50 billion a year in the last couple of years

Senator WHISH-WILSON: At a rate of 34 per cent per annum—that's what the total pool has grown?

Mr Hirschhorn: I think the last numbers I have were that the 2014-15 carry-forward balance was \$188 billion and the 2015-16 was \$238 billion. I confirm my colleague from Treasury Mr Brine's number of \$279 billion as the most recent number that we've published.

Senator WHISH-WILSON: I've got some numbers here from the Parliamentary Library. In 2010-11 it was about \$9.3 billion and then that doubled to about \$18 billion in 2011-12. Then, as you say, there's been increased investment and, compounding, it's now \$278 billion.

Mr Hirschhorn: I would also say that there was another big effect, which was that a lot of the onshore projects which had previously been outside the PRRT were brought into the PRRT regime.

Senator Cormann: By the Labor-Green government when you legislated the MRRT and PRRT changes.

Senator WHISH-WILSON: That's irrelevant to my question.

Senator Cormann: It's actually quite relevant because they gave additional deductions. As a result of your changes, you've given them a bigger haven because companies are now able to use their onshore expenditure to offset it against offshore production. That was your change.

Senator WHISH-WILSON: I'll check our voting record on that.

Senator Cormann: You voted in favour of the minerals resource rent tax and PRRT changes. When the Gillard government introduced the mining tax, it included the introduction of an onshore PRRT when there was never any prospect of any PRRT collected on projects onshore.

Senator WHISH-WILSON: What's the percentage of onshore—

Senator Cormann: But what it has done is deliver additional deductions.

Senator WHISH-WILSON: What's the percentage onshore?

Mr Hirschhorn: Again, I will do my best to find the number.

Senator WHISH-WILSON: Okay. I understand most of this relates to Gorgon—

Mr Hirschhorn: The starting base, which is the new projects that came in, which highly correlates with onshore projects, is now up to about \$94 billion. The LNG project, which is primarily offshore, came to about \$189 billion of carry-forward expenditure.

Senator WHISH-WILSON: Are you aware that that current \$278 billion, just as a comparison, is nearly 16 per cent of this country's nominal GDP? Those tax offsets sitting there for gas companies are nearly 16—

Senator Cormann: The onshore component, which you introduced—

Senator WHISH-WILSON: per cent of nominal GDP. I'm just asking if you're aware of that. It's a very large number.

Mr Hirschhorn: I've never done the calculation, but—

Senator WHISH-WILSON: You can check.

Mr Hirschhorn: I think it would be about right.

Senator WHISH-WILSON: It's a very significant number. In fact, according to my calculations, in the last seven years, going back to 2010-11, these tax credit offsets have grown by 2,800 per cent.

Mr Hirschhorn: I will just confirm that they're tax losses rather than credits.

Senator WHISH-WILSON: Right.

Mr Hirschhorn: I would also say that, because the PRRT is on a project-by-project basis, it is very likely that a large component of those losses will just be wasted and never able to be used because they're on projects which will never come close to—

Senator WHISH-WILSON: Do you have that breakdown?

Mr Hirschhorn: That is very hard because we're not in the business of projecting resources. I would refer the committee to the Callaghan review, which has attempted to do some very detailed project-by-project modelling as to future PRRT receipts.

Senator McALLISTER: Just on that exact question, isn't it the case, though, that the lines drawn around the activities that are then defined as the project are in the hands of the companies? One of the critiques that's been

put to this committee during the process of the corporate tax inquiry is a view that companies were gaming that project by establishing the boundary definitions?

Mr Hirschhorn: Without being on top of all the critiques, generally you've got to be a contiguous project. You've got to be under a single—I might get this wrong—production licence or a single licence. In some cases, contiguous licences can apply to be combined. Let's say, for example, we have a starting base of an onshore project. On the whole, onshore projects—going back to Senator Whish-Wilson's comments—are extremely unlikely ever to pay PRRT because they have to make a superprofit over and above the royalties that they're paying to the states, because onshore projects, if they're successful, will pay royalties.

Senator Cormann: As well as company tax on profits.

Mr Hirschhorn: And company tax on profits.

Senator WHISH-WILSON: Like Chevron, for instance.

Mr Hirschhorn: But the one thing which is outside this project by project is that exploration expenditure can be transferred between projects, so onshore exploration can be used to transfer to reduce PRRT on offshore projects.

Senator Cormann: And this was a feature of the Gillard government reforms which you supported, introducing the minerals resource rent tax and the onshore expansion of PRRT.

Senator WHISH-WILSON: We've discussed this before.

Senator Cormann: I know. This is an important point, Senator Whish-Wilson.

Senator WHISH-WILSON: I heard your point, Senator Cormann.

Senator Cormann: This is a correct result of that decision.

Senator WHISH-WILSON: That includes clean-up costs of oil spills, for example, during operations.

Mr Hirschhorn: Closing-down expenditure is not transferable, but what it can do is that, if you have closing-down costs on a project which has previously paid PRRT, there is the potential for a clawback of previously paid PRRT on that project.

Senator WHISH-WILSON: When this committee had a hearing in Western Australia, we asked the companies directly about their closing-down costs, and they said that was still under negotiation. So that's definitely part of the scheme now, is it? They're not deductible?

Mr Hirschhorn: I'll make a distinction here. There are the costs, let's say, as a project is winding down, and they are in a sense normal deductions. There are costs of complete cessation, and they allow a company to claw back previous PRRT. So, if you close down part of a project, that will be an expense which can be used against that project's current PRRT. If you close down the whole project, you can get a clawback of previous years' PRRT.

Senator WHISH-WILSON: Okay. I'll give that some thought, but that's pretty much what we've already been told. My issue is that, when this committee also asked individual companies when revenue is likely to be collected on their various projects, I think the numbers were given at around 2027—Gorgon, for example. I don't know if you've done your own ATO assessments on that.

Mr Hirschhorn: We have not done ATO assessments, but once again I refer the committee to the Callaghan review which has done some detailed modelling under different scenarios, and that sort of time frame is consistent with the Callaghan review.

Senator WHISH-WILSON: So that confers with the Callaghan review. But, given this growth that we've seen in these tax losses, as you call them, will you look at reassessing that? It seems to us now that it's more likely to be 2037 to 2040 before anyone even pays any revenue, and then you have those close-down costs as these projects become mature. Are they ever going to pay anything for their gas?

Mr Hirschhorn: I would make a couple of comments on that. One is that, as a very interested observer but not a participant in the Callaghan review, I'm sure that Mr Callaghan did take into account the expenditure and did very sophisticated project-by-project modelling, and I would say that none of these numbers are inconsistent with what I would expect to have happened. So you should ask Mr Callaghan, but I would expect that he has taken this into account. The second thing I would say is that the closing-down expenditure issue is more relevant to the existing projects—for example, Bass Strait.

Senator WHISH-WILSON: In terms of decommissioning costs?

Mr Hirschhorn: Decommissioning costs, which are currently paying the vast bulk of PRRT. There are a couple of the petroleum projects.

Senator WHISH-WILSON: Yes, I'm aware of them.

Mr Hirschhorn: The gas projects are extremely long-term projects. They've started production but, as I understand it, most of them are expected to be in production for 40-odd years. So the closing-down expenditure becomes an issue for them perhaps long after I care.

Senator WHISH-WILSON: It does but, in terms of when they'll ever actually pay anything for their gas, if you look at the North Sea, there are decommissioning costs there of over \$1 billion on individual projects as a guideline. These are much larger gas complexes.

Senator Cormann: We always have to remind ourselves that whether they'll ever pay superprofits tax, which is what you're talking about, obviously depends on whether they make superprofits. When you say 'will ever pay any tax', they would be liable to pay corporate tax on profits. But in terms of PRRT, which is a superprofits tax—

Senator WHISH-WILSON: How much corporate tax has Chevron paid?

Senator Cormann: I'm not going to talk about individual taxpayers.

Senator WHISH-WILSON: They paid nothing.

Senator Cormann: It depends on whether they generate taxable income. It depends on whether they make profits.

Senator WHISH-WILSON: Well, these guys are doing a good job of trying to hold them to account through the courts.

Senator Cormann: If they do make profits, the ATO will ensure they pay tax.

Senator WHISH-WILSON: But also they transfer profits overseas, and that's why, as you know, Senator Cormann, the ATO has taken them to court over it.

Senator Cormann: We have legislated the diverted profits tax measure, which you know. We've legislated—

Senator WHISH-WILSON: It's not black and white—

Senator Cormann: multinational anti-avoidance legislation, and we've provided additional resources to the ATO to ensure that companies pay their fair share of tax and profits generated in Australia—

Senator WHISH-WILSON: It takes tens of millions of dollars for the ATO to take these guys to court and they sometimes get caught in court for decades. It's not clear-cut.

Mr Hirschhorn: I will make one comment generally on corporate tax—from this very large oil and gas investment that we've had—which is that you would naturally expect that when a company has a lot of set-up costs that it will not pay tax for several years after production starts, because it's got the income but it's also got depreciation and whatnot—

Senator WHISH-WILSON: They pay royalties though in some respects—

Mr Hirschhorn: If royalties are the regime, they will pay some royalties as soon as production starts. What I would say is that the natural life cycle of an oil and gas reserve is that we would generally expect—in fact, I think some of these companies have given testimony in this committee and other committees that you would expect the corporate tax, so the ordinary profits tax, to start flowing from these projects in 2021.

Senator WHISH-WILSON: In relation to the Callaghan review it was reported recently—in fact, in the *Age* a few weeks ago—that there was going to be an announcement in the budget.

Senator Cormann: Don't believe everything you read in the newspaper.

Senator WHISH-WILSON: No. Next month's budget will tackle long-standing concerns about the way energy companies are taxed by curving uplift concessions. Where are we at with the Callaghan review, minister?

Senator Cormann: The government—

Senator WHISH-WILSON: Are you going to make any changes to the—

Senator Cormann: The government will announce relevant changes in due course once all of the necessary decisions have been made.

CHAIR: I've got some questions for the ATO specifically about the package announced in the budget to protect low balance and inactive accounts, and reduce the number of duplicate superannuation accounts in the system by allowing the ATO to proactively reunite those accounts with members' active accounts.

Mr Jordan: One thing I might say, whilst Mr O'Halloran is getting himself organised, is that I watched a number of TV reports the other night and in the morning. They were interviewing people in Melbourne and they said, 'I don't know what my accounts are. I really don't have any idea.' There's a number of ways—if you register

for myGov and then link tax, they're listed there for you. I can get on my phone and press the tax application, and it will show me what my super balances are and it transacts. I don't know how we can get this message out there but there's a very easy way to do this if you go through myGov. It shows all your accounts and all the balances. It gives you a button, 'Do you want to consolidate these? Which one, do you want to go to?' Press a button and we do the lot. It all happens. It's such a shame—

CHAIR: It's terrific there's a proactive—

Mr Jordan: I know. It's such a shame that people don't know—

CHAIR: It's part of financial—

Mr Jordan: this service is there for them—

CHAIR: Commissioner, I think you're probably familiar with that—

Mr Jordan: It's really a shame.

CHAIR: Mr O'Halloran, how does the current system work? We've had a brief description from Mr Jordan, but how does the current lost and unclaimed super process work? How will proposals in the budget change that system? Then I have some quite specific questions about how it will work in operation.

Mr O'Halloran: A couple of things, the current system operates in two areas. In terms of the ATO's ability to reunite with unclaimed super, we can identify people but we have to get the conscious consent of people for them to agree for their superannuation amounts to be reunited. We have had successful campaigns not only in terms of what the commissioner referred to as, 'the consolidation opportunity for people to locate their range of super accounts' but also in terms of the money that comes into the ATO. As recently as the last three months, we've written out to 100,000 people who had myGov accounts—in other words, we could identify them—inviting them to claim the superannuation amounts that we held. Even if we can identify people, we can't do it without their conscious consent in terms of our ability to reunite the amounts that come in. Balances are set at effectively under \$6,000 that come in under the current law.

Mr Jordan: What's the figure you've done in terms of the consolidation of accounts over the last few years? You mentioned that the other day, it was billions.

Mr O'Halloran: Predominantly through myGov, but not exclusively, because, as you might be aware, Senator, we also have campaigns at various times of the year where we basically advertise the postcodes and the amounts and encourage people to look. Since the online ability came in and some other aspects, from July 2013 to April 2018 through that process there have been 2.1 million accounts consolidated to the value of \$10.72 billion.

CHAIR: How many are left?

Mr Jordan: Two million accounts and \$10 billion have been reunited through this service.

CHAIR: Do you have an estimate of how many duplicate accounts remain?

Mr O'Halloran: The current amount that we hold, as opposed to the funds—we hold 5.37 million accounts valued at approximately \$4 billion.

CHAIR: Wow.

Mr O'Halloran: In terms of accounts that are, if you like, lost superannuation that are held by funds—of which we actively give information to assist them to locate, where the accounts become inactive or they've lost contact et cetera, particularly the over-65 age group—they're holding approximately 665,000 accounts to the value of about \$13 billion.

CHAIR: When the ATO takes in those inactive accounts, it won't charge any fees, will it?

Mr O'Halloran: No.

CHAIR: If those accounts have insurance premiums being taken out, what will the ATO do with those?

Mr O'Halloran: Under the proposed law, of course, there's a change to the nature of the issue and insurance for the accounts where people would have to opt-in, as I understand it, under the current law to keep insurance. Money that would come in to us would, in fact, not have insurance attached to it.

CHAIR: So there'll be no premiums?

Mr O'Halloran: That's correct.

CHAIR: We heard some evidence yesterday that the ATO will potentially be able to use its data-matching tools to reunite those unclaimed low-balance or inactive accounts with the members' relevant accounts within a month—is that right?

Mr O'Halloran: That's what we're planning. We're basing that on two things. We spend a lot of time, of course, trying to effectively get a decision out of people to claim the lost superannuation that we hold. I stress again, we also have a pretty good operation in the sense of the identification of people, which we share with funds twice a year, if not more frequently depending on the funds. A month does seem a reasonable estimate at this stage. Clearly, there's a lot of speculation and other matters to be worked through in terms of that, but we've had a pretty good operation in our ability to match and identify. The lag has been where we can't get a response from people—for various reasons, and that's a matter for them—who in fact do not give us permission, if you like, to allocate the money to a nominated fund.

CHAIR: Under the new service, the member won't need to do anything proactively at all; it will be done on their behalf?

Mr O'Halloran: That's correct.

CHAIR: What's the role of the superannuation fund in these circumstances? Obviously they have to report inactive accounts to you. How will that change under the proposed rules?

Mr O'Halloran: There are probably two things under the proposed law. At the moment, the funds are required to report to us accounts in two instances, but generally speaking it's where they've been inactive for 12 months and then over a five-year period. That five-year period is being reduced to 13 months when it would be required that that amount of information be forwarded to the ATO. It's reducing the period. That allows for some time for the funds—we do, in fact, share information with them to help them locate their lost member, for want of a better word. If that's not available to be done, and the account's been inactive in terms of the receipt of contributions or rollovers, that is now going to be reduced for accounts that have less than \$6,000.

CHAIR: I should ask: are the funds compliant with your requests to report inactive accounts?

Mr O'Halloran: In short, yes. We have quite a detailed benchmarking exercise that we do with each fund—what's called an ATO diagnostic report, which is personalised for the funds. We track their performance in terms of the reporting of their accounts, how they compare with other benchmarks, under 65s and TFN matching. By and large, the report that we've just issued this year for each fund highlights that there have been improvements in matching the accuracy of TFN, which of course is important for us, as well as the reporting of information to the ATO around the database.

CHAIR: Do you have any recalcitrant funds?

Mr O'Halloran: I'd have to be fair and say no, in that sense. I haven't detected any particular reticence from the funds to do that at any level of management that I've dealt with. I think clearly there's a desire to keep the fund alive and within the fund engagement opportunities, and that's quite appropriate. It's in all of our interests to try to make contact with the member. Where the fund can do it, we're happy for that to happen. But, obviously, since the last three or four years there's been a change whereby accounts are what's often termed swept, once they appear to be inactive, and other criteria. The new law will in fact allow us then to move more quickly to reunite people with their superannuation.

CHAIR: Do you sense a general goodwill from the funds? Obviously, the funds themselves make money on the fees from those inactive accounts, so they have a vested interest in not giving you that information.

Mr O'Halloran: I can only base on what we see, particularly through our benchmarking exercises and our engagement. A lot of this is probably not unlike the ATO—there are some pretty big systems and things. But I would have to say that there does seem to be goodwill and a strong desire. Picking up your point, to a degree the funds are as keen as we are to have the relationship and engage with their members before it comes to us. I'll leave speculation as to what the business model is, but certainly it is in everybody's interests to try to engage with the member. We're as keen then, to be honest, to give the money back.

Senator WILLIAMS: Mr Jordan, my apologies, I saw some of your opening statement from my office, but I had meetings to attend. If I'm going over old ground, please forgive me. You're aware of the combined ABC-Fairfax *Four Corners* story. Were you offered an interview with that story?

Mr Jordan: We went through this before. It was not a formal offer. It was discussions between our organisations as to who, what and where. We decided, with input from a number of people, that it was better for Deborah Jenkins, as the head of the small business group, to do that interview.

Senator WILLIAMS: You were offered an interview yourself, were you?

Mr Jordan: If I wanted to do one I could have. But there wasn't a formal offer and a rejection. It was just discussions: 'We would like someone from the ATO to make comment.'

Senator WILLIAMS: Why do you think it was better for Ms Jenkins to do the interview instead of you? Do you think she was over the small business issues more than you?

Mr Jordan: She knows much more about it than I do, and I was hoping we could get across our points in much more detail. I know a little bit about a lot of things. She knows a lot about small-business issues. I was hoping that we could maybe address some of these issues, but clearly that didn't happen. She was on the show for only a very small amount.

Senator WILLIAMS: Speaking of small business, Mr Jordan, many people, including the Inspector-General of Taxation, have been calling for years for the appeals areas for small business and individuals to be separate—a separate appeals area. Do you understand what I mean? Has that progressed anywhere?

Mr Jordan: Yes, we do have a separate appeals area.

Senator WILLIAMS: Individuals are separate from small business now?

Mr Jordan: Yes. All objections now, the last of which were for ABN cancellations—so any reviewable decisions of the Australian Business Registrar are now transferred over to the review and dispute resolution group, under Second Commissioner Andrew Mills. The person dealing with that objection is someone quite different from the original decision-maker and is in a different group, entirely separated from the operations in the client engagement group.

Senator WILLIAMS: Getting back to the media and the Cranston affair, there was a media press conference on that, wasn't there?

Mr Jordan: Yes, I think—I was certainly at one with the Australian Federal Police commissioner, I think, or the deputy Federal Police commissioner.

Senator WILLIAMS: Good. Just on another issue—we're not going to mention any names you know have been in touch with you—there are allegations that the ATO staff are being placed under pressure to meet deadlines at the end of the financial year, which is only a month away. Will the ATO commit to not—repeat, not—issuing any tax assessments to a small business that were based on an internal assessment as opposed to a proper audit of the financial statements by the ATO?

Mr Jordan: Deborah Jenkins—I've mentioned her name a number of times—

Ms Jenkins: Thank you for your question, Senator. We're working through that particular matter and I understand that discussions are underway.

Senator WILLIAMS: Which means?

Ms Jenkins: Which means we're going to work with taxpayers cooperatively to understand what the situation is.

Senator WILLIAMS: Very good. Can we have an update of Operation Nosean, if that's possible? It's on gold; the golden question. Last time, I think you said you were looking at criminal charges. Where have you progressed from there?

Mr Olesen: You've been particularly interested in the criminal charges. Two persons appeared in the Sydney Downing Centre Local Court on 13 March this year and faced charges under the Criminal Code. I understand that those charges have been called over for further mention in September this year, so that's ongoing.

Senator WILLIAMS: Good. Thanks, Chair. Thanks for your time.

Senator KETTER: I want to go to the issue of the outsourcing of legislative drafting to a number of private firms. Firstly, what extent has the Office of Parliamentary Counsel been consulted about the outsourcing of drafting, Ms Mrakovic?

Ms Mrakovic: Senator, I'll ask Mr Writer to assist.

Mr Writer: When you ask about consultation, do you mean in relation to the process itself?

Senator KETTER: Yes, about the outsourcing of drafting.

Mr Writer: In Treasury, we have a quite elaborate process for managing our legislation program which involves extensive consultation with the Office of Parliamentary Counsel about the way we do that. A component of that is discussing with them the issues associated with the procurement of drafting from alternative providers. We don't seek their permission to outsource particular measures, but we do inform them of that in advance and they're free, as part of that process, to provide any views that they might have to us.

Senator KETTER: Earlier in estimates last week, Mr Quiggin gave evidence and said, 'We were involved in some early discussions, but I don't think "consulted" would be the word when it comes to the outsourcing of drafting.' Would you agree with that—that he feels that he hasn't been consulted?

Mr Writer: In relation to the original decision to do so?

Senator KETTER: Yes.

Mr Writer: Senator, I'm not really in a position to discuss or talk about that because I wasn't in the Treasury at the time, so I'm not aware of the specific discussions that were had or not had with Mr Quiggin.

Senator KETTER: Okay. Mr Lonsdale, at last estimates, described this outsourcing issue as 'an experiment'. Can you tell us: what was the genesis for the experiment? And is there a time frame for the experiment?

Mr Writer: I might start with the time frame first. In the 2017-18 budget, one year of funding was allocated to the pilot program. That was extended in this year's budget by another 12 months. To the broader question, the pilot really came out of a desire to develop an understanding of whether or not the Treasury could augment available drafting resources, noting that the Office of Parliamentary Counsel also received additional drafting resources in the 2017-18 budget. It was to see whether there may be ways to deliver a larger amount of legislation, given the amount of legislation that Treasury has to deal with, and try and ensure that we were no longer in a position where we had a backlog of measures to deal with.

Ms Mrakovcic: I guess the government was keen to push ahead with a very large legislative agenda, and essentially, at the time of the 2017-18 budget, as Mr Writer points out, there were resources provided to the OPC. There were resources provided to Treasury.

CHAIR: What were those resources provided?

Ms Mrakovcic: How much, or when?

CHAIR: How much?

Ms Mrakovcic: I'm relying on my memory, and Mr Writer can correct me, but \$5.2 million to the OPC and around \$16 million or \$17 million to Treasury.

CHAIR: Thank you.

Senator KETTER: In Budget Paper No. 2 on page 135 there is additional funding for legislative drafting. It's a new measure. Can you tell us why this is not for publication? I am also looking for aggregate expenses there?

Mr Writer: I think the decision was taken that it be not for publication because it concerns the procurement of commercial services, and we didn't want to disclose to potential providers how much the pool of money was available for this trial.

Senator KETTER: So are you saying those expenses are commercial in confidence?

Mr Writer: In a sense. The desire to not disclose it was really to not make available to potential providers information about how much money was on offer. We wanted to see how we went with the trial without creating an expectation that there would be a certain amount of business that would come out of it.

CHAIR: Senator Ketter, I have questions on this particular issue too, but I'm conscience that we're past the lunch break time. We will resume at 1.15 pm with the Treasury group and the ATO—I'm afraid, Mr Jordan.

Senator Cormann: With the Revenue Group?

CHAIR: Yes, with the Revenue Group and the ATO.

Senator Cormann: Do you have any indication of how much longer? After Revenue Group is finished, Senator McGrath will take over. So this is just in terms of organising my logistics this afternoon.

CHAIR: I think we've probably got at least half an hour of questions and potentially 45 minutes.

Proceedings suspended from 12:16 to 13:14

CHAIR: The committee will now resume. I think we only have a few more questions for the ATO—I'm guessing around half an hour's worth of questions for the ATO. But we might kick off.

Senator KETTER: I will continue on with our line of questioning in relation to Budget Paper No. 2, page 185—the not-for-publication figure that's in the budget.

Senator Cormann: Which page are you looking at?

Senator KETTER: Page 185 of Budget Paper No. 2. We were discussing this before lunch. Mr Writer, I see no reason why we can't have an aggregate figure that's being spent by the Department of the Treasury on legal service providers for the purpose of drafting legislation. I'm not going to press for disaggregated figures in terms

of individual law firms or individual pieces of legislation or projects, but I see no reason why we should not be provided with the aggregate figure there, so I do insist that that figure be provided.

Senator Cormann: We'll take it on notice and we'll see what we can provide you on notice.

Senator KETTER: Minister, I just don't want a response to come back to say—are you going to claim public interest immunity?

Senator Cormann: I don't know. This is not my direct portfolio responsibility. I hear what you've said; I hear what you've asked. The appropriate minister, on advice from the relevant part of the department, will consider your request, and we'll provide the best possible answer that we can provide in the context of the standing orders as they apply.

Senator KETTER: Alright. I'll move on. Ms Mrakovcic, you might be more appropriate with this question. I'm looking for the genesis of the request for the outsourcing of parliamentary drafting. Did that come initially from Treasury or from the minister's office?

Ms Mrakovcic: I'd have to take that question on notice.

Senator KETTER: Okay. According to question on notice 114 from the last estimates, the response we got there is that there is a panel for external drafting, which is Clayton Utz, King & Wood Mallesons, PwC Legal and the Australian Government Solicitor. Is PwC Legal involved in drafting any tax legislation?

Ms Mrakovcic: I might ask Mr Writer.

Mr Writer: The pilot covers a range of measures, including tax legislation.

Senator KETTER: If that's the case, then what steps has Treasury taken to be satisfied there are no conflicts of interest, given that PwC also has a large tax practice?

Mr Writer: There are a number of things that we have in place to deal with that. The primary way of dealing with it is through the selection of measures. We have a way of considering the kinds of things that are suitable for drafting by alternative providers—the legal firms—which really goes to questions of their complexity, their likely sensitivity, whether or not they raise issues of conflict of interest, potentially, or market sensitivity and those sorts of things.

Senator Cormann: It's very important here to remember that Treasury, not any external drafters, remains accountable for the legislation prepared under the trial.

Senator KETTER: Alright, but I'm looking for processes that you might have to ensure that there are no conflicts of interest. The same could apply for, say, King & Wood Mallesons and Clayton Utz if they're involved in drafting any financial services legislation.

Mr Writer: There are also some other layers to this. These firms are legal firms regulated under the relevant jurisdiction's legal profession regulation, which requires them to identify and manage conflicts of interest as part of those professional obligations to which they're all subject. In addition to that, they're part of the Commonwealth's Legal Services Multi-Use List, which is administered by the Attorney-General's Department. The deed for that, which is available on the Attorney-General Department's website, makes very clear that those firms on that panel—and these four firms are all on that panel—are required to actively identify and, in consultation with the Commonwealth, manage any potential conflicts of interest. Our own arrangements also explicitly require these things to be identified and managed as part of the trial. As I said before, in our selection of measures to be drafted by the firms, we do take account of these sorts of sensitivities, because we don't want to place ourselves and the firms in a situation where these sorts of problems could arise.

Senator KETTER: How can that not arise in a situation where you've got PwC involved in drafting tax legislation?

Ms Mrakovcic: Just to re-emphasise that point, because it's an important one: there are actually quite clear obligations under the Treasury deed to maintain strict confidentiality of the content and the existence of the projects, both publicly and within firms, and they are actually obligated to inform Treasury of potential conflicts of interest.

Senator KETTER: Do you do any checks on whether there are conflicts of interest between the legislation the firms are drafting and the clients they represent?

Mr Writer: In the same way as we, or any other Commonwealth agency, would deal with these issues, the firms themselves are expected to identify any potential conflicts of interest when we ask them whether or not they can provide a quote for the work in the first instance. At that stage, we don't provide the detail of the measures,

but we do seek their response and, as part of that, they would be expected—as is the case for any other legal service provider to the Commonwealth—to identify any potential conflict of interest that might arise.

Senator KETTER: So you rely on them to tell you, but, other than that, you don't do any other management of the risks associated here?

Mr Writer: Well, as I said earlier, we certainly are very cognisant of these risks in the selection of measures that we would put out to these firms to be done, and we don't put out measures that are particularly sensitive or raise issues of confidentiality or market sensitivity or other kinds of sensitivities as part of the pilot. We have limited the selection of measures to those that really are uncontroversial, reflect announced government policy, and are really an application of that government public policy that's already out in the public domain.

Senator Cormann: Also, ultimately, while Treasury is responsible, the government introduces legislation, and the parliament decides on whether or not the legislation should be passed unamended, amended, or opposed. All of the appropriate checks and balances and public scrutiny, of course, that are normally part of the democratic process apply to the fullest extent.

Senator KETTER: You've indicated that Treasury's using alternative legislative drafting service providers for 12 measures. Can you tell me which? Do they relate to bills that have been introduced into parliament? I'm interested in which bills are being done by which firms, and which public-release draft bills have been drafted by alternative drafters.

Mr Writer: The figure of 12 measures comes from the answer to the question on notice, which was provided, I think, in April. Since then, there are additional measures that have been done. They cover a range of activities, including the drafting of primary legislation, subordinate instruments, including regulations, and also the provision of some advice about particular measures. We have, as part of the arrangements with the firms, very strict confidentiality requirements, as Ms Mrakovcic outlined earlier. As part of that, we ask the firms not to disclose to anyone—including within their firms—which measures they're working on publicly. And the Treasury has adopted the position of not doing so either. The purpose there is really to avoid a situation where firms are identified with the preparation of particular measures, thus giving rise to the risks that you've raised around conflicts of interest and potential breaches of confidentiality, around the preparation of particular measures.

Senator KETTER: I'll cede the rest of my time to Senator Keneally.

CHAIR: I've actually got some follow-up questions on that particular issue. We've got a minute and a half. Do you mind? I can give you an extra minute and a half later on.

Senator KENEALLY: Thank you, Chair. I'll go on to another subject.

CHAIR: Thank you. On this issue of the Office of Parliamentary Counsel, I know that a lot of these questions were actually asked and answered by the OPC last week in legal and constitutional affairs. From memory, you've been entirely consistent in your responses, but can I ask you this. As to this pilot program, I know we discussed the funding for that before: \$16.9 million to Treasury. Prior to the pilot program, with alternate drafters, would all of the legislative drafting have been done by the OPC?

Mr Writer: There are two categories of legislative drafting. There is tied work, which is required to be done by OPC under the legal services directions which are issued by the Attorney-General. That includes measures that are brought before the parliament or submitted to the Governor-General in Council by agencies. There is also a category of untied work, which relates to a broader set of subordinate instruments that are prepared by agencies themselves or by other providers beyond OPC.

Senator Cormann: I think that's a long way of saying no. In the past also, other work has been done by external drafters.

CHAIR: So the OPC didn't have a monopoly on this work?

Mr Writer: Not on all legislative drafting work, no.

CHAIR: My understanding—and I think this came out last week; I'm trying to remember the number, whether it was 23 per cent or 25 per cent or even a little bit greater—

Senator Cormann: Twenty-five per cent.

CHAIR: Twenty-five per cent of the legislative agenda comes from Treasury. Is that correct?

Senator Cormann: Yes.

CHAIR: That's an enormous amount.

Senator Cormann: Yes.

CHAIR: And there's about double the amount of legislation coming through in this winter session than there was in the last winter session, which is the reason why this pilot program is so important.

Senator Cormann: There is a peak level of demand; that's right.

CHAIR: Have the OPC got the final say or review of the legislation that is drafted by external drafters?

Mr Writer: Ultimate accountability for the quality of the measures rests with the Treasury, and the legislation is subject to the approval of Treasury ministers before it's submitted to the legislative approval process.

Senator Cormann: I've got a direct answer to your question. Treasury and the Office of Parliamentary Counsel have agreed a quality assurance process to ensure bills prepared as part of the trial of compliance meet all the requirements for legislation introduced into parliament. So the answer to your question is yes.

CHAIR: But the ultimate responsibility for the standard in Treasury legislation is Treasury?

Senator Cormann: It's Treasury, as I've indicated before, and the ultimate responsibility actually—the ultimate responsibility for whether or not a proposed piece of legislation is ultimately passed into law—is for the parliament.

Senator RICE: I have just a few quick questions about the ATO's implementation of the Australian government guidelines on the recognition of sex and gender, which were guidelines that were meant to be introduced by July 2016, relating to the ability for people to have 'indeterminate sex' marked on any databases and forms and to support transgender and intersex people in general.

Mr Jordan: Our COO, I'm very pleased, has won a gold award in this area recently.

Senator RICE: Okay. Can you tell me how the ATO has implemented these guidelines?

Ms Curtis: We are compliant with the particular guidelines you're speaking about. We do collect gender information only when there is a legitimate business reason to do so. We have implemented a process where it can be the tick-box for male, female or indeterminate, and we have actually seen some people using that system now, so we think that's working quite effectively. We have introduced training about gender sensitivity issues, including identification. We have very strong networks for LGBTI and have, as the commissioner just said, recently won an award for our inclusiveness in the workplace.

Ms Smith: For the second year in a row.

Ms Curtis: For the second year in a row, yes.

Mr Jordan: And the only government department or agency to be [inaudible].

Senator RICE: So you've covered things in terms of your internal systems. But that's also applying to your—

Ms Curtis: External as well.

Senator RICE: External—your client-facing system?

Ms Curtis: Yes, absolutely.

Senator RICE: Can you tell me more about the training that is provided or needs to be undertaken? Is it mandatory?

Ms Curtis: It's mandatory training on diversity and inclusion. Within that, we have obviously got some specific elements that cover these guidelines and the sensitivity around gender identification.

Senator RICE: So all of your outward-facing operations are completely compliant?

Ms Curtis: Yes, absolutely.

Senator RICE: That's good to hear. In terms of your working relationships with other agencies, do you have any interactions with them to ensure that with any things that you do jointly together, where there are such processes, the other agencies are compliant as well?

Ms Curtis: We have very strong links with other agencies. Obviously their policies are specific to them, but we hope that we stand as a bit of a role model. We have a very strong network across the ATO, which is also connected to other ATO agencies, so we think we're quite influential in this place, and we're a leader. We are the lead agency when it comes to diversity and inclusion, having won the award. We think that's a really good standard for other people to strive and reflect. We share all of our procedures, policies and training with other areas if they request them.

Senator PATRICK: I have questions about air travel and air travel expenses. Would that be you?

Ms Curtis: Our CFO is going to answer the questions on travel.

Senator PATRICK: Ms Cawthra, I'll give you some context. The finance minister provided my office, through questions on notice, data that shows a massive disparity between government officials' use of Qantas over Virgin. Overall figures for the whole of government are \$206 million in domestic fares to Qantas and \$61.6 million worth of fares to Virgin. Dividing the numbers of tickets and the total cost, Virgin's tickets average about \$261 per flight and Qantas's tickets average at \$377.

Senator Cormann: That's not the same distance and the same—

Senator PATRICK: No. It's using a large sample but I accept there could be areas in that. In my experience, when I look at booking myself, I tend to find Virgin slightly cheaper. I could be wrong on that. I will go to numbers, provided to me by the finance minister, for the ATO. I've got two sets of numbers. I believe I'm working off the updated numbers. The ATO spent, in 2016-17, \$9.699 million on Qantas and \$3.491 million on Virgin. All up, that's about \$13.5 million. Does that sound about right for your travel?

Ms Cawthra: That is probably about right.

Senator PATRICK: I did have some numbers that only had you spending something like half a million dollars.

Senator Cormann: It was a transposing error, which finance disclosed, and you were provided with the correct information.

Senator PATRICK: I understand that. I just wanted to make sure I was working off correct data. Are you in a position to explain why there is a disparity within the tax office in the use of Virgin and Qantas?

Ms Cawthra: I can give you a bit of an outline and take the question on notice, specifically.

Senator PATRICK: Sure.

Ms Cawthra: First and foremost, our policies state that all staff must take the best fare of the day to meet business needs. In addition, we line that up against where our staff are and the different legs et cetera. On that particular piece, we did some research over the last three quarters of this financial year and had Qantas coming out ahead of Virgin. There are some particular things we're now digging into around that. One of them does seem to be the leg between Melbourne and Canberra, which is one of the most used legs. The offerings of flights there vary significantly between Qantas and Virgin, in terms of the time of day et cetera. So, yes, there is some disparity. It does seem to be attached to that particular leg of the journey, and we're doing some additional information on that. I can take the actuals on notice.

Senator PATRICK: That's very helpful. The bottom line is you're looking into that yourself to see what's going on, so that's good news. I've had some other agencies committed to looking into it as well. Finally, I have a question in relation to membership of Qantas's Chairman's Lounge and Virgin's The Club. I have no issue with people accepting a membership of that; indeed, I declare I have it. It's on my register of public interests. Are you in a position to advise how many of your staff have accepted an invitation to one or the other, or both, where the invite resulted because of the position they held in the ATO?

Ms Cawthra: No, I'm not in that position. Membership lounges, as you know, can be a balance and a share of both personal travel and public travel with the agency. People could well have been invited because of their personal travel versus their public.

Mr Jordan: Are you just referring to the Chairman's Lounge?

Senator PATRICK: Chairman's—not Qantas Club or the Virgin lounge.

Mr Jordan: It's the executive, so—

Senator PATRICK: Normally people are invited on the basis of their position.

Ms Cawthra: Sorry, I thought you were talking about all of the schemes—

Senator PATRICK: No, no. People can do what they like. If you have someone at the ATO whose husband or wife has a billion-dollar company and that gets them access, I don't want to know about that. If you could come up with the numbers—and I'm particularly interested in circumstances where an official only has one on their official travel—of what the split is for Qantas and Virgin travel.

Ms Cawthra: Yes.

Mr Jordan: There are seven—

Ms Cawthra: There are seven. But, in terms of the split: no, we don't.

Mr Jordan: We've all got both.

Senator PATRICK: If you've all got both then the data's not very useful to me, in which case there's no answer to that question; it's not required. It's seven and you have both.

Mr Jordan: Yes.

Senator PATRICK: Okay. Thank you very much.

Senator KENEALLY: I'd like to ask some questions about ATO tax outages. The ATO was asked to provide a full list of system outages in Senate estimates on 25 October 2017. Was the list that was provided a complete and thorough list of all the outages?

Mr Katf: It absolutely was, Senator.

Senator KENEALLY: There were five outages listed in 2017. We had some reports of another seven outages over 2017 that weren't included on that list. These reported system failures are substantiated by alerts sent from the ATO, under the name of Colin Walker, to agents. Can you explain why the outages listed in 2017 missed these other ones?

Mr Katf: No, I cannot. I'm happy to take that on notice and reconcile the numbers for you. We have a range of different systems that we monitor and track, and we keep very, very clear statistics on our availability metrics across all of those systems. We provided what were the records at the time, so I'll need to take that on notice.

Senator KENEALLY: Okay. If you can do that and advise us if you need to update the table that was provided after the questions from October 2017. Can you please also provide—and I'm happy for you to take this on notice—a full list of all the system outages in the last 18 months, detailing the time, date and duration of those outages?

Mr Katf: I'm happy to provide that on notice. I think we might have done that for one of the other committees, but I'm happy to provide it to this group.

Senator KENEALLY: Thank you. How is the ATO's testing of the new system to be launched in July this year proceeding?

Mr Katf: Very well is the macro answer. You have to break it down into different systems. Our preparation for tax time, which is the biggest event that we face on an annual basis, is proceeding very well. We've implemented and are doing all the thorough testing across all the legislative changes and the improvements that we're putting in place for tax time next year. But, in parallel with that, we have a number of systems that we're also implementing at a variety of times—improvements to the Tax Agent Portal, for example—and most of that testing is proceeding very well.

Senator KENEALLY: Do you have any concerns at this stage that the system won't be ready in time?

Mr Katf: None whatsoever, Senator.

Senator KENEALLY: Do you have contingency plans in place if the system changes don't proceed as well as you're expecting?

Mr Katf: We always have contingency plans. Tax time is not an optional for us, so we have to be very, very ready for introducing the legislative change. The good news is we have progressed all of the testing for the tax-time-related activities, so I'm pretty confident that we will be ready for tax time again this year.

Senator KETTER: I have some questions relating to the R&D tax incentive. I wanted to firstly ask: how many companies are currently registered for the R&D tax incentive?

Mr Olesen: I don't think I have that data with me. I'm happy to take it on notice.

Mr Jordan: How many have registered over what period—last year?

Senator KETTER: How many are currently registered?

Mr Jordan: I think it's a project basis. I don't think you register and stay there forever. You register for a project; that's the way I understand it. Once the project is finished and you've claimed all the expenditure around that project, that's it. It's not like a standing ongoing registration. You have to apply to AusIndustry for each of the projects that you're claiming the incentive for.

Senator KETTER: This may well be a function of the number of projects that are ongoing at the moment. I see Mr Hirschhorn coming forward. Do you have some light to shed?

Mr Olesen: I was just going to add that Mr Hirschhorn might have some additional information. I have some data here about claims made, which might be different to people registering with the Department of Industry, Innovation and Science about their research. As I understand the project, the scheme has two components to it; you register your interest in some eligible activity and then you make the claim for your tax return. Our role in

that system is to check that the expenditure is what you claim it to be in your return and related to the research and development. In the 2016-17 year, for example, there were some 13,000 claims made for the R&D tax incentive.

Senator KETTER: Perhaps I can put it this way. I'm interested in how many businesses are going to be affected by some of the R&D measures announced in the budget.

Mr Olesen: That might be a better question for Treasury.

Mr Brine: The figure I have here is that in 2014-15, approximately 12,000 companies claimed the incentive.

Senator KETTER: Can you advise how many companies were registered for the non-refundable tax incentive in 2015-16 and 2017-18 financial years to date? Can you break that down by sector?

Mr Brine: We will have to take that on notice.

Senator KETTER: Sure.

Mr Hirschhorn: In 2016-17, there were 11,262 claims for refundable offsets. That had \$2.5 billion of offsets claimed and used. There were 1,812 claims for the non-refundable offset, and that's approximately \$3.6 billion of offsets claimed and used. The refundables were pretty much flat year on year. Sorry, I don't have the full stats here, but they were pretty flat, and the non-refundables were down compared to the previous year.

Senator KETTER: You don't have the 2017-18 figures at the moment?

Mr Hirschhorn: That is still, in a sense, in progress. I'm not sure exactly the time when you have to register with AusIndustry, but I think it's either before the end of the year of income or before the return; I'm not sure which.

Senator KETTER: I will keep moving along. Based on Treasury modelling—I'm interested in the proposal for the sliding scale intensity measure—can you tell me how many companies will have their R&D benefit cut 8.5 per cent to four per cent as a result of the intensity measure?

Mr Brine: I would need to take that on notice.

Senator KETTER: Of those companies, how many have a turnover of \$50 million or less? You could take that on notice as well. How many companies today will be financially better off under the new measures for the non-refundable component?

Mr Brine: We will need to take that on notice.

Senator KETTER: On your modelling, how many businesses that currently claim the non-refundable tax offset have intensity levels exceeding two per cent? I suspect you're going to be taking a lot of these on notice.

Mr Brine: Yes. On notice.

Senator KETTER: I will just put them on the table. How many have an R&D intensity rate equal to or exceeding 13.25 per cent? How many companies that claimed the non-refundable component currently have an intensity of 40 per cent or more? What sector is likely to be worst hit as a result of the intensity measures? Do you have a feeling for that?

Mr Brine: I don't. We will take that on notice.

Senator KETTER: Manufacturers still represent about 30 per cent of the R&D claims. I want to talk about the changes to the refundable component. How many companies will be affected by the new \$4 million cap?

Mr Brine: I will take that on notice.

Senator KETTER: How much money is that particular measure expected to save?

Mr Brine: Looking at the measure prescription in budget paper 2, you will see there is a split between revenue and expenses. I would say the expense component of the measure is a save of about \$1.4 billion. That would be largely picking up the refundable component.

Senator KETTER: Is it true that there may only be about 20 companies affected by the \$4 million cap?

Mr Brine: I'd have to take that on notice.

Senator KETTER: I'm interested in what sectors the affected companies will come from and what the annual average taxable income is from companies who claim the refundable R&D incentive. Were options for a collaboration premium in the initial modelling undertaken for the budget R&D measures?

Senator Cormann: That goes to the content of advice. I will take it on notice to see whether there is something we can provide you with in addition to what's already been provided.

Senator KETTER: I'm not asking for the advice; I'm asking whether it was considered.

Senator Cormann: The way you're framing the question, you are effectively asking for the advice that forms part of the deliberative cabinet process. But I've taken it on notice. If there is something we can provide you with, appropriately, mindful of the usual conventions, then we will.

Senator KETTER: The FFF review into the R&D tax incentive noted the low employment of STEM PhD graduates in Australian industry relative to other OECD countries, which was deemed a lost opportunity for knowledge spillovers. Can you explain to me how the recent changes to the scheme will rectify this lost opportunity and improve collaboration?

Ms Purvis-Smith: In responding to what's known as the three Fs report, the government noted changes to the R&D incentive, which is what you have in front of you in the budget papers. In terms of tightening up the integrity of the system and changing the focus of the R&D incentive, there is no inclusion in the measures, as you have noted, of a collaboration premium. I think there may be—again, this is not in the tax area—some government measures in other areas and other portfolios.

Senator KETTER: Finally, can you tell me how Australia's recently announced R&D scheme compares to other global tax regimes? How many other global tax regimes have a base rate lower than or as low as four per cent?

Ms Purvis-Smith: I can take that on notice.

Senator Cormann: Could I just provide a response to a question that was asked by Senator Ketter yesterday in relation to the 2018-19 budget data, which I was a bit intrigued about. The suggestion was that, contrary to previous years, 2018-19 budget data had not been made available on data.gov.au. The Digital Transformation Agency have confirmed that the 2018-19 budget tables and data are available on data.gov.au. The Digital Transformation Agency have confirmed that the 2018-19 budget tables and data were added to data.gov.au at 7.35 pm on budget night. The 2018-19 tables and data, and data for past budget updates, are still available on data.gov.au, and data is provided in a machine-readable CSV format—that is, common separated values format—and the DTA have confirmed that data.gov.au has not had any downtime since the budget. So I'm not sure what happened there.

Senator KETTER: This is the data chart pack, I think?

Mr Brine: Yes, that's right.

Senator KETTER: Thank you very much for that.

Senator STOKER: Mr Jordan, we hear from the Left from time to time that Australia is lightly taxed and that some people would be happy to pay a lot more in tax. Is the taxpayer able to make a voluntary payment of tax?

Senator WHISH-WILSON: Who is the Left exactly?

Senator LINES: Who's the Left?

Senator STOKER: I don't think it's crazy to describe those who are broadly of a leftist persuasion as holding that particular view.

Senator Cormann: In fact there were some people on Twitter and in the Fairfax media earning a particular income saying that they wanted to pay more tax. My understanding is: anyone who wants to pay more tax under our income tax act can volunteer to provide more tax. I'm sure that the ATO can give them the hotline as to where any such person across Australia who feels they should pay more tax than legally required can assist our nation in that particular way.

CHAIR: Mr Jordan, is that possible?

Mr Jordan: I haven't been flooded with those requests.

Senator Cormann: But you might want to talk us through how that is actually possible. Is there a program—

Mr Jordan: It is, and apparently some people do.

Ms Smith: There are a number of ways that any client can pay additional tax voluntarily. For example, they may negotiate with their employer to actually have the employer increase the tax instalment deductions that they're making on their behalf. That's an agreement that's made privately between the employee and the employer.

Mr Jordan: And that's normally so they get a refund in a lump sum.

Senator Cormann: That is not actually paying more tax. We were more looking for the additional revenue to the government because someone wants to actually pay more tax.

Senator STOKER: That's right, Minister: I was looking for someone who wants to contribute more in the ultimate wash-up for the year.

Ms Smith: I don't know that I've got the answer to that. The other avenue I was going to outline was simply: you can pay additional tax, but that of course is then assessed at the end of the year. We had last year 127,000 clients who, according to our data, did make some additional payments, which is very easily done through myGov or directly. You simply need to have your payment reference number. But, again, that is not additional tax but rather at the end of the year—

Senator Cormann: I think there is some important legal information that we need.

Senator STOKER: Something in the nature of a conscience payment.

Ms Smith: We do have conscious payments.

Mr Jordan: On that last one, what some small businesses say is: 'We've got money now. We might not have it next quarter. Can I give it to you now, because I want to prepay?' So you can do that. That was 127,000. That's not additional money. Occasionally, we receive cash in the mail—

Ms Smith: We do.

Mr Jordan: without anything. I was told that—Albury does our processing now; it used to be Pennant Hills—we got \$62,000 in cash with a note saying, 'This is yours'.

Senator Cormann: That is all very interesting. I actually want to know where people should ring if they want to pay more tax to the government voluntarily than they are legally required. Somebody's got to have the answer.

Mr Mills: I think the problem legally is we cannot hold more tax than someone actually owes when we know who it is. That's our first problem.

Senator WHISH-WILSON: Can you put them in touch with the people who don't want to pay their tax?

Mr Mills: That would be nice! If people actually do want to voluntarily pay additional tax, the best way is in fact to put the cash into a brown envelope and drop it at our Albury office!

Senator Cormann: So all those people around Australia who are on the public record saying that the income tax rates are not high enough, you now have advice on how you can relieve yourself of some of your surplus cash that you would like the government to have!

Mr Mills: Of course you shouldn't really be dealing in that amount of cash anyway.

Senator STOKER: Is there any evidence of a trend developing of Australians who want to pay more tax sending in additional sums?

Mr Jordan: No.

Senator WHISH-WILSON: Incredible line of questioning. The Left—I'd be interested to know who they were, Senator.

Senator Cormann: No self-respecting free marketeer would want to pay more tax than they have to.

Senator WHISH-WILSON: I have a couple of questions on thin capitalisation. The *AFR* recently ran an article that said:

The federal government's budget move to tighten the thin cap rules follows a \$66 billion blowout in asset revaluations that foreign companies used to increase their related-party loans.

The report went on to say:

... many of the revaluations of large resources projects have been made by one partner at a major accounting firm.

How many accounting firms is the tax office aware of that have been recommending this strategy to clients? Are you able to comment on the article?

Mr Hirschhorn: The article spoke about a particular sort of revaluation for thin capitalisation, which has been permitted under the law. You are allowed to gear a certain amount under the safe harbour test versus your assets. Most on-balance sheet revaluations are allowed as assets for that purpose, or the increased value of asset is allowed. There is a small category of—I might describe them as—off-balance sheet revaluations, which have also been allowed. That has been a feature of the system since there was the alignment of Australian accounting standards with international accounting standards quite a while ago, because that alignment caused some previous assets to be de-recognised. The ability to revalue for thin capitalisation purposes only has been a feature for a long time. I'm sure that every tax adviser for this market worth their salt would have advised their clients who had thin capitalisation issues to explore this strategy. I'm sure of that.

Mr Jordan: It fits perfectly within the rules.

Mr Hirschhorn: There has been an announcement in the most recent budget that the ability to have off-balance revaluations will be ceased.

Senator WHISH-WILSON: Will that require legislation?

Mr Hirschhorn: As a government announcement, it obviously requires the government to pass it.

Senator WHISH-WILSON: Would that require consulting with the big four accounting firms and other stakeholders before that is passed? Is it going to happen?

Mr Jordan: That would be a matter for Treasury. That would go through a normal consultation process. As you can imagine, when you can do off-balance sheet valuations not subject to the rigour of audited accounts and all of that, we've had a bit of concern about this for a number of years, and we are really pleased that the government has made an announcement on it.

Senator WHISH-WILSON: Excellent. I look forward to that. This last question is a bit of an unusual one. It is about the backpacker tax package of bills. Do you remember the backpacker tax issue?

Mr Jordan: Yes.

Senator WHISH-WILSON: Senator Cormann remembers it very well, as I do. We managed to get a good result in the end. The package of bills included a requirement to establish a register of employers for agricultural producers.

Mr Jordan: Yes.

Senator WHISH-WILSON: Senator Leyonhjelm didn't like it. He's not here at the moment. The government agreed to remove it from the bill to get his support for the package, and then we negotiated an outcome. Nevertheless, the bill introduced in February 2017 has the requirement for this register but we haven't seen any establishment of a register yet, so I was just checking. I will read you quickly from Minister Morrison's second reading speech:

The register will be made public, with a list of registered employers published on the ABN Lookup, making it easy for working holiday-makers and others to check the registration status of a potential employer.

Has the ATO established a public register of backpacker employers?

Mr Jordan: I recall the issue. When was that going to start from?

Senator WHISH-WILSON: I don't remember when the start date was, but certainly the other laws came into effect immediately.

Mr Jordan: We will need to take that on notice. I do recall that issue. I think there were some concerns about the publication, because if you are an employer with a registered office and all that, that's fine, but it also did apply to people like au pairs and nannies. There was some issue about private people having to put their address up on a public register and all that sort of stuff. I remember these things around the time, but I can't remember where it finally landed. We will take that on notice. I've been told there is a further amendment going through now, so that's probably why I haven't seen the finality. We will take that on notice and let you know.

Senator WHISH-WILSON: If you could take that on notice and just note that the legislation said it would be made public.

Senator KENEALLY: I do have some questions about build-to-rent but, given the fact that Senator Stoker introduced some rather random lines of questioning, I thought of another one I wouldn't mind posing. I don't know if the ATO or Treasury are aware of Pope Francis's recent proclamation that wage theft, exploiting labour, paying people under the table, not paying pension contributions and their fair share of tax is a mortal sin—obviously punishment by internal damnation.

Senator Cormann: Or, of course, by significant penalties pursued by the tax office!

Senator KENEALLY: I was wondering if Treasury or the ATO is aware of that proclamation from the Pope and if they have any comment on it.

Senator Cormann: I am not sure that the ATO would consider themselves to be the enforcers for His Holiness Pope Francis, but our laws actually have similar effects.

Senator KENEALLY: Pardon me, Minister Cormann?

Senator Cormann: Our laws are designed to ensure that people pay their fair share of tax and pay their employees' superannuation entitlements consistent with our laws, and the ATO and other agencies of government are properly resourced to enforce compliance with those laws.

Senator KENEALLY: Minister, are you saying the ATO penalties for not paying your fair share of tax have a similar effect to eternal damnation?

Senator Cormann: You talked about the sin that was non-payment of taxes and superannuation entitlements and other matters. I just pointed out that our laws actually are there to, among other things, help ensure compliance with the requirement to pay your fair share of tax, for employers to pay superannuation entitlements and, indeed, we're pursuing some further measures in this budget to ensure that happens. There are agencies that have responsibility and authority to ensure that employees receive their fair entitlements generally.

Mr Jordan: I'm sure some taxpayers would prefer a few Hail Marys as punishment than penalties, but the Black Economy Taskforce is going to have a really good look at that, because that's the problem with these cash businesses. They're paying cash wages, they're not paying super and they're not giving sick leave or holiday pay, and that will be quite a significant issue.

Senator KENEALLY: Maybe they could invite a submission from Pope Francis.

Mr Jordan: He can come to confession to me, if he likes.

Senator Cormann: Not with a brown paper bag, though.

Mr Jordan: Yes, no bags required.

Senator KENEALLY: Minister Cormann, you and I are both migrants and we are both Catholics.

Senator Cormann: That is true. We have so much in common. Why don't you support our company tax cuts?

Senator LINES: We don't have that much in common!

Senator KENEALLY: Moving on to build-to-rent.

Senator Cormann: I prefer your accent to mine, too! That's true.

Senator KENEALLY: Don't be so hard on yourself, Minister. May I please move on to build-to-rent? I'd like to talk about the media release of 14 September 2017 from the Treasurer and the Assistant Minister to the Treasurer, which talked about managed investment trusts not being able to acquire residential property other than affordable housing. This is still government policy, yes?

Ms Mrakovcic: I believe so.

Senator KENEALLY: Can you confirm that this ban on managed investment trusts started at 4.30 pm on 14 September 2017?

Ms Mrakovcic: I'd have to take that on notice.

Senator KENEALLY: Was draft legislation for this measure released for consultation?

Ms Mrakovcic: I'd have to take that on notice.

Senator KENEALLY: And could you also then take on notice when did that consultation period close? Is legislation to implement this measure before the parliament? I don't believe it is, but I just want to double-check.

Ms Mrakovcic: As per the other questions, I'd have to take it on notice.

Mr McKenna: The answer is that legislation is not yet before parliament for that measure.

Senator KENEALLY: Do you know if draft legislation for the measure was released for consultation?

Mr McKenna: It was late last year. I don't know the precise dates, but it was released around the time that you were mentioning the press release.

Senator KENEALLY: And are you able to confirm that the ban on managed investment trusts started at 4.30 pm on 14 September 2017?

Mr McKenna: Sorry; I don't have the finer details with me.

Senator KETTER: Is that because we don't have legislation behind that?

Mr McKenna: No; that's just because I don't have the finer details with me at the moment.

Senator Cormann: And we've already taken that on notice.

Senator KENEALLY: Minister, do you know when the government will put this legislation to parliament?

Senator Cormann: It's not in my area of responsibility, and the officers have taken it on notice. We'll find out and get that response to you as soon as possible.

Senator KENEALLY: Thank you. It's been eight months since the ban was announced, and no legislation is before the parliament. What does that say about the certainty for investment?

Senator Cormann: What it says is that the legislation will be before the parliament as soon as it's ready.

Senator KENEALLY: There's no uncertainty, given that it's been eight months?

Senator Cormann: Certainty is advanced by making sure that the legislation is appropriately well drafted and has gone through the proper process, which, as has been indicated to you, is happening as we speak.

CHAIR: Thank you, Senator Keneally. Senator Siewert has some questions for the ACNC.

Senator Cormann: Does that mean that we're finished with Revenue Group?

CHAIR: Sorry; Senator Leyonhjelm has another question for the Revenue Group. Is that correct?

Senator LEYONHJELM: Yes; only short.

Senator SIEWERT: I'm happy to wait.

CHAIR: There are some questions for ACNC.

Senator Cormann: If we could get to the ACNC at the end, we could let the others go.

CHAIR: We can do that.

Senator LEYONHJELM: There may not be anyone here who can answer this, so I would be happy for it to be taken on notice. I understand that there is a negligible number of vehicles that are older than 30 years which are imported into Australia, but the Australian Historic Vehicle Interest Group argue that this is due to the application of the luxury car tax. They also argue that providing an exemption for historic cars would boost revenue because GST collections on additional new imports of historic cars would exceed the foregone luxury car tax on existing imports. Are you able to confirm that current imports of vehicles older than 30 years are negligible and that the associated luxury car tax collections are also negligible?

Ms Mrakovic: Senator, we'd have to take that on notice.

Senator LEYONHJELM: Fine. Also probably on notice, can you outline the reasoning for vehicles imported by deductible gift recipients for public display being exempt from the tax while other historic vehicles are not? I'm happy for you to take that on notice.

Ms Mrakovic: We'll have to take that on notice.

Senator LEYONHJELM: Thank you very much.

Senator KETTER: I want to follow up on my earlier questions that were taken on notice in relation to the R&D tax. If any of the officials have any of that information available today, it would be very much appreciated.

CHAIR: As there are no further questions for the ATO or Revenue Group, we will let you go. Thank you very much. I'm sorry that we kept you for so long. Thank you also, Minister.

Senator Cormann: I'll just wait for Senator McGrath to arrive, but we can keep going with the ACNC.

Australian Charities and Not-for-Profits Commission

[14:08]

CHAIR: Welcome, Dr Johns. Thank you very much. I'm sorry to have kept you waiting. Senator Siewert, you have some questions.

Senator SIEWERT: I've got probably three brackets of questions. Hopefully I'll get them all done in my allocated time. I've got some number questions to begin with. Could you update us on how many active investigations you currently have underway, and are you able to tell us how long they have been active?

Dr Johns: Yes. We have 98 investigations in train; 76 were completed last year. So that gives you an idea of the magnitude. Did you ask for an average time?

Senator SIEWERT: Yes, how long they have been—so maybe the longest, the shortest and then the average.

Dr Johns: There is a table in my head which comes to mind, but they can range. Some have been around for two years; others can be down in a matter of months. It really does often depend on the nature of the correspondence between a charity and us.

Senator SIEWERT: Could you provide on notice, then, the longest?

Dr Johns: I will. I'll give you a nice table.

Senator SIEWERT: If you could, that'd be really appreciated. I realise that there are issues around talking about specific investigations, but please provide on notice the longest and the shortest and provide information also on the number that have been completed year to date.

Dr Johns: As in across five years?

Senator SIEWERT: What I'm looking at is year to date, but I'm also keen to look at the history of the investigations and whether we are seeing more investigations. But we might also need the most up-to-date figures of how many charities are registered, or have been registered in those years, so that you don't look at it and say,

'Look, there have been this many investigations,' when really you've got a lot more charities that are now registered.

Dr Johns: I'm happy to supply those, but the answer is: the number of completed investigations is climbing and the number of charities is fairly static.

Senator SIEWERT: Now that you've got that last tranche.

Dr Johns: No. The last tranche, which is the four coming over from the other registries, is not with us yet, and that's a fairly small number; there are 2,200. But the 56,000 is pretty stable. The number of completions jumps. Two years ago it was 52, and there were 76 last year. So there's been a jump. And we have 98 currently on hand, and we're not quite sure when they'll complete. But I think the simple answer is that, in the early years, the commission naturally was concentrating on the registration side and getting its affairs in order, if you like. The other thing, of course, that will drive this is that the number of concerns raised with us is climbing. In 2017, there were 1,695 concerns, which is up 42 per cent from 2016. Now, I don't have an answer for you as to why that jumped, because it's not something in our control, but I think the general answer is that we are better known as a focus for the sector.

Senator SIEWERT: Okay. You said the number of complaints last year was 1,695 and you completed 76 investigations. I take it from that that the majority of complaints obviously don't then go into investigations.

Dr Johns: Correct.

Senator SIEWERT: Would you very quickly outline the general nature of the complaints.

Dr Johns: We have a triage—you can imagine. We have 1,600 coming in and 76 or so being completed. The triage runs generally along these lines: is there someone at risk? is there fraud? is there private benefit? is it a very public charity, for instance? is there a reputation at risk? Those are the sorts of risk factors. Our people work on those literally daily—I was talking to someone last night about her work. Then we allocate the most important, as we triage them, to our team of 18 people, and we get through as many as we can.

Senator SIEWERT: You mentioned that the number of charities has stabilised. How many have registered in the last 12 months?

Dr Johns: I'll look at it. It's about 2½ thousand.

Senator SIEWERT: In the last 12 months?

Dr Johns: Yes. I'll grab it for you while we're here.

Senator SIEWERT: Also, how long does it take now to process a new registration?

Dr Johns: Our measure is: 95 per cent of registrations are completed within 15 days, and that's the way in which we report that. Sorry—your first question again?

Senator SIEWERT: How many in the last 12 months?

Dr Johns: It'll come to me. It's not popping out. It will. I'm terribly sorry. Any other questions?

Senator SIEWERT: I'm also interested in how many charities have voluntarily submitted their financial reports in the last 12 months.

Dr Johns: Ninety per cent. Of those that are due now, 90 per cent have. As to registrations—here we go: 2,635 between July 2017 and 30 April this year.

Senator SIEWERT: Year to date?

Dr Johns: Sorry; no. That's new applications received. Registered year to date: 2,133.

Senator SIEWERT: And there are applications from 2,635?

Dr Johns: Correct.

Senator SIEWERT: So my maths says there are over 400 still in the process. Is that correct?

Dr Johns: Yes.

Senator SIEWERT: I wanted to go to some of the discussions we were having last estimates and ask about some specific points. Last estimates, we were having a discussion about the political donations electoral reform bill. Out of that whole process has come the change that was made to the act in 2017 around when people have to report political expenditure. Last time we had a discussion around the confusion that could arise between the bill and the Charities Act, and I've asked the AEC how many charities they are expecting will have to report against the changes to what is regarded as political expenditure that is, or is likely to be, before an election—which a lot of us are now seeing as having widened what charities are required to report on. Have you had any discussions

with the AEC or the government, or have you considered the impact of that change, in terms of charities having to report against that requirement?

Dr Johns: We've certainly opened the door to the AEC. As to our website—because we get most of the hits from charities, and there are millions of them—we've taken the view that we will inform anyone coming to our website what they need to do to comply with AEC rules. But, as you can appreciate, we don't write the rules; we just republish them. At the same time, it has reminded us, I suppose—we're doing it anyway—that charities should complete any obligations they have with the law, but they should register with the AEC if there are donations and so on. We're also doing a little piece of work now—I think we'll just update it—where we will remind them that if they have made a donation then they need, for our law, to tell us, because it might trigger a disqualifying rule under our conditions, which is that they are said to, and seen to, support a particular political party or candidate. It doesn't say that it does, but I'm just saying: when they register with an Electoral Commission anywhere in Australia, state or federal, then they need to tell us.

Senator SIEWERT: It's not just about donations, though, is it? I'm talking about the section that was amended in the act that is 314AEB, annual returns relating to political expenditure. It's not just about donations. It's also: if they've incurred expenditure during the year, in terms of expressing views, for example—

Dr Johns: Yes.

Senator SIEWERT: The concern there is that a lot of us interpret that to have widened—otherwise why would the government bother doing it anyway?—what charities have to report on. Have you looked at that specifically and have you considered whether it is going to expand the number of charities that have to report?

Dr Johns: I literally don't know it, because it brings to my attention those who undertake an action that might disqualify them as a charity—that is, they are seen to favour or disfavour a particular party or candidate. Mine is a narrow purview and I simply don't know if anything else is happening.

Senator SIEWERT: But you make comment in your submission to the inquiry into the legislation—you talked about regulatory burden, and we had a discussion about that last time.

Dr Johns: Yes.

Senator SIEWERT: One of the areas that I want to look at is, then, the regulatory burden on these charities that already report to you and their requirements under your legislation. They are now having to report, potentially, under quite onerous conditions—threats of jail for the CFOs. Have you been involved in any discussions with the AEC about that or, in fact, the charities you regulate, or have you had any legal advice on that?

Dr Johns: No, because it's not my legislation; it won't control me. But I do know, because we speak to charities all the time, and charities, of course, have made their voice quite plain about the notion of advocacy and the importance of advocacy, so we know that they spend resources, whether it's time or money, on advocacy. So, if the government is asking them to tally that, clearly there'll be a greater regulatory burden. But I didn't put any figures to it because I don't know it; I just know it's there.

Senator SIEWERT: In your conversations with charities, have they raised with you their concerns about the regulatory burden and the potential implications of that change?

Dr Johns: They have.

Senator SIEWERT: They have. So would you regard it as a major concern for organisations?

Dr Johns: It's one of many concerns. It's hard to rate it. It's the sort of thing where you sit down, you have discussions with charities, you go through five or six or seven things on a list. It'll pop up. It hasn't popped up for a couple of months. It was hot last time we were here.

CHAIR: Senator Siewert, I'm conscious I've given you about three minutes more than the allocated time for everyone else.

Senator SIEWERT: One more question?

CHAIR: One last question.

Senator SIEWERT: And I'll put the rest on notice.

CHAIR: Yes; perfect.

Senator SIEWERT: I want to go back to the question I asked about the AEC. Have you had any discussions with the AEC about that particular point?

Dr Johns: No.

Senator SIEWERT: Do you intend to? That's a supplementary!

Dr Johns: I think we'll wait until the legislation settles and then we'll see what advice they publish. I could only republish advice, if you know what I mean.

Senator SIEWERT: These are actual changes that have been made already.

Dr Johns: I know, but I would only republish their advice as, if you like, a gift to the charities who come through my website. I'm not reinterpreting; I'm not doing anything. I would republish their advice and put a link in back to the AEC.

CHAIR: Thank you, Senator Siewert. Senator Ketter.

Senator KETTER: Dr Johns, can you tell me what the ACNC's litigation expenses have been over the last three financial years?

Dr Johns: We've only had the one case, and I'll look it up. It was about \$250,000. We had one charity on a registration matter who took us to the AAT, and those funds were expended on barristers to the AAT.

Senator KETTER: So, in the last three financial years—

Dr Johns: Yes, there's nothing prior to that that I know.

Senator KETTER: Only one case; okay. You've made the request for more litigation resources specifically for this upcoming year. Can you tell us why?

Dr Johns: Because the commission's been sitting there for five years and, very luckily, it hasn't been taken to court—or hasn't defended itself in court. As I say, that's either luck or, maybe, a reflection that it wasn't prepared to make decisions that it felt might have gone to court. That is speculation on my part. The point is: I felt as though we needed a litigation fund, because it's not a good look if a commission cannot defend its decisions in court, should it arise. I don't anticipate anything at the moment.

Senator KETTER: How did you arrive at the figure of \$1 million?

Dr Johns: This AAT decision cost about \$250,000. It's a relatively minor matter, so it wouldn't take much to eat through a fair amount of money. That's a one-off amount that will sit in our budget for those purposes only.

Senator KETTER: Can you tell us whether the ACNC's ever been forced to relent in litigation or make a decision not to initiate litigation based on resourcing?

Dr Johns: I'm not aware of any.

Senator KETTER: So that \$1 million figure is the amount that you specifically asked for?

Dr Johns: I did.

Senator KETTER: How will you prioritise the use of those funds?

Dr Johns: It will sit there in the knowledge that, should a charity take us to the AAT or the Federal Court, we'll be able to defend a decision. It simply means that there is provision for it. I think commissions should be able to feel confident, when they make their decisions, that it's part of a legal process. They should be able to not only make a decision but have it challenged, quite rightly, and then be able to defend themselves in court.

Senator KETTER: Thank you very much.

CHAIR: I don't think there are any more questions for the ACNC. Before I let you go, we need to re-table a document that Senator Ketter tabled before—it didn't photocopy in the way we thought it was going to! We are officially re-tabling that document. Thank you very much, Dr Johns.

Dr Johns: Thank you very much.

Australian Competition and Consumer Commission

Australian Energy Regulator

[14:27]

CHAIR: Only running an hour and a quarter behind, I now call upon the Australian Competition and Consumer Commission and the Australian Energy Regulator to join the committee. Welcome, Mr Sims, and welcome to the ACCC and the AER. Mr Sims, do you have an opening statement?

Mr Sims: No, I don't. We're happy to answer any questions you've got. If you want to make up a bit of time, we're happy with that as well!

CHAIR: I'll bet! I think there are probably a few people here who would be happy for us to make up some time. I might kick off the questions. Can I ask first and foremost about the Consumer Data Right in open banking? Can you explain to the committee exactly what the Consumer Data Right is?

Mr Sims: I'll give the opening shot, and I've got an expert on my right. It means that consumers are able to get access to the data that a supplier may have on them—most relevantly, in the first instance, a bank—and send that data to, potentially, a competitor of that bank or an accredited person who could act on their behalf to see whether there's a better deal. What often happens is: you can't get access to your data, so the alternative supplier can't readily formulate an alternative deal. If you have got access to your data, that will facilitate switching quite a lot. It doesn't take the data away from the company that acquired it; it just gives you access to your data so you can use it as you want, and you can seek out other offers. I really think it was a very clever idea by the Productivity Commission to come up with this, and it's terrific that the government's moved quickly to put it into place.

CHAIR: My understanding is that open banking is the first sector to have this Consumer Data Right.

Mr Sims: Yes.

CHAIR: Just for the benefit of the committee, could you talk about open banking.

Mr Sims: The way it's going to work is that it'll be open banking first, and we have a timetable on that, which Mr Gregson's able to explain. Then it does energy. Then it does telecommunications. Those are the first three. Then it will go through the economy. From our point of view, we really think it's got fantastic merit right through the economy. Obviously we've got the AER over there, but we at the ACCC are doing a bit of work on how to improve affordability of energy, so access to data will be important in that. We're also the telco regulator, so we can really see how access to data there will be helpful. So the banking one will break new ground. In a sense, it'll be the first one—mind you, it will learn lessons from Britain, which has got a bit of a head start. Once we get it done with banking and then move on to energy, we'll just be attempting to broaden it out so that this is a right every consumer has. This will take a bit of time but, with virtually all of their transactions, it will really facilitate competition, I think, in this digital world. There are a lot of people out there who are very happy to help consumers switch to get better deals, and really, to fashion those deals, you need access to the data about usage.

CHAIR: Fantastic. Mr Gregson, you were going to go through the time line—did you say the time line for open banking or the process for open banking?

Mr Sims: There is a very clear time line, which Mr Gregson can give you.

CHAIR: That would be terrific.

Mr Gregson: I am the executive general manager of the Enforcement Division. While it is not part of the Enforcement Division, this work will ultimately report through to me. The government has announced a bit of a time line for open banking. That is to have one part of that sector commencing from 1 July 2019. That will be data on credit and debit cards, deposit and transaction accounts. We will then move by February of 2020 to have available data on mortgages and finally, by 1 July 2020, data on the remaining products recommended in the open banking review. That's all the current timetable. There's a lot to achieve between now and then, and we're going to do our very best to keep that timetable under review.

CHAIR: Obviously there's a UK regime that is not that dissimilar. What potentially have been the learnings from the UK regime?

Mr Sims: There were quite a few.

Mr Gregson: We're learning a lot from the UK experience. We've had meetings and engagement with the agency involved there. It's still at quite an early stage, but some of the challenges that we will face are in terms of making the rules, which are the high-level set of rules about how data will be made available and moving to standard setting, which is the next level of technical standards as to how you make that data available. Invariably, I think, the overwhelming feedback from the agency is the importance of having strong communications with the industry sector and being very conscious of the privacy issues that need to underwrite such a policy.

Mr Sims: We're already in close contact with the Privacy Commissioner, so we'll be working hand-in-glove with them.

CHAIR: I was going to ask you about how you will actually go about regulating open banking—how the ACCC intends to go about its regulation responsibilities.

Mr Sims: We're going to be accrediting people. There are certain obligations that are going to be on the banks. There are then accredited entities that can receive the data. Basically, if people don't live up to the obligations under the law, we'll be taking action, and the Privacy Commissioner will be making sure that, if people have concerns about the privacy of their data, they can deal with that. I will say—not really flippantly—that in Sydney my office and the Privacy Commissioner are in the same building, so we will find it easy to communicate and work together. Do you have anything to add there, Scott?

Mr Gregson: It may be repeating, but there are five roles that the ACCC will have under the Consumer Data Right. The first will be designating new industries. As you say, that's taking care of the banking, and we have a bit of a read on the next two that we might do, but designation through government will be our first role. The second will be setting those rules, which is the high-level set of rules, and we'll be working with the office of the information and privacy commissioner to make sure that we take into account the privacy issues. We'll then work with Data61, which, as you know, is an offshoot of CSIRO.

CHAIR: Yes, I was going to ask them about this tomorrow.

Mr Gregson: Yes. They'll be responsible for writing the standards which comply with our rules, but we'll have an approval process to make sure those standards actually meet the rules. As Mr Sims mentioned, we'll then also be dealing with the accreditation of third-party data receivers. That's quite an important role, to make sure that it has real-time information so that, for example, banks know who they can release material to.

CHAIR: Is that the security aspect of that?

Mr Gregson: It's security but also the accreditation of those parties, to make sure that they are proper and fit persons to have access to consumer data. And yes, there'll be a lot of work to be done there with the Information Commissioner as well. Finally, later down the track we'll be enforcing. If businesses aren't releasing material in accordance with the rules we'll have the capacity to enforce. The final thing I'll mention is in relation to working with the OAIC. We'll have to work out to make sure there's no wrong door for consumers to raise issues and the OAIC will have a front door capacity to take reports and work with us in working out what the strategic issues are for us and what the privacy issues are for them.

CHAIR: Finally, one thing you haven't spoken about—I think the benefits to consumers and small businesses are quite obvious, but one of the ACCC's primary responsibilities is competition—do you end up doing a review or some sort of postimplementation assessment of this project?

Mr Sims: Yes, I think we most certainly will. At the moment I think that's the furthest thing from Mr Gregson's mind!

CHAIR: Implementation before postimplementation, yes.

Mr Sims: There is a hill that's extremely steep in front of him. But we have got a financial services unit, and one issue they will work on at the same time as we're—the most immediate step we've got is working with Data61, who'll do the standards while we're putting the rules in place. And they're not going to be sequential; they'll happen together. But also our financial services unit will be looking at how consumers react to data, what's the problem such that they're not switching, what do other players out there want to help consumers to switch? That will feed in, and certainly once the access to data right has been in place—I don't know how long—we'll review to see the benefits. But I'd be stunned if it doesn't promote significant competition. I mean, we've had alternative providers out there for a long time, both the second-tier banks and then the fintec startups, but they're just not making much of an inroad. Hopefully this will unlock that so that they can really provide a lot of competition to the big four banks.

CHAIR: Terrific. Thank you, Mr Sims and Mr Gregson.

Senator KETTER: Firstly on petrol prices—and I note your report that petrol prices are not the same as are released this month—what's your work in 2018 going forward now that this report is out, in this area of petrol prices?

Mr Sims: Sorry—what our work is going to be?

Senator KETTER: What will be your work going forward in 2018?

Mr Sims: We haven't completely settled it, but certainly before the end of the year—and I think our next report will be on price cycles: trying to understand what's happened to them, how regular they are, why they occur, that perennial question, and all under the heading of how we can provide advice to consumers—we've got two tracks with our petrol reports. One is a quarterly report, which comes out quarterly, and the other is special reports that we do alternately, in between the quarterly reports. I suspect that the next one will be the report on the fuel cycles, which I think we talked about last time.

Senator KETTER: I think that's the deep dive exercise you talked about last time.

Mr Sims: That's right. There's the quarterly reports, and then we pick an issue and do the deep dive, and we'll do a deep dive on fuel cycles.

Senator KETTER: Firstly, in relation to this quarterly reporting, will you investigate in more detail what the patterns of pricing are and who's driving prices up, or changes that are driving them down? What sorts of things will you be looking at in the quarterly reports?

Mr Sims: In terms of who's driving them up and who's driving them down, that'll be more a fuel cycle issue rather than a quarterly report issue. We already know a fair bit about that, because we spent a lot of time looking at that when assessing BP's acquisition of Woolworths, so we already know that as a general rule the price is led up by the majors and led down by the independent chains. But we'll be trying to provide a lot more information about that and trying to understand how that's done.

Senator KETTER: Will you be looking at individual service stations, such as those in the western suburbs of Brisbane, which regularly appear to be the first to put prices up, and end up being the highest?

Mr Sims: We'll be looking across the country. I honestly don't know how much we'll focus on Western Brisbane. But certainly Brisbane is the city we focused on. We focus on the most of the capitals. Inexplicably—although we do have explanations for it—Brisbane has prices that seem to be regularly three cents a litre more than any other capital city, which is outrageous because there's no cost justification. It does cost Brisbane motorists a lot of money.

Senator KETTER: Going to this price cycle, deep-dive exercise that you were talking about. Are there further updates you can give us in relation to that, which we talked about in February? You might have already touched on all of that.

Mr Sims: I think it will be our next deep-dive study. We're just about to release our latest quarterly report. That will come out early next week. With that out of the way, I imagine that the team is ready to go on the fuel cycle study.

Senator KETTER: Is there any work anticipated to be completed between now and the next round of estimates in October?

Mr Sims: I'll take that on notice about the exact timetable. We should have a timetable of those reports and we'll get that to you. That should be something we can do. We should have our next report out by October. I think it will be the fuel cycle one. It should be out by then, but I'd like to take that on notice so I don't give my fuel team a hurdle they can't jump.

Senator KETTER: Is there anything you can tell us to date about what you've found in this price cycle investigation?

Mr Sims: There are two things with price cycles. Well, a few, really. One is the perennial question of why they occur in petrol and don't seem to occur in other products. We think part of that story is the information service that's been there for some time, which we took legal action against. We took legal action against Informed Sources and Coles, Woolworths, 7Eleven, BP and Caltex, I think—pretty well all of those. We settled it on the basis that that information will be made available to the public. I think we can say, firstly, that it is the majors leading it up and it is the independents leading it down. So they play a really valuable role. The other thing we can say, irritating as they are, you can save yourself a lot of money if you keep an eye on—there are a number of websites, but ours, for example, where we give advice to consumers on when to buy. Just by avoiding the top six days or the top ten days of the peak, you can save yourself three to six cents a litre on petrol, so it really does matter. Obviously if you have to fill up each week you don't have that luxury. But if there is any good news about the peak it's that once it hits the peak it comes down, so if you can avoid that you can save a lot of money. In Perth, given the cycle is regular, you know that you should buy on a Monday. A massively disproportionate number of people in Perth do buy on Monday and save themselves a lot of money.

Senator KETTER: Have you anything further to add about potential policies you might be considering to drive down petrol prices, particularly for Queenslanders, who are particularly affected by this issue?

Mr Sims: I think it comes down to two things. One is making sure consumers are aware that petrol prices do differ. On the screen shot I looked up today in preparation for coming here, there is an eight-cent difference between the lowest and highest in Brisbane. It's not a lot, but it's worth keeping an eye out for—eight cents a litre is quite a lot for many people. So it is letting consumers know that, if they work out where to buy and also when to buy, they can save themselves some money—understanding that different petrol companies do charge different prices. But also there are things governments can do to improve that transparency and things governments—and I mean state and local governments here because this is essentially a planning issue—can do to foster the independent chains getting into those markets. We can deal with acquisitions if they occur—and try to stop them if we can if we think they are anticompetitive—but encouraging new players in is very much a state government-Brisbane City Council issue.

Senator KETTER: Okay. I now want to turn quickly to the taps that were sold in ALDI that allegedly contained dangerous levels of lead.

Mr Sims: My colleague has this one.

Senator KETTER: There is I think some collaboration going on between ALDI and the Queensland Building and Construction Commission. They've agreed to partner on a definitive round of testing, with the ACCC keeping a close watch on that. Apparently, an ACCC spokeswoman said that, should the accredited testing show unacceptable levels of lead, the ACCC would expect ALDI to recall these taps. What can you tell us about this testing?

Mr Grimwade: This issue arose quite a few months ago, so I'm just having to recollect the events. We were advised by the Queensland Building and Construction Commission that they had tested a particular individual tap that was sold by ALDI and they had found high levels of lead. ALDI disputed this, and we got involved. We required the test to be conducted by a NATA-accredited testing laboratory. That test result came back, as I recall, showing the opposite—that it was compliant with the relevant standard. I understand that there was some further testing done, which was ambiguous. That's really the state of affairs at the moment. As a consequence, there have been some discussions. The QBCC, which has the running on this particular product and possible recall of it, is working with ALDI. We'll get involved if we feel we need to, but at the moment it's in the hands of the QBCC.

Senator KETTER: So you're expected to be monitoring this testing arrangement?

Mr Grimwade: Not so much monitoring, but we will assist, as needed, our fellow regulator.

Senator KETTER: So you'll only assist if the QBCC requests?

Mr Grimwade: Yes. If the QBCC request our assistance, we'd be quite happy to assist them to the extent that we feel we can. Essentially, what is needed is a definitive result in relation to the testing of this particular tap. If it is noncompliant with the standard then it will be recalled. We know that ALDI has committed to recall it if, indeed, it is noncompliant. They disagree with the fact that it is noncompliant.

Mr Sims: I should point out that, while we are the national consumer product safety regulator, each state has a safety regulator and also they have specialist regulators for buildings, electrical goods and a whole range of things. So a lot of safety issues get dealt with by specialists who have technical knowledge. We deal with more general issues.

Senator KETTER: Just to finish up on this: are there any milestones that we need to look at? Are there any key dates? Are there any report findings due out to the public?

Mr Grimwade: That's a matter for the QBCC, which has leadership of this particular safety investigation, not us. I'm just not aware of those. We're not planning to do anything at the moment. I don't believe that these taps are being retailed anymore—

Senator KETTER: But it's concerning that we have got two different tests coming up with different results.

Mr Grimwade: Yes, it is. That's right. But the test that was conducted by a NATA accredited laboratory did come back saying that these taps were compliant. We rely very much on the expert testing laboratories.

Senator STEELE-JOHN: Mr Sims, in the last estimates I think I asked you about the government's proposed Regional Broadband Scheme and whether it would prove to have distortionary effects in the telecommunications market. Actually, I believe it was Mr Cosgrave that I asked. Is he with us?

Mr Sims: No, he has a sore back and he was advised he couldn't get on a plane. I will do my best!

Senator STEELE-JOHN: That's a good one. I will remember that!

Mr Sims: I thought it was good too!

Senator STEELE-JOHN: Can you answer on his behalf?

Mr Sims: Yes, I'm across our communications work.

Senator STEELE-JOHN: The response at the time was that there was a current debate around the extent of any subsidy measures. In your recently released *Communications sector market study final report* in recommendation 8 you proposed direct budget funding as it would prove to be the 'least distortionary'. That's a direct quote from the report. Is it your assessment, then, that the Regional Broadband Scheme would have a distortionary effect on the market?

Mr Sims: When the thing was first proposed, the ACCC felt that it was a bit distortionary but it wasn't such a bad thing that we would publicly advocate against it. When there was talk of extending such a scheme to mobiles—not, I should add, from the government—we said, 'Hang on; you have to be careful about these things,' but we formed the principled view that if you're going to provide subsidies for regional areas they're best done on budget. That argument, I have to say, as someone who has been involved in public policy for over 40 years, has been around forever. There are a lot of subsidies that are provided through a cross-subsidy. The economic purists say do it from the budget, and, often, it's more convenient to do it as a cross-subsidy. So, it is distortionary. How

distortionary is it? We're basically talking within fixed broadband. I guess it distorts a bit, but it's not a big issue for us. What we were most strenuously arguing against is anything that would protect the NBN from competition from mobiles. That is really now a dominant issue.

Senator STEELE-JOHN: But from a purely competition perspective, it will have a distortionary effect.

Mr Sims: I think it would have some distortionary effect. As I say, we advocate on a lot of issues; this is one we haven't been banging the drum about too much. But there's no question things like that have some distortionary effect.

Senator STEELE-JOHN: We were talking previously with Mr Cosgrave about pricing and the CVC. At that time, Mr Cosgrave noted, 'Longer term initiatives are still under consideration and there is discussion between the NBN and the sector,' and that he was keeping across that closely and expected a further briefing in the near future. Can you provide me an update on these longer term initiatives and his interactions with the NBN since then on that issue?

Mr Sims: Yes, we've had very constant interactions, and I think since we last spoke to you the NBN has brought out its longer term pricing. So the immediate 50 per cent CVC uplift was a temporary measure, and they've brought in a bundled product where, in essence, if you buy it as a bundle you get a certain level of CVC and you have to pay a slightly higher AVC charge, and any incremental CVC you want to use comes at a reduced rate. So, that bundled product they have out there really makes the 50 megabits per second service—frankly, it's very close to being priced at the 25 megabits service, so it still is quite an attractive offer. Just as we have seen the temporary measure they brought in mean that the telecommunications providers now had—because they were basically given a 50 per cent uplift in CVC, so that meant they had enough CVC, and congestion on the NBN has just nosedived. I think the feeling of the industry is that the longer-term measure—the way that is structured—should have the same effect.

Senator STEELE-JOHN: Do you have a general opinion on the kind of lack of transparency around the consultations in relation to NBN's pricing structures? Surely it would be ideal if it were done more openly?

Mr Sims: From where I sit, I think it's been reasonably transparent in the sense that—yes, it hasn't been public, I accept that, but it's been done with the RSPs, who I think have been following it fairly well. Certainly, NBN has kept us fully informed. My understanding is that they've kept the RSPs fully informed. If I have a bit of an issue with it, it's that it's done by way of a discount that could be removed quickly. So, if we have a continuing question it's not the transparency of the process, which we don't think has been too bad. It's just how permanent the current pricing arrangements are. That's the issue we're giving thought to.

Senator STEELE-JOHN: Would you be able to give me an update on your NBN wholesale services standards inquiry?

Mr Sims: Yes. I can. I've been seeking to get one myself from our people.

Senator STEELE-JOHN: Too many back injuries in the ACCC!

Mr Sims: I don't think it's a back injury that's done it, but just the complicated nature of the issue. I don't think on this one Mr Cosgrave is the bottleneck! We as a commission will be considering that issue, I think in the next month or so. That's a little bit later than I would have told you previously. It has taken a little longer, but they're complex issues when you're dealing with time for repairs, time for callout—and, of course, we have also had the ACMA retail arrangements, and we're trying to think about how we dovetail with those. So, it's taken a little longer but that paper will come to us fairly soon at the commission, and where it goes from there depends on how happy we are with what we're given.

Senator STEELE-JOHN: Finally, regarding peering arrangements, the last time we were here I asked Mr Cosgrave about the anti-competitive effect of peering arrangements between what's commonly referred to as the 'gang of four'. In his response to my question on notice it was noted that you were in the process of, and I quote directly, 'assessing whether access to wholesale internet interconnection services is available on competitive terms'. Can you provide me with an update on the process and the results of this?

Mr Sims: I guess not really. Certainly we're deeply buried in the issue. It is very complex. You are right: there's a gang of four, who have free peering between them, as you obviously well know, and then others outside the gang of four have to pay. There are issues about whether the technology is overtaking those arrangements—so, whether it's significantly anticompetitive to cause a problem under our act. That's what we're assessing. We have information requests out with the relevant companies and we're going through it. If I had been sitting here a while ago, perhaps I wouldn't have been able to say. But, certainly, at the start of this it looked pretty bad, but technology is complicating it. So—

Senator STEELE-JOHN: You don't have a definite time line at the moment?

Mr Sims: It's been around for a while, so I think we're going to have to get to the bottom of it fairly soon, but I don't have a definite time frame, no. But it has been around for a while, so we need to get on with it.

Senator STEELE-JOHN: In terms of the process of assessment, you said you put out requests to—

Mr Sims: Yes, we put out, I'm sure, at least two rounds of requests for information from the gang of four, basically, but also more widely to those who use the service. It's one thing to complain; it's another thing to substantiate the extent of the problem. Sometimes these things are irritating but not actually that important; you can get around them but you would rather not. For us to take court action, it has to jump a hurdle of being sufficiently problematic. That's what we're trying to wrestle with. There's no question that not being part of the gang of four is a nuisance and unfortunate. How bad it is is the question we're wrestling with.

Senator STEELE-JOHN: Thank you.

Senator PATRICK: I just want to ask a couple of quick questions, as a start, about Infinity cables. There's a total of 22,200 kilometres of cable estimated to have been laid. It appears that about 2,473 kilometres has been either remediated or scheduled to be remediated. When do you think you will get to the best you think that you're able to get to? I imagine it tapers off over time.

Mr Sims: That's a good way of putting the question. You have a good understanding of it. I will pass to Mr Grimwade, who is the expert and right on top of it.

Mr Grimwade: The commission is responsible for overseeing the voluntary recalls of 4,700 kilometres of cable. Our recent audit has identified that over 6,500 kilometres of Infinity cable was supplied in Australia. The New South Wales electrical safety regulatory authority, is responsible for a compulsory recall of around 1,400 kilometres of cable as well. In terms of the ACCC's leadership of the voluntary recalls, we have now got to the point of 52 per cent of the Infinity cable being either remediated or scheduled for remediation. We have been working quite closely with our state and territory counterparts. At a recent regulatory task force meeting, we decided that the ACCC is getting to the point and will be at the end of this year where it really can't achieve much more in terms of improving the voluntary recall rate. We are expecting Masters to complete its recalls this calendar year, which will improve the rate of recalls. We're now in the process of transitioning the leadership of the Infinity recall to the New South Wales Office of Fair Trading, because we feel that state based strategies are now required to try and advance the remainder of the recalls.

There are a number of challenges, particularly in getting that last section of recalls. There are a number of smaller suppliers that the New South Wales authority are responsible for under their compulsory recall, and there's quite a bit of work to do there. Their recall rate is much lower than what we have achieved. There are a couple of other very significant challenges. As you know, Infinity itself has gone into liquidation. We have now audited the suppliers. We've identified all the suppliers of cable, but they don't necessarily keep good records, and the cable they supply to electricians is mixed up with other cable, and electricians themselves often do not know whether they have installed Infinity cable or kept records. There's also a bit of wastage. We estimate between five and 10 per cent of cable supplied was wasted, so the recall rate probably is not as low as expected, if you have regard to that as well.

One of the biggest challenges we now face is consumer apathy. We have put out 11 or 12, maybe even more, press releases trying to highlight this. We're now looking at state based strategies that will be more directed to the individual consumer. So all sorts of innovative strategies are now being considered where we're hoping to advance the consumer side of the recall process.

Senator PATRICK: Thank you. So that 14,000 and 6,000, between the ACCC and New South Wales, is there some common set in amongst that?

Mr Grimwade: Sorry, that was 1,400 kilometres.

Senator PATRICK: So that's identified as being separate?

Mr Grimwade: They're separate.

Senator PATRICK: In one of my questions on notice, I quoted a number that Senator Madigan had asked about. He'd asked you about the internal cost to the ACCC involved and he'd got a number back of about \$230,000 and then another \$81,000. I've asked the question and you've said you're not able to give me an answer to that. Has something changed? Do you no longer track—

Mr Sims: To calculate what the cost has been to us—

Senator PATRICK: To the ACCC.

Mr Sims: The difficulty is we've got 40 to 50 safety people, and they do a range of things. So quite when they're working on this and working on that, I don't know. Whether you want to cost a bit of my time for doing it, it's a tricky issue.

Senator PATRICK: An answer had been supplied to—

Mr Sims: We've done various things. We've not only got the internal staff time; we have spent a bit of external time on these things. So I'm not quite sure—

Senator PATRICK: Okay.

Mr Grimwade: We have had to transfer a number of our recall staff to dedicate themselves particularly to the auditing process. But we've also procured some external testing. There are some costs associated with that. I don't have the costs to hand, but if you wish me to take—

Senator PATRICK: Yes, take that on notice. That would be good.

Mr Sims: As Mr Sims said, it's quite hard to account for the time of management, commissions and other—

Senator PATRICK: Sure. More generally, how many recalls have been done over the past financial year?

Mr Sims: Across all products?

Senator PATRICK: Yes.

Mr Sims: Quite a few.

Mr Grimwade: Five hundred in the last 10 months. We have, on average, 600 voluntary recalls notified to us each year. Of those, a very significant number—almost half—would be motor vehicle, therapeutic goods or food recalls. We do not have actual responsibility for leading and managing those recalls but they're notified to us and put on our website. We've got also got another 600 to 700 recalls which we're actively managing and assessing.

Senator PATRICK: For those recalls, can you break that down into a percentage of imported products versus local products?

Mr Sims: I'm sure we can. We'll take it on notice.

Senator PATRICK: Perfect.

Mr Grimwade: We would have to do that manually, but we can take on notice to do that.

Senator PATRICK: Do you have any feel for where success lies in recalls—for example, kids' toys versus car recalls? Where do you get the best success rate?

Mr Grimwade: There are a number of factors that go to recall effectiveness. The cheaper the good the less likely you're going to have it returned. People will throw it out or not bother to seek to have it refunded or whatever. There are some goods where it's easy to identify the consumer who has actually purchased a good. The Thermomix recall was one where we could identify the purchaser through records kept by Thermomix. It really depends on the particular circumstances. In terms of consumers returning something and getting a refund or throwing out the good, it does depend a bit on how you frame the risk. So it goes to our social media activities and our other media activities as well.

Senator PATRICK: So the bottom line is that there are so many factors there's no real pattern other than cost.

Mr Grimwade: We are working with our colleagues in the OECD on a recall effectiveness research project. We're doing one under the Takata recall. We see that as a great opportunity, because it's compulsory, to get data to identify the recall effectiveness amongst particular demographic groups as well. So we're going to do an exercise as we undertake that recall to get a bit of a better handle as to what makes for a more effective recall.

Senator PATRICK: How many people are on your mailing list for product recalls? I note you have about 8,000 Twitter followers.

Mr Grimwade: I think I'd have to take that on notice.

Senator PATRICK: Do you ever spend money on promoting tweets and such things to expand your contact in relation to recalls?

Mr Sims: I don't think we do on tweets, subject to somebody—but we have occasionally with Facebook, where we've had a recall, I do remember our having funded a bit. It doesn't cost that much, but we have, to get a recall out there, done something that promotes it. I don't actually understand what we did, but I know we spent some money. We're happy to take it on notice.

Senator PATRICK: Airservices under FOI disclosed that they had to reduce the scope of a Defence project to fit within a fixed budget. In the letter Airservices wrote to Defence they said:

... I would like to reassure you that Airservices will provide at no cost to Defence, the facility and equipment necessary in Brisbane and Melbourne Centres to accommodate the consolidation of Darwin, Townsville and Nowra approach services. We would intend to recover these costs by extending our existing charging regime at Darwin and Townsville for civilian aircraft.

In effect they were saying that, to manage a Defence related contract—they're in a monopoly supply situation—they were going to pass on the cost to a particular bunch of users. They have since retracted that. How do you manage Airservices in respect of that monopoly arrangement? Do you audit them from time to time?

Mr Sims: I may have to take that on notice, unless someone—we do have some regulatory responsibility for what they do with their charges, but I'd have to get back to you to give a better answer, sorry.

Senator PATRICK: I would be very interested in anything you can provide us. We have an inquiry into the cost of regional airfares, for example, and Airservices are part of that. It is a monopoly service. I wonder what powers you may have to examine that and look at the fairness of the charges, particularly in regional areas.

Mr Sims: We'll get back to you. I'll take it on notice. We have some broad powers, but they're fairly broad. It doesn't come across our desk too much, but we do have some sort of role. We'll take that on notice and get back to you. I'm sorry: Mr Cosgrave deals with that, and he's the one with a sore back.

Senator PATRICK: I have been racing around all the estimates committees talking about the disparity between Qantas and Virgin across government and each individual organisation. The ACCC comes out okay—

Mr Sims: I'm pleased to hear it.

Senator PATRICK: It's not exact, but recognising route capacities and so forth, your numbers are something like \$500,000 and \$400,000. What are you doing right? Do you have some sort of airfare policy enforcer?

Mr Sims: I will pass to my chief operating officer for this one. All I can tell you is my assistant puts me on the cheapest flight available, and as I head to the airport, I need to check whether I'm flying Virgin or Qantas depending on the fare she has found on the day.

Senator PATRICK: That's how I work too.

Mr Sims: I fly both, but with very little foreknowledge.

Ms de Gruchy: We have a policy: best fare of the day, subject to operational adjustments depending on whether people have to be in a particular place at a particular time. All of our executive assistants are trained to always look for the best fare of the day and offer those to our executives and others travelling. As the competition regulator we like to ensure there is competition between the airlines, so we encourage our staff to do that. There are natural preferences from time to time, but we keep a handle on ensuring everyone uses both airlines.

Senator PATRICK: It's \$802,000 to \$527,000—probably about right, because of differences in the airlines. Are you suggesting that you have a good culture inside your organisation, mindful of the need—that policy is not yours, by the way; it's a government policy. I'm trying to distinguish what you're doing right that others are not.

Mr Sims: I think we have a very good culture, but in addition, if we have a policy and Rayne finds that people are not following it, it gets pretty ugly.

Senator PATRICK: Well done.

CHAIR: The committee will now have a break.

Proceedings suspended from 15:15 to 15:30

CHAIR: The committee shall now resume. Senator Ketter.

Senator KETTER: Mr Sims, if I could start off in relation to your market study into the new-car retailing industry and your recommendation that there be a mandatory scheme for car manufacturers to share automotive data and repair information with the independent sector. That report was completed about six months ago. Do you have any information on the expected time line for Treasury consideration of this recommendation?

Mr Sims: No, that would be a question for Treasury. We're certainly in fairly constant touch with them to help them think through the issue. Obviously it's a complicated one with a fair number of technical issues to go through. Do you have any timeline on that?

Mr Grimwade: No. I'm not aware of the time line that Treasury are working to.

Senator KETTER: Has Treasury engaged with the ACCC on the recommendation and the models to implement it?

Mr Sims: We've certainly engaged.

Mr Grimwade: There have been some staff-level discussions. I think the Treasury officers have been talking to the staff who were responsible for drafting the study and working on the study to understand better the issues behind it and understand the different views held and those sorts of things, given the complexity.

Senator KETTER: Has the ACCC advised the government on your recommendation and, if so, when?

Mr Sims: Well, we put out the market study.

Senator KETTER: As a result of this engagement Mr Grimwade's talking about?

Mr Grimwade: The commission didn't have a particular regulatory model in mind when it recommended some regulation that provided access to data and information. So I think we identified three different options in the market study, including that it be captured by the Motor Vehicle Standards Act; another mandatory code and the third escapes me—

Mr Sims: The third was particular legislation.

Senator KETTER: But my question relates to consultation or engagement since the handing down of your report over the last six months. Have you briefed the governments about this? Have you briefed the minister about your recommendation?

Mr Sims: We've sent the report to the minister and we have discussed it with the minister on a couple of occasions. So we catch up with Minister Sukkar, who's responsible for consumer and product safety issues, on a regular basis. This issue has come up a couple of times. Obviously most of the time when we do speak to him in the recent almost six-month period, it starts with Takata airbags, because he's had to make that big decision. And we deal with a range of other product safety issues. But we've certainly talked to him about this.

Senator KETTER: Can you provide the dates on which you met with the minister?

Mr Sims: We can provide you those, sure.

Senator KETTER: Thank you. If the government accepts your recommendation for a mandatory scheme for sharing technical information, are you ready, willing and able to draft a mandatory code and to enforce that code?

Mr Sims: We are always ready, willing and able to do whatever the legislation under which we act requires us to do—so, absolutely, Senator. I should add, though, that we did point out in our report a number of steps that have to be taken to draft that code, because there's complexity in a number of areas, but one area of complexity is how you deal with the certain information which is necessary for safety to stop that being so widely available the car can easily be stolen. That's been done overseas, so it's not a hurdle you can't jump, but it does require consultation. And also you've got to understand the information systems of the manufactures. The manufacturers are in varying ways making data available, so we need to understand that and work in with that. So there's just a bit of complexity there. We've recommended that this information be made available to the independent repairers, so we'd be extremely keen to implement it.

Senator KETTER: Do you have the capacity to administer a mandatory industry code for sharing automotive service and repair technical information?

Mr Sims: To be honest—and I will defer to Mr Grimwade—I'm not sure we've thought about what staffing it would take. We already do supervise the franchising code and the horticulture code. I'm not sure we've turned our minds to it yet, because we don't know which way the government's going to go—whether it's going to be a code or legislation or done in motor vehicle standards or, indeed, whether the government will pick it up at all. We don't know yet. We haven't given any thought to that.

Mr Grimwade: It's not apparent that the ACCC would necessarily have the role. It may be that some other agency or authority would have to deal with it, because it may not be a mandatory code.

Senator KETTER: The government hasn't engaged with you about who would administer such a code?

Mr Sims: There's a question for Treasury, but my understanding is that they're working through whether to mandate that that information must be made available, and then which of the three proposals we put forward is the way to go. I understand that they're consulting with the various players on this. We've done a fair bit of consultation, but Treasury, as the policy advising entity, will need to do their own consultation. That does take a little bit of time. I think that's the process they're in. Treasury are the people best placed to know. We've engaged with them, but they're the best people to answer that one.

Senator KETTER: I'd like to turn to the Takata airbag recall. There are an additional one million cars requiring action under the emergency powers of section 132J of the Competition and Consumer Act. Are you familiar with what I'm talking about?

Mr Sims: Yes. I will get Mr Grimwade to answer.

Mr Grimwade: I don't have the legislation in front of me. Perhaps I should clarify the announcement on the weekend relating to the 1.1 million vehicles—if that would assist?

Senator KETTER: Yes, thank you.

Mr Grimwade: Under the compulsory recall, we had required manufacturers who had not recalled vehicles with affected Takata airbags already to identify a schedule by which they would recall them and replace them by the end of December 2020. That was part of the recall notice announced, and that took effect on 1 March. The manufacturers were required to provide to us what are called recall initiation schedules at the beginning of April. We assessed each of those, whereby they would essentially plot out which vehicle model would be recalled at which time according to the priority factors that are set out in the recall notice. Those that are higher priority would be brought forward; the recall on those of lesser priority would be later. We had to, essentially, quiz the suppliers on why particular vehicles were being recalled earlier than others. After a month or so of assessment, we approved the recall initiation schedules of those suppliers for the 1.1 million that had not yet been subject to active recall but were captured by the recall notice, and they are now being listed on our website. I should note that the VIN lists of some of them aren't available yet—they won't be available until 1 July—but others are available. The recall for these vehicles won't commence until 1 July and later.

Senator KETTER: Did that announcement for the additional million cars require ministerial notification?

Mr Grimwade: No. These vehicles were captured in the original notice. These are not another million vehicles that we've discovered that had not been captured by the notice; they were always captured by the recall notice that was announced by the minister on 28 February. What we're announcing now are the dates at which these vehicles are being recalled to provide some transparency and certainty for consumers so that they can identify when their cars are going to be recalled. Up until now they didn't have that clarity. The other important issue is that we are requiring the suppliers to notify consumers when their vehicle is being recalled. This was an opportunity for us to remind the community to make contact with your supplier and give them your contact details. So, if your car has been recalled, say, in December 2018, they have your correct contact details to get in touch with you and advise you that your car is now ready to have its airbag replaced.

Senator KETTER: Did you brief the minister on the work you were doing to develop the additional list of affected cars?

Mr Grimwade: Yes, we did.

Senator KETTER: Can you provide a list of the briefings, correspondence and representations to the minister on the matter?

Mr Sims: I think this goes back to the conversation we had last time. When this issue first came up, we had to do a lot of work to work out which airbags in which vehicles needed to be recalled, because there were airbags that were badly designed and badly made through to other airbags that were badly designed and extremely well made, but they were still badly designed. That's why the recall occurred earlier this year. In that recall, all the cars that had to be recalled, or were part of the mandatory recall, were recalled. So, in a sense, we did all of that work and then put that recommendation to the minister. We did the liaising with the industry and all the technical work and then advised the minister, who then took the decision.

Mr Grimwade: This was a decision by the ACCC to assess and approve the recall initiation schedules and also a decision by the ACCC to publish them on our website.

Mr Sims: The minister's decision was to agree to the mandatory recall once we'd done, frankly, a massive amount of work to work out which types of airbags needed to be recalled. The minister approved the recall we recommended. It's now us who approve things under that recall.

Mr Grimwade: That's correct.

Senator KETTER: It has now been three months since the compulsory recall began in late February, and the additional one million cars make up about 20-25 per cent of the total of affected cars in Australia. What options are available to let consumers know about the issue, without creating a sudden panic?

Mr Sims: What we've been at pains to do is to point out to consumers that you can go on productsafety.gov.au. We've done a lot of media on this to get the message out, and I think that has been very successful. It has been one of our biggest media campaigns to say to people: 'Check the website now. Either your car is recalled now, in which case you should get in touch with your dealer and book it in, or you're due for a subsequent recall. You're not recalled now, but you will be between now and the end of 2020.' To those people we're saying, 'Let the dealer know your details.' The community now has full visibility of which vehicles are recalled and when that recall will kick in. Are they being recalled now? There are another 900,000 being recalled

now—there are 900,000 still to be done on the recall list now—and another 1.1 million that will be done over the next period to 2020.

Mr Grimwade: To make things clear in answer to your question: this isn't another 1.1 million. These were captured by the original recall. I think you had a question about 'How do you avoid the consumer panic over this?' The recall notice made it very clear what the priority factors were that need to be taken into account. These inflators don't present a safety risk in all circumstances. Indeed, in many, many cases, the safety risk won't be presented for up to 25 years. It's only the worst of the worst—that is, in the worst climatic conditions—that you will have a safety risk present between six and nine years. We've asked for the OEMs to prioritise first the replacement of inflators that are older and in hot and humid environments. They've identified some which have been replaced in, say, the Northern Territory or Queensland first, before they go to Tasmania or Victoria in some cases. Generally, we will prioritise those which are older before the younger ones, as well. The reason—as I think I mentioned the last time—why we've got a three-year period for replacement is that there's just such a vast number of airbags to be replaced, and there is insufficient global supply of replacement parts, workshop constraints and other factors.

Senator KETTER: Can I ask the ACCC to take on notice a request to provide the list of queries received from consumers about whether their cars were affected in the past three months that have ended up on their compulsory recall list update?

Mr Grimwade: I could give you some numbers in relation to contacts through our info centre in relation to Takata. I know that in the last two days we've had about 100 or so from the weekend and 60 of those related to the question, 'Is my car affected?' The majority of inquiries we get in relation to Takata ask, 'Is my car affected?' What we've now endeavoured to do with publishing this information is to give the information to consumers. They can now go onto our website and find out if their car is affected.

Senator KETTER: But can you provide with us a list of those queries?

Mr Grimwade: I can give you the number of contacts made to our info centre about Takata, but I don't think I can give you much more detail—

Mr Sims: We'll give you what we can. We'll answer the question to the best of our ability.

Senator KETTER: Thank you very much.

Senator WHISH-WILSON: Mr Sims, I was wondering if you could update us on how the effects test is going. Has the sky fallen in at all? Has it been used?

Mr Sims: No, I think the sky is still there! The predictions have all proven wrong in that regard. It is a very effective piece of legislation. I think various views about what would happen, what it would stop and the confusion it would cause have all proved wrong. Really, if I could be frank, every time we—or any government, over many years—have sought to improve the Competition and Consumer Act, the business view is that the sky is going to fall in. I always like telling the story that 44 years ago, when the act was going to bring in misleading and deceptive conduct, that was seen as just terrible. How could you have a law that prevented you from lying to consumers—just appalling! But the sky didn't fall—well, it probably fell in on a few people. Sorry; I'm taking too long to answer the question.

Senator WHISH-WILSON: I understand where you're going. Have there been any uses of it in terms of the misuse of the market power at this stage?

Mr Sims: Mr Bezzi is the expert here. We have opened some investigations. So far we haven't taken any court action. What I often say is the fact that we look at things does change behaviour pretty quickly.

Senator WHISH-WILSON: Sure; it's an incentive.

Mr Sims: Some of our biggest successes nobody ever hears about. I think it has had a bit of influence. It certainly allows us to look at things that we couldn't look at before, and there's a whole lot of talk about things in relation to digital platforms and a whole range of other things. Having our laws very similar to overseas laws allows us to look at things we just couldn't look at before.

Mr Bezzi: I don't have anything further to add except that we've got a team that's been established that is focusing particularly on section 46 and concerted practices, which was the other significant reform that commenced in November last year.

Senator WHISH-WILSON: Great, thank you. I just have a couple of quick questions on the recycling industry in Australia at the moment. It's something I've been paying a lot of attention to. Then I have a couple of quick questions around the mortgage price inquiry. My understanding is that 'force majeure' means unforeseen circumstances that prevent someone from fulfilling a contract. Are you investigating the terms of any recycling

contracts in light of recent disruption in the market? You may be aware there's been a bit of a recycling crisis after China changed their policy.

Mr Sims: Yes, we're very aware of that—only because I read the papers ferociously.

Senator WHISH-WILSON: You've been hearing the Greens bang the drum on this, too, of course.

Mr Sims: I have, certainly. I don't think we've got any investigations in relation to that; have we, Scott?

Mr Gregson: I'm not aware of those matters being raised with us. If there were, we'd consider where there was misleading conduct, and, as you quite rightly point out, you take representations that were made in good faith at the time into account under the law.

Senator WHISH-WILSON: But if a company invokes force majeure, it's not automatically looked at by you guys. There has to be an extra layer of process.

Mr Sims: That's a contractual issue. Our powers would essentially get enlivened if someone was misled.

Senator WHISH-WILSON: Yes, but they don't have to make an application to you, for example, if they're going to invoke force majeure.

Mr Sims: No.

Senator WHISH-WILSON: That's all I wanted to check, because I understand the contracts are between local governments and collection companies and sorting facilities, and they do vary around the country.

Mr Sims: No, that's a matter very much for them. If there are issues there, that's a contractual dispute, and either party there can take action, and it doesn't involve us.

Senator WHISH-WILSON: Just in relation to two questions on your *Residential mortgage price inquiry: interim report*, there were two preliminary findings I wanted to ask you about. This is the one released 15 March 2018. One of your preliminary findings says that new residential mortgage borrowers often pay a lower interest mortgage rate—32 basis points on average—than existing borrowers. Are you aware of any other markets like this where, in essence, the more loyal a customer you are the more you pay for your service?

Mr Sims: Unfortunately, yes. We're finding this. It's certainly the case with electricity, where I suspect the gap between those who are loyal and those who are active is larger than in banking. I don't have those numbers to hand, but the savings to be made in electricity could be potentially 10 or 20 per cent of your bill.

Senator WHISH-WILSON: Which is good for new customers, as it is in the banking sector. But how do you go about getting that balance with offering discounts?

Mr Sims: There are two issues from our point of view, and I'll let Marcus add to this. First of all, we do a bit of advocacy to consumers to say, 'Look, you might just want to shop around.' I personally had a lot of people say to me, both in banking and in electricity, that they've heard that message, they've done so and they've saved money, so we're trying to get that message out. But, also, we're trying to make sure there's more transparency in the market so that the way the market presents itself to consumers is more transparent and they've got clearer choices. Marcus, do you want to add anything?

Mr Bezzi: Often consumers are concerned about the costs of switching and the hassle involved in switching, and really that's why the open banking initiative is such an important one. It will reduce the complications involved in switching from one service provider to another, if the policy is successful.

Senator WHISH-WILSON: That's a big if at the moment, I understand. There hasn't been much work done on that yet; has there?

Mr Sims: It'll take a while, but we're pretty confident it's going to make a difference. But, yes, it's going to take a while to put into place. The gun has just fired on the start of the race.

Senator WHISH-WILSON: Okay; it's good that it has been fired.

Mr Bezzi: Switching's the key.

Senator WHISH-WILSON: Presumably, competition's another aspect of that, which I will ask you about in a second. There's one difference between mortgages and electricity, in the sense that mortgages have macroprudential implications, given the ability to repay and financial stability. Is this something you've had discussions with APRA about at all, in terms of the difference in spreads within the mortgage market?

Mr Sims: We were given this role in financial services in the 2017 budget. So that started in May. Our first role was to assess what's happening to the bank levy and whether or not it's being passed on. So, in that context, we've been looking at mortgage pricing. We have had conversations with APRA—and ACMA, but they're not

relevant to banking—to begin a relationship, because that's obviously not a sector we were much involved in before, at least in this sort of way. Marcus, do you—I don't remember anything specific.

Mr Bezzi: I think we've had discussions in general terms—certainly at a staff level and I think once at a chair-to-chair meeting—with APRA. We know that they've read our report. I should say we also have heard a lot from smaller banks that have talked to us about the impact of the various macroprudential measures on their business.

Senator WHISH-WILSON: That's right. I'll certainly be asking, a little bit later, about risk weightings to APRA on exactly that issue. I might put this to them as well. In terms of competition, you also had another preliminary finding about signs of a lack of vigorous price competition. Internal documents to the inquiry on banks reviewed by the ACCC to date revealed 'a lack of vigorous price competition between the' inquiry banks and the big four banks, as you were referring to Mr Bezzi. Then you said:

... the pricing behaviour of the Inquiry Banks appears more consistent with 'accommodating' a shared interest in avoiding the disruption of mutually beneficial pricing outcomes ...

Is that just a snazzy way of saying 'collusion' between banks?

Mr Sims: No. In our world, no. 'Collusion', in our world, involves some ability to make contact or send really clear signals. This is more a strategy that we could see within each of the banks where they wanted the market to be orderly, they wanted their rates to be mid-ranking and they were very conscious that, if they priced in an aggressive way to win share, that might disrupt that market with unforeseen consequences and they wanted to avoid that. We didn't see evidence in any way of them doing anything at all illegal—it was more the mindset of four players not wanting to rock the boat.

Senator WHISH-WILSON: When they mean 'disrupt the market', aren't they talking about disrupting their own profits essentially?

Mr Sims: Yes, that's right.

Senator WHISH-WILSON: Would it then be anticompetitive behaviour in any way, shape or form? Forget collusion—

Mr Sims: No.

Senator WHISH-WILSON: It wouldn't?

Mr Sims: To be collusion you've got to, as I say, either enter into some sort of pact about what you're going to do or send very strong signals between each other in ways that promote that coordinated behaviour. This is more each of them understanding that they'll probably make more money if they don't use price to chase share. Is that fair, Marcus?

Mr Bezzi: It's not unusual to see that in markets with a small number of very large powerful businesses that dominate the market.

Senator WHISH-WILSON: And you see that as rational behaviour?

Mr Bezzi: Yes. That's right.

Senator WHISH-WILSON: For example, the home loan pricing strategy paper of one of the big four banks from March 2009 notes:

We will not compete nationally above the line with the headline pricing of the second tier lenders as this would generate a main bank response and lead the market down.

If it's not anticompetitive, it's rational behaviour. Is it still something that could be tested, for example, with the new section 46 powers in relation to the effect of—

Mr Sims: No. Section 46 is going to be about, as I said, doing things that in some way prevent competition. It wouldn't cause a breach of 46 and I don't think it would cause a breach of concerted practices, having somebody decide that, if they behaved in a certain way, they'd have an expectation that others would. If others are behaving in that way, that's profit maximising for them and probably for the four of them. It's behaviour that benefits them and disadvantages consumers, but it's not the beginning of a breach of the act.

Senator WHISH-WILSON: I'll put the other questions on notice.

CHAIR: I have a couple of questions specifically for you, Mr Sims. Last year you released your draft report into retail electricity pricing. I'm just wondering what your progress is on that final report.

Mr Sims: Fairly rapid at the moment, since the report's due out at the end of June. So we are shaping our recommendations at this moment, and it's going to be—as inevitably it is with any report of this nature—a fairly intensive period between now and the end of June to complete the report, but we'll certainly complete it on time.

So we're busy just shaping our recommendations and seeing what makes sense. We've got the data we need. We've got the information we need. We're just debating what's the best way forward.

CHAIR: Without pre-empting what's in there—obviously the government's worked with the major energy retailers, secured domestic gas supplies and abolished limited merits review—how would you assess the government's efforts so far to deal with the affordability issue in our electricity system?

Mr Sims: We've been highlighting that there are issues right across the value chain—there are issues in the network sector, there are issues in retail and there are issues in generation—and you've got to look at them all to address affordability, and that's what the government's asked us to do. Certainly we and the AER supported the removal of limited merits review. In our gas report, separate from our electricity report, we identified that the major LNG players were, at a time of an excessively tight—indeed, almost short—gas market, going to be exporting LNG overseas on the spot market, not to meet a contractual commitment but just on spot. So we identified that, and the government acted very quickly to, frankly, put pressure on them to avoid doing that so that that gas came onto the domestic market. That was obviously something we were keen to see, because we did think it was outrageous that, at a time when the domestic market is short, the LNG players would be selling onto the international spot market.

CHAIR: Last year you were quite specific: you said that the Renewable Energy Target was not an affordability mechanism. The opposition has promised a 50 per cent renewable energy target by 2030. Is there some concern from the ACCC that this will exacerbate affordability issues in the Australian retail electricity market.

Mr Sims: What I think I was referring to then was the National Energy Guarantee, the NEG. I'm pretty sure I remember saying that was very much a mechanism—and there are experts on my left here—to improve both reliability and sustainability and that it wasn't primarily an affordability mechanism. Obviously it has some effect on prices. When the NEG came out, we did express a few concerns with it, because it looked as if the way it was structured could have favoured the big three players. With further refinements of the NEG from the Energy Security Board, it now looks like they're addressing those issues. I think a mechanism that makes sure that all energy that comes into the market does so in a way that suits the market will be beneficial and is a mechanism that's probably better suited to improving affordability than was the Renewable Energy Target, which I think it's not quite but more or less taking over from.

CHAIR: Finally, the ACCC is monitoring the implementation of commitments made by the energy retailers to develop much simpler fact sheets for consumers with comparison rates on the retail energy offers. Could you give the committee, potentially, an update on how that's going.

Mr Sims: That is completely an AER issue, and the world expert is sitting at the end of the table there.

CHAIR: I'll ask the world expert, then, Ms Proudfoot.

Ms Proudfoot: Thank you, Senator. Following on from the discussion we had at the last meeting, as you're aware, there were a range of commitments that the retailers made to the Prime Minister. One of the most significant of those was the simplification of the energy price fact sheets. That work has been finalised now. We've released our final retail pricing information guide, under which retailers will now be required to produce a basic plan information document. On the basic plan information document, there'll be a table that provides an indicative annual cost for three households—basic benchmarks for a one-person household, a two- to three-person household and a four- to five-person household—so that customers can more easily look across. It is only an indicative price, but that's made clear. The BPID also includes things like the key fees and charges, any eligibility criteria and the details of discounts and what needs to be done to receive those.

CHAIR: Those fact sheets are available to consumers now?

Ms Proudfoot: No. The fact sheets will be available from early August. One of the other factors that we took into account was that we wanted them to be comparable across retailers, so all retailers need to produce those now through our Energy Made Easy website, and we're just completing the work on that at the moment. That is accompanying a redevelopment piece we're doing on the look and feel of the website so that that's easier for customers as well as when they come to the site.

CHAIR: Terrific. So, by the time we come back to the next round of estimates, you'll be able to give us a sense of how those fact sheets have been going?

Ms Proudfoot: Very happy to, yes.

CHAIR: Terrific, thank you.

Senator McALLISTER: My question is also for the AER. I just want to talk about the review of the regulatory tax approach 2018. Can you just talk me through, from a process perspective, the origins of that review?

Mr Anderson: Yes, certainly. In terms of the tax review, within the AER we are continually reviewing and adjusting our approach to regulation. At times, that's by way of a major program; at other times, it's a more incremental approach. The tax review falls within that context.

There is a long history of dispute and litigation around the tax allowance we provide in our regulatory determinations. Since 2009, 21 network companies have appealed our allowance on tax to the Competition Tribunal. There was a major step in settling those disputes in May 2017, when there was a decision by the full Federal Court of Australia which essentially upheld our approach to tax with respect to imputation credits. With that decision, we have now been able to turn our attention to broader aspects of the tax review.

So, commencing in July last year, we had discussions with officials from the Department of the Treasury, the Australian Taxation Office, and the Department of the Environment and Energy. As a result of those discussions, there was a working group set up. That working group first met in August last year. Our role in that working group was to provide information to the tax office on the amount of allowance we provide in our regulatory determinations for tax. The ATO then went away and compared that allowance to their records.

The ATO's records are private, and they haven't been able to give us information that's available to them. But what they were able to do in April this year is provide us with a note setting out their high-level conclusions. Based on the note that was provided to us from the ATO, we then came to the view that we should undertake a further review of our tax allowance, looking at some of broader aspects that had been raised in the note from the tax office, and we published an issues paper to commence that process in May this year.

Senator McALLISTER: Some of the issues go to a disparity between the amount of tax estimated as part of the price-setting process and the amount of tax ultimately reported as paid? That's one of the issues that you're interested in?

Mr Anderson: Yes. The tax office haven't been able to quantify for us the discrepancy between the tax that they see in their records and the tax that we provide in our allowance, so the first step in our process will be to understand the magnitude of that discrepancy and the reasons driving that discrepancy, and the ATO in their note identify a number of possible options there. Having worked through that, we will then form a view on whether adjustments are needed in our approach in order to ensure that customers receive the lowest possible costs for their energy, and, if so, how those changes might be taken forward.

Senator McALLISTER: Understood. Just from a process perspective, did you, the AER, initiate the working group that was established in July last year?

Mr Anderson: It was a discussion that arose amongst the agencies relatively simultaneously. There were discussions between Treasury, us, the ATO and the department of energy, and we all had similar issues at the same time.

Senator McALLISTER: Okay. And did the minister provide any direction about the establishment of the working group, or was this something that was happening at officials level?

Mr Anderson: It was happening at the officials level.

Senator McALLISTER: Then, as you described it, the ATO did some work as a contribution to that working group. There was then a decision to initiate a more formal review. Who is the decision-maker in that case?

Mr Anderson: The AER decided that, as the tax allowance forms part of our regulatory determinations, we should undertake that review, given the advice from the ATO.

Senator McALLISTER: So you then briefed the minister?

Mr Anderson: We briefed the department, yes.

Senator McALLISTER: My apologies. You briefed the department of energy.

Mr Anderson: Correct.

Senator McALLISTER: Did you speak to the minister or his staff directly about it?

Mr Anderson: I did not, no.

Senator McALLISTER: Did the AER—there being a distinction, I suppose, between you and the institution?

Ms Groves: It's possible that they may have, but we wouldn't know. We'll need to take that one on notice.

Senator McALLISTER: Okay. But, for the most part, this is an interaction between you and the department of energy.

Mr Anderson: Correct.

Senator McALLISTER: That makes sense. You've opened up the review and you expect to conclude it by—

Mr Anderson: December this year.

Senator McALLISTER: December this year—terrific. I know that this very specific issue about the discrepancy between tax actually paid and tax anticipated as part of the building-block process was raised previously with government, and Mr Koutsantonis, the then South Australian energy minister, wrote in 2015 to the federal minister and drew this bundle of issues to his attention. Was there a request to the AER at that time to explore the issue?

Mr Anderson: Earlier last week, there was a discussion at one of the other Senate committee inquiries, and, following that discussion, I asked the department of energy to provide me with a copy of the letter from Minister Koutsantonis and the reply from Minister Macfarlane. We have reviewed our records, and, as far as we can tell, the original letters were not provided to us. But, in the letter from Minister Koutsantonis, he refers to a submission from the AER's consumer challenge panel, and we do have a copy of that submission that was provided to us.

What happened there is that one of our consumer challenge panels looking at the upcoming determinations for the New South Wales electricity distribution businesses provided us with a submission that raised a list of questions around how our regulatory determinations should be established for those businesses. There was a long list of issues that they raised. We've been reviewing each of those issues and focusing on those issues which are of greatest value to consumers. For example, in those New South Wales determinations, we set a total revenue of \$21 billion. The network businesses in question were seeking additional revenues of \$6½ billion. The make-up of that additional revenue was about \$2½ billion relating to return on equity and \$1.8 billion on operating expenditure.

Senator McALLISTER: Okay; so it had been part of the bundle of issues before you in the past?

Mr Anderson: Correct.

Senator McALLISTER: That's all I need to know. But the specific issue as raised by Mr Koutsantonis hadn't been directly referred to you, either by the minister or by the department, in 2015?

Mr Anderson: Not to our knowledge.

Senator McALLISTER: Then, similarly, in April this year, Ms D'Ambrosio from the Victorian government also wrote on the same matter. Did the department or the government ask you to explore this issue at that time?

Mr Anderson: I'm not sure.

Ms Groves: We were already exploring the issue at that time. By that stage, we had received the advice from the tax department and we were in the process of considering that. So the issue was well and truly on our radar.

Senator McALLISTER: Did the letter get forwarded to you, Ms Groves?

Ms Groves: Not that I'm aware of.

Senator McALLISTER: And there was no specific request for advice about that piece of correspondence from the department?

Ms Groves: Not in respect of that particular piece of correspondence. The minister has subsequently written to the AER requesting us to look at this issue in a timely way.

Senator McALLISTER: When did that correspondence come through?

Mr Anderson: Sorry—which minister?

Senator McALLISTER: Minister Frydenberg has written to you, according to Ms Groves, to ask you to examine this particular bundle of issues. I'm just looking for the date of that correspondence and perhaps whether the correspondence could be tabled.

Mr Anderson: Certainly. It's on our website.

Senator McALLISTER: Great.

Mr Anderson: I have it here. He wrote to us on 3 May, and we published our issues paper on 15 May.

Senator McALLISTER: So you were well and truly underway, because in fact you'd been working since the previous July in this working group to start tackling these issues. Is it possible to have the ATO advice that was provided to the working group—the note that you referred to earlier—tabled for the committee?

Mr Anderson: Yes. I have a copy of that as well, and it is also on our website.

Senator McALLISTER: Finally, when your review is finished, do you anticipate providing a publicly available report?

Mr Anderson: Yes. Minister Frydenberg has asked us to provide an interim report in June this year, and then a final in December.

Senator McALLISTER: Okay. Terrific.

Senator RICE: Mr Sims, I'm interested in some questions about toll road concessions and competition issues. I note your press release from a few weeks ago where you raised preliminary competition concerns about Sydney Transport Partners' proposed acquisition of a majority interest in the WestConnex project, with Sydney Transport Partners being majority owned by Transurban. Could you summarise your concerns about Sydney Transport Partners' proposed acquisition of WestConnex?

Mr Sims: We have two broad concerns—or three, probably. WestConnex is quite a big road. If an alternative road provider owned WestConnex, they would be better placed to bid for new roads. That issue took on extra significance because we've seen that, recently, Transurban, over the last 30 years, has been successful with self-initiated road programs, where it has gone to a road authority in a number of cities, and said, 'What about we build this road?' and there's perhaps some trade-off with other roads they've got. Owning roads gives you a stronger position to self-initiate bids. If WestConnex was owned by somebody else, there'd be someone other than Transurban able to go to the New South Wales government with self-initiated bids. That's one issue.

The second issue is that, in the particular case of WestConnex, it can compete with other roads in the Sydney network that are also tolled. So, with an alternative owner of WestConnex, you could find different owners of toll roads that in fact can both get you to the same destination. Those were our preliminary concerns. The statement of issues is a statement of preliminary concerns, and we're now seeking to take those forward, get market feedback, and do a bit of our own modelling to work out how substantial those concerns are, before we make our final decision in July 2019.

Senator RICE: Okay. So that's quite a way off. Have you got a position as yet in general, going particularly to the point about unsolicited proposals and the strength that gives Transurban in particular, in exchange for toll extensions on existing tollways?

Mr Sims: It's something that's happening more recently. When we've looked at toll road bids before, that wasn't an issue uppermost in our minds. But, now that it is happening a lot more, it certainly says to us that road users and taxpayers perhaps would be better off—particularly road users—if there was more than one entity able to make those bids and put those proposals forward to government. Exactly how big an issue that is is what we'll be working on between now and mid-July. So it's certainly uppermost in our mind. We're now trying to work out how important it is.

Senator RICE: Are you only going to be looking at the WestConnex issue with your statement of issue, or are you going to be looking more broadly? I'm particularly interested in Transurban and the unsolicited proposal of the West Gate Tunnel in Melbourne, where they're seeking—or they're getting—a 12-year concession extension from 2035 to 2047. It's going to generate \$20 billion to \$30 billion nominal extra revenue. Compare that to the cost of the West Gate Tunnel, which according to most estimates is going to cost \$6.7 billion to build, with the Transurban contribution expected to be approximately \$4 billion. So they're getting a pretty good deal for it and they're in a position where they're able to offer something very substantial to the Victorian government.

Mr Sims: I think that's an illustration of the concern we've got. But the context of our decision-making is that this is a merger decision, or an acquisition decision, because Transurban is seeking to acquire WestConnex. Our law says it's against the law to have a merger or acquisition which has the effect or likely effect of substantially lessening competition. The tradition has been that companies come to us before completing a project or acquisition to see whether we think it could have the effect or likely effect of substantially lessening competition. We say either, 'No, it's not a problem', or 'Yes, it's a problem'. Ultimately, they're looking for us to form a view about whether we would seek to oppose them in court if they were to proceed. That's the question we're wrestling with and it's purely in relation to Transurban's acquisition of WestConnex, or the Transurban consortium's acquisition of WestConnex. So, no, we're not looking at that proposal as an issue in itself. But we are taking account of that sort of thing in forming our view about how large our competition concerns are in relation to the Transurban consortium's acquisition of WestConnex. The decision-making is all about that.

Senator RICE: More broadly, do you see there may be a need for you to look at the issue of unsolicited proposals, in a market like the Melbourne toll road market, where you only have essentially one major operator, Transurban, and those unsolicited proposals end up increasing their power and lessening competition.

Mr Sims: I'll see whether my colleagues have a view. I think it's hard that it would fit under our act. And, of course, keep in mind the state government is really the decision-maker here. You would think that it's their job to assess whether any bid is in the interests of the drivers in their state and, of course, their own revenue and road planning. I think, really, the decision-maker is them. I'm not sure how it would breach the act.

Mr Bezzi: It's hard to speculate on the basis of a hypothetical. These things are usually regarded as planning decisions and brought within the scope of a state government planning or infrastructure development power. I don't really want to comment particularly on the West Gate proposal or any specific proposal. Our experience is that, if a very large amount of money is being spent, they will arrange for the necessary approvals and exemptions from our act, which they're often, usually almost always, in a position to give.

Mr Sims: The state government, that is.

Mr Bezzi: The state government.

Senator RICE: So they are able to—

Mr Bezzi: bring a proposal. Exactly.

Senator RICE: have exemptions from your act?

Mr Sims: There's a section in the act that says they can take actions that are excluded from our act.

Mr Bezzi: Frankly, bankers and other financiers are very unlikely to invest in a project where there's not absolute certainty about these sorts of issues.

Mr Sims: I should just add—and correct me if I'm wrong, Marcus—that in many ways the situation you're describing is unlikely to be a breach. I think the dominant view is it's unlikely to be. If the circumstances presented themselves where it could be, they can remove that risk through an exemption under our act.

Mr Bezzi: I didn't want to imply there was a—

Mr Sims: On the face of what you're describing, I'm not sure it would breach our act. Our act is basically all about, 'Is someone getting misled?' on the consumer side; and, 'Has something happened that substantially lessens competition?' on the competition side. That's always a tricky estimate. Going back to WestConnex: making sure there are a couple of players that could provide those bids is a competition question. Once somebody's in that position and taking advantage of that position, I doubt whether that would be a breach of the act.

Senator RICE: You note in your statement of interest with regards to WestConnex that the ACCC is considering whether the New South Wales government is sufficiently likely to constrain Transurban, to exercise such ability, such that competition concerns are not likely to arise.

Mr Sims: Yes.

Senator RICE: But because you're not looking at the unsolicited bid into the West Gate Tunnel, do you have any ability to have concerns with regard to whether the Victorian government, in fact, is going to take competition concerns seriously or into account?

Mr Sims: I doubt we've got any power to do that. The WestConnex issue is one where some would argue—and, possibly, the lawyers representing Transurban might argue—that because the state government controls what unsolicited bids they accept, that's enough of a safeguard to make sure that nothing that could be an unfortunate outcome will occur. I guess we were really saying in that statement that we're not sure you can rely on that, because it could well be that the state government might feel it gets more money in or spends less money to achieve an outcome that may not be in the interests of consumers. We're not sure, in our competition assessment, that we can rely on the state government to completely look after the competition concerns we've got. That's what we were saying there. That's why, therefore, we're not going to put undue weight on that issue in this assessment for WestConnex. I don't really think we have a legitimate way into assessing the West Gate matter.

Senator RICE: What I see in West Gate is that you've got perverse incentives for the government to use that model. It's got a budget-neutral investment and it passes on the cost to customers. You've essentially got a monopoly toll road provider. In fact, the cost of that new investment is passed on to road users who are using a completely different asset. Despite that, you don't think there's any way into that for you?

Mr Sims: No. Often people see our act and say, 'If there's any chance someone might do something that might harm consumers, in this case drivers, it must fit under the act.' That's actually not the way it works. The way it works is: you have to show that there's been someone being misled, you have to show there's a cartel and you have to show there's something that excludes competition. It is quite precise. It has to be a particular action rather than us being on the corner, waiting for something that could lead to higher price for consumers. That's an outcome, but there's got to be an anticompetitive step along the way.

Mr Bezzi: I would add that, if the exclusion of competition is a deliberate result of government policy, it's very difficult for us to take action because of the various exemptions in our law. A good example of that is the arrangement that has been put in place in Melbourne for transport between the city and the airport. That's a monopoly that's been given in return for an agreement not to put competing public transport services in. It was a public-policy decision made by the government that excludes competition from public transport. There's no room for us to get involved in that. We can complain about it. We say it's anti-competitive. But from a legislative point of view there's no room for us to get involved.

Senator RICE: How do state governments apply for exemptions? What's the process by which that occurs?

Mr Sims: It doesn't apply; they're judge and jury. They just do it.

Senator RICE: They just say, 'We are exempted'? It's part of the legislation that they make?

Mr Sims: They've got to pass a law that then slots them into our act. It's something they can do, and they're in complete control of their ability to do that.

Mr Bezzi: They've got to be transparent and up-front about it.

Mr Sims: That's right, but it doesn't require any approval from us or from the Commonwealth.

Senator RICE: They just legislate to say that they've got exemptions full stop.

Mr Bezzi: Yes.

Mr Sims: That's right.

Senator RICE: In addition to the work that you're currently doing on WestConnex, is this area of looking at toll monopolies and toll roads more generally an area that you think you will end up doing more work in?

Mr Sims: In the immediate term, I doubt it because we've got so many other things that we've got to look at. I do keep saying: we're quite a modest-size organisation and we have a lot to do. I'd be reluctant to add to that list. We're really flat out with all the enforcement cases we've got on, and freeing up people to do that at the cost of other things—I don't think we will in the short term. I understand the problem. It would be nice to be able to look at such things.

Senator RICE: People are concerned about it, for sure.

Mr Sims: Yes. There are a range of things we could look at and start advocating on, but I'm afraid the list is pretty full at the moment. I'm sorry.

CHAIR: Can I ask a follow-on question to that. If there were a change in government in Victoria, could that original agreement to not have the ACCC investigate the negotiation of that deal with the West Gate Tunnel be overturned? Could the new government coming in request the ACCC's investigation of that?

Mr Sims: Two points, if I could—the main point we made before was: it's unlikely that what was being described by the senator would be a breach. But what we then said was—

CHAIR: If one set of road users was paying for the building of a different road—

Mr Sims: Yes. Again, I'll defer to Mr Bezzi, who's got more expertise in this than me. To me, it's highly unlikely that this would breach the act. But what Mr Bezzi was saying was: if there was any chance that it would, they could legislate to remove themselves under the act. And to answer your question—a subsequent government could undo that. So, that's the direct answer, but I wouldn't want to play that up. I'm not aware of them legislating to get out of this. I don't think there's anything that would likely breach our act, in what the senator was describing, that would require that legislation. I don't think it would shape up as a breach of the act.

Senator RICE: It's concentrating power. It is reducing competition because of the value of incumbency in these unsolicited bids.

Mr Sims: But if you're the only player in a market and you keep building extra things in that market, you're consolidating your power but you're not breaching any part of the act. If you keep building new things, you're just adding to your own position. That's not illegal. If you acquire somebody else, that could be illegal. If you stop somebody else doing it, that's potentially illegal. But just being in a strong position and growing your monopoly positions through bids you get a government to accept, personally I don't think that is going to breach our act. You can question whether the government is looking in the best interests of the taxpayers. I don't know whether it is or isn't, because I haven't looked at the issue. That would be more the question, I think.

CHAIR: Without eyes in on that contract, without any transparency in the negotiation of that particular contract, we won't know?

Mr Sims: It's not something we've looked at. Our focus has been on WestConnex. I think the question grew out of WestConnex and the fact that one of our important theories of harm is that if somebody else that we are investigating bought WestConnex, you could have two players, another player besides Transurban, actively able to put unsolicited bids to the New South Wales government. I understand what the Senator is saying about Melbourne but we as an organisation don't have any knowledge about that. We're not in a position to pass a view. I hear the issue, I understand the issue, but we don't have any facts, apart from what I might read in the newspaper occasionally. So, it is not something we've looked at.

[16:36]

CHAIR: It sounds like the best option to get the ACCC involved in that particular contract is to have a change of government in Victoria. Thank you Mr Sims. Thank you to the ACCC. Thank you very much to the AER for appearing this afternoon. I now call to the committee the Australian Prudential Regulation Authority. Thank you for joining us here today. Can I say congratulations to Ms Rowell. I believe you've been reappointed. Great news. Mr Byers, you've tabled an opening statement. Would you like to make an opening statement?

Mr Byers: I do have an opening statement. In the interests of time I will just quickly go through it. When I last talked to this committee I outlined some of the many ways that we are accountable to both parliament, including through committees such as this, and to the Australian people. They are important measures for APRA to maintain the trust of industry and the public as we aim to fulfil our mandate as prudential regulator.

The core of our mission is safety and soundness. Clearly, some of the revelations emerging from the royal commission have been disturbing and go to the heart of whether financial institutions treat their customers fairly. However, while institutions have a great deal of work to do to restore trust, I want to emphasise that Australians can be reassured that the industry is financially sound and the financial system is stable. That reflects considerable policy reform and hands-on supervision, over a long period of time, designed to build strength and resilience. We don't know when the next period of adversity will arrive, but when it does we need to have done what we could to strengthen the system so it can continue to provide its essential services when they're needed most.

The importance of accountability has been one of our key themes this year. It was front and centre with the release in April of our review of executive remuneration practices in large financial institutions. Incentives and accountability can play an important role in driving positive outcomes and also in deterring behaviours or decisions that produce poor risk-taking and damaging results. Our review found that while policies and processes existed within institutions to align remuneration with sound risk outcomes, their practical application was often weak. We've indicated that we're minded to strengthen the prudential framework to give better effect to the principles we want to see followed: less rewards based on narrow and mechanical shareholder metrics and greater exercise of board discretion to judge senior executive performance more holistically. We've also urged institutions to push ahead with their own improvements, notwithstanding some investor opposition, in light of the long-term commercial benefits that can flow from better practices.

Lack of accountability for poor outcomes was a theme that emerged in the final report of the prudential inquiry into the Commonwealth Bank, which was released this month. The report is, I think, clear and comprehensive and provides a strong message, not just to CBA but to the entire financial services industry, about the importance of cultivating a robust risk culture, especially when it comes to non-financial risks. We're keen that the report will be seen not just as a road map for CBA but as a useful guide for all institutions.

Residential mortgage lending is another area where we've been lifting industry standards. Although there is more to do, there certainly has been an improvement in industry lending practices. As a result, last month we announced we would remove the 10 per cent investor growth benchmark, which we have talked about a few times in this committee, for those lenders who could provide a range of assurances as to the quality of their lending standards and practices now and into the future.

Superannuation is an area where APRA consistently emphasises the need for trustees, regardless of size or ownership structure, to go beyond compliance with minimum regulatory requirements and aim to deliver the best possible outcome for members. We've just released the results of two thematic reviews of superannuation licensees—on board governance and on the management of related party arrangements. Both those reviews noted improvements in industry practices in recent years but also found more work was needed, including finding ways to bring fresh ideas, perspectives and skills to trustee boards. Our post-implementation review of the 2013 Stronger Super reforms, which we launched last week, should also provide us with some additional insights into how the prudential framework is performing and whether any adjustments would help to better achieve our objectives.

Many of the findings in the Productivity Commission report into superannuation released this week are consistent with the approach that we've adopted to supervising trustees, in particular with a focus on enhancing the delivery of member outcomes through our engagement with trustees with outlier underperforming funds and products.

Technology is rapidly changing the way financial institutions operate. In all likelihood the financial system will look different in five years' time, relative to the way it looks today. Much of that change will hopefully bring benefits to the community in the form of new competitors, products and ways of access, but it will also bring risks. The accelerating threat of cyberattacks to regulated entities has prompted us to recently propose our first prudential standard on information security. Industry consultation is ongoing, but certainly we hope to implement the new cross-industry standard by 1 July next year. That's an issue that is only going to grow in importance.

Continuing to look ahead, our preparations are well advanced for the commencement of the banking executive accountability regime, which begins in just over a month. The BEAR considerably strengthens APRA's existing powers to identify and address prudential risks from poor governance, weak cultures or ineffective risk management. However, I have made the point previously that, while important, the BEAR alone will not remedy perceived weaknesses in financial sector accountability. We've encouraged all regulated entities, and not just banks to whom it applies, to use the regime as a trigger to genuinely improve systems of governance responsibility and accountability.

Finally, we are continuing to provide relevant information to the royal commission to help it in its inquiries. In addition, APRA and the Australian financial system more broadly will be subject to intensive scrutiny from the IMF in the weeks ahead as part of its 2018 financial sector assessment program. That program will examine in quite some detail financial sector vulnerabilities and the quality of regulatory oversight arrangements in Australia. As ever, we will obviously fully cooperate with our international reviewers and we look forward to their report card, including any recommendations on how we could do our role more effectively in the future. I'm very happy to take your questions.

CHAIR: Thank you, Mr Byres. I'm going to cede my chair's prerogative to Senator Bushby; but, before I do, can I just say congratulations not just to Ms Rowell but also on the appointment of an additional deputy commissioner, which is very exciting. We heard your announcement today that Mr Lonsdale was appointed. I suppose, just before I hand over, I can understand now why Mr Lonsdale had such an excited face yesterday when he appeared before us at estimates as part of the markets group. Can I ask you what you feel the impact of having another deputy commissioner at APRA will have on your ability to discharge your obligations?

Mr Byres: First of all, we are very pleased that the government decided to reappoint Helen. We think that's fabulous for APRA. We think she's done a great job. In terms of the additional deputy chair role, it is caveated by the fact that legislation needs to pass the parliament to create that role. So, while the government has made the announcement about its intention to nominate, it's obviously conditional on the legislation being passed. But, from our perspective, it just brings additional skills and experience to the leadership team at a time when we've got a very, very busy agenda. I think anyone that knows John knows that he's a very capable individual, and we are very pleased to have him as part of the leadership.

CHAIR: Can you give us an idea of what you envisage his role to be?

Mr Byres: We're still thinking through how to divide up our responsibilities. I haven't had an opportunity to talk to John about it yet, so I'm wary of saying too much. We have an increasingly expanded set of activities and mandates, and more is expected of us in a range of areas. There are new things being added to it, both our toolkit and our scope of activities, and so having someone else to help cover the ground there will be very helpful from our perspective.

Senator BUSHBY: Thank you for assisting the committee today, and congratulations also, Ms Rowell, on your reappointment, and I also look forward to working with Mr Lonsdale in his new capacity. It seems to me that he has been appearing before this committee probably for the best part of 10 years with a different hat on, so it will be interesting to see him sitting here with APRA at the next one.

I have a couple of quick questions. You mentioned in your opening statement the Banking Executive Accountability Regime and that it largely strengthens APRA's existing powers to identify and address the prudential risks arising from poor governance, weak culture and ineffective risk management. But you also note that the BEAR alone will not remedy perceived weakness in the financial sector of accountability. Do you think that the BEAR, though, is, I presume from that quote, a positive step in helping APRA discharge its obligations?

Mr Byres: Absolutely, particularly the focus on clarifying accountabilities within banking organisations, which is at the heart of what the BEAR is all about: It's an accountability regime. If you look at many of the

problems that have emerged in the financial system—and certainly it was a theme that existed in the prudential inquiry into the CBA—they were not necessarily because people set out to do the wrong thing but rather it was often unclear who was responsible for what. For one reason or another, either issues fell down a crack or people didn't take ownership of them and outcomes were not what they should have been. I think one of the great strengths of the BEAR regime in requiring quite formal accountability statements for individuals and also accountability maps for each ADI will be much more clarity about who is responsible for what. That's really quite important and fundamental.

Senator BUSHBY: What is APRA currently doing in the lead-up to 1 July to actually engage with the institutions that are subject to this?

Mr Byres: It is being implemented in two stages. The first stage, which is from 1 July this year, is the four major banks, effectively, will be subject to the regime. The smaller institutions have an additional year, so that will be 1 July 2019. We have been working over the last little while with each of the major banks, which have provided us with their draft accountability statements for the proposed accountable persons under the act, which essentially are all the senior executives and directors of the organisations, and also their accountability maps. We've been doing some compare-and-contrast and providing feedback on where we think they need to be strengthened or improved or made clearer. We're at the final stages of working through those and providing that feedback so that, on 1 July, we're ready to go.

Senator BUSHBY: So there has been an ongoing dialogue between the four big banks and APRA as to how they're going to meet their obligations; it has been tweaked over time; and, as of 1 July, APRA will go into that happy that the banks are saying they are putting into place a regime that will work. How will you test that afterwards?

Mr Byres: I think we will have a credible regime in place on day one. That's not to say it can't be improved as time goes on and we get more experience with it. The real test will be whether, as we talk and engage with senior executives in those organisations, they are very clear about what their new obligations are and what their new accountabilities are. We can see, as our supervisors are in their organisations, that there is clarity. It is changing the way that people respond to issues. It is clear that people are taking ownership of issues—

Senator BUSHBY: So you're already seeing that?

Mr Byres: I might ask Gideon if he has any observations to make. I don't know whether it's perhaps too early to say there's positive evidence of it just yet, but I think there's clear intent.

Mr Holland: I think absolutely it's already yielding benefits. An example would be as to specific responsibility for the capital management, the funding plan, stress-testing and who is the individual actually responsible for overseeing and approving, developing and looking after these really core and fundamental aspects of the prudential regime. So I think already we're seeing some benefits in defining accountabilities more clearly. I think there's a long way to go. It's a new regime and it will be in place from 1 July for the first time.

Senator BUSHBY: Do you think the banks are finding that it's actually useful for them as well—not just in terms of ensuring that there's executive accountability and that that delivers the public benefit that the act is intended to deliver, but also in the banks looking at this and saying, 'Having to go through this exercise is actually assisting us in terms of how we run this institution'?

Mr Byres: You'd probably get some mixed feedback. Initially, I think it was seen as—

Senator BUSHBY: An unnecessary additional burden?

Mr Byres: unnecessary. But where I've received some very positive feedback is from the director community because it is very much helping them identify within their organisations who is responsible for what—some will admit that that has not always been clear—and they can certainly see business benefit from that.

Senator BUSHBY: I suspect that may well be the case because improving accountability and internal understanding of who's responsible for what improves focus, and, I would think, improves management outcomes. Do you think that the BEAR will assist to address some of the issues that have been highlighted in the CBA inquiry and the royal commission?

Mr Byres: Yes. I would give two ways in which that might happen. There are probably more, but at least two. One is, as I've already said, I think many of the issues that have come to light—operational problems and other things—have often been because there has been a lack of accountability or a lack of clarity of accountability, of who is responsible for what. We have matrix reporting structures and complexity about who owns a process from end to end, and the BEAR will obviously help in some way to cut through that complexity and become much clearer about who has accountability for different things. The second thing that I think it will do is: when things

are not as they should be and there are poor outcomes, it will help ensure that there are consequences in terms of remuneration and other things which, as I touched on, I don't think have been very effective thus far in creating good behaviour and good risk culture in organisations.

Senator BUSHBY: Probably the opposite, in some ways?

Mr Byres: Probably the opposite.

Senator BUSHBY: I might change to a different subject. You also mentioned in your opening statement about the residential mortgage lending standards and that your level of supervisory intensity has led to a lift in industry lending practices. How is that realised in practice? What does that improvement in industry lending practices actually look like?

Mr Byres: I'd probably oversimplify it but, essentially, it is banks undertaking a more robust credit assessment at the time that loans are being granted, thinking much harder about the borrower's ability to repay and thinking much harder about the risk metrics of the portfolio as a whole.

Senator BUSHBY: So it is improving the overall quality of their book.

Mr Byres: Yes. We were concerned about competition that was playing out in an unhelpful way. Banks were happy to compete, but they weren't competing on price—and I don't know if they were necessarily competing on service. They were, by and large, competing to win market share by shaving credit standards. I'm talking here a few years ago. We essentially tried to dampen that competition that was leading to that erosion in standards and, over time, rebuild. I think we have achieved that. We have some more work to do—it's not complete—but the quality of loans being written today is certainly receiving much more scrutiny than was the case a few years ago.

Senator BUSHBY: Excellent. You mentioned also that you will be removing the 10 per cent investor growth benchmark for some lenders who've met certain standards. How many lenders and are they all big ones or is it a range across ADIs? How does that look, the lenders who will have that 10 per cent requirement removed?

Mr Byres: We've made that available to everybody. Any ADI that wants to give us that assurance and thinks they can reasonably give us the assurances we've asked for can. I think we were talking before about how we're expecting maybe a trickle rather than a flood, because the first deadline for providing the assurances is this week.

Mr Holland: Yes.

Senator BUSHBY: Has anybody provided that assurance so far?

Mr Holland: There've been a few applications so far, but it's probably too early to tell because we're reaching the first—

Senator BUSHBY: You're still assessing them.

Mr Holland: Absolutely.

Senator BUSHBY: But there have been some applications for this so far.

Mr Byres: There have been some. A number of organisations have said quite openly that they still have some work to do before they can provide the assurances, so we shouldn't expect one from them. When people are ready, we're happy to receive them.

Senator BUSHBY: Maybe I can ask the same question again at the next estimates, when you have a bit more evidence, to see who made the grade.

Senator McALLISTER: I also want to ask about loan serviceability. I note that your submission to the royal commission talked about the targeted review that you undertook into banking practices in 2017. In your submission, you said that you expect 'ADIs to use the greater of a borrower's declared living expenses or an appropriately scaled version of the HEM or HPI indices' and you talk about the fact that those indices represent a floor, not a replacement, and also call for prudent calibration of the HEM benchmark. I want to talk about what kind of concerns you found in that 2017 targeted review of people not being in compliance with that set of expectations.

Mr Byres: The general view we had was that the industry had become a bit over-reliant on the indices as a shortcut way of doing a serviceability assessment. The HEM, which is the most commonly used of the metrics, is calibrated to a certain level of expenditure. It would be well below the medium household expenditure but was being used in a fairly high proportion of cases. In some cases, that was because borrowers provided information that seemed too low, even with due inquiry, and therefore the banks decided to substitute it with the benchmark. That's an entirely appropriate thing to do because we'd like them to use the higher of when they seem very low. But, in other cases, it did seem that either they were not necessarily making extensive inquiries or they were receiving information from a number of borrowers that seemed very, very close to the benchmark—coincidentally

close to the benchmark. From our perspective, we've said that we're uncomfortable with the extent to which it is being used at present.

Senator McALLISTER: When you say you're uncomfortable about the extent to which it's been used, is its use widespread across market participants?

Mr Byres: Yes. It's certainly the common metric for the large lenders. It's used in slightly different ways in different organisations. Sometimes it's scaled by income or other things, so it's not just a single number. People do other things to add buffers to it to make it a more realistic assessment of household income. I could provide you with the number after this, but, in a speech I gave last year, we did summarise the outcomes on the use the HEM. For the largest banks, it was above 70 per cent, on average.

Senator McALLISTER: What steps are you taking to address to that? You've identified it in the review. You've raised it in the royal commission. What is happening practically?

Mr Byres: We are asking all banks to have a look at the way in which they are collecting borrower expenses, and all of them have programs underway now to collect more information from borrowers.

Senator McALLISTER: Is there a deadline when they have to meet the expectations that were set out?

Mr Byres: We've told them all that, as one of the conditions for the removal of the 10 per cent benchmark, we want them to reduce the reliance on HEM.

Senator McALLISTER: So that's one of the levers.

Mr Byres: Yes.

Mr Holland: I'd add that, to reduce reliance on HEM, there's no silver bullet. There's no one way in which a bank can do that. It'll a combination of making more reasonable inquiries, increasing the number of expense categories that are used to collect borrower expense information and monitoring the use of HEM at a granular level to see if there are particular lenders or brokers that are significantly reliant on it.

Senator McALLISTER: I am a little troubled by the fact that this keeps coming up. I asked about this in June 2015 and, at that time, I think ASIC was engaged in an enforcement action with one of the Queensland institutions. You said that you'd done an exercise around that time where you used hypothetical borrowers to test how banks would assess their serviceability. You flagged that you weren't pleased to see that there were banks in that exercise that decided to assess the borrowers' living expenses using a lower amount than the borrowers themselves said they needed to live on. That was three years ago. Two years later, you undertook a targeted review, and it found the same thing. Are you satisfied with the rate of progress APRA is making in addressing these issues? You had knowledge of it quite a long time ago.

Mr Byres: The first problem that we set out, which you talked about, was that people were using the HEM number even when the borrower had declared something higher. I think we tried to quickly put an end to that. The question then was: were there still too many borrowers that were being assessed using the HEM rather than proper inquiries?

Senator McALLISTER: I tracked down a speech by Dr Laker from 2007. He was the commissioner at that time and he said that many lenders were, at the time, using estimates of living expenses below the Henderson poverty index or were not regularly updating their estimates. The commissioner was talking about these issues 11 years ago. I wonder whether you're satisfied that, over the last decade, the institution really has engaged with this behaviour from the banks.

Mr Byres: I think we have, but it's hard to create the alternative. Some of the more really problematic practices—such as a borrower declaring they had expenses of X and the bank using something less than X, or banks using indices that are out of date and not regularly updated—have been stamped on. The real problem is that borrowers are not very good at providing the information. We would all like, I think, to at least significantly reduce the use of benchmarks, but the alternative is actually difficult to transition to, simply because it relies on borrowers having really good information to give to banks.

Senator McALLISTER: I appreciate the hurdles, but it's been under discussion for at least 11 years. We've finally got a royal commission which is exposing how significant these practices are, both from a consumer perspective and potentially from a systemic perspective. I just really do wonder whether we've done enough. I've been asked a lot, 'What were the regulators doing?' And I really wonder if you've given any thought to whether you could have done more over the last 11 years.

Mr Byres: That's sort of a hypothetical. You can always think, with the benefit of hindsight, that you could have done something different. The other thing that we've been conscious of trying to do is manage a transition in lending standards. I'm focusing in my response on the last three or four years, when we've had our most recent

intervention. That continued to allow credit to flow, didn't produce material step change in the volume of credit or cut credit off sharply in any way, but it allowed the market to adjust in an orderly fashion. It's not the only thing that we've been doing to reinforce the financial system. We've also been raising capital requirements. We've put out prudential practice guides. We've done a raft of things along the way. We've been active. I would say we've devoted huge resources to this. Certainly when we started on this most recent round of interventions back in late 2014, I would have liked to have made more progress than we have made now. But we've done what we can with the resources we've had, and we've had a good impact.

Senator McALLISTER: I want to ask too about some of the issues that have emerged from the royal commission and their impact on shareholders. Class actions are underway against AMP. A number of analysts have given unfavourable ratings to the retail banks. I note that, in the Australian case in particular, the broader Australian public is quite exposed to bank equities through the super funds. Do you think that APRA needs to rethink its approach to its obligations to shareholders in terms of disclosing what it is finding out about ADIs' activities?

Mr Byres: Not particularly. The role of the prudential regulator is to protect depositors, not protect shareholders. Our task is to make sure that depositors' money is safe. In fact, shareholders are there to absorb losses and act as a buffer to protect depositors. So I'm comfortable with the way we fulfil our mandate. We do have confidentiality provisions. I think they're helpful to allow us to do our job. They allow us to get a considerable amount of information that we wouldn't otherwise get. If everything we did was in the public domain, I suspect information wouldn't be made available to us that is currently made available to us. I'd also fear, to be honest, that there's always a risk of overreaction to regulatory issues. So it's a nuanced position, but I start with the proposition that we're here to protect depositors, not shareholders.

Senator McALLISTER: When we talked about this last time, which again was back in 2015, our conversation recognised that there is a balance between the ability to obtain information from those that you regulate, your primary responsibility to depositors and some of the broader issues around market information.

Mr Byres: Yes.

Senator McALLISTER: I acknowledge that those things remain in tension with one another and need to be balanced. Do you think that, given what has emerged from the royal commission, there is a need for some rebalancing and some reconsideration of whether you have got the balance right on those questions?

Mr Byres: I don't quite think about it as a rebalance, but I do take your point about trying to improve transparency. We have tried to do more to flag some of the issues that we are investigating, not at an institution level but certainly at an industry level. If you want to see the stats on the use of HEM that came from the targeted review, we included them in a speech where we talked about some of the industry trends that were existing. So I think we're trying to be more visible about what we're doing. Indeed, it would have been possible, at least in theory, for us to deal with the whole issue of investor growth and interest-only loan benchmarks behind the scenes by talking to individual institutions, but we decided that the best way to achieve this was to be quite transparent about what we were doing for everybody. I'm not sure that that was the traditional way of doing things. As I'm saying, we're trying to be more transparent and balance these things.

With the CBA prudential inquiry, releasing the report was clearly not the traditional way of doing things, but in the particular circumstances we thought that there was broader interest and a need to produce that report and make it public, so before we saw it we committed to making that report public. We committed when we announced the review. So we are mindful of the issues you talk about. We do think about them. We are trying to be, where we can be, more transparent where it is not likely to create undue concern or undue volatility.

Senator McALLISTER: Thanks.

Senator WHISH-WILSON: Welcome, Mr Byres. I want to ask about your media release in relation to the report you released on the CBA in your culture review. I found the language quite extraordinary, but in a good way. You were certainly very direct in the summary of your report. You did say in a media release, which I have a copy of in front of me:

In response, CBA has acknowledged APRA's concerns and has offered an Enforceable Undertaking (EU) under which CBA's remedial action in response to the report will be monitored. APRA has also applied a \$1 billion add-on to CBA's minimum capital requirement.

Can you detail the conditions of the enforceable undertaking that you have reached with CBA?

Mr Byres: The enforceable undertaking is a public document. I'm happy to make it available to you if you haven't seen it. Essentially, there are four components of the undertaking. The first is that CBA needs to provide to us by the end of June this year a remedial action plan that deals with each of the recommendations in the

report—what will be done, who's going to be accountable for doing it and when it will be done by. That's not just a report, but a plan that we approve. That's the first one. The second one is that they have to appoint an independent reviewer—again approved by APRA and on terms approved by APRA—who will do some independent validation of progress against the remedial action plan every three months and report that to APRA. Also by 30 June this year the board needs to give us a report on how the findings of the report have impacted on executive remuneration, both of current and past executives, and also to make sure that the delivery of the remedial action plan is given material weight in the performance scorecards of the executives going forward, so there is skin in the game. And then the fourth component is the capital adjustment you talked about, which will be removed as and when CBA shows that it has completed the remedial action.

Senator WHISH-WILSON: Okay. We talk about enforceable undertakings a lot with ASIC. In this case, do you often take enforceable undertakings with corporations? Is it solely in relation to systemic-risk-related issues rather than misconduct issues?

Mr Byres: I wouldn't say they're common, but they're not rare. I don't know whether—Warren, do you know offhand how many we've taken over what period? It's a relatively small number. Warren?

Mr Scott: It's all on our website. We don't enter into any enforceable undertaking unless it's made public. And the entity has to admit that APRA's concerns were valid and that they needed to make changes. It's mainly been with some insurance companies, but there have been two banks that have entered into enforceable undertakings. I think there are about seven on the website. I'm not sure of the exact number.

Senator WHISH-WILSON: In this case—perhaps rather than the other cases where you may have had other enforceable undertakings—were more punitive actions considered, such as civil or criminal convictions?

Mr Scott: There is always a balance that's made, and it's usually done with the management of APRA as to the cost benefit. We're mainly interested in forward-looking changes by entities. At times we have thought about remedial plans being more effective for APRA's mandate than going to court to get a disqualification or a penalty.

Senator WHISH-WILSON: I'd like to get into that in more detail, but, unfortunately, I have such limited time. In relation to the capital penalty of a billion, will this be permanent? Is this the kind of thing you've levied on other institutions?

Mr Byres: Yes. We have the power to put capital add-ons on all sorts of organisations that have capital requirements. They could be banks, they could be insurance companies. We do that as a matter of course in supervision, where we think it's needed. It helps provide some extra incentive for people to get things fixed when we want to get things fixed. In this particular case it's not permanent; it's permanent until they've satisfied us that the 35 recommendations in the report are addressed. And then the reason for having it will—

Senator WHISH-WILSON: It will be reviewed. Right, I'll come back to that.

Mr Byres: It's intended to act as an incentive to get things done. If you want to get rid of it, you get things fixed.

Senator WHISH-WILSON: In relation to the targeted reviews—and I must say that I have asked when you're going to release those at several estimates now, but the royal commission has forced the release of those reviews. Can I just run through things fairly quickly? So the major banks—by the 'major' banks I mean the big four—are authorised to use an internal risk base in respect of mortgage risk weights. Is that correct?

Mr Byres: Not just the major banks, but it's true for the major banks, yes.

Senator WHISH-WILSON: Being authorised to use the IRB requires a bank to have a strong and sophisticated risk management framework. Is that correct?

Mr Byres: Yes.

Senator WHISH-WILSON: The Productivity Commission estimated that using IRB amounts to a funding advantage—I actually asked them in the last session—in the order of about 15 basis points. Would you agree with that? Or have you chatted to them about their work on this?

Mr Byres: I've seen their work. It depends on assumptions you make. It's not an estimate that I would challenge.

Senator WHISH-WILSON: Okay. What we saw at the royal commission—and Senator McAllister touched on some of this—was that the targeted reviews detail extensive problems within the big four, regarding their mortgage books and particularly in relation to income and liability verification of customers and the collection and management of data. Did the findings of the targeted reviews accord with the requirements for a bank to have a strong and sophisticated risk management framework to use the IRB?

Mr Byres: The results are clearly not ideal. The issues of the targeted review are a broader subset of risk management of the portfolio and also a broader subset of the way in which banks assess the risk of their borrowers. It was a narrow perspective, but it's not a good report card, so I'm not complaining about that. The response to that, though, is to say that there's a range of ways you could deal with that. Essentially, the way it's being dealt with at the moment is, in the case of all of the banks, because we have imposed this through different means, they're running, for want of a better term, higher capital requirements than their models would naturally produce. We have overlays and a raft of interventions that have pushed their risk weights up.

Senator WHISH-WILSON: We've also heard CBA lost the data of 20 million accounts. It fell off the back of a truck, according to what I read. We've had your review of the culture with CBA, which found them to be arrogant in their risk management or seriously deficient. Once again, how does that kind of thing accord with the requirements to obtain IRB accreditation?

Mr Byres: The IRB accreditation is specifically focused on credit risk. There has been, until recently, a separate accreditation for operational risk. Many of the issues you touched on are operational risk related. That whole framework for operational risk, consistent with the international views, we have decided is not really a workable system anymore. So we flagged our intent to remove the capacity to model operational risk as part of our capital reforms.

Senator WHISH-WILSON: Not long ago and late last year, I met with representatives from regional banks, and one of them said to me that they'd spent in the order of \$40 million on modelling to try and get IRB authorisation themselves, to no avail. What is it about a major bank that makes their management of their mortgage books so much more sophisticated and less risky than a regional or tier 2 bank?

Mr Byres: I think it is the investment they have made in systems and the investments they have made in risk management and portfolio analytics. That's at the heart of it. It is deliberately a high standard because what's happening with IRB is essentially there's a default method—the standardised method—and the bank needs to demonstrate that it is producing better measures of risk and, in a sense, better quality predictors of risk than the regulator's default settings. That does take investment.

Senator WHISH-WILSON: True, but the targeted review shows that these systems are flawed, though, doesn't it?

Mr Byres: It showed that there are certainly weakness in some components of it. It is not showing it necessarily, because that's only one part of the risk management framework and the risk modelling process. Banks use a range of other things to assess the quality and probability that a borrower defaults, including the borrower's behaviour over the life of the loan. The serviceability is a point in time before the loan is granted.

Senator WHISH-WILSON: I'd have liked to have had more time to ask you about that. I may have to come back to you, Mr Summerhayes, if I don't get any more time. I wanted to ask you, after your very famous speech on carbon accounting and carbon pricing, whether there have been any advances broadly in Australia on the Australian stock exchange around moving towards a framework on carbon risk?

Mr Summerhayes: There has been good progress on disclosure as it relates to a transition to a low-carbon economy. One of the motivations for us making the speech was the release of the TCFD's disclosures. Two of Australia's major banks, I'm happy to say—the ANZ and NAB—are part of a pilot of banks globally piloting TCFD disclosure. There is about to commence a global pilot of insurers, for which a couple of major Australian insurers have nominated. APRA certainly is supportive of TCFD disclosure; it aligns very nicely with risk management standard CPS 220, which asks institutions to have appropriate governance strategy, risk management and metrics around the risks that they confront, and climate risk fits in that along with other risks. What I would say is that there has been considerable movement since those speeches made last year on other forms of pressure on institutions to improve disclosure. Proxy firms, certainly major investors, rating agencies and, in many cases, shareholder action are pushing firms to accelerate progress, which APRA welcomes.

Senator KETTER: Thank you, Mr Byres, for your opening statement; and congratulations, Mrs Rowell, on your reappointment. I want to come back to macroprudential measures for a moment. We know that in the budget papers it was identified that there is risk for household spending being affected by an unanticipated tightening of financial conditions, possibly as a consequence of the royal commission. Are you seeing any tightening of financial conditions at the moment, given what is coming out of the royal commission?

Mr Byres: Not particularly. All of the APRA regulated lenders are being more diligent than perhaps may have been the case a few years ago, but that doesn't need to be materially impacting on the flow of housing credit. For the last few years, the flow of housing credit has hovered between five and seven per cent despite all the actions that we and others have taken. So I think we have been able to manage that in a fairly orderly manner. As I said,

we have indicated that we are willing to remove the 10 per cent benchmark for those who are lending with good standards and practices. So that is, in a sense, us stepping back a little bit. To the extent that there are other factors at play that are creating a bit more caution, I don't think that is a bad thing just sitting where we are in the cycle. I do not think at this point there are signs of anything excessive. As I said, housing credit growth may be slowing a little bit but it is still rising above household income growth.

Senator KETTER: If you saw a further tightening, how would you deal with that in the context of your actions in the macroprudential area?

Mr Byres: We have to be a bit careful in saying it is okay to go back to lending sloppily just because housing credit slows down; I do not think that is the response. Nor do I think we would necessarily rush the only other instrument that we have initiated, the benchmark on interest-only lending, where we ask lenders to slow down the proportion of lending occurring on an interest-only basis. The industry now, relative to our benchmark of 30 per cent of the flow of new lending, is currently running at about 20 per cent. So there is opportunity there. It is not as though they couldn't do more of that lending if they wished to do so. So I don't think our benchmark is particularly constraining at this point. I am wary of suggesting that somehow we are able to readily adjust the flow of credit in the economy; that is not the case.

Senator KETTER: No, but you have measures available to you. For instance, if credit tightened substantially, would you consider further loosening your macroprudential policies?

Mr Byres: I don't like the term; I just think they're prudential policies. The only significant measure we have in place at present, beyond just asking people to do some good housekeeping in their lending practices, is the 30 per cent interest-only benchmark. I don't think it would be in the community's interest to see us go back to much higher levels of interest only lending. So I guess my answer to you is that I don't think I have a large number of instruments that could somehow pump credit back up if it did slow significantly.

Senator KETTER: Given your mandate on financial responsibility, how responsive will you be to the circumstances in the economy in terms of how you calibrate your prudential policies?

Mr Byres: We are trying to be to some extent countercyclical. We saw a situation back in 2014 where we saw very rapid credit growth, particularly for investors, and we saw an erosion of credit standards. We tried through 2014, 2015 and 2016 to throw some sand in the wheels and urge a bit more caution in that space. We think those measures have had an effect, so now we are starting to ease them off again, and that is really the measure we took with the 10 per cent benchmark being potentially removed. So I think we are trying to be countercyclical. We are also trying to do things that create an orderly adjustment in the market and, as I said, don't all of a sudden make a contraction of credit by the industry. Thus far, I think we have been able to do that, as evidenced by the fact that the flow of credit to housing overall has been pretty stable.

Senator KETTER: I would now like to turn to the issue of superannuation returns, particularly in the context of the members of the BT Business Super fund. There was a recent report in *The Australian* which quoted internal industry data by analyst super ratings which suggested that, over the past five years, people in this fund who selected the cash investment option received an average return of just 0.5 per cent a year after fees and taxes. This is despite the fact that the five-year cash rate and the federal government five-year bond yield, both of which are benchmarks for cash investments, averaged 2.03 per cent and 2.48 per cent at that same time. Is APRA concerned about the very low returns being given to members of some superannuation funds?

Mrs Rowell: Yes, we are. Indeed, we are undertaking some work at the moment to look at the returns on various cash options and the composition of various cash options across the sector. The work we have done so far highlights a couple of different issues. One is that some cash options seem to be returning much higher than we would expect from what you might call a pure cash option and there are others that are returning much less. Our initial work seems to suggest that part of it goes to the types of instruments, if you like, which are in those. They are not just term deposits; they may be enhanced cash, RMBSs or other types of securities that are cash-like but not cash. And in other cases it does come down to the level of expenses that are being charged for the management of those cash options. Those are all issues that we are pursuing with the relevant funds where have identified them as being outliers in that regard.

Senator KETTER: Does APRA consider that the current regulatory arrangements are appropriate and sufficient?

Mrs Rowell: The superannuation framework relies on trustees to set the investment strategy and to set the fees and charges that they apply for those investments and the management of those investments. The focus of our member outcomes work, and the proposals that the government has considered around enhancing member outcomes, is really about pushing trustees to think a lot harder about some of those decisions. In that sense, I

would say that there is room to strengthen the regulatory framework both in terms of putting tougher requirements on funds in terms of how they look at and assess member outcomes and what they are delivering at a fund, product and investment option level but also in terms of the reporting and disclosure and the information that is available that enables us and other stakeholders to get more visibility of these types of issues more quickly.

Senator KETTER: Has APRA approached the government to seek strengthening of the laws to address circumstances like these arising?

Mrs Rowell: The whole focus of the bills that were previously introduced into parliament was in part driven by a number of these issues—the proposals to provide enhanced powers to do look-through reporting and the like, the member outcomes proposals. There are some matters that we can deal with ourselves, and we are taking steps where we can through reviewing our prudential standards and reporting frameworks. But there are also some measures where getting the government bills through parliament would be very helpful to us.

Senator KETTER: I will now turn to the review of the prudential framework. Could you update the committee on what this review will cover.

Mrs Rowell: This is a post implementation review of the Stronger Super reforms. Its focus is looking at the prudential standards, the prudential practice guides and the reporting standards that were introduced in 2013. So it covers the whole suite of prudential standards and the reporting framework. The objective of this review is to get feedback and to assess for ourselves whether the original intent of those Stronger Super reforms is being delivered and, if not, what room there is to amend the framework to better deliver the original Stronger Super objectives.

Senator KETTER: You have just announced that. What is the background to this review? I think you have touched on that to some extent. Is there anything further you want to add?

Mrs Rowell: We committed to doing a post-implementation review a few years after the framework had been fully implemented, when we actually introduced the prudential standards. The prudential framework was new to superannuation and therefore we felt it was appropriate to have a post-implementation review a couple of years after it had been fully implemented.

Senator KETTER: Can you tell us when you gave that commitment to have a post-implementation review?

Mrs Rowell: I believe it was in the original discussion papers and the finalisation of the framework at the time we completed our consultation. That would have been back in 2012 or 2013.

Mr Byres: It is probably best that we take that one on notice. We can give you the reference.

Senator KETTER: At any time before your announcement of the post-implementation review on 23 May, did APRA discuss this review with the Treasurer or the Minister for Revenue and Financial Services or either of their offices?

Mrs Rowell: I don't recall any specific conversation other than in the general context of a general update on our work program. But we might take that one on notice as well.

Senator KETTER: Okay—when and with whom. Did APRA ever raise this review with Treasury officials before it was announced?

Mrs Rowell: We would have provided an indication to Treasury that we would undertake the review, because we regularly inform them of our policy agenda and program.

Mr Byres: in fact, we have a Treasury official helping us with this review. We wanted some people independent of those who had been involved in the design of the framework to be involved in the review of the framework, so Treasury provided an official to help us with that.

Senator KETTER: Can you tell us notice when that occurred and with whom.

Mrs Rowell: Yes.

Senator KETTER: Does APRA have any prudential changes that it would like to be considered as part of this review?

Mrs Rowell: There are a few areas of the prudential framework that we are aware need to be strengthened or revisited. There are some issues around reporting, particularly around expenditure reporting. There are also some issues around the reporting of related party arrangements that we think need to be strengthened and clarified. Other than that, the prudential framework seems to be operating quite well. So this is really just about whether there is room to tweak it.

Mr Glenfield: A lot of what we are looking at is whether it is fit for purpose. It came in in 2013. We have had a period of betting it down and working with trustees and RSEs. We are now looking at whether it actually delivers what we wanted it to do. Other things we are looking at are around strategy and viability assessments—

which is that member outcome work that wasn't considered earlier. And it is particularly going back to industry and to the public and saying, 'Did we get it right in the first instance, or are there other areas that we need to think about?'

Senator LEYONHJELM: Mr Byres, I would like to take you to a couple of points in your opening statement. Can you explain in some more detail what you mean by encouraging boards to exercise greater discretion to judge senior executive performance more holistically? What are you referring to there? What is holistic judgement?

Mr Byres: To give you a specific example, there are some aspects of the senior executive remuneration which are quite mechanical in nature. So if the share price performance relative to a group of peers is above the median, the award will be granted. There is no discretion. There is no discussion about whether the factors that led to that share price outperformance were attributable to the executives or whether they were just a factor—say, other people had poor performance and you were the last man standing, in a sense. We're very keen to move away from those sorts of mechanical things and have boards exercise more discretion in thinking about not just what the financial performance was in dollar terms, but, 'How did we achieve it? Is it sustainable? Are we generating good value for shareholders over the longer run, and are we running the business in a sustainable and prudent fashion?'

Senator LEYONHJELM: But it's always in the context of financial performance?

Mr Byres: It's in the context of the performance of the entity. Financial performance will be one factor, but if, in the current environment, we're achieving good financial results but being badly damaged reputationally then that's not necessarily a positive outcome in the broader context.

Senator LEYONHJELM: Do you mean prudential reputation?

Mr Byres: We're saying boards should look at everything. I think our particular focus is around making sure that issues of safety and soundness—the prudential matters that we're responsible for—are part of the consideration. It's easy for financial organisations like banks to generate high profits by taking high risks. We're saying that, if you're going to reward people purely on financial outcomes without regard to how they're being achieved, that's a risky proposition.

Senator LEYONHJELM: Also in your statement you said that you're focusing on the importance of cultivating a robust risk culture, especially when it comes to non-financial risks. What non-financial risks were you thinking of there?

Mr Byres: The particular reference came from the Commonwealth Bank report. The findings of the panel were essentially that the CBA had a good focus on its financial metrics; it had a good focus on its financial risks—credit risk, market risk—but it didn't have a good focus on operational and compliance matters. The most public and well known example of that were the breaches of the AML legislation, which were not given the appropriate attention. Those sorts of operational and compliance matters are really what we're talking about in that regard.

Senator LEYONHJELM: You also discussed the BEAR bill. Feel free to disagree, but it seems to me that the BEAR bill is very close to taking APRA into matters of management. They relate to how a bank or an ADI manages its business. Would you agree?

Mr Byres: With respect, not really. It does impose a set of obligations such that people have to be very clear about what they're doing. It does impose a set of obligations—that people obviously have to have the honesty and integrity, competence and character to do the jobs that are required of senior roles in the financial system—but it doesn't tell anyone how to do their job. It's up to organisations to decide who is going to be accountable for what. We don't prescribe that. We don't prescribe, and the legislation doesn't prescribe, how people should be paid or how much they should be paid, and we don't have the power to prescribe how much an individual should or shouldn't be paid. I think it does stop short of APRA prescribing—or the legislation prescribing, because in fact most of the requirements are in legislation—exactly how a bank is to be run.

Senator LEYONHJELM: All right. Yes, I suppose I'd agree with you—it doesn't enable you to tell a bank exactly how it should be run—but you certainly have more significant influence over how an ADI is run than ASIC has over any other business, for example. Then, in the CBA report, you made quite a number of recommendations that led to an enforceable undertaking. You're getting quite close, if not over, the border, into management, are you not?

Mr Byres: I think I'd make a couple of observations—first of all, the general observation for prudentially regulated entities, which in Australia are banks and other deposit takers, insurance companies and superannuation. The prudential regime has been designed by the parliament to say there are a set of financial organisations that certainly should have higher requirements and more stringent supervision than the other corporations that are managed under the Corporations Act by ASIC. To your point about: do we have higher requirements and more

scrutiny than non-APRA-regulated institutions? Absolutely. That's the intent of the regime. The prudential framework is built on the fact there are these certain sorts of financial institutions where, given the sorts of promises made to the community, it's very important those promises are delivered, that deposits are safe, that insurance policies are paid and that super fund members have their best interests looked after. They should be subject to higher requirements. That's the genesis of the prudential framework.

When it comes to the CBA report, you are right: there are a lot of recommendations in there that are, in some senses, fairly detailed; they're not the sorts of recommendations that we would normally put, with that level of detail, in a prudential standard that we would issue. But the panel identified a range of issues that needed to be fixed. It called out what they were. It did, though, quite deliberately stop short of saying exactly how those issues were to be addressed. That's the task that we've now given the CBA under the EU: 'How are you going to fix these things? It's up to you to tell us how you're going to do it, when you're going to do it by and who is going to do it.'

Senator LEYONHJELM: Have any of the staff of APRA previously worked for the institutions that they are involved in at that level of—what word should I choose?—supervision, if you like, in relation to the CBA recommendations and the BEAR bill implementation?

Mr Byres: Most of our staff come from the financial sector broadly defined. I include in that accounting firms and law firms as well as financial institutions. I'd have to take this on notice, but I don't think there was anyone on the CBA inquiry that had previously been a CBA employee, if that's the specific question that you have.

Senator LEYONHJELM: Would that be an issue if there had been?

Mr Byres: We're very careful to try and avoid those sorts of conflicts. Part of the way we do that is think very hard about delegations for decisions within APRA and who has responsibility to take decisions. As you would expect, we've got very clear policies—code of conduct, et cetera—that deal with conflicts of interest. I couldn't say that we haven't got anyone that wouldn't somewhere in their past have worked with an organisation that they're supervising, but very rarely do we have anyone who can take a material decision on their own where that might be a particular issue.

Senator LEYONHJELM: The corollary of that is also: do you have people who have management experience themselves relevant to the level at which they are placing obligations on the ADIs that affect management?

Mr Byres: To the extent that we're placing obligations on the chief executive of a major bank, we don't employ a former chief executive of a major bank. There will be issues, but collectively with regard to the senior leadership team, we have senior industry experience, including Geoff beside me, who in a prior life has been a senior executive with a number of financial institutions.

Senator LEYONHJELM: The question, I suppose, is whether you're comfortable that your personnel have sufficiently senior experience—and I'm thinking of the salaries that are paid in the financial industry. I presume you don't attempt to match them. Therefore, the question is: do your staff have the level of management experience or seniority of management experience that allows them to look at an ADI and say, 'Okay, this is a weakness in that ADI, and therefore I'm going to issue some kind of direction, undertaking or something'? In making that decision, are they in fact sufficiently qualified to make it?

Mr Byres: My general observation would be that I think we're well placed in that regard. We would never say no to more skills and experience, but I think we are well placed in that regard. In fact, over the last few months we've recruited three senior and highly regarded people from the banking sector into some of our executive roles.

Senator LEYONHJELM: Is this a poacher-turned-gamekeeper situation?

Mr Byres: As you rightly point out, people don't come to APRA for the salaries.

Senator LEYONHJELM: I wouldn't have thought so, no.

Mr Byres: People come because what they think what we do is important. They feel alignment with the purpose of APRA and its role protecting the community. So we are always looking for good people. In recent times, if we could find good people, we've got the capacity to bring them on, but, as I said, our experience has been that we have been able to get good talent into the organisation. When we do surveys of our regulated institutions—we do a major survey every couple of years—on the issue of whether your APRA supervisor is sufficiently experienced, we never get a particularly concerning result out of that.

Senator LEYONHJELM: Could your pre-existing powers or the BEAR bill have allowed you to have prevented the CBA from failing to report its cash transactions?

Mr Byres: Not particularly, no. Partly that's because we would not necessarily go looking at AML issues. AUSTRAC is the regulator; they have a regulatory framework and a surveillance program. In the normal course of events, an APRA supervisor would not go looking at those issues.

Senator LEYONHJELM: Under your various powers, either existing or what you are gaining, would you have been able to save or prevent any of the banks from charging for services they fail to provide?

Mr Byres: Would we have been able to prevent that? No.

Senator LEYONHJELM: Would you have been able to do anything to avoid Bankwest causing hardship to small business by revaluing property and calling in loans?

Mr Byres: To stop them revaluing property and calling loans? No. Those issues are not really issues that fall within our domain. We would obviously want Bankwest to be making good loans, but, equally, once a loan is impaired or likely to be impaired, the goal we have is to make sure that the depositor's money which is being used to make that loan is safe. We do want Bankwest—or any other bank, for that matter—to make sure it is pursuing that money when it needs to.

Senator LEYONHJELM: If I have time for one final question—

CHAIR: You're very much pushing the friendship, Senator Leyonhjelm!

Senator LEYONHJELM: I appreciate that I'm here on forbearance. The customers of a bank such as those of Bankwest could potentially go to the banking industry ombudsman to complain about their treatment. Would you get to know about that? There are a couple of other options, I suppose. Would you get to hear about that?

Mr Byres: Not in the normal course of events. Sometimes people do make a complaint to the ombudsman, and they choose to copy that to APRA or to ASIC.

Senator LEYONHJELM: You don't have an automatic communication with them?

Mr Byres: No, and that's because, by and large, most customer-related matters are more in the domain of ASIC rather than APRA. We're dealing with safety; they're dealing with fairness, and most of those things will be an ASIC issue.

Senator LEYONHJELM: Understood. Thank you.

CHAIR: I have a couple of questions. I think they're more specifically to Mrs Rowell. I know we've covered a few of these issues in previous estimates, Mrs Rowell. I know APRA provided evidence on the record during a Senate Economics Legislation Committee inquiry into the government's member outcomes and accountability reforms, so I won't ask you to repeat your support of those here, but I wonder if you could give us an example of how APRA might use the enhanced powers provided in that reform package to improve the outcomes for super members and to protect their retirement savings.

Mrs Rowell: There were a number of different aspects of those proposed reforms, so I could give a few different examples. I think for us the key would be, firstly, a directions' power, because a stronger directions power would give us the opportunity to intervene earlier and more appropriately than we do at the moment. There's been a lot of debate and discussion about poor outcomes, mergers not proceeding and those things. At the moment, the trigger for us being able to take action on those is a fundamental concern about the solvency and safety of the assets of the superannuation plan rather than poor outcomes for members. If we had a directions power, if there were higher My Super authorisation criteria with equal cancellation powers, we would be able to step in based on poor member outcomes rather than having to wait for that concern about the safety of the superannuation assets.

CHAIR: You've actually touched on a point I was going to get to a little later, which was that my office were vociferous in their support for the extension of the CGT extension for super fund mergers, but there seems to be so little activity in this space. Why do you think that is?

Mrs Rowell: It's a vexed issue. I think there are a number of entities out there who believe that they're providing value to their members, that they have a future and, to the degree that APRA or other stakeholders may raise concerns about their performance, that that can be addressed over time. And so there is often a lack of willingness in the industry even to contemplate the thought that they might merge and not continue in their own right. There are some other issues raised from time to time around the costs of mergers, the need to be able to demonstrate that it's in best interests of members, tax and other issues, but fundamentally I think the biggest barrier is the boards being open to the idea of merging.

CHAIR: I'm jumping all over the place here, but another thing I know you and I have discussed is governance issues. You say the boards being open to the idea of merging is an issue. Do you think that the issue of governance we have discussed before, whether it be things like expertise, tenure, the boards having fifty-fifty

composition or whatever it might be, is part of the problem with getting boards to be open to the idea of fund mergers?

Mrs Rowell: I think the composition, the skills and capability and the mindset of boards are issues that need to be addressed and are very difficult to address under the current legislative framework. We would strongly support some change to ensure that there are appropriate skills and the right people on boards.

CHAIR: You've just done a review on the deficiencies in super fund board governance, haven't you?

Mrs Rowell: Yes.

CHAIR: What was it you specifically highlighted in that review?

Mrs Rowell: Well, there are a number of aspects to that review. Across the spectrum of the funds that were covered by the review, it did raise concerns about how they source directors; their ability to get directors with the right skills and experience; the long tenure; and the lack of appropriate renewal on some boards. Regarding board assessment processes, objective, independent assessments are often not being done to determine whether the board is actually performing well and meeting its obligations as well as it could be. There were a number of issues that were in the letter that we released to industry just a couple of weeks ago.

CHAIR: In APRA's view, would the government's proposed reforms to superannuation fund governance—which predate the APRA report—help address some of these issues?

Mrs Rowell: Our longstanding view is that there is value in having independent directors on boards. I think it would help to address some of these issues by bringing a different perspective and different skill sets to the table.

CHAIR: I note that that was supported by the Productivity Commission's findings.

Mrs Rowell: Indeed.

CHAIR: You probably haven't had a chance to digest the whole of the Productivity Commission report?

Mrs Rowell: I've done my best.

CHAIR: Do you have some initial reflections for the committee?

Mrs Rowell: I think it's a very comprehensive report, as you have noted. It has a number of interesting recommendations. We see a lot of alignment in the observations of the Productivity Commission with some of the issues that we have been raising and talking about and focusing on in our supervision of the superannuation industry. So we welcome the report and we think a number of the recommendations certainly have significant merit.

CHAIR: Just finally, I know that there were a number of superannuation changes in the Protecting Your Super package that were announced in the budget. I don't need to go into each one of those individually, but I wonder if there are any that align with the work you are doing, whether it be the fee changes to low balances; exit fees; the insurance premium; removing compulsory insurance; or making insurance opt-in for under 25s? Or are there any that set off alarm bells for you?

Mrs Rowell: There's clearly an alignment in terms of trying to address issues that are not delivering good member outcomes with the work that we are trying to do with enhancing member outcomes. We have made observations to industry in the recent past about concerns with undue erosion of balances through insurance premiums. There is the issue of industry needing to do more to tackle multiple accounts. So I think that the issues being addressed by those proposals are real issues in the industry that need to be addressed, and the budget proposals would be helpful there.

CHAIR: Are the causes of multiple accounts, in your opinion, the current rules surrounding default super products?

Mrs Rowell: I think there are a number of causes of multiple accounts, in part due to the way people get offered superannuation products as they change employment, which go to the heart of why you end up with multiple accounts. There is also a degree of inertia from members in not taking the steps that can be taken to consolidate, and funds not doing more to try and encourage consolidation as well.

CHAIR: They have a vested interest in seeing a greater number of accounts, haven't they, because that's their source of fees?

Mrs Rowell: Any individual fund obviously benefits from retaining assets and members. Someone loses when you consolidate—one fund gains and one fund loses.

CHAIR: The member is the one who gains the most, aren't they?

Mrs Rowell: One of the points about the budget proposals, and also some of the recommendations in the Productivity Commission report, that we and the industry and the other stakeholders need to be mindful of is the transition and the implementation. All of those proposals would create a reasonable amount of change for the industry to absorb, and it's very important that it's done in a way that doesn't have unintended consequences or adverse outcomes for members.

CHAIR: Thank you, Ms Rowell, that's sage advice.

Senator WHISH-WILSON: In relation to the Productivity Commission's draft report *Competition in the Australian financial system*, there was one statement there that caught my interest:

The Australian Prudential Regulation Authority's (APRA's) actions to slow interest-only lending on residential property in early 2017 resulted in higher interest rates on both new and existing residential investment loans, despite the regulatory objective being to slow new lending.

This led to a windfall gain for the banking sector.

Then they went on to say:

Up to half of this gain is in effect being paid for by taxpayers, as interest on investment loans is tax deductible. The Commission estimates that the cost borne by taxpayers as a result of APRA's intervention was up to \$500 million a year.

I supported that measure because I felt like it was important. How do you respond to the Productivity Commission's report and comments on APRA?

Mr Byres: We made a couple of comments. We made a submission on that, which is public. I have a couple of comments. First of all, on the general issue of impact on the taxpayer, I think, it's very difficult for regulators to be expected to take those sorts of things into account. We made this comment—and I think it's been supported by other submissions, including from Treasury—that it would not normally be the case that regulators would think about these sorts of things. In the same way as when the Reserve Bank moves interest rates up and down it doesn't work out what the impact is on the budget bottom line; it does what's right for the community. The budget will be the budget.

On the issue specifically of the increase in interest rates, you're right the observation is we did set out and, indeed, we deliberately designed the measure to set out to impact the flow of new lending. Given our experience with the investor lending, we did deliberately set out to design the instrument a bit differently and to focus on new lending. The fact that the banks chose to apply it to more than just new lending is partly a product of the fact that there's more than one thing moving here. Not only did we put in place this benchmark around the flow of new lending but we also flagged to the industry, as part of our changes to capital requirements, that we would be raising capital requirements on higher risk types of lending and flagged that that would be likely to include interest only lending. We've subsequently put out proposals that would produce higher risk weights for interest only lending relative to principal and interest lending. Banks, in a sense, are anticipating some of those changes as well in the way they price their book.

Senator WHISH-WILSON: Do you think that reflects a lack of competition in the market? I will read to you the from the ACCC—I wanted to ask you this, because I did ask them this directly and they said to ask APRA next—*Residential mortgage products price inquiry: Interim report*. A couple of the preliminary findings were that, 'new residential mortgage borrowers often pay a lower interest rate—32 basis points on average—than existing borrowers'. The report says:

The pricing behaviour of each of the...banks appears more consistent with 'accommodating' a shared interest in avoiding the disruption of mutually beneficial pricing outcomes.

They said that's not anti-competitive behaviour; it's rational behaviour. Nevertheless, does it also signal lack of competition in the banking sector that these kinds of things are occurring?

Mr Byres: It signals a reluctance to compete on price. When you're the dominant player and you have an important profit stream, you're careful about how you manage that. It is part of the flip side of the concern we had, because in terms of what we were seeing we have always said that the housing lending market is competitive—people have disputed whether it is or it isn't. I think the ACCC would say it's not competitive in terms of pricing. Our concern was that it was competitive in terms of lending standards, and people were competing fiercely to grow market share, but they were doing to it by eroding lending standards rather than, perhaps, other ways of offering something better or cheaper to the customer. These are two sides of the same coin—the ACCC issue, reluctance to compete on price and our concern about competition that eroded lending standards.

Senator WHISH-WILSON: Both the Productivity Commission and the ACCC found that the banks, and major banks in particular, are subsidising cheaper loans to new customers by charging existing customers higher rates. Once again, that might have a competitive angle to it, but I'm interested in the macroprudential implications

of this kind of front-book, back-book strategy. Shouldn't someone with a lower LVR get a better home loan rate? Isn't that the way it should work in a risk neutral setting? Do you think there are any macroprudential implications to these kinds of findings?

Mr Byres: I am not sure I think there are macro prudential issues; there may be fairness issues but I don't know they go to the safety and soundness of the system. It's beyond my mandate to comment on these sorts of things. In one sense it's perverse that long and loyal customers don't get the same deal as new customers. But lots of businesses will argue they compete with special deals for new customers, and the banks will say, 'Well, that's all that they're doing.'

Senator WHISH-WILSON: Fair enough. Mr Summerhayes, in relation to your answer to my question just before the break, around carbon risk or, more broadly, around frameworks, is there anything on the horizon we should be looking out for in terms of benchmarks or developments?

Mr Summerhayes: The transition to the low-carbon economy, as you point out, is underway so the transition risks aren't avoidable. It's important therefore that organisations, particularly APRA related organisations where we have an interest, assess, manage and disclose those risks. As I mentioned, the TCFD recommendations are relatively new and there are issues around taxonomy and how it's done. We have a couple of major Australian banks in that pilot and some insurers are about to start the insurance pilot. That said, people are voluntarily improving their disclosure through the range of pressures I mentioned earlier. APRA is about to commence, which I flagged in a speech last year, a survey of banks, insurers and superannuation funds to assess their maturity as it relates to assessing these risks, and we'll play back the insights from that to help develop an advance market practice on risk management of climate-related risks.

Senator WHISH-WILSON: Do you feel the leadership role you played and the speech you gave conceptualising what a framework would look like and why it's important have been an important catalyst in stirring the pot a bit and getting some activity?

Mr Summerhayes: There's been a range of positions put by a range of stakeholders, not just APRA, which I think has advanced the broader community's realisation of both the transition—physical and liability risks—and APRA's interest is in the entities we regulate. And certainly there has been considerable progress since those speeches were made last year but more needs to be done.

Senator WHISH-WILSON: I think I may have asked you this way back when we had our Senate inquiry into this but it probably wasn't that long ago. I believe you have stimulated a lot of interest and a level of public debate and I applaud you for that but I wonder if at any point, it will need to lead to some kind of perception there may be some kind of regulatory framework in the future; otherwise things won't happen—in terms of stick and carrot. Is it still way too early to talk about that?

Mr Summerhayes: I think so. I'm encouraged by the weight of money, and commercial implications are actually driving a lot of the change. Regulators have an obligation to highlight where we see risks and that's what we sought to do. There's a lot of smart money that can see where the transition to a low-carbon economy is going—that is, whether it be investors, ratings agencies, proxy firm, that's driving more disclosure and identification of the risks. APRA will continue to take an interest in this area.

Senator PATRICK: I'm not sure if you heard the questions I asked the ATO in relation to the disparity between the use of Qantas and Virgin by public officials on travel.

Mr Byres: I didn't.

Senator PATRICK: Okay, I will give you some context in that case. Minister Cormann has provided me in response to questions on notice details of the use of Qantas and Virgin. In a situation where we have a lowest practical fare booking code, there's a fairly significant difference. In government spending overall Qantas is \$201 million in 2016-17, and for Virgin it was \$61 million. So there is quite a big difference. If I divide the numbers through, although I know it's not perfect, in my experience Virgin are significantly cheaper in many instances. I've got it by department. I'm just having a look at your numbers. Your numbers come in at \$429,000 to Qantas in 2016-17 and \$122,000 to Virgin. I'm wondering if anyone can explain the difference. It's quite a reasonable disparity, noting the policy. Can you say whether there's some explanation you may be able to offer, or whether it's something you need to take it on notice?

Mr Byres: I don't have the figures in front of me. They sound reasonable in term of \$500,000 or a bit more of domestic travel. I couldn't give you a detailed explanation. I'm happy to take that one on notice and come back to you.

Senator PATRICK: It might be helpful if you look at Finance's codes. There may be legitimate reasons.

Mr Byres: We'll look at those and come back to you.

Senator PATRICK: A number of agencies have responded by saying, 'Thank you, we'll have a long, hard look at what's going on.' There's only one agency that has Virgin flying more than Qantas. That seems a bit unusual. Secondly, in relation to the Chairman's Lounge and Virgin's The Club, I have no criticisms if anyone has accepted a membership, but in the circumstances where they have accepted that membership because of their official position, if they have only selected one—so they either only have the Chairman's Lounge, or The Club—in that circumstance, for any officials in that position can I have a breakdown of their split between Virgin and Qantas?

Mr Byres: I am neither. But we'll take that on notice and come back to you.

Senator PATRICK: Thank you very much.

CHAIR: Thank you very much to the officers of APRA. We'll return with ASIC after the break.

Proceedings suspended from 18:17 to 19:00

CHAIR: I welcome officers from ASIC—in particular, the chair, Mr Shipton. Do you have an opening statement?

Mr Shipton: Yes, I do.

CHAIR: Thank you, Mr Shipton.

Mr Shipton: Good evening. I'm pleased to appear before the committee today, along with deputy chair, Peter Kell, and my fellow commissioners, Cathie Armour and John Price. Also appearing are senior executive leaders Laura Higgins, Sharon Concisom, Warren Day, Jane Eccleston, Greg Kirk, Louise Macaulay and David McGuinness. Chair, with your permission, I would like to acknowledge the important work of the royal commission. I expect the committee will have questions about various issues raised recently at the royal commission hearings, including about evidence which was derived from ASIC's work and investigations. Given that the royal commission is ongoing and yet to make any findings or recommendations, it is important that we not comment or speculate on what the royal commission might find or may recommend. I'm also aware that ASIC has ongoing investigations relating to a number of issues covered by the royal commission hearings. Accordingly, there are limits to what we can publicly disclose about them today. Nevertheless, we appreciate the opportunity to speak about the public outcomes we have already achieved in matters that have been subject of the royal commission hearings. Accordingly, Chair, with your permission, I seek to table a folder of public statements and public reports by ASIC that relate to matters which have been raised by the royal commission as case studies.

CHAIR: Thank you, Mr Shipton. I have received this folder. I must admit it is highly unusual to receive such an enormous number of documents to be tabled. But if the deputy chair is happy with that.

Senator KETTER: No problem.

CHAIR: Yes, thank you, we will table that.

Mr Shipton: In those tabled documents, for broader context, is information regarding total enforcement outcomes and the very broad work we currently have underway. In particular, I draw the committee's attention to the first document, ASIC's regulatory activities—activities that are aimed at ensuring that we have a fair, strong and efficient financial system for all Australians.

I also thought it would be useful for me to pass on some observations to the committee of how I see Australia's financial system and its regulatory structure, having returned to Australia a little over three months ago from almost 25 years working overseas. My observations include that, firstly, there is a trust deficit between the financial industry and the broader community. Secondly, there is insufficient embedding of a professional mindset and a professional culture in finance. Thirdly, there is insufficient attention given to, and mitigation of, by the finance industry, conflicts of interest. These observations are very consistent with reports and recommendations made by ASIC in recent time. In fact, ASIC's pursuit of regulatory enforcement, prosecutions and consumer compensation is very consistent with the regulatory responses that I believe were warranted. Nevertheless, ASIC must continually look for new ways to do its job, to ensure that it is evolving to respond to the harms and threats manifesting in Australia's financial system. And today I would like to outline to the committee some of the new approaches ASIC is looking to deliver in response to the threats I just mentioned.

Firstly, there is enforcement. We have used funding from our enforcement special account over the last few years to fund a regulatory program, called our wealth management project, that focuses on financial advice. Much of what we saw in the financial advice round of the royal commission hearings was based on the work of this project. We want to expand and accelerate this important program. We are also looking to build ways on our

enforcement outcomes. This could include making greater use of external resources for our investigations—again, in order to accelerate response times.

The government has announced that it has accepted or agreed, in principle, to all of the recommendations in the task force that reviewed ASIC's enforcement powers. These reforms include significantly stronger and clearer rules about the obligation of licensees to report to ASIC honestly and, importantly, in a timely manner. They include a stronger ability for ASIC to take regulatory action against senior managers or controllers of financial services businesses. They include a new directions power that will enable ASIC to direct licensees to undertake remedial actions, such as consumer compensation programs, and they include stronger penalties against licensees in breach. For example, section 912A of the Corporations Act that, importantly, requires firms to deliver financial services 'efficiently, honestly and fairly', does not currently incur a criminal or civil penalty. It would incur a civil penalty under the proposed reforms.

I want to turn to supervisory approaches. ASIC currently supervises firms it regulates through a combination of risk based surveillance or reviews aimed at a particular firm and thematic reviews aimed at a sector or subsector. While these approaches can be very effective, they can be less intrusive and are generally based on sampling. These techniques will continue to have an important role to play; nevertheless, over the coming years, we will seek to improve our work by adopting new supervisory approaches for Australia's largest financial institutions and the important sectors within that sector. This will involve more intensive day-to-day supervision, with better cooperation between our fellow regulators, especially with APRA. This approach will be more intrusive, enduring and, with onsite visits, more physical.

The third new approach is ASIC's role in encouraging adoption of regulatory technology solutions in the financial sector. ASIC believes Australia can position itself as a world leader in the development and adoption of Regtech solutions, and we look at new ways to encourage this.

In closing, I expect also that there'll be further strategic responses necessary to enhance a regulatory approach to tomorrow's threats. We look forward to the recommendations that will come from the important work of the royal commission. And, as the Treasurer confirmed earlier this month, ASIC is discussing with the government what additional support it may need to support these new directions. To this end, we formally submitted our request for funding of these important initiatives on Monday. I have spoken directly with the minister for financial services and the Treasurer on these new ideas and have received a positive reception from them. Nevertheless, I am very conscious that there is a formal process to review and decide on these types of funding requests, a process that I very much respect and do not want to pre-empt.

As always, ASIC looks to maximise the effectiveness of its work, whatever its budget. Deciding what it does and doesn't do is one of the most difficult parts of ASIC's job. My job is to ensure that ASIC responds to circumstances strategically and with a clear sense of priority. Thank you, Chair. We look forward to your and the committee's questions.

CHAIR: Thank you, Mr Shipton. I just want to confirm: how many people did you bring with you today?

Mr Shipton: We brought up with us—

CHAIR: Or down and up.

Mr Shipton: Down and up—it's a federated organisation, as you know. We brought eight senior executive leaders and four commissioners; that's a total of 12.

CHAIR: I want to kick off, using the chair's prerogative, by asking you some questions about the enhancing ASIC's capabilities bill. The government has introduced that legislation to remove some of the requirements of ASIC to engage staff under the Public Service Act and to give you a bit more operational flexibility. I want to talk about the competition mandate aspect of it. I realise you weren't in the country at the time of the Murray review, but I'm sure you're entirely across it. What did the Murray review recommend in terms of competition and ASIC's role?

Mr Shipton: My understanding—and I can defer to my colleagues who were here at the time—is that ASIC should have consideration of competition in the fulfilment of its mandate and the execution of some of its decisions. But I will defer to colleagues who, as I said, were here at the time.

Mr Kell: ASIC didn't have competition as one of the elements that we should consider as part of our statutory mandate. The Murray inquiry recommended that that be incorporated into our mandate in a formal sense—not so that we would become the competition regulator but so that it was clear that we should be taking into account the impacts on market competition in our regulatory decision-making. We were very supportive of that recommendation and we've been very pleased to see that the government wants to take it forward.

CHAIR: Have other reviews reiterated that that you're aware of?

Mr Kell: I think the Productivity Commission review recently has emphasised the importance of ASIC's role in facilitating competition as well as other elements of the financial system.

Mr Kirk: That was just in their draft report.

Mr Kell: Yes, in their recent draft report.

CHAIR: Can I ask whether such a mandate as given to you under this legislation will improve ASIC's decision-making, or how it will potentially benefit your end users, your customers?

Mr Kell: We think it would certainly assist our decision-making in that it would allow us to formally incorporate competition elements into regulatory decision-making—for example, decisions around granting relief or cross-industry issues. It's quite a while ago now, but there was a case where ASIC did seek to take into account competition issues in the past and where the Administrative Appeals Tribunal said, 'No, actually, that's not part of your remit, so that shouldn't be taken into account.' We think that's unsatisfactory.

CHAIR: Can I ask also about what the ASIC capability review recommended in terms of supporting a more effective staff recruitment and retention strategy?

Ms Armour: I'm happy to commence answering that. The ASIC capability review did recommend that ASIC be free to employ staff outside of the Public Service Act. That same recommendation was made by the Senate inquiry into the performance of ASIC and also I believe the financial system inquiry. And really here, what we're looking to do is to be able to employ staff on similar terms to those of the other financial regulators. For example, APRA is able to employ staff outside the Public Service Act.

CHAIR: So how will it make ASIC a more effective regulator to be able to do that?

Ms Armour: Some of the skill sets that are required to effectively regulate in the financial markets involve employing people with that market expertise, and we'll be able to attract people at a more reasonable set of salary terms and conditions—well, a more competitive, if you like, set of salary terms and conditions—than under the current arrangements.

CHAIR: I should pull you up on that one. I should ask you: will the removal of existing ASIC staff from the Public Service Act potentially impact the staff and their employment arrangements?

Ms Armour: First of all, we had an enterprise agreement in place with staff. The proposals allow for things like continuation of the superannuation arrangements that currently exist for staff.

CHAIR: So it shouldn't affect any—

Ms Armour: We don't see that it should at all be a negative situation for current staff.

CHAIR: So it won't affect the enterprise agreement in any way, shape or form?

Ms Armour: No.

CHAIR: Will existing staff have the choice to remain in their existing Commonwealth superannuation fund?

Ms Armour: Yes, they will.

CHAIR: Excellent. That's what I wanted to know. I want to ask you some questions about the ASIC Enforcement Review Taskforce. I've only got about four minutes before I turn over to the deputy chair, so forgive me if I whiz through these things a bit. I want to ask you about how significant the new powers are for ASIC and when the last time ASIC received such a significant boost to its powers and also to its regulatory toolkit.

Mr Kell: We are very pleased when it comes to the package of reforms that are proposed through the enforcement review. It includes proposed increases to maximum penalties, both criminal and civil. I might note that I don't think the civil penalties have been reviewed since 1993—

CHAIR: Wow!

Mr Kell: so they are long overdue to be modernised so that they offer a far more meaningful deterrent effect for wrongdoers.

CHAIR: I would like you to expand on that: how they'll act as a deterrent to unacceptable misconduct and how those reforms will potentially affect consumers in the end.

Mr Kell: The maximum civil penalties across ASIC administrated legislation will increase for individuals to \$1.05 million or three times the benefit obtained. For corporations, it's the greater of \$10.5 million, three times the benefit or 10 per cent of annual turnover. It's worth noting that, for some of our key provisions at the moment, such as 912A—the requirement for licensees to act honestly, efficiently and fairly—there is no monetary penalty at all. When you look at the increase there, you can see it's very significant. In addition to the penalties, we're also

very pleased that there would be a disgorgement power available for us, which would allow us to seek the disgorgement of profits that have been obtained as a result of misconduct. There would be better banning powers for senior managers.

CHAIR: How do disgorgement powers work?

Mr Kell: It would mean that, when we take civil penalty actions, we can also seek to have the court order that the profits or the money made as a result of the misconduct—

CHAIR: Become the proceeds of crime?

Mr Kell: Yes.

Ms Armour: It's a similar concept.

Mr Kell: That's important. We've been arguing for some time, and this committee has supported us, for an improvement in our ability to take action, ban action and administrative action against senior managers—not just the frontline advisors or mortgage brokers but also those who have effectively managed them and allowed the conduct to continue. We think that's something the community expects: those at the top of the tree are also going to be held accountable. There will be enhancements to our search warrant powers. We will also be given a directions power which will help us in a variety of ways, including the ability to direct licensees to put in place a suitable compensation program, for example, and do that far more easily than it can be done at the moment. If you consider the package, with the additional penalties, the additional powers and the additional remedies, we're very pleased to see that coming forward.

CHAIR: It's safe to say, then, that ASIC is very confident that the powers that you have been given—the new penalties; the new regime—will more effectively deter and punish those who are doing the wrong thing?

You think that, if this had been in place a decade ago, you would've been a more effective agency—is that what you're telling us?

Mr Kell: When you also consider the enforcement package—and, obviously, the government is intending to introduce product intervention powers and design and distribution obligations on firms—we think, as you add that up, it makes for a much stronger and more diverse toolkit to allow us to address harm. We're already thinking about how we're going to start using this when it comes on board, because we want to start using it from day one as I think our chair has indicated.

Mr Shipton: We want to use every inch of our powers as soon as they are available to us.

CHAIR: That's terrific. Senator Ketter.

Senator KETTER: Thank you very much, Mr Shipton, for that information; that's very useful. I've got a range of areas to cover. I'll start firstly with the legislation that's been introduced to remove ASIC from the Public Service Act. I understand that current ASIC staff will remain in terms of their superannuation coverage under the current CSS and PSS schemes and will be able to remain PSSAP members. Can you confirm that's the case.

Ms Armour: Yes, that's the case.

Senator KETTER: What entitlements to maternity leave do ASIC employees currently have?

Ms Armour: We probably have to give you that detail on notice, but the intention is that those entitlements would continue where there is no intention that those would change.

Senator KETTER: So you're saying they'll have access to the same entitlements after these changes occur?

Ms Armour: Yes.

Senator KETTER: How will you give effect to that?

Mr Price: There will need to be some changes to legislation to enable this to occur, and my understanding is that legislation is in the process of being drafted.

Ms Armour: In any event, ASIC has its own internal policy on paternity and maternity leave and our intention is to replicate the existing requirements.

Senator KETTER: What about redeployment rights within the APS? Is it the case that ASIC employees, including those who are made redundant, currently have redeployment rights to the broader APS?

Ms Armour: I think we'd have to take that on notice, if that's okay, and give you some more detail.

Mr Price: It may depend a little bit on how the relevant ASIC staff member is employed—whether they're employed as a permanent public servant or under contract—but we'll take that on notice.

Senator KETTER: Will current ASIC employees retain those rights after 1 July 2019?

Mr Price: Yes, we'll take that on notice.

Senator KETTER: Is ASIC supportive of existing ASIC employees retaining these redeployment rights?

Mr Price: I think, as a general principle, what we're aiming to do, as far as possible, is ensure that rights and entitlements flow through under the new scheme. You've raised a couple of matters of detail, so we'll come back to you on this.

Senator KETTER: Will ASIC be covered from the Australian Public Service Commission's workplace bargaining policy after these changes commence from 1 July next year?

Mr Price: Again, we'd like to take that on notice.

Mr Day: My understanding is the answer to that question is yes.

Senator KETTER: If the current bargaining policy remains in place, would ASIC expect to have to bargain under that framework?

Mr Day: The answer to that question is yes.

Senator KETTER: So, one could argue: this goes against the point of removing ASIC from the Public Service Act, if ASIC is still going to be subject to the restrictions of the Australian Public Service Commission's workplace bargaining policy.

Mr Day: We can take that on notice and come back to you with a more complete answer, but we don't believe so. I think, as Commissioners Armour and Price said, there are still certain flexibilities that are open to ASIC when we moved out of the APS in relation to the remuneration that we're able to offer certain staff through short-term contracts and other things and the ability to employ staff and retain staff. In relation to the broad bargaining framework, that still sits. Shortly, we'll be entering a new set of bargaining discussions with our staff in relation to replacing the existing one. The current employee agreement is about to expire and we'll be looking at a negotiation with staff in relation to replacing it with a new one.

Senator KETTER: I think it's 26 May next year—is that right?

Mr Day: I think that's right.

Senator KETTER: According to the minister's second reading speech, removing the requirement for ASIC to employ people under the Public Service Act will promote greater operational flexibility.

Ms Armour: Yes.

Senator KETTER: Can you explain what 'extra operational flexibility' is?

Mr Price: To elaborate: with highly skilled people in particular areas of the financial system and in particular geographic locations, it can be a challenge for us to compete with private employers to retain the talented staff that we feel we need to get the best results for all Australians. That's why we're seeking these changes. And I would note that if you go back to the Wallace inquiry, which was the inquiry that set up the financial system architecture as we know it, my recollection is that the recommendation was that both ASIC and APRA be able to employ outside the Public Service for that reason. Those changes were put in place and that legislation was put in place for APRA but not for ASIC. So one might argue that this is actually delivering on what was originally recommended in the Wallace inquiry.

Senator KETTER: The minister's second reading speech goes on to say:

It will also allow ASIC to tailor management and staffing arrangements to suit its needs, ensuring it is fit for purpose to deliver effectively on its mandate.

Can you explain how you're going to utilise these changes to give effect to that?

Ms Armour: We'll be able to be more agile with our hiring of staff for particular projects, and be able to employ people on contracts which are tailored to the expertise that's required for the type of project and the length of the project. That will give us some more agility in doing that.

Senator KETTER: So more short-term contracts?

Ms Armour: Maybe, yes.

Senator KETTER: I just want to move to the Dollarmites issue. These were the practices where thousands of accounts were set up by Commonwealth Bank staff because of the pressure that they were under in terms of their performance targets and bonuses. Can you firstly tell me just when these practices in relation to Dollarmites and Youthsaver accounts came to ASIC's attention?

Mr Kell: I would have to take on notice the exact date, but very recently.

Senator KETTER: And can you tell me how they came to your attention?

Mr Kell: The detail of the issue came to our attention through media reports, rather than a report directly from—

Senator KETTER: So the CBA didn't report this matter?

Mr Kell: Not all the detail. I will take on notice the exact timing, but we have been meeting subsequently with CBA to get more details. We are investigating the matter.

Senator KETTER: So you found out about this through the media, Mr Kell?

Mr Kell: The details, the extent of the matter, were found out when we found out through the media.

Senator KETTER: What is ASIC's understanding of the period of the misconduct?

Mr Kell: Our understanding of the period of the misconduct is that CBA became aware of it in 2013. So that was some time ago. But, as I said, we're still finding out from CBA some more detail about the matter.

Senator KETTER: So this poor behaviour just continued. For you to have to find out about this through the media is just indicative of ongoing—

Mr Kell: I'm not sure that it continued beyond 2013. I'm not sure. I wasn't suggesting that it continued over that period. That's something I can come back to you on.

Senator KETTER: But the fact they didn't report it to you, and you only found out via the media—

Mr Kell: I only found out about the detail. There was a very brief report a little way before the media report to us from the CBA, but didn't contain the detail that we saw in the media report.

Senator KETTER: Can you take on notice whether they provided you with at least some detail of that?

Mr Kell: Sure.

Senator KETTER: What's your understanding of the number of customers affected?

Mr Kell: Again, we're in the process of obtaining information from CBA about the extent of the conduct. We're reviewing information we've obtained from the bank under notice in order to inform our decisions on next steps, and that includes the breadth of the conduct.

Senator KETTER: Has ASIC taken regulatory action over this issue as yet?

Mr Kell: Only to the extent that we have issued notices to obtain material from CBA, and we are investigating the matter.

Senator KETTER: Finally, do you expect to take regulatory action in relation to these issues?

Mr Kell: Look, I don't want to prejudge what decisions we might make, but we're taking it very seriously. As I said, it's the subject of an investigation.

Senator WILLIAMS: Mr Price, in 2009 I took a representative from ASIC to Adelaide. We met with John Viscariello. We gave ASIC two folders of chronological evidence about the accusations of Peter Macks, who worked for PPB as a receiver. Peter Macks spent \$500,000 of creditors' money suing a lady called Heidi George for \$27,000. ASIC did nothing. I'm alarmed. I table this letter in which ASIC responded to Mr Viscariello saying, on 13 January 2012:

I confirm that Peter Macks agreed with the Australian Securities and Investments Commission to seek retrospective approval from the committee of inspection in relation to the decision to fund the Heidi George Litigation.

ASIC ticked it off. This has cost John Viscariello millions. He won the court case under Chief Justice Kourakis and has won the appeal. Just before his appeal case started, his barrister committed suicide. It's been a shocking time for him. My question is: why didn't ASIC run this case? Clearly, you should have.

Mr Price: Senator, I will say at the outset that I certainly feel for Mr Viscariello and his circumstances. He's been through a very difficult time.

Senator WILLIAMS: He's been through hell, Mr Price.

Mr Price: I would, however, take issue with your final point that he won the appeal. For example, there is a recent article in the *Insolvency Law Bulletin* that talks about this very case. It concludes that the full court's decision largely vindicates the liquidator on findings of fact, 'although there were still breaches of s 180 relating to the continuation of legal proceedings'. It remains the case that ASIC does have some action on foot in respect of the liquidator in question. That action is ongoing, and therefore it is probably not appropriate for me to go into a large amount of detail in respect of that action.

To the extent your point is why we did not make a decision to investigate this matter when the material was first brought to us, I will go back to a point I made in this place a couple of times before: with every matter that we decide to take, there is an opportunity cost. At any one time, there are a large number of matters where we

have to make decisions about which one to resource and which one not to resource. In the case of this particular matter, a decision was made not to resource it. As I said, the full court's decision in this matter largely vindicates the liquidator on findings of fact, according to this independent article. I very much appreciate and feel for the difficult situation that Mr Viscariello has been in. We made a decision at the time not to take this action. Other actions were preferred rather than this particular action. But in more recent times we have taken, and we are taking, action against the liquidator in question, and we will follow that action through.

Senator WILLIAMS: Should you have taken action? Looking at this in hindsight?

Mr Price: In hindsight, as I said, with every choice we make about an investigation or enforcement decision, there's an opportunity cost. So it's not as if there was nothing else for us to do. It would have been fantastic if we could have taken this action, but necessarily that would have meant that some other action that we were taking—perhaps criminal, perhaps against an institution, perhaps recompensing investors—was not possible. Those are the sorts of decisions we need to make every day.

Senator WILLIAMS: Thanks, Mr Price. I appreciate that. I'm sorry I had the appeals judgement wrong, but I was led to believe that he'd basically won it.

Mr Price: I'm happy to provide a copy of that.

Senator WILLIAMS: Thanks for that. Mr Shipton, on Thursday 17 May you gave a speech titled *The Trust Deficit and Corporate Australia*. The speech contained the following statement:

...the best way to deal with some conflicts was not to manage or disclose them, but to *remove them altogether*.

This is an option that ASIC favours in relation to conflicted payments and advice. There can be no ambiguity in this area.

In terms of life insurance, Mr Shipton, there was a long process that started with ASIC Report 413 in 2014 and ended with ASIC legislative instrument 2017/510, which introduced caps and clawbacks for life insurance commissions from 1 January 2018. Given your speech and the context of your published statement, do you no longer support your own legislative instrument on life insurance commission caps? If not, what has changed?

Mr Shipton: Thank you for the question. To clarify, when I was talking in that speech about conflicted payments and advice, I was talking about financial advice. I went on to also use that as an example or a benchmark to show that, when talking about the broader issue of conflicts of interest, particularly in remuneration, eradication of conflicted payments is one option. I wouldn't go on and then extrapolate that our policies in relation to other areas like life insurance are a direct consequence. That said, it is very important in all of these areas that the industry, and companies and entities within that industry, are constantly looking at the remuneration structures so as to minimise or mitigate conflicts of interests.

Senator WILLIAMS: So there's no plan for changing the process that was put in place for commissions for life insurance? The other commissions for advice have gone?

Mr Shipton: Correct.

Senator WILLIAMS: No plan to change that?

Mr Shipton: Again, I called in this speech—and I'm happy to reiterate it today—for the industry to take a lead. I called on that day for the industry to have a wholesale review of their practices in relation to conflicts of interest, particularly in relation to remuneration structures, so as to eradicate or mitigate and deal with conflicts of interest, because they are far more prevalent than they should be. Going back to some earlier comments, they are causing bad customer outcomes. It is a priority to ensure that conflicts of interest do not end up with consumer and customer outcomes which are untoward.

Senator WILLIAMS: Mr Kell, I'm running out of time; I have about three questions. You've used enforceable undertakings for many years now on big companies for wrongdoing. Are enforceable undertakings a sufficient deterrent to stop bad behaviour?

Mr Kell: Enforceable undertakings are a very effective tool. You need to sit them alongside the fact that we take a considerable amount of criminal actions.

Senator WILLIAMS: A very effective tool in relation to preventing wrongdoings in the future?

Mr Kell: They can be. They can be a very effective tool, yes.

Senator WILLIAMS: Perhaps they can't be, either.

Mr Kell: In cases where we don't think they're going to be an effective tool, that they're not going to stop the conduct or where they're not going to provide remediation we are not prepared to use them.

Senator WILLIAMS: I asked the question in the context of AMP. In 2007, you put an enforceable undertaking on AMP, correct?

Mr Kell: It was in 2006, 12 years ago.

Senator WILLIAMS: Look at the behaviour of AMP coming out in the royal commission. Did that enforceable undertaking you put on AMP in 2006 do anything to deter their behaviour in latter years?

Mr Kell: At the time—and I have to say, I wasn't around at the time; this was 12 years ago now—it enabled compensation to be paid in a way that wouldn't have been achievable through a court outcome. It's also worth remembering the environment back in 2006. The legislative standard of advice was different, arguably lower. All commissions were allowed. There were no civil penalties attached to the misconduct, had we taken court action. It's obviously been extremely disappointing to see the conduct of AMP in recent times around the fees for no service issue, but I think it's difficult to imagine that an enforceable undertaking from 12 years ago could have prevented some of those things that we've seen in the last few years.

Senator WILLIAMS: If you have them in the future, let's hope they work to more effect. Turning to small amount credit contracts in industry, who is responsible for that? Is it you, Mr Kell?

Mr Kell: I think so, yes.

Senator WILLIAMS: There were issues in 2013 where compensation was sought for six consumers. Are there any issues in that industry which are currently against the interests of the consumers they serve? Are there any ongoing issues with small amount credit contracts? There were some half dozen back in 2013. Are there any now?

Mr Kell: Yes. We have some investigations underway in the payday lending space. I won't go into those that are the subject of current investigations, but it is an area of focus for us, because we are talking about particularly vulnerable consumers in many cases.

Senator WILLIAMS: With the flagged changes being talked about in this building, will you be engaging with the National Credit Providers Association and having negotiations and consultation with them?

Mr Kell: We certainly will be. We've had some meetings with the industry association and we've had meetings with the consumer associations that are interested in this area. We're obviously engaging with Treasury and the government. We think the reforms are important. Our experience in the administration of the regime over the last few years has been that there have been some shortcomings. It hasn't properly addressed some avoidance issues and it hasn't properly addressed the issue of consumers ending up in a spiral of taking out one loan to pay back the previous loan and another loan to pay back that one, and so on. We've certainly supported reform. Ultimately the decision on the reform, the shape it takes, is one for government. We want to make sure it works and can be enforced.

Senator WILLIAMS: In other words, you want to clean it up but not crucify it? I hope that's the case. Mr Shipton, Senator O'Neill was talking in the chamber a couple of weeks ago, saying how we've cut the funding for ASIC in the budget. The Superannuation Complaints Tribunal will go from ASIC when AFCA kicks off in early November, correct?

Mr Shipton: Correct.

Senator WILLIAMS: You don't need the funding for that. We've been on at this for years about how you spend \$30 million policing, if I use the word, financial planners, but you only collect about \$2.8 million in fees. You spend \$10 million a year policing liquidators and only collect about \$40,000 in registration fees. Your user pays system will be coming in soon—is that correct?

Mr Shipton: Yes. The industry funding model will commence this coming financial year.

Senator WILLIAMS: Is ASIC funding good enough?

Mr Shipton: The current funding regimes for ASIC very much are subject to NPPs. Some of those NPPs are winding down and that explains that there's been movement in our funding. I would like to reiterate that we have put in on this Monday a funding request based on a number of strategic initiatives that I've outlined in my opening remarks. That request is being processed in the ordinary course. As I also mentioned, I have personally spoken to the Minister for Revenue and Financial Services and the Treasurer and I have received positive responses. I am very respectful of the due and proper processes in these regards, and I will leave my remarks at that.

Senator WILLIAMS: We will run through that in October and see how you go. Good luck and all the best with what is coming out of the royal commission. I believe ASIC has played a major role in giving evidence to the royal commission on companies such as AMP and others, is that correct?

Mr Shipton: That's correct. We've been very pleased with the support that we've provided the royal commission, which is doing incredibly important work and putting a lens on issues that the community needs to see. We remain very committed to trying to deal with the issues coming from the royal commission, now and into

the future. But as you highlighted in your question, these issues were very much a part of our regulatory attention for quite some time and they will remain part of our regulatory attention into the future.

CHAIR: As a follow-up to Senator Williams' question, do you have any idea exactly how many requests from the royal commission ASIC has already responded to, or how many documents you might have already produced?

Mr Kell: We would have to take that on notice. It's a lot.

CHAIR: The official count is a lot!

Mr Kell: That's what we do. That's our job.

Senator KETTER: Can I follow up on that issue of funding cuts? Mr Shipton, I understand that you've been subjected to increases in your efficiency dividend over the last four years. What strategies did ASIC adopt to meet the efficiency dividend increase beginning in 2014-15? Was a reduction in staffing levels one such measure?

Mr Shipton: I will have to defer to my colleagues who were at the organisation at the time.

Ms Armour: We have adopted a number of strategies to ensure that we are operating as efficiently as possible. One of those strategies has been actually NPP funded since 2016, but we had put it in place a number of years before that. That is transforming the platform on which we do our work. So we have a simpler system, we have more connected databases, so that staff can make inquiries at one place in one issue, rather than having to look at a number of dispersed areas. We've been running that program for some time. So it's changing our platform, and is helping us to garner a number of efficiencies.

Senator KETTER: My question is, was reduced staffing levels one of the methods you adopted to meet your efficiency dividend objective?

Ms Armour: We did have a reduction in staffing levels in 2014 as a result of this.

Mr Kell: We might need to check the dates.

Senator KETTER: What was the impact of these cutbacks on ASIC's supervision of enforceable undertakings during this period?

Mr Price: I think—and again it's the dates that I'm trying to place—but remember around this time there was the Senate inquiry into the performance of ASIC. There was a substantial piece of work that followed that around enforceable undertakings generally, and it did include enhanced supervision around those undertakings.

Ms Armour: There was an audit conducted by the ANAO into our processes in managing enforceable undertakings. That made some recommendations, which we adopted. We'd be happy to provide you with the relevant material on notice.

Senator KETTER: I note that while the number of financial adviser entities increased by over 400 between 2015 and 2016, the number of ASIC staff in the team overseeing them dropped from 32 to 26. Staffing numbers also fell in the investment manager and superannuation oversight team despite the number of entities in that regulated population also increasing. Did these cuts hamper the ability of the stakeholder teams to supervise their regulated operations?

Ms Armour: There was a redundancy program in 2014 as a result of cuts to our core budget. We can come back to you with details on the numbers of staff who were made redundant.

Senator KETTER: During that period, I understand that ASIC was heavily reliant on independent experts to oversee bank remediation. Was this related to these cuts?

Ms Armour: No. Generally practice with enforceable undertakings, depending on the nature of the matter and the undertaking, is that frequently independent experts are appointed to conduct a review of the practices and processes in the organisation. ASIC staff will view the work of the independent expert and will work with the firm in response to recommendations by the independent expert in a program that is developed with an independent expert. We haven't changed our processes over that period of time in relation to dealings with the independent expert. The one thing we have changed is that in certain situations ASIC may appoint the independent expert, and we have a system of public reporting on the progress of the independent expert's review.

Mr Price: If my memory is right, those enhancements came out of the Senate inquiry into the performance of ASIC. That drove some changes in terms of how that work was reviewed.

Senator KETTER: In which other ways did the funding cuts and efficiency dividends curtail ASIC's regulatory capacity?

Ms Armour: We've always done the best job we can with the resources available to us, so we will have made an overall adjustment to the way we approached issues.

Mr Price: We do look at things critically in the goods and services budget. That tends to be the first area. We think very carefully about what travel we're doing, whether meetings can be done by video conferencing rather than by in person, reducing travel costs in that way. There's a whole range of things that might be put in place, but we don't want to micro-manage the senior executives for each team. The senior executives for the relevant teams are allocated budgets and they tend to make decisions about what the best areas are where savings might be able to be attained. That's a general principle that we try to adhere to.

Senator KETTER: Mr Price, in answer to a question from Senator Williams you mentioned that if you had undertaken the legal action that Senator Williams suggested, there would be an opportunity cost in that you wouldn't be able to initiate another action. It suggested to me—

Mr Price: My point about opportunity costs applies whether ASIC's budget is \$200 million, \$300 million, \$400 million or \$500 million. It's the same basic point. There will always be matters where we have to make choices about what is more important, what seems to be a better case, and therefore what resources are allocated to it. That applies regardless of budget.

Senator KETTER: That's right, but one would like to think that for ASIC, as a regulator, if there are meritorious cases, you shouldn't have to make a decision amongst them as to which are to be pursued on the basis of funding?

Mr Price: Sure. There are real questions of judgement in there. We think our staff do have the right judgement to make the right decisions on which cases to take forward and which ones not.

CHAIR: I'm certain, Mr Price, you made the same sorts of decisions when there was an efficiency dividend applied in 2008, 2009 and also 2012 and 2013.

Mr Price: Absolutely. I reiterate that we do the best job we can with the budget allocated to us. We understand that there are many competing demands on governments of the day. That's our commitment to people—we will do the best we can with whatever money we're provided with.

Senator KETTER: I'd like to move on to another subject. The fact that there are billboards popping up over Queensland with Mr Palmer's photo on them reminds me about your investigation into his activities, particularly in relation to Queensland Nickel. Could you update us in relation to the allegations of shadow directorship?

Mr Price: I think I indicated at the last appearance—I can't remember whether it was the parliamentary joint committee or Senate estimates—that our investigation was well advanced. That remains the case. I probably would not like to go into too much more detail at this stage, at least in public hearings.

Senator KETTER: Okay. I respect that we certainly don't want to prejudice anything. I'll keep going. Can you tell me if there are any new allegations that you are following up on in this matter?

Mr Price: No, the core allegations we're looking at are still the same. They're basically the ones that I think we discussed on the last occasion. They relate in particular to the following matters. Just bear with me.

Senator KETTER: Breaches of directors' duties and false documents.

Mr Price: Correct. And in particular various—so the use of company funds to fund the Palmer United Party and other companies controlled by Mr Palmer.

Senator KETTER: I was interested if there was anything new. So are you saying there is nothing new?

Mr Price: Yes.

Senator KETTER: Can you tell me what other agencies ASIC is working with in relation to these investigations, and what their involvement has been?

Mr Price: Again, I would prefer not to go too far into that.

Senator KETTER: Sure. Can you tell me if ASIC has spoken to Mr Palmer or Mr Mensink as part of its investigation so far?

Mr Price: I'd prefer not to go into that. We have conducted a number of interviews with various parties, but I would prefer not to name those parties.

Senator KETTER: Okay. I have a number of other questions. Can you tell me what the potential maximum penalty is for someone found guilty of acting as a shadow director?

Mr Price: That's not quite how it works. Basically the shadow director provisions say that you are placed in the same position as a director of the company would be if that person were correctly appointed. The penalty that might attach really depends on what breach of the law flows from that person's action. For example, if there was misuse of company funds, as a shadow director the penalty that would apply would conceivably be in the same range as the penalty for the misuse of funds by someone who is an actual company director.

Senator KETTER: Okay. In relation to Mr Mensink, he's wanted on two warrants to appear before the courts. Mr Palmer has told the courts he was at one stage paying him \$4,000 a week while he was away on an overseas holiday while the courts were seeking his attendance. Are you concerned that Mr Palmer has said he'd be willing to pay his nephew \$1 million a week, if he wanted to, given that Mr Mensink is a wanted man? Is this a breach of any corporate laws?

Mr Price: Mr Mensink has been asked to appear before the court in relation to some civil proceedings, if my memory is right, that liquidators of the company are undertaking. The comments that Mr Palmer has made recently in relation to Mr Mensink are not the main focus of our inquiries.

Senator KETTER: You don't believe there's any breach of corporate law involved in the comments that he's made to the court?

Mr Price: On the basis of the material I've seen to date, I do not believe so.

Senator KETTER: Thank you.

CHAIR: Just before I throw to Senator Whish-Wilson, I want to confirm, Mr Price, the efficiency dividend that applied in the 2008-09 period was two per cent and the efficiency dividend in 2013 was 2.5 per cent—is that correct? Is that your best recollection of those efficiency dividends applied by the Labor government in those years?

Mr Price: I have a good memory, but not that good. I'll take that on notice.

CHAIR: Fair enough. Thanks very much.

Senator WHISH-WILSON: I might start with a big broadbrush question, if I could. Senator Williams and I, and probably Senator Bushby, have been on this committee, and others, in the last five years looking at a broad range of inquiries. I campaigned hard to get a royal commission and I was quite surprised by some of the revelations that have come out of the royal commission, even after seeing and experiencing what I'd experienced. I know other commentators, including very experienced commentators, have made similar comments. I suppose the big question that a lot of people would like answered is: was ASIC surprised by some of the revelations we've seen at the royal commission? I will give you a couple of examples. I know you won't be commenting, Mr Shipton, on specific aspects of some of the revelations, but, for example, CBA knowingly charging customers who'd been dead for a decade; there's the NAB branches in Western Sydney with their Introducer Program, and bribery and forgery rings. We've talked about AMP already, how they lied to you guys on 20 individual occasions and how they misrepresented the findings of their own audit reports. They are some examples. Can you speak generally to them? Have you been surprised by some of the revelations, or did you already know about these things?

Mr Shipton: The vast, vast, vast bulk of the matters that have appeared as case studies are known to us and have been a matter of regulatory and investigatory attention, and my colleagues can speak in some detail on that. A very good example is the broader fees-for-no-service issue, which has rightly been highlighted by the royal commission. Again, the royal commission has done the community a great service by highlighting these issues.

Senator, you're absolutely right: you can sit in this place or you can sit as a regulator, and it is still nonetheless confronting to see these matters play out on the screen and in the public domain. This is very important, and that is why the royal commission is serving a very valuable role. Fees for no service is a very good example. We reported this in 2016. It's a subject matter of an ASIC report, and it is a matter that we have paid serious attention to and we continue to pay serious attention to. In fact, some of the initiatives that I spoke to in my opening remarks are very much aimed at accelerating some of the work in relation to advisers and the deficiencies that we see in that space. Before I hand over to my colleagues, I would reiterate that while the vast, vast bulk of the matters were under our regulatory attention, it is still, as you alluded to, nonetheless extremely confronting to see them in the public domain.

Senator WHISH-WILSON: Hence your comments, Mr Kell, about being very disappointed about these revelations about AMP? You were aware of them?

Mr Kell: Yes, by and large. But there have certainly been some instances that have come to light through the royal commission case studies where it's become apparent that not all the information about a particular matter, say, a particular advisor, has been reported to the regulator. That in itself is obviously of concern, and we will be following up with that. It might have been that some information about an advisor engaging in misconduct has been reported, but not the full picture. But in relation to the AMP matter, we have a very significant investigation underway there. We've been public about that.

Senator WHISH-WILSON: That was underway prior to the royal commission?

Mr Kell: It's been underway for some time now, arising originally out of, as the chairman said, our work looking at the fees-for-no-service issue. That significant investigation is continuing. We're considering criminal and civil options there. I don't really want to go further into it because it's quite serious at this point in time.

Senator WHISH-WILSON: I respect that; I wouldn't want to compromise your investigation. And in relation to some of the revelations, like the Commonwealth Bank charging dead people—was that a revelation? Are you able to comment?

Ms Macaulay: We weren't specifically told that in so many words. It may have been that those clients were included in broad statistics or broad groups that were reported to us, but it was never made plain that some of these clients had passed away.

Mr Kell: We're following up on that particular issue. With the fees-for-no-service investigation that we've been doing across the large firms, there's around \$220 million so far that's been identified for remediation; there's more than 300,000 clients across the five largest entities. We expect that to grow significantly, I'm afraid to say, because some of those entities are still undertaking reviews around who has been charged fees without advice being provided. Within that mix, it has now become apparent with CBA that some of those clients were deceased, which is obviously completely unsatisfactory, and we'll be following up on that aspect of it.

Senator WHISH-WILSON: And the same with the NAB branches in Western Sydney with their Introducer Program?

Mr Kell: ASIC has had a significant program around loan fraud matters underway over the last few years. This includes taking action both against individual brokers that have engaged in fraud and also some more large-scale systemic matters. That is one matter that we were aware of and that we've been investigating and engaging very closely with NAB on, so there is a major investigation underway there.

Senator WHISH-WILSON: That was underway prior to the royal commission as well?

Mr Kell: Yes.

Senator WHISH-WILSON: How long was that underway for?

Mr Kell: I'd have to take that on notice, but more than a year. Again, from our perspective it is important that the community gets to see some of the issues around loan fraud. There will always be, given the size of the mortgage and other finance industries in Australia, some fraud. Our objective is to minimise the risk of that and to take brokers and others out of the industry as quickly as possible. I think we've removed about 70 so far since we've had the regime, with more than a dozen criminal convictions. We had one earlier this year—a five-year jail sentence for a big \$180 million loan fraud. It is a focus for us, because you just don't want that sort of thing spreading.

Senator WHISH-WILSON: I will ask you a question that I asked the other two regulators today, the ACCC and APRA. It's probably more to do with prudential financial risk, but I know you have a direct responsibility for ensuring that lending standards set out under the national consumer credit code are adhered to. Is that correct?

Mr Kell: Yes. We have responsibility for the responsible lending standards.

Senator WHISH-WILSON: The royal commission has also uncovered an overreliance by banks on the household expenditure measure, the HEM, to determine a loan applicant's income, particularly for household mortgages. Have you investigated the use of this measure in the sleep is it where they have where they've introduced this program past and do you agree that there is an overreliance on the HEM in setting mortgages and mortgage risk weightings in Australia?

Mr Kell: It has been a significant focus for us. We've had, in particular, a major focus on the use of benchmarks in relation to interest-only loans. We did a major review there a few years back. We've taken some actions against some of the major lenders in respect of overreliance or inappropriate use of benchmarks without taking into account people's actual expenditures and incomings. We have Westpac in court at the moment on this matter. I don't want to talk further about that. We'll see how that goes. Certainly it has been a very significant focus for us and we're currently engaging further with the banks around this. We have seen improvements in that area, I have to say, so we've been pleased that the banks and the other major lenders have responded and improved what we would have regarded as an overreliance in this area. We hope to see that continue.

Senator WHISH-WILSON: Can I put another broad question to you—and I suppose various senators have touched on it in some way or another tonight. To the public that are looking at the debate at the moment around the royal commission and seeing examples of misconduct or fraud or unconscionable conduct—whatever you want to call it—how do you separate pursuing corporations or companies through enforceable undertakings or civil and criminal proceedings versus individuals within those companies? Where do you draw the line? Most

people out there say, 'We want to see people being thrown in jail.' Why aren't these executives going to jail? If someone steals from a car three times, they'll go to jail. Why are these people getting away with it? Corporations can pay the fee, and it's a cost of doing business, and they move on. It's the most common question I get, all the time. I find it difficult to answer, because I actually don't know the answer. How do you separate out individual conduct within organisations? I did write down, Mr Kell, that you mentioned you've got new laws around administrative actions or banning actions against executives.

Mr Kell: Senior managers.

Senator WHISH-WILSON: Sorry, senior managers. When you are going to pursue misconduct how do you decide between going after the individuals to get a conviction and letting the company take the rap, pay the fine and move on?

Mr Shipton: Let me start and then the deputy chair can pick up. The starting point for any regulator is that we are in the business of aiming for a financial system for all Australians that is fair, strong and efficient. That's our goal. We will use all of the tools available to us to achieve that goal, modify behaviours and get the right outcomes to get that goal. You mentioned our range of enforcement tools that are absolutely instrumental and absolutely key, and we will utilise them. Our aim when we're exercising the discretion that my colleague Commissioner Price was talking about is to get to a point whereby Australians have confidence in the integrity, the efficiency, the strength and the fairness of the financial system. We work back from that goal. That is what we're aiming for.

When we are presented with the misconduct that we're seeing very clearly through the prism of the royal commission and, as we have mentioned before, we have been focused on for quite some time, we are exercising professional regulatory judgement in relation to the particular cases and the particular circumstances, again with the ultimate goal of that efficient, fair and strong financial system. There isn't a bright line between a corporate entity and a person. It is what we believe to be the right response in the circumstance with that goal in mind. Might I also add, as you've highlighted, there are a range of different enforcement options to us and we will exercise our best discretion in trying to apply whether it's a civil pursuit, a criminal pursuit, an enforceable undertaking, an administrative action or the like. So you've actually highlighted one of the great challenges of a good regulator, and that's something that we are striving to achieve by being strategic but above all by being very attentive to the harms that have been manifested and the ultimate goal.

Senator WHISH-WILSON: And the disincentive for this kind of thing not to continue?

Mr Shipton: Correct.

Mr Kell: I also want to make the point here that it's not always the case that these objectives are mutually exclusive and, where possible and where it's relevant, we will seek to take action to address problems within the firm—imposing requirements on the firm to improve its processes, to improve the way, say, in the financial advice area, it audits financial advisers and remunerates financial advisers while also potentially taking the worst advisers out of the industry through bannings—and also, hopefully, in some cases ensuring remediation or compensation for the consumers. In the larger and more significant matters, you are looking to have, if you like, a holistic approach to ensure that you get the consumers fixed up, the people who are responsible for misconduct taken out of the industry and the firm itself having to bear the costs of fixing their own systems.

Ms Armour: I don't accept the premise of the question, which seems to be that we don't take action against individuals.

Senator WHISH-WILSON: I didn't say that. I said that the perception on the street is that you're not throwing anyone in jail.

Ms Armour: Yes, and that's a really unfortunate perception because it is not reflected by the facts. In the last seven years we've had more than 160 people convicted criminally.

Senator WHISH-WILSON: Senior managers of corporations?

Ms Armour: We've run cases against senior managers and we've run cases against people who may have been participating in the markets. We've had a range of cases. We have actually taken over 140 civil cases now. Often they are against corporations, but we have taken them against individuals as well. In fact, we have some cases underway in relation to individuals who are senior managers of Rio Tinto. We actually do that, and I'm happy to provide the information.

Senator WHISH-WILSON: I understand. This committee had an enquiry into white-collar crime only last year, and, of course, we've all worked hard to get you and to support you in your call for higher penalties and

provisions. Certainly, I think the overwhelming evidence was that goal time is the biggest disincentive for managers in companies, especially around changing corporate culture. I'll just put that on the record.

Senator BUSHBY: Mr Shipton, you mentioned that ASIC was aware of the vast majority of cases that the royal commission is looking at, and, when Senator Whish-Wilson went through a number of cases, you indicated that ASIC was already investigating most, if not all, of them, I think. To what extent is the royal commission informed by what you're giving them? I presume that you haven't been able to talk about these because you have a requirement to keep confidential who you're investigating, but, with the royal commission, you can provide information to them and then they can open it all up? To what extent is the work of ASIC actually informing the work of the royal commission?

Mr Shipton: We would like to think that we are being very helpful and beneficial to the work of the royal commission. The chair, Senator Hume, asked earlier about the volumes of information we're providing, which is absolutely significant. So I am very confident in predicting that the information we're providing is extremely useful and helpful to the royal commission. But, of course, having said that, the royal commission is conducting its own work. It is deliberating in its own way. We respect their important and very independent role that they are performing, and we await the recommendations or any matters that they happen to bring to our attention and to the attention of other agencies.

Senator McALLISTER: About three years ago, I asked Mr Kell about the use of the Henderson poverty line. At the time, you were engaged in enforcement with the Bank of Queensland. You said that you were concerned that the use of benchmarks might not be appropriate. You said you thought industry was moving away from those practices but that the responsible lending laws would require a very different approach from lenders and that a reliance on benchmarks alone would not be acceptable. Can I ask how many enforcement actions ASIC has taken in the last year in relation to the misuse of benchmarks?

Mr Kell: I think we'll have to take that on notice. We have one major one in court at the moment with Westpac. Are you talking about benchmarks or responsible lending more broadly?

Senator McALLISTER: Benchmarks, specifically.

Mr Kell: I think that might be the main one, but I'll have to come back to you.

Senator McALLISTER: Do you have any idea how many enforcement actions have been taken over the last five years?

Mr Kell: I'll take that on notice as well.

Senator McALLISTER: Is it tens or hundreds?

Mr Kell: No, not that many.

Senator McALLISTER: Not hundreds?

Mr Kell: Certainly not hundreds. I'll come back to you on the benchmarks issue.

Senator McALLISTER: APRA made a supplementary submission to the banking royal commission, and, drawing on their targeted review, they indicated that the extent of reliance on the benchmark is not consistent with APRA's preferred approach. That evidence from APRA, which they confirmed this evening, was that the problem is relatively widespread. Can you tell us what steps you are taking to proactively identify instances of breaches, particularly in relation to the inappropriate use of benchmarks?

Mr Kell: We conducted a major review several years ago, which we have subsequently repeated, on the use of benchmarks and responsible lending more broadly, especially in relation to interest-only loans, which is the fastest growing sector in the home loan industry. We looked at the lenders, and we undertook a separate review of the responsible lending obligations of brokers because both parties have responsible lending obligations in the credit sector. We came out with a set of recommendations. I haven't got the report in front of me, but I'm happy to provide it to you. It set out where we thought improvements needed to be made. We identified and engaged with the lenders on that and those improvements generally were made. That has also subsequently led to the test case, in effect, that we have before the courts at the moment in relation to Westpac. So it's been a focus for us.

Mr McGuinness: The central issue in the case against Westpac to which the chair has referred is about the use only of benchmarks in the absence of using actual expense from borrowers. So we are putting that front and centre in that case. That arose out of this review to which Mr Kell has referred. That review was also conducted in a collaborative and joint way with APRA. Out of that work sprung our concern more broadly around benchmarks and their use in a vacuum. That is a critical question in this case that will be before the court for trial in September this year.

Mr Kirk: One of the other things is that the simple case, and the rarer case, is the one where they're used in a vacuum and used as a substitute for asking any questions of the borrower. The more common practice which I think may be concerning APRA is that, having asked questions of the borrower and got information about their expenses and the like—

Senator McALLISTER: The benchmark is a substitute?

Mr Kirk: you use the benchmark as a test against that. Even there the concern is the benchmark being used as the backstop check is not high enough. The experience, I think, from lenders is that very often people understate. They don't want to use the information that people have given them without testing it because they think it's too low. To some extent the benchmark, used wisely, can be used to put a check on the expenses people are really reporting and to test whether that is realistic for a person in their circumstances.

Senator McALLISTER: Is it your assessment that that is how benchmarks are being used?

Mr Kirk: That's a very common use of benchmarks. As I said, there is also the rarer case—or we hope it is rarer—where it's used as a substitute for asking the questions at all. I think that industry has moved away from the bare use of benchmarks to a more complicated process, but there are still problems with that complicated process and some questions to be asked about it.

Senator McALLISTER: Mr Shipton, I apologise that I wasn't here for your opening remarks, but I understand that you talked about the need for stronger penalties against licensees in breach. There's been some commentary—and I'm sure you're aware of it—in an article on the ABC website today that in fact there is a penalty in relation to section 912A's obligations and that penalty is the suspension or removal of a financial services licence under section 915. Do you believe that that option is available to ASIC?

Mr Shipton: Thank you for the question. That option is certainly available to ASIC. I would like to just clarify my statement from the speech which has been quoted in that article. I want to put it in context because I don't believe the context was made as completely clear as it could have been in the article. I was actually talking about the announced reforms which my colleague the deputy chair has just mentioned that would strengthen the available penalties. I was talking about the fact that section 912A does not currently incur a penalty and it would under the proposed reforms. I was referring to either civil or criminal penalties. As I mentioned in my opening remarks, that is being addressed.

I also want to clarify that the article referred to section 915C, which is talking about administrative action to suspend or cancel a licence. It's important to note that this does not give ASIC a unilateral or automatic power to remove or suspend a licence. It instead establishes a procedural requirement for a hearing which, amongst other things, would then trigger procedural fairness. Therefore, I would not personally characterise this particular power as a penalty. I think that clarifies my remarks.

Senator McALLISTER: But it is available to you as a sanction?

Mr Shipton: It is a sanction and it is a consequence—

Mr Kirk: If I can clarify: it's available as an administrative procedure. The purpose of that administrative procedure must be to protect the public. If we were to seek to impose conditions or to take away someone's licence with the intent of punishing them for wrongdoing, that would be overturned in the courts. That's not a permissible use of licence conditions or removal of a licence. We're not given the power for that purpose and we can't use the power for that purpose.

Senator McALLISTER: In other securities it is possible. The Hong Kong securities regulator this year suspended the ability of UBS to act as an IPO sponsor for 18 months.

Mr Kirk: I don't know whether they did that as a penalty or to protect the public. Again, with examples here, we can take someone's licence in order to protect the public.

Ms Armour: In any event.

Mr Kirk: But in a case where we seek to do that—which commonly happens where we have sought to do it—they put up the defence saying: 'Yes, we did those things, but we've now got new procedures in place and we're undergoing a review. We've brought in a compliance expert. We will be able to comply in future, therefore you should not take our licence.' That is an argument that is sufficient to keep their licence in the courts.

Ms Armour: And we regularly exercise this power. Over 800 people or entities have been banned from having licences or have had licences suspended in the last seven years. It is a power we use, where it makes sense. It's a power we use, where it's available.

Senator KETTER: Can I just follow up on that question, Mr Kirk. Section 915C—you know this better than I do—says:

ASIC may suspend or cancel an Australian financial services licence (subject to complying with subsection (4))—where—

... the licensee has not complied with their obligations under section 912A.

Senator McALLISTER: It's fairly direct.

Mr Kirk: That opens the door. It's a possibility, if it's necessary, in order to protect the public. It can't be done as punishment for the breach.

Mr Price: That's right. The full details are set out publicly in ASIC's information sheet 151—which I'm happy to read out here—and in our Regulatory Guide 918, *Licensing: administrative action against financial services providers*.

Senator McALLISTER: Maybe don't read it out, Mr Price.

Mr Price: But these are not constraints we impose on ourselves.

Senator McALLISTER: I understand that.

Mr Price: This is how administrative law works in this country.

Senator KETTER: But, Mr Shipton, if somebody was listening to your speech or listening to your opening comment tonight where you said that there is no penalty for a breach of these obligations in relation to 'efficiently, honestly and fairly', they would think that there's no penalty, no sanction and nothing that anyone can do. That's not the impression you wanted to convey, is it?

Mr Shipton: The point, which I'll reiterate, is that the expression 'penalty' was being used in the context of the act that we administer that connotes either a civil penalty or a criminal penalty. I think this is more of a point at the margin, because, as I've said, there is a potential consequence of a breach of section 912A which would trigger other consequences. The broader point, which I made in my opening remarks—and I'm sure, if you look at *Hansard*, you'll see I was very careful to further elaborate that I was referring to civil and criminal penalties—was the fact that there was a civil penalty on its way. The broader point is that section 912A is an important provision. The reason why it's an important provision and the reason why I highlighted it—and I'm glad you're giving me an opportunity to highlight it again—is it places an obligation on financial entities to be responsible for their representatives and it places a responsibility on them to adhere to financial services law. That's the message I wanted to get across to the broader community and, importantly, to the people in finance that they have responsibilities. What makes me feel better is that we will shortly have a penalty that will enable us to actually enforce it more efficiently and more readily. That's the important point. I'm sorry it's getting lost in legal technicalities, because the broader point is a far more important point.

Senator KETTER: I take your point. I'm certainly not arguing against the need for stronger penalties in this area. We might be splitting hairs here, because you describe it as an administrative procedure or an administrative sanction, but it's a fairly significant sanction to take someone's licence away from them, isn't it?

Mr Shipton: It certainly is. We have, as my colleague Commissioner Armour has mentioned, used it and we will continue to use it. My colleague Mr Kirk is absolutely right to identify that, if we do decide to use it, there are important administrative law considerations that we have to consider. Again, tonight's session has been very useful, because it highlights we have to make important decisions that do have opportunity costs, and we have to exercise judgement. We do weigh up these issues, we do weigh up the processes and we do weigh up how we can get the most efficient outcome in the circumstances that it warrants, because, at the end of the day, our job is to have a fair, efficient and strong financial system for all Australians. That's the ultimate aim.

CHAIR: I was going to go to Senator Patrick, but we have hit the break time. Senator Patrick, can we go for a break and come back? We'll start with you. Are you happy with that?

Senator PATRICK: Yes.

CHAIR: All right. We might do that.

Proceedings suspended from 20:31 to 20:46

CHAIR: This committee will now resume. I welcome back to the committee officers of ASIC. Senator Patrick will kick-off the questions.

Senator PATRICK: Thank you, Chair. I want to respond to a couple of things that have been said along the way, in particular, in your opening statement you made a claim in relation to the royal commission. I want to read this from our bible, which has some derivative from section 50 of the Constitution:

The sub judge convention does not have application to matters before royal commissions... A royal commission is not a court, its proceedings are not judicial proceedings, it does not try cases and it is unlikely that a royal commissioner would be influenced by parliamentary debate.

I just wanted to put that out there. Blanket claims are normally done so in error. Of course, you can make public interest immunity claims on any particular question.

Commissioner Price, you made a statement in evidence before that in many instances you investigated a matter and took it to a point where you then had to consider the opportunity cost of taking it further. That's an unfortunate position you end up being in. I'm a little bit concerned about that. I'm happy to take this on notice, but I'm wondering if you could indicate matters, over can last three years, in which you decided not to, on the basis of opportunity cost, proceed to a court action? I don't mind if it's de-identified but perhaps attached to sector.

Mr Price: Sure. What I was really referring to there was ASIC's information statement 151, which publicly sets out our approach to enforcement. The fact of the matter is that every reported misconduct that comes to us is assessed. It goes through an initial point of assessment. At that point, we ask questions like, 'What is the extent of the harm or loss? What are the benefits of pursuing this conduct relevant to the expense? How do other issues like the type and seriousness of the misconduct, and the evidence available, affect the matter and is there an alternative course of action?'

Following that, you will see a flowchart in that document I'm referring to—that publicly available document—where we ask ourselves whether a formal investigation should be held. Following the investigation, if we do find evidence of misconduct then we do get into a question of what's the appropriate remedy, be it a punitive remedy—that is punishment—protective, preservative, corrective compensation or negotiated resolution.

The important point I want to get across is that every report of misconduct that comes to us is assessed. Then the question of whether or not they're sufficient to actually launch a formal investigation is a question that requires a sufficient level of evidence, because we can't just start an investigation because we feel like it. In addition, there's a question sometimes of judgement in relation to which particular matters should be prioritised at a point in time.

Senator PATRICK: Sure. And it's not a criticism, but you did use the word 'expense' in there. And I understand when you need to balance resources. So, that's the burden of my question. It relates to decisions where you decided that you wouldn't proceed because the cost-benefit wasn't right.

Ms Armour: It's almost a question where it's really difficult to produce an answer for you, because our processes are so iterative. We know we have X amount of money available to us or we anticipate that we'll have X amount, and we assess and then we take cases through stages over a period of time. It's not a case where you—

Mr Price: Let us take it on notice and we'll assist as best we can.

Senator PATRICK: Thank you. And are you aware of any of those matters where you decided not to proceed that have now been re-agitated or re-prosecuted at the royal commission?

Mr Price: That's a very good question.

Senator PATRICK: I'm happy that it be taken on notice, if you think it's complex or requires—

Ms Armour: In relation to rounds 1 and 2, I think we're reasonably confident—

Mr Kell: As I said earlier, there are a small number of matters where it's apparent in relation to, say, individual advisers that not all the information may have been provided to us by a licensee, and we're following up to ensure that if further action needs to be taken then we will take it.

Senator PATRICK: Sure; that's good. I'm just wondering whether you could give us some statistical information that says that there were eight matters that we decided not to proceed with but have been—

Mr Price: We'll assist as best we can. I'm not sure whether we have those statistics, but if we can take that on notice we'll assist.

Senator PATRICK: Thank you very much; that's appreciated. Mr Shipton, you talked about a trust deficiency between the financial sector and the community. I've read a number of news articles, and I might put it to you, giving you a chance to respond, that there may be a trust deficiency between the community and ASIC. Do you accept that proposition?

Mr Shipton: I don't accept that proposition, with due respect. I would frame it that a challenge for any regulator, us included, is to earn the trust, the respect and the confidence of the community. That is something I believe that we have, but I'm not going to take that for granted, and I know that the fine men and women I work with don't take it for granted. This is something that drives us every single day—to earn the trust, the respect and

the confidence of the broader community. We hope and expect that the work we're doing, the regulatory outcomes that we're striving for, will engender that trust.

But you raise a broader point, which is that we have to work very hard at it. And there are significant challenges facing the financial system and the regulatory structure that oversees that financial system right now, and that is redoubling and re-energising our efforts to maintain, strengthen and heighten that trust with the community.

Senator PATRICK: In light of the royal commission and a whole range of matters—I'll step back: one might argue that had ASIC done its job properly a royal commission—whether it was through lack of resources or for some other reason—would not have been necessary. Would you like to respond to that?

Mr Shipton: I don't think it's as simple as one agency or another agency doing or not doing something that triggered the royal commission. I wasn't here when the royal commission was triggered. The only observation I will make—and this was implicit in my opening remarks and I make it explicit now—is that 25 years away, coming back to Australia, I am really confronted by the failure of financial services firms and some people in finance to take the levels of professionalism and customer focus that are needed to heart. That was my motive when I mentioned that there is a trust deficit.

This is why I was mentioning the important responsibilities, in answer to the previous question, under statute by financial services firms to ensure that they comply with financial services law and also provide honest and fair financial services as well as supervise and ensure compliance of representatives. This is where there's been a fundamental failure. And this is where the trust deficit, along with a failure to focus on conflicts of interest and a failure to nurture and encourage a culture and a mindset of professionalism—this is why we find ourselves, in the financial sector and the financial system, in the predicament that we are in. That's why I've been calling upon the men and women in finance to actually meet their obligations, both under statute but also what the community expects, which I think is neatly enshrined in the culture and mindset of professionalism, and that's part of what we're trying to do.

Senator PATRICK: Mr Shipton, what you're doing is looking outward at the sector. I think everyone understands there's a problem there. I'm asking you to look internally and I'm asking for comments internally. You're clearly very experienced and passionate. Have you looked internally? Have you taken the time or gone through a process where you've looked internally and said: 'What could we have done better? Have the people that I've got working for me done the best they can?' Maybe they have; maybe they haven't. The point is: have you looked?

Mr Shipton: I have looked, and my job is to look at where we are today and where we are going to in the future.

Senator PATRICK: But you must look at the past to be able to—

Mr Shipton: Sure, but right now, three months on the job, what I've prioritised is, firstly, diagnosing the challenge and, secondly, thinking about and strategising what tools and what approaches we can use to respond to these important challenges. I outlined some of them. I outlined the fact that we want to accelerate our enforcement outcomes. I outlined that we want to have a focus on conflicts of interest. I also outlined that we want to increase our supervisory intensity. I also outlined that we want to utilise regulatory technology tools. These are some of the solutions that I believe and my colleagues believe can address these harms and threats that are manifesting themselves right now. Yes, of course, there are lessons to be learned. What I've been prioritising in the last three months and will continue in the years ahead is to apply that strategic framework and that strategic mindset. Only by that strategic mindset and the adoption of the right tools and the right circumstances and, importantly, the industry living up to their first-line responsibilities, both what is expected by the community and under the legislation, will we get through into a better place.

Senator PATRICK: In your submission to the royal commission, there's a statement you've made about general conduct obligations. You said:

Presently, there is no civil penalty available for a breach of General Conduct obligations. This is a very real short-coming in the legislative regime.

I wonder going back, with the benefit of hindsight, whether or not you're looking at what you did in the past—I imagine that's a longstanding problem—and saying: 'What did we do about that problem? Did we do enough two years ago or three years ago to address a shortcoming like that and why did we fail to not move government?'

Mr Shipton: I think on that shortcoming, that was a part of the discussion we've just had about increasing our civil penalties and increasing our ability to respond.

Senator PATRICK: But it's taken a royal commission to do that.

Ms Armour: Sorry, that is not correct. It has not taken a royal commission. ASIC advocated for changes to the penalty regime in 2014.

Mr Kell: And earlier.

Ms Armour: And earlier. The Senate committee that reviewed ASIC's performance at that time also advocated. The financial system inquiry also advocated. There was a year-long project conducted in 2017 reviewing our enforcement powers and, actually, that project reported to government at the end of 2017. So this was all underway before the royal commission.

Senator PATRICK: So why do you say nothing's happened?

Ms Armour: The government has announced that it will introduce legislation. We are looking forward to that legislation being introduced into parliament.

Senator PATRICK: How long do you believe those shortcomings were in existence? I think someone said that these laws haven't been reviewed since 2003.

Mr Kirk: 1993.

Senator PATRICK: 1993—so, for a long time.

Ms Armour: And ASIC has been advocating for improvements for much of that time.

Senator PATRICK: To whom?

Mr Kell: To this committee for a start.

Ms Armour: To this committee, publicly—

CHAIR: I get a sense we're all in vehement agreement here, Senator Patrick.

Senator WHISH-WILSON: Senator Patrick, it's true that we have all been working on this for at least six years.

Senator PATRICK: Sure—in this forum, yes, and, I understand, the inquiry into ASIC. I'm actually referring to government—advocating to government—who control the legislative agenda in the parliament. Senate inquiries are very useful for exposing issues and making recommendations, but ultimately it's the government—

Ms Armour: We have been advocating consistently, and we actually put out a public report. Not only were we advocating to government as part of our normal work; we put out a public report on this issue in 2014.

Mr Shipton: Senator, we're very pleased that the government has announced that they are remediating this area. So, there is progress on fraud.

Senator PATRICK: Sure. Where I'm going is that it comes back to your organisation, internally, looking back and saying, 'What could we have done better? How could we have done things differently, with the benefit of hindsight now, to make sure that these things wouldn't happen again?' That's the trust I'm getting too, in terms of the trust between ASIC and the community.

Mr Shipton: Sure. A strategic response—and a strategic mindset—requires an analysis of lessons learned. But I don't personally want to dwell on the history; I want to focus on the demonstrable challenges and threats that are relevant right now and today. Yes of course we can always look to history and try and avoid circumstances repeating themselves. That's why we have some suggestions, which we presented to the government and which we've mentioned to this committee, that we believe can go some way down the track of remediating the challenges and the threats that are confronting us.

CHAIR: Senator Patrick, I've let you go on six minutes longer than I would normally do so. It must be late and I'm getting soft! I'm going to give the call to Senator Abetz. I won't be quite so generous with you, Senator Abetz!

Senator ABETZ: Thank you very much, Chair. Can it be confirmed that a company limited by guarantee, to be registered by ASIC, needs to lodge a constitution? It's pretty basic.

Mr Price: It is pretty basic, Senator. But ASIC has dual responsibility for certain charitable companies with the charities regulator—

Senator ABETZ: I didn't ask about that. Do you have to lodge a constitution to be registered by ASIC?

Mr Price: My recollection is yes, but I would like to check that.

Mr Day: We would want to check that, but I don't believe you have to lodge your constitution with ASIC.

Mr Price: The replaceable rules—

Mr Day: Yes—the replaceable rules could be suitable in that circumstance.

Senator ABETZ: Do you have to have a constitution to be able to be registered by ASIC as a company limited by guarantee?

Mr Day: Yes.

Senator ABETZ: Right. So how do you know that the organisation has a constitution without sighting it? Surely you must sight it.

Mr Day: As I understand it, no, we don't have to sight it. With a whole range of companies, they can utilise and take advantage of the replaceable rules. In circumstances where they have other rules or they've adopted another constitution, they inform us that they have that and that it's held at their registered office. But, again, I would want to go and just double-check that.

Senator ABETZ: You don't bother to check and verify whether it's an appropriate constitution?

Mr Price: There are many elements of our regulatory system that are self-executing—for example, there is no requirement to provide any identity checks for directors of companies.

Senator ABETZ: I'm only asking about a company limited by guarantee. Time is limited.

Mr Price: I understand that. I use that as an example.

Mr Day: There are well over 2.2 million companies in Australia, Senator. In circumstances where you would expect that we would have to vet or review every constitution, I think you would understand that that would be prohibitive. The short answer to that is: we don't review every constitution.

Senator ABETZ: Who, then, is tasked with that to protect the public?

Mr Day: The director of the company.

Mr Price: The directors.

Senator ABETZ: To protect the public.

Mr Day: Why do they need to protect the public, Senator? The company does the things a company does. It has the rules it needs to operate as a company. The company of itself is not a consumer-protection mechanism, as I understand it.

Senator ABETZ: For example, a company might falsely describe itself in these terms: 'The object for which the company is formed is to advance the progressive public policy in Australia where that advancement furthers a charitable purpose.' That organisation is not a charity, is not registered by ACNC. A punter might look at the object and think, 'This is a charitable organisation; this is worthwhile supporting.'

Mr Price: We would very much like to get further details of the matter to which you're referring.

Senator ABETZ: Good. I would invite you to do that. That was going to be my last question: to follow that up. I'm reading object 15 from the GetUp! constitution. It says 'where that advancement furthers a charitable purpose'. The punter reading this would believe that the only purpose is charitable. I would assert that is demonstrably false, but I will leave that with you to follow up.

Mr Price: Thank you.

Senator ABETZ: The other issue with the GetUp! constitution is that it has categories of membership. One is full membership. Those members, basically, run the show. They are the ones who can vote for directors and admit others into the full membership. There are founding members, full members and other classes. Concentrating on full members, we are told in this constitution, under definitions: 'Full member means each of the persons listed in schedule 1 and any other person.' You go to schedule 1 and we are given a completely clean sheet. One wonders why an organisation that is so on about transparency in all things public fails to disclose its membership? Chances are, it starts with the CFMEU and then the AWU and then the Greens, but that is all conjecture. Knowing who funded them to get them started, one assumes that would all be in the full-members schedule. It is completely and utterly missing.

I believe the public needs to be protected, so my final question is: will ASIC please take on notice these deficiencies in the GetUp! constitution and report back to the committee as to what can be done to protect the public, in relation to those two matters? If it's not within ASIC's bailiwick can you assist me as to whom I should go to, to have this egregious matter redressed and rectified, to make GetUp! into an honest organisation?

Mr Price: Yes.

Senator ABETZ: Thank you very much.

Senator WHISH-WILSON: My last question is not very long. You are aware that I wrote to the Auditor-General recently asking for an investigation around your declaration of interest and conflict-of-interest policies.

You may be aware that they responded and said they'll wait for the royal commission to deliver any findings before they look at doing something like that. It's an opportunity tonight for you at ASIC to briefly tell us how you manage your own internal conflict-of-interest policies and whether, for example, you have a register and that kind of thing that other organisations do.

Mr Shipton: Thank you very much for raising this very important issue. I'll start from the outset by saying it's absolutely fundamental that we as an organisation that expects high standards of the regulated population have high standards of ourselves. We are subject to a range of different conflict-of-interest management rules under various acts. We have rules that apply to me as chair, to the commissioners and to members of staff in relation to disclosure of conflicts of interests and management of conflicts of interest.

One thing that I would add—because this is an issue that I pursued with vigour in my former role as a regulator in Hong Kong—is that I have asked the internal audit team to commence a review of internal conflict-of-interest procedures and requirements with an aim that what we have is best in class and world leading, because we must, as an organisation, live up to the expectations that we expect of the regulated population. Commissioner Armour and I would be happy to go across some of the detail, if you'd like to go into detail, about our conflict-of-interest policy; otherwise, I'd be personally very happy to keep you and the committee updated as to how our review and updating of our procedures progress in the period ahead.

Senator WHISH-WILSON: I understand that, given people come from different backgrounds and different employment histories, they are inevitable and they are not necessarily a negative thing or a slight on ASIC at all. I just wanted to see if you had a system in place, and perhaps you could give that to me on notice.

Mr Shipton: Of course. We'd be delighted to give that to you on notice.

Senator WHISH-WILSON: In the 2013 enquiry, when we were looking at ASIC, something came up around the secondment of ASIC staff or, vice versa, financial services companies working at ASIC. Are you still seconding ASIC staff into banks and financial services companies at the moment?

Ms Armour: We probably do need to come back to you on that. We adjusted the policy after the 2013-14 enquiry. I believe at that time part of the concern was more the other way; it was people from industry coming into ASIC.

Senator WHISH-WILSON: That's correct. Is that occurring currently?

Ms Armour: We would need to come back about whether it is occurring currently. We have introduced more steps to ensure that if it does occur it's carefully managed. I think we require commission approval for that, and we are managing that.

Mr Price: We certainly adjusted our policy. We can come back to you with the exact detail. There are some areas of ASIC that aren't strictly regulatory areas. So there may well be secondments into some of those. But we can give you more detail when we come back.

Ms Armour: We will come back with the detail.

Mr Price: We were certainly very conscious of the questions that were raised during the 2013 process and we rewrote our policy as a result.

Senator WHISH-WILSON: I was interested in light of what's going on at the moment with the royal commission into financial services and how sensitive that is. I understand why you would have secondments both ways so you understand better how these firms work. But I suppose it is a question of the tension between being on Christmas lists or being on dartboards—or maybe both. If you could get back to me that would be great.

Ms Armour: Yes, we will.

Senator WHISH-WILSON: Thank you.

Senator KETTER: Mr Shipton, while I've been here idling away my time, I've taken the opportunity to look at the very helpful folder you have provided and looking the misconduct and breach reporting section. If we look at the period to April 2013, there's been a 39.1 per cent increase in breach reports related to a AFS licensees and registered entities of managed investment schemes. Is that a large increase?

Mr Day: Yes, it is, Senator.

Senator KETTER: What do you put that down to?

Mr Day: Probably a large number of financial services licensees reviewing their own conduct or, if you like, misconduct circumstances and deciding there are things they need to report to ASIC in compliance with the section.

Senator KETTER: What might have prompted them to do that?

Mr Day: I think there's a royal commission on in town, Senator.

Senator KETTER: That could be right.

Mr Shipton: I'd also add that we have accelerated and increased the volume of our expectations in this regard.

Mr Kirk: And we have an active project on breach reporting.

Senator KETTER: Can you tell us a bit more about that?

Mr Kirk: We're reviewing breach reporting practices and are looking at, I think, 12 different banking entities, including the four majors. We're looking at their internal processes and policies for identifying breaches, for making decisions about whether there is a breach and whether it's significant, how those matters are escalated and how they're reported to ASIC. We're also getting time frames on how long those things take across the board. We're expecting to put out a report. I think the work will be finished by the end of July and we'd expect a report soon after.

Senator KETTER: Are you able to tell us anything about some of the impressions that you've got so far in this investigation?

Mr Kell: We did provide some of this information to the royal commission after some preliminary findings based on a quantitative analysis of data from 12 banking groups, including the four majors, between 2014 and 2016. The average time frame from an event occurring to it being identified internally for investigation was 1,552 days—just over four years—which was a median of 1,094. The average time frame from the start of an internal investigation of a matter to lodging a breach report was 123 days—a median of 58 days. One in four significant breaches took longer than 145 days to report to ASIC. The institutions in question had commenced a change to their systems to address a compliance issue within an average of 18 days of an investigation concluding, but customer remediation often took a lot longer, averaging 217 days. These preliminary findings confirm the concerns that we've articulated publicly and before this committee about the timeliness and consistency of breach reporting and projects still underway.

Senator KETTER: Are you able to provide the information that you've given to the royal commission?

Mr Kell: Yes. It's in a witness statement.

Mr Kirk: Possibly for completeness, it's worth mentioning that the enforcement review has also looked at breach reporting and made significant recommendations, which the government has adopted in principle, which would make a big difference to how breach reporting would work. One of the problems until now has been that the test for when something has to be reported is extremely subjective. The intention is to make that an objective test and to require it to be reported within 30 days. Even if the investigation is not complete, it has to be reported within 30 days. That's a very significant change from the current legal settings, and we very much welcome those recommendations and the government's in-principle commitment to them.

Senator KETTER: The time frames you outlined seem extremely suboptimal. What's your impression of those findings, Mr Kell?

Mr Kell: As I said, they confirm our concerns about the problems and the inadequacies of breach reporting across the sector. They're unfortunately based on some very real poor experiences. That's why we've been arguing for reforms. It is too easy for firms to arrange their systems in such a way that reports don't come in for quite a long time. Penalties for not breach reporting adequately are insufficient and the test, as Mr Kirk said, in some ways benefits larger firms relative to smaller firms. This has to change. I mean, it is such a fundamental part of the regime that licensees come forward when there is a problem and explain what it is, so a decision can be made about how to deal with it. Reform is overdue so we're very pleased to see the reforms coming through.

Senator KETTER: And you mentioned that this analysis that you've done was over 12 financial institutions?

Mr Kell: Yes, 12 banking groups.

Senator KETTER: And are you able to disaggregate that information? I'd be interested in the four major banks, whether the statistics there are different to the rest of the cohort?

Mr Kell: Can we take that on notice in terms of how we might categorise and to help you understand the mid-tier banks?

Senator KETTER: The four major banks, I'd be interested in. You're saying there is a lot of self-reporting now happening.

Mr Kirk: There's more of it.

Mr Day: The regime is a self-reporting regime.

Senator KETTER: The volume has increased so we're now looking at the figure you've given here—423 for 2018 compared to 304 for April 2017. That's around 120 more.

Mr Day: We're looking at over a 30 per cent increase for the similar period on average over the last two years. The last two years were quite static and similar. So in breach reporting, we're looking at a 31 per cent increase. Similarly, in relation to general reports of misconduct from the wider public in the same period, since the start of this calendar year, we've seen an 18 per cent increase in volumes compared to the last two years.

Senator KETTER: I will come back to that. In these breach reports for the AFS licensees and registered entities of managed investment schemes, can you tell me is there any pattern emerging?

Mr Day: I don't think at this stage I could say. That is something we're looking at at the moment. We're trying to look at what are, if you like, the spheres of activity or the areas of activity that these breach reports relate to. But we normally only do that type of analysis on a six-monthly basis. So at this stage I can take it on notice but I don't think I can help you at the moment.

Senator KETTER: In terms of breach reports from the broader community, you say there's an 18 per cent increase there.

Mr Day: We call them reports of misconduct for the matter of distinction. What are we seeing? I can tell you, we have done analysis in that increase and that is in the financial services and credit area.

Senator KETTER: Can you provide any further information?

Mr Day: It is about 18 per cent, yes. It ranges from financial advice to dealings with mortgage brokers, to other banking products. This is against all of ASIC's areas of focus so that is corporate governance issues, directors' duties issues, liquidators' issues, auditor issues—the list goes on. That 18 per cent is mostly attributable to financial services and credit, as I said, those categories of financial advice and so on.

Senator KETTER: Do you put that down to the royal commission's activities?

Mr Day: Yes, but we do see an upswing at this time of year. But again, taking out the seasonal nature of that, we are still seeing an 18 per cent increase. So we do put it to the fact that people's attention is focused on their own personal circumstances, given the stories coming out through the royal commission.

Senator KETTER: So that suggests to me that there will be more of a call on the resources of ASIC to deal with this fairly significant increase in breach reporting. Would that be correct?

Mr Day: Absolutely. At the moment in terms of the resources we have—and my team is devoted to that—we are stretched to be able to deal with those in a timely fashion. In relation to breach reporting, we have an internal time frame of 14 days that we want to assess those in. That is starting to creep out a little bit in general reports of misconduct from the general public. Our aim is to have assessed and responded to about 70 per cent of those within 28 days. We're meeting that still but, if this continues, we don't think we will be able to sustain that, at least over the next three to six months.

Senator KETTER: Mr Shipton, is this one of the areas that you've sought additional funding for?

Mr Shipton: We have engaged a proposal that, amongst other things, is attentive to the need to receive and diagnose information coming in from the general public and from entities. So the answer is yes.

Senator KETTER: The difficulty that we have with those very lengthy time frames that you've talked about, Mr Kell, is that it's all too easy for evidence to be lost during the course of those extended periods of time before breaches are reported. Is that correct?

Mr Kell: That has been an issue that we've encountered across a number of different areas in the past, that the further you go back, generally, the less adequate the record keeping has been. That's another reason why we want to see more timely reporting. We would hope that with the increasing availability of new technologies to record data in the financial advice industry or the credit industry that some of those record-keeping issues won't be as significant in the future. But there are no two ways about it: the further you go back in time, the poorer the records. That's something that we've always had to deal with.

Senator KETTER: Given the additional activity that's happened around the time of the royal commission, have you changed your risk profiles when regulating different sectors? For example, the perceived risk in the financial system post the revelations of the royal commission surely would impact on your activities and—just going back to what you said, Mr Shipton—the need for additional resources?

Mr Shipton: Well, that's right. That was part of the diagnostic exercise that I embarked upon. Certainly, we have highlighted—and this is part of the strategic initiatives that I outlined earlier—for instance, that we need to

accelerate work, in amongst other matters, in the financial advisory space: the wealth management project that I mentioned before. We want to accelerate our outcomes there.

We are also gearing up for a more intrusive, a more attentive and a more physically based supervisory structure when it comes to larger financial institutions because it's very clear that the larger financial institutions touch the largest amount of members of the general public and therefore require our supervisory and regulatory attention. And as I just mentioned, we also want to increase our ability to receive, triage, respond to and analyse information that is coming in to us that will lead to potential regulatory intervention, supervisory action and, potentially, enforcement outcomes.

Senator KETTER: This then takes me to the questions I had around your proposal for embedded supervisory teams in financial services. Can you just tell me how you believe those activities will strengthen compliance and culture in the industry?

Mr Shipton: This is still a work in progress and, again, I don't want to pre-empt the final delivery of the plan. Essentially, our belief is that by having a more attentive and more physically based supervisory presence, whereby we were, as it were, touching important regulated entities more often, there can be a change in the mindset. There is an expression which is often used about a regulator being a cop on the beat: this is a manifestation of that. By actually having ASIC representatives, and maybe representatives from other regulatory agencies, present that does make a demonstrable change. For instance, if we were able to spend more time with senior management, middle management, different parts of financial institutions and different governance bodies on a more regular or more permanent basis, then I believe—and I've seen this be reasonably effective in other jurisdictions—that it can have a mindset change, not just for the senior leadership of an organisation but, importantly, for the middle management of an organisation. That is absolutely vital for the delivery of cultural and organisational change in an organisation.

Senator KETTER: Can you tell me practically how these embedded supervisory teams would work.

Mr Shipton: Just to clarify, we're not proposing to embed on a permanent basis supervisory teams. What we are doing is looking very closely at supervisory structures that have worked, or have been deployed, in other jurisdictions like the United Kingdom and the United States. We are going to embark upon an exercise where we take the most valuable lessons to be learnt from those jurisdictions and apply them in Australia. Again, I don't want to pre-empt any conclusions that my colleagues and I reach, but the aim is to focus on a basis whereby we are spending more time physically inside financial institutions. By doing so, we believe we can affect cultural change and a mindset change. We also think that we should have early focus on, for instance, the governance structures and the decision-making structures—and to pick up on some of the comments my colleagues have just made about breach reporting—and how organisations themselves collect data, identify breaches, resolve them, respond to them and, importantly, inform us and fellow regulators when these breaches occur. This is an example of where we've highlighted, through the very good work of the breach reporting exercise at ASIC, that there's a problem and we're trying to identify ways and means that we can respond in a regulatory and supervisory sense so that we can affect permanent change inside financial institutions to rectify this harm.

Senator KETTER: Is this new strategy fully developed, or are there certain aspects yet to be finalised?

Mr Shipton: We are in an advanced development stage but, again, there are a number of processes that we need to go through and I'm very respectful of those processes. However, I hope that what I've just done is give you a sense of the philosophy and some of the examples that exist as a matter of good practice internationally that we will look to apply at some stage, hopefully, in the not too distant future here in Australia.

Senator KETTER: Have you raised this proposal with the government?

Mr Shipton: Yes.

Senator KETTER: What indication have you received about the level of interest?

Mr Shipton: As I said before, they have been positively predisposed to the initiatives that I've mentioned to them.

Senator KETTER: Can you tell me when you approached government?

Mr Shipton: Yes. I can certainly mention that we've been in discussions, as the Treasurer mentioned earlier this month, and we formally submitted a proposal with funding requests last Monday.

Senator KETTER: If this proposal has the objective of engaging cultural issues, how do you propose to maintain a separation of the supervisory team and the bank and the culture that they're overseeing? I acknowledge it's not a permanent situation but, potentially, you could see some cross-pollination..

Mr Shipton: That's right. The harm that you are identifying, which is an important one, is to avoid regulatory capture. I will just talk about models and lessons that have been learnt from other jurisdictions, particularly in the United States, which are to have a mixture of representatives and supervisory officers who are physically onsite, backed up at regulatory headquarters by teams who look across the spectrum of financial institutions. Putting it simply: the best way of solving for this regulatory capture point is to have vertical as well as horizontal teams and make sure that there is active benchmarking between the different teams by individuals and supervisory officers who work across the spectrum and can ensure that we monitor and avoid regulatory capture. But regulatory capture is something that we are very attentive to in our planning and we will be very attentive to in our execution. It is something, again, where we would like to spend some time learning some of the lessons from the application of these more intrusive, more intensive supervisory approaches in the United States and Europe.

Senator KETTER: Are you able to tell me how many people would be required to staff these supervisory teams to actually start to make a difference in the culture?

Mr Shipton: That will be something I hope to come back to you on in the not-too-distant future, once we've gone through the formal processes.

Senator McALLISTER: I think that you may have mentioned the product intervention power earlier in your remarks—and I'm sorry if I'm covering ground that you've already gone across; I wasn't able to be here between seven and eight. I'm wondering what your expectation is about the introduction of this legislation. Treasury have advised us that they're going into a second exposure draft phase.

Mr Kell: Do you mean our expectations around timing?

Senator McALLISTER: Yes.

Mr Kell: I think we would defer to Treasury on the timing.

Mr Kirk: We've been informed that there's another round of consultation; we don't know more about the timing than that.

Senator McALLISTER: What is your understanding about the outstanding issues with the legislation?

Mr Kirk: Again, I think Treasury are a better source because they've been the ones engaged in the industry consultations.

Senator McALLISTER: On the process side, then, when did you last meet with Treasury around the legislation?

Mr Kirk: Staff from ASIC met with staff from Treasury either earlier this week or late last week—I can't remember which it was, but it was in the very near past.

Senator McALLISTER: What has been ASIC's role, if any, in the development of the legislation since the consultation closed in, I think, February?

Mr Kirk: I think there have been ongoing meetings managed by Treasury which probably are in the nature of consultation still. So saying it closed in February—

Senator McALLISTER: Well, it's been going for some time, I suppose. Let's step through the phases. I'm just trying to understand what your contribution is. You're not the policymaker; you're the regulator—I understand that distinction—but you've obviously been involved in some way to provide some practical guidance about how it might work in the field, and I'm trying to understand how that's been orchestrated in the process.

Mr Kirk: We made public submissions in relation to the consultation draft. We have had discussions with Treasury where we've talked about those things. We have long been advocates for these powers. In fact, we were the ones who advocated for them in the Financial System Inquiry and we're very pleased they were recommended. So we have been continuing to advocate, including for things that we think could be improvements even on the draft that was consulted on. For example, we thought there could be some increases in coverage in terms of ASIC Act products in relation to both product intervention and product governance, and in relation to credit products more broadly in relation to product governance. We've taken positions on those things.

Senator McALLISTER: Has that been simply through the formal process of consultation on the draft legislation or through some other mechanism?

Mr Kirk: Both through that formal process but also in conversations we've had with Treasury, we've explained why we think that's a necessary and worthwhile thing and given them examples where we think it would come into play.

Senator McALLISTER: I apologise that I have not read your submission on the draft, but you mentioned three areas where you had some very specific views. They're set out in that draft submission?

Mr Kirk: In the submission, yes.

Senator McALLISTER: The submission on the draft—my apologies. Have you commenced any preparatory work around guidance materials for industry in anticipation of implementation of the policy?

Mr Kirk: We've been thinking about it, but, no, not in concrete terms. We certainly haven't started talking to industry or consulting on that.

Senator McALLISTER: Have you got a view about the inclusion or not of basic banking products in the design and distribution obligation?

Mr Kirk: Yes. Generally we have supported the idea it should be inclusive in that way.

Senator McALLISTER: Right. Would you explain the rationale for that view?

Mr Kirk: Accepting that basic banking products are simpler than others and don't have some of the complexity, we have seen problems in the past on relatively straightforward products—for example, term deposits. We put out major reports about problems in the way term deposits were marketed. Even there, whilst it might be easier to comply with the product governance obligations in relation to basic products, they should still play a role.

Senator McALLISTER: Okay. I turn to something quite different. I'm aware that you have established an initial coin offering regulatory watchdog. Mr Price, you've made some public comment about that. In very brief terms, can you describe how you're thinking about the scope of this? What are the ICOs that you're concerned about and what are the structural risks that you are trying to address?

Mr Price: I have a couple of comments. First of all, one of the challenges with ICOs is that they don't have a set legal structure, so, depending on how they're actually set up, they might be things like a security. They might be like a share. They might be like an interest in a collective investment scheme. They could be a derivative. They could be a non-cash payment facility. Indeed, they might not even be a financial product, so they might fall outside ASIC's regulatory jurisdictions in normal circumstances. To deal with that particular issue, we've spoken to the ACCC and asked them for a referral of their powers relating to misleading or deceptive conduct.

The simplest way to explain the situation is that, regardless of the legal structure of an initial coin offering, ASIC will be able to take action if the disclosure around that product—either formal disclosure or promotional material—is misleading or deceptive. We think that's quite important because, I think, it is documented that there are some scams—and the ACCC has reported on this—to do with crypto currency, and we'd like to be able to deal with those in a quick and efficient way, being very pragmatic about it without getting into a prolonged process of going through legal advice and deciding what sort of financial product it is. I think what consumers really care about is that they're getting honest and fulsome information about the product.

I suppose that doesn't stop us looking at regulatory issues that are more specific to particular legal structures, like securities or collective investments, but the fact that we have this referral from the ACCC will let us act quickly on misleading or deceptive conduct.

Senator McALLISTER: I understand the point you're making about the variety of legal or commercial structures that might underpin these products. That being the case, how would you describe the scope of the task force? Is it simply cryptocurrencies, or are there other kinds of activities that you're observing in the market that you think should fall within the scope of the task force?

Mr Kirk: The cryptocurrency work is with an internal working group. It draws together people with skills from a variety of areas of ASIC—people skilled in the regulation of securities, regulation of collective investment schemes, derivatives—and pools that expertise so we are very quickly able to pick apart what an offer is and work out where there might be problems.

Senator McALLISTER: I think I'm just trying to work out what's in and what's out. If people are out there and they see something happening, how do they know whether to refer it to your regulatory watchdog or whether to send it somewhere else?

Mr Price: I'm not going to give you a legal answer; I'm going to give you a very pragmatic answer. If there is a product out there and it's being promoted or marketed as an initial coin offering or a cryptocurrency product and you think it's a scam, please contact us.

Senator McALLISTER: Okay. That's in fact quite straightforward. I think I understand the enforcement mandate that you've sought to respond to that. When was the decision taken to set up the task force?

Mr Price: It was last year. The initial decision was taken last year, and the referral from the ACCC was this year. I should add that our work around cryptocurrencies and ICOs isn't the just around the enforcement piece;

there are some legitimate people operating in this sector, and we have done some work to provide guidance and assistance for them as well.

Senator McALLISTER: So this is a decision taken exclusively within ASIC and then reaching out to the ACCC to derive the necessary powers to do the work?

Mr Price: That's right. I should add that it's not unusual for the ACCC to refer powers to ASIC, and indeed, for ASIC to refer powers to the ACCC. This happens quite a bit and it deals with—

Senator McALLISTER: I'm not troubled by it; I'm just trying to understand the scheme. How long do you anticipate it being in place for? Is this an ongoing regulatory role? Is there an end point?

Mr Price: Nothing lasts forever. It will be something that's under review, obviously. But, at the moment, it's an area that I think is garnering a lot of public attention. According to press reports just recently you know, the ACCC reported that Australians lost \$2.1 million to cryptocurrencies scams, so clearly that's a concern for us.

Senator McALLISTER: How many employees are assigned to the task force?

Mr Price: We pull in employees as we need it. I'd need to take that question on notice. But you need to understand there's not a very large number of people that are full-time dedicated to this. There's a small core of people who are spending a lot of time doing this, and then we're pulling in that other expertise as we need it.

Senator McALLISTER: When you say a small core, do you mean under 10?

Mr Price: Under 10.

Senator McALLISTER: So it's a small core, and then you identify the resources elsewhere in the organisation for a particular issue.

Mr Price: Exactly right. And that task force type structure is, again, not unusual in ASIC.

Senator McALLISTER: That's also okay. I'm really actually genuinely seeking information. There's no punchline to this line of questioning. I just want to know what's going on. The Norton Rose Fulbright partner Zein El Hasan has suggested that you're underfunded for this activity. Do you think that's fair?

Mr Price: I think that certainly, with the work we have at the moment, I'm comfortable with the resources that we're allocating to this.

Senator McALLISTER: I think you've publicly said you expect you'll need to accelerate your activity in this area. Do you have the funding to do that?

Mr Price: That might depend a little on what level of acceleration is needed. I should add that I think public interest in these products perhaps has waned a little from the time I made some of those initial comments. I think that the price of bitcoin has not done as well as it had earlier in the year.

Senator McALLISTER: Have you given thought to what the reporting framework or communication piece, either with the general public or with the market, might be for the task force?

Mr Price: Absolutely. To that end, we've got an information sheet, which is information sheet 225, 'Initial coin offerings and crypto-currency'. That's really directed at market participants, but we also have provided messages for consumers on the risks of ICOs on our MoneySmart web page. I encourage any consumers who might be listening: please, look at our MoneySmart web page.

Senator McALLISTER: . Do you anticipate pursuing people retrospectively after they have raised funds, or are you principally trying to encourage compliance in advance?

Mr Price: I think it's both. If there has been disclosure that's clearly misleading or deceptive and that's caused harm and there are funds that we can access and recompense to consumers, I would be quite interested in that sort of situation. Equally, the extent to which we can prevent harm before consumers are parted from their money obviously is a very worthy aim as well.

Senator McALLISTER: What kinds of mechanisms do you have to play that preventive role? Do the misleading and deceptive conduct provisions you say you'll rely on assist in that prevention function?

Mr Price: Again, there are a range of enforcement remedies that we might consider. They range from as simple as contacting issuers or their lawyers to express our concern. We have done that in the past and people have taken offers down. It extends to issuing public warning notices where we have concerns that particular disclosure is misleading. So that's letting the public know. It goes right through to, for example, taking injunctive action. So there's a regulatory toolbox, and we try to tailor our action, I suppose, to the particular circumstances we're seeing.

Senator McALLISTER: Some other international authorities have said that ICOs are linked to illegal financial activities. Is that something that ASIC is concerned about in the Australian context?

Mr Price: I know there are certainly some jurisdictions that are concerned that ICOs and cryptocurrencies might be used for money-laundering purposes. While it's a matter for AUSTRAC, my understanding is that there were some law reforms recently here in Australia so that cryptocurrencies exchanges would actually be governed by various money-laundering provisions.

Senator McALLISTER: Nonetheless, bringing them within scope is not quite the same thing as effective regulation and enforcement. Do you see engaging with those questions of criminality as one of the things that your task force might engage with?

Mr Price: We obviously have limits to what we can do in that we've got to be cognisant of what our own jurisdiction is—and that's an expanded jurisdiction through the referral that the ACCC has provided. Where we do see activity—and I am speaking on a general basis, not just in relation to ICOs—that looks as if it may be of interest to other regulators, wherever possible we will share that information with other regulators. We are in close contact with a variety of international jurisdictions about the approaches that they have taken with ICOs. It's fair to say that many jurisdictions have a similar regulatory framework to us in the sense that some ICOs are within the purview of the securities regulators and some ICOs aren't. I haven't been able to find another regulator that's managed to cover the field in the way we have with that referral from the ACCC. There are some regulators that have prohibited these products outright, namely the one in China.

Senator McALLISTER: Yes, sure. I'm conscious that the expertise that might be relevant to the task force may well be embodied in the same group of people who are involved in the equity crowdfunding compliance framework. Is that a fair assessment?

Mr Price: There is some overlap but not a great deal, to be honest.

Senator McALLISTER: I suppose my question is: has establishing the task force in any way delayed or hindered efforts to establish the equity crowdfunding compliance and regulatory regime?

Mr Price: No. As far as the equity crowdfunding regime goes, obviously public companies have been able to be licensed for some time. From memory, nine institutions have been granted a licence. There have been around nine equity crowd funding matters raised. I think there's legislation currently before parliament in relation to extending that to proprietary limited companies. Once that's passed, ASIC will need to make some changes to its systems, but we should be able to do that within a couple of months, I would have thought, once we know the final form of the legislation that's been passed.

Senator McALLISTER: What's your assessment about ICOs as a capital-raising pathway? Do you think that, in terms of just the trends you see, it's likely to be more or less prevalent, perhaps, than the equity crowd funding model? We're seeing these new models come into the system, and I'm just wondering where you see the weight of effort falling.

Mr Price: Regulators are not so great at picking commercial winners. I think there's a great deal of potential in the initial coin offering space. It is really important, though, if that market is to flourish, to make sure that the broader public has trust and confidence around it, and that does mean dealing with some scams that are in the marketplace. And I really don't want to tar ICOs generally with that statement, but I think it's well documented that there are some ICOs out there that are scams, and it's important that we deal with those, and that's one of the reasons why we set up this task force.

Senator McALLISTER: Thanks, I have further questions around equity crowd funding, but I'm conscious the chair may wish to break.

CHAIR: Yes, we are going to have a break. In fact, we've kept ASIC here for more than the 2½ hours that we had scheduled.

Senator McALLISTER: So many questions!

CHAIR: I know. I've got some questions too. In fact, I did want to ask the chair specifically about a speech he made at the Australian Council of Superannuation Investors Annual Conference earlier this month. I think a lot of my questions may have been answered in your opening statement, Mr Sipton, so I might put those questions on notice or ask them at additional estimates. Are there further questions from Labor?

Senator McALLISTER: We do have further questions.

CHAIR: We might just take a five-minute break, if that's the case.

Mr Kell: Chair, can I just take a minute to correct a statement I made earlier?

CHAIR: Yes.

Mr Kell: I've had some updates from the staff. You asked about Dollarmites, and we have found out about it. I just wanted to correct that. When we found out about the detail, we did receive some information and had some engagement with CBA immediately before the article appeared. So I'd have to take on notice exactly when that was, but, in the days leading up to the article, there was more detail provided by CBA around that matter, prior to the media article coming out.

Senator KETTER: But only a matter of days before?

Mr Kell: As I said earlier, we did receive a very brief indication a little while before that, but, in terms of detail, just in the days leading up to the publication of the article, yes.

Senator KETTER: Thank you.

CHAIR: Thank you, Mr Kell. We are going to take a five-minute break for a private meeting.

Proceedings suspended from 21:58 to 10:01

CHAIR: The committee will now resume. As ASIC come to the table, I'm going to say that we're going to let you go. Thank you very much, ASIC, for staying so late this evening—starting late and finishing late. You don't even need to sit down again, Mr Shipton.

Mr Shipton: I thought, out of respect, I would sit down, Senator.

CHAIR: Thank you very much. I think there will be a number of questions on notice.

Mr Shipton: Thank you.

CHAIR: We will have an adjustment to the agenda. We are going to first call the ABS, followed by the Productivity Commission and then we're going to call the Commonwealth Grants Commission. The Inspector-General of Taxation is now going to appear at spillover on Tuesday.

Australian Bureau of Statistics

[22:02]

CHAIR: I now call to the committee the Australian Bureau of Statistics.

Senator McGrath: Can't we just go through to midnight and get—

CHAIR: That was my first preference, Minister McGrath, but, sadly, I couldn't get anyone to agree.

Senator McALLISTER: We've all got an early start tomorrow.

Senator McGrath: Some of us have got to come back from Queensland.

Senator Keneally interjecting—

CHAIR: That's because he's flying high on Milo!

Senator McGrath: I'm being very conducive. I'm not interrupting. I'm being very helpful. I'm renowned for my helpfulness. I might have to change!

CHAIR: Good evening to the officers of the Australian Bureau of Statistics. Thank you very much for staying so late this evening.

Mr Kalisch: I have an opening statement. I'm happy to table that if it would be helpful.

CHAIR: That would be terrific. We're on a bit of a tight time frame this evening. Thank you.

Senator KENEALLY: Thank you to the ABS for appearing tonight. I'd like to take you to the answers to your questions on notice that I lodged with the ABS regarding stillbirth data—you're familiar with those?

Mr Kalisch: I can certainly get those.

Senator KENEALLY: The answer to question 1 (g) points to data on the ABS website for 2007-16 for stillbirths in Australia. The tables there describe perinatal deaths and divide them into two categories, neonatal deaths and fetal deaths. For the sake of clarity, neonatal deaths are babies who are born alive but die within 28 days of birth—is that correct?

Dr Jelfs: That's correct.

Senator KENEALLY: The term fetal deaths as it is used on the ABS website refers to what are commonly known as stillbirths—is that correct?

Dr Jelfs: That's correct.

Senator KENEALLY: The data on the ABS website shows that for 2013 the number of fetal deaths is 1,781 and that for 2014 the number of fetal deaths is 1,698. That is a total of 3,479 stillbirths in 2013-14—correct?

Dr Jelfs: Yes, that is correct.

Senator KENEALLY: The Australian Institute of Health and Welfare released a report this week called *Perinatal deaths in Australia 2013-14*. That report states that for 2013 and 2014 the number of stillbirths in Australia is 4,419. That's 1,000 more stillborn babies than what the ABS is reporting for the same period. How do you explain that discrepancy?

Dr Jelfs: There are a couple of explanations there. The ABS data for stillbirths comes directly from the registrars of births, deaths and marriages. That requires a registration process by the parents or some other authority—like a coroner, for example—to bring those registrations forward. The Australian Institute of Health and Welfare's data is derived primarily from the hospitals' data. There's a different sort of administrative process around that. It's captured at the point of care for that woman and that baby at the time. Consequently, that creates a differential in the administrative process between the two collections, and hence that differential that you've pointed to.

Senator KENEALLY: Could the discrepancy also be explained—and perhaps this goes to the data collection sources—by the difference in the definition of stillbirth that's used by each agency? I note that the ABS says the criteria for including stillbirths in national counts are based on gestational age and weight. The agreed inclusion criteria are 20 weeks gestation 'and' 400 grams birthweight. But the Australian Institute of Health and Welfare defines stillbirth as 20 weeks gestation 'or' 400 grams birthweight. Could the difference lie between the two words 'and' and 'or'?

Dr Jelfs: Yes, that would be the case if that were correct, but we have discovered that the briefing on the question on notice was incorrect and it should have been an 'or'. Our definitions align exactly between the Australian Institute of Health and Welfare and what we produce in the ABS.

Senator KENEALLY: So the definitions are consistent—

Dr Jelfs: That's correct

Senator KENEALLY: but the data is still different because of the source from which you collect?

Dr Jelfs: That's correct. We have also had discussions with the registrar of births, deaths and marriages in Queensland to try and ascertain whether they undertake some follow-up of parents who have had a stillbirth. They have given us advice that they choose not to do that, because they do not wish to create additional stress around that family.

Senator KENEALLY: I'll come to that in a moment. I note that the question on notice answer also said that cause of death information is not captured on the perinatal death certificates of stillbirths in Tasmania, the Northern Territory and the ACT. Has the ABS requested that these jurisdictions change their data collection so as to incorporate this data?

Dr Jelfs: The Australian Bureau of Statistics works with all of the registrars of births, deaths and marriages across a whole range of data items. We have a formal committee that meets amongst all of the registrars and their technical assistants. In that work that we do, we identify areas that come to our attention where some improvements in quality could be captured through all of the data collection across all the births data and deaths data—marriages data as well, but primarily we focus on births and deaths. Through that committee work, we have identified that cause of death information in stillbirths is an issue. In fact, we have identified that approximately 70 per cent of information on cause of death is unknown in babies.

Senator KENEALLY: What percentage was that?

Dr Jelfs: Just over 70 per cent of babies. And in the mother, where we're looking for a particular cause of the stillbirth as well, over 50 per cent is unknown.

So, we have tried to influence the registrars to shift some of their data collection activities and we've been quite successful in that way. We also work quite closely with the National Coronial Information System, which pulls together data from each of the coroner's offices in each of the states and territories. We have been quite successful in that approach by standardising with them some of the information that is collected from those coronial reports. We also have been successful in influencing them around the speed of collection of that information, and we also have been influential in terms of coordinating that information back in through our causes-of-death data. It's an evolutionary process, and we have been successful most recently in influencing Tasmania to work with us to provide cause-of-death information, so that's a step forward in that space. But the other states that you pointed out do in fact still have gaps in their cause-of-death information.

Senator KENEALLY: One more question, then: going back to the definition, where you said that the definition is consistent across AIHW and ABS—that is, that a stillbirth is defined as 20 weeks gestation or 400 grams of birthweight—

Dr Jelfs: That's correct.

Senator KENEALLY: Isn't it the case then that the ABS is necessarily always going to miss stillbirths—

Dr Jelfs: That's correct.

Senator KENEALLY: because you're not recording stillborn babies born before 20 weeks, even if they meet the 400-gram criteria? So, a baby born at 19 weeks will not be recorded, because they don't get a death certificate from the state.

Dr Jelfs: That's correct, because the registrars of births, deaths and marriages apply that same standard and therefore they don't collect that information.

Senator KENEALLY: Thank you.

Senator KETTER: In terms of the budget impact on the ABS, according to Budget Paper No. 4 the ABS has had a decline of 169 staff. Can you confirm that?

Mr Kalisch: That's the average staffing level change that's reported in the budget paper.

Senator KETTER: Has the ASL cap had an impact on staffing at the ABS?

Mr Kalisch: At the moment the issue that we have is really an affordability one rather than the cap being a constraint on the staffing that we have.

Senator KETTER: So, it's a question of dollars—

Mr Kalisch: It's related to our budget—how many staff believe we need to engage to undertake the work that we need to do.

Senator KETTER: What areas of the ABS have the staff cuts come from?

Mr Kalisch: That change from 2017-18 to 2018-19 can be largely explained by the marriage law survey. The marriage law survey accounts for a considerable change of 70 between the two years. We received an increase of 70 in our ASL cap to undertake the marriage law survey. That was attributed in 2017-18. And you will notice that that number in 2017-18 that's now reported in the budget papers is higher than the number that was estimated for 2017-18 in the previous year's budget papers, which didn't account for the marriage law survey, because none of us knew it was going to happen.

Senator KETTER: But you're down by 169 over the past 12 months?

Mr Kalisch: Taking one year to the next year, yes.

Senator KETTER: That's still a reduction, is it?

Mr Kalisch: It's really about I suppose 80 staff overall, once you take out the marriage law survey.

Senator KETTER: And where have those 80 staff come from?

Mr Kalisch: Those 80 staff are being reduced across the nature of our business. We are reducing staff in our central office. We're reducing staff in most of our offices and really looking at how we can continue to deliver the quality program that people expect from the ABS with slightly fewer staff. That's really the nature of efficiency dividends and whole-of-government savings that all agencies are having imposed upon them.

Senator KETTER: Can you on notice provide a breakdown as to where those reductions have occurred—head office and regional offices as well?

Mr Kalisch: We can give you a sense of where they have taken place over the last year. We're still working through our budget this year as to what is likely to happen for 2018-2019.

Senator KETTER: When's the next forward work program document to be released?

Mr Kalisch: That will be released around September, October. That's the usual timing that we have for that. We're about to start consultations with some of our key advisory groups on that fairly soon.

Senator KETTER: What datasets are being reviewed for cancellation?

Mr Kalisch: None that I'm aware of, but we are looking also at within the forward work program the extra money that the government provided us for enhancing economic statistics, improving housing statistics and providing advice to the national data commissioner.

CHAIR: That was the \$27.3 million over five years?

Mr Kalisch: That was the amount in total for all of the budget measures. I've highlighted three in particular.

Senator KETTER: In your opening statement you said you're becoming increasingly reliant on additional user funding to produce your significant statistical information. This is a reflection of budget constraints?

Mr Kalisch: There were some aspects in the forward work program discussions and consultations last year where we have sought to convert some statistical programs that were previously appropriation funding into user funding. Those discussions with a number of agencies have gone quite well, and we're about to do that. There are aspects that we're seeing, particularly reflected in the budget papers, that there will also be a bit of a peak in user funding in 2018-19 and 2019-20, where our social statistics program is hitting its straps again. It goes through particular cycles, and we are seeing increased funding for a number of those significant surveys.

Senator KETTER: Have you had any requests from Treasury to use Multi-Agency Data Integration Project to model impacts of policies reforming negative gearing, capital gains tax discount or dividend imputation?

Mr Kalisch: We have had some requests from Treasury for using some of our data integration facilities, but I'm not aware of any of those issues.

Ms McCulloch: We have engaged with a number of different agencies on both our Business Longitudinal Database and our multiagency database, which is an individuals base. Our engagement with Treasury has been more of an exploratory nature primarily around the Business Longitudinal Database, so the answer is no.

Senator KETTER: Have you had any requests from Treasury to assist with costings or distributional impact analysis of any of the reform options I mentioned earlier?

Ms McCulloch: The work that we do is not of that nature. Treasury has options to impost officers to work and use our data for their purposes, but we don't provide costing information.

Senator KETTER: Have you been involved in a privacy impact assessment process with Treasury on the Multi-Agency Data Integration Project?

Mr Kalisch: I will leave that to Teresa Dickinson. We're involved and are the lead agency in a privacy impact assessment for MADIP with a number of agencies, but I can't recall that Treasury was part of that consortium.

Ms Dickinson: There was no particular partnership with Treasury over that piece of work. It was done across a number of agencies.

Mr Kalisch: It was ourselves, Department of Health, Department of Social Services, Taxation Office—

Ms Dickinson: Human Services.

Senator KETTER: Treasury had no involvement in that whatsoever?

Mr Kalisch: No.

Senator KETTER: Can you tell me who instigated that privacy impact assessment process?

Mr Kalisch: The ABS instigated it, and it was done by an independent consultant.

Senator KETTER: There was no advice or data to Treasury from this project before the privacy impact assessment process was concluded?

Mr Kalisch: Not that I'm aware of.

Senator KETTER: Could you take that on notice?

Mr Kalisch: I'll take it on notice and check.

Senator WHISH-WILSON: The Kiwis a couple of weeks ago said they were going to be releasing their wellbeing budget structure looking at four types of capital—an ambitious project. When I started here in 2012 the ABS were looking at setting up alternative indices to GDP and other economic indicators. That hasn't continued, for obvious reasons: funding has been pulled, probably due to a lack of political interest. Have there been any discussions between yourselves, Treasury or any other divisions about a similar approach in Australia?

Mr Kalisch: Not that I'm aware of. We quite regularly have conversations with our New Zealand colleagues and the international statistical community around measuring GDP and other dimensions of wellbeing. We're also involved with the OECD committee that looks at measuring wellbeing in different dimensions, so we are still part of that international dialogue and conversation.

Senator WHISH-WILSON: How difficult do you think it will be for New Zealand, based on your previous experience with setting up these indices, and how easy would it be for us to resource a similar thing?

Mr Kalisch: Teresa Dickinson will know, having just come from the New Zealand Stats office.

Senator WHISH-WILSON: We won't hold that against her.

Mr Kalisch: She has also been at the ABS previously, so she's well rounded. The New Zealanders are very good at some innovative things. We will also look at what happens across different parts of the world. The key thing with some of these wellbeing indices is it depends on how you structure them as to how useful they are. Part of the dimension comes to some real judgements—

Senator WHISH-WILSON: Subjective.

Mr Kalisch: the extent to which it is very subjective or normative, the usefulness of some of those indicators and the extent to which you look to do it in parallel with other indicators.

Ms Dickinson: The only thing I would add is that the New Zealand approach doesn't produce one index number for each of those four dimensions; it's a scorecard approach across economic, social, environment—a scorecard is being developed in each of those dimensions. That's the type of thing we used to do at the ABS when we had our Measuring Wellbeing program.

Senator WHISH-WILSON: When was that officially ended?

Mr Kalisch: I think it was ended in 2014.

Senator WHISH-WILSON: Will they be the first country in the world to deliver a wellbeing budget? That's what they claimed in their media release. Has anyone else delivered an annual budget with a wellbeing index?

Mr Kalisch: We can take that on notice and get some information back to you.

CHAIR: Thank you very much to the ABS—unless there are any further questions?

Mr Kalisch: We can answer Senator Ketter's question that we took on notice before. We have just checked, and there was no engagement with Treasury about that matter. I also note to the committee that Mr Jonathan Palmer, Deputy Australian Statistician at the ABS, will be retiring in June after about 40 years of service at the ABS, other statistical organisations and the IMF. I want to let the committee know that is happening, and place on the public record the regard we have for Jonathan and his service to the ABS and to the Australian community.

CHAIR: On behalf of the committee please send him our best and wish him well for the next phase of his life. Thank you very much for that information. Thank you very much to the ABS for appearing this evening.

Productivity Commission

[22:24]

CHAIR: Good evening. Thank you very much for the Productivity Commission for appearing and disappearing and then appearing again. We're sorry that we gave you such mixed messages, but I'm very pleased that you're here this evening. Have you got an opening statement for us?

Mr Harris: No opening statement, but thank you for the opportunity of getting on tonight. We appreciate it.

Senator KETTER: Mr Harris, your draft superannuation report is now out. When it is scheduled for the final report to be released?

Mr Harris: On the superannuation report, I'm going to turn to Ms Chester, our deputy, who's shepherded most of this through for quite a substantial period.

Ms Chester: At the moment, our website states that the final report timing is to be determined. That's largely because we're very conscious that there's another commission happening in parallel to us such that we can't be determinative about some of the consultation that we need to go through with the interested parties and stakeholders before we finalise our report.

Senator KETTER: Would that be the royal commission?

Ms Chester: Yes, that's correct. We're the not-so-royal commission, perhaps. We'll be aiming to give it to government by the end of this year—with best endeavours, perhaps November. But we can't be more definitive until we have greater clarity around the royal commission's time lines.

Senator KETTER: If you can't tell me the time frame, what are the next steps between now and the release of the final report?

Ms Chester: In 2½ weeks time we'll have public hearings. Wherever we need to go around Australia we will have public hearings, but at the moment we think they'll largely be in Sydney and Melbourne, given the interested parties that we've had to date. We will then take post-draft report submissions from interested stakeholders and parties. There are three further supplementary papers that we'll be issuing that we identified in our draft report, the first being around some econometric work that we're doing on economies of scale and whether or not they've been fully passed through. The second one is around the fiscal costs and fiscal implications of having insurance within superannuation, which was a request in our terms of reference. When we get some further data from the funds—

we wrote to the funds yesterday seeking that further data—we'll be doing some further analysis, and we will also issue that in a third supplementary paper.

Senator KETTER: Your report confirms that there is a performance gap between the retail funds and the industry superannuation funds, which can't be explained by asset allocation. Can you tell us how big the gap is?

Ms Chester: By segment, and on averages, the not-for-profit segment over the period that we analysed over 10 years was on average 6.8 per cent and the retail segment was 4.9 per cent.

Senator KETTER: So just under two per cent?

Ms Chester: Yes.

Senator KETTER: What do you think explains the gap?

Ms Chester: That's going to be an area for further analysis. We did some further analysis, including some econometric analysis, about whether we could attribute it to disparity in fees and scale. With fees it was really around admin costs. There are other characteristics we'd like to look at, and that's why several of the questions in our funds survey were so important. For example, once we get net investment returns by asset class, fees and costs by asset class, and fees and costs for related-party transactions, we'll have a much better handle on understanding what are the drivers behind that systemic difference.

Senator KETTER: Of the top-10 performing funds, how many are industry funds or not-for-profit funds, and how many are retail funds?

Ms Chester: I take it, Senator, you mean top-10 funds in terms of the analysis we did in our overview based on net investment returns over the 10-year period.

Senator KETTER: Yes.

Ms Chester: I'd have to look at the colour of the bubbles. I think it's fair to say that most of them are green, which means they're industry funds. There is one public sector, one retail and, I think, two corporates, including one little unicorn corporate way up high who outperformed everybody. So you're right, Senator: the majority are industry funds, but there's a splattering of corporate, retail and government.

Senator KETTER: Of the worst 10 performing funds, how many were industry funds and how many were for-profit funds?

Ms Chester: From my quick arithmetic here, there are two or three industry funds and two corporates and the rest are retail.

Senator KETTER: In your report you mention that the Productivity Commission undertook a 'novel' approach; that's the word you've used—

Ms Chester: Did you want me to run through the other segment?

Senator KETTER: Which other segment?

Ms Chester: The default segment—we missed that one, with the bubble story.

Senator KETTER: Okay.

Ms Chester: Of the 26 underperforming products in the default segment over the 10-year period there were 26 underperforming products: 12 were retail, 10 were industry, three were corporate and one was public sector.

Senator KETTER: Just going back to my question in relation to the approach you took to asset allocation, you said that looking at this was a novel approach. Are you concerned that both APRA and Treasury have not done work on this matter already?

Ms Chester: It was a novel approach to do it across a system. It's not such a novel approach from an industry perspective. If a super fund trustee board is doing regular performance attribution analysis, they would typically construct such a benchmark portfolio to assess what they bring to the table in terms of overperformance, underperformance or meeting the market. So it's not novel to that extent. It is very novel, and it's a lot of sweat and endeavour from my team over the last six to 12 months, to do it across a system when the data is so poor. That's the novel part of it—doing it across a system. So we're in a situation of being able to compare apples and zebras—funds and products with very different asset allocation.

Senator KETTER: So it's really not that difficult to conduct that type of analysis across the system?

Ms Chester: It's not difficult to do it for a single fund or a single product when you have all the data. It is incredibly difficult to do it across the number of products and funds that we were dealing with over that time horizon when the data is very poor. For example, for the default segment, the regulators only started collecting data by product for MySuper 3½ years ago. If you want to understand the members' experience you need to

collect product-level data, and that's what was important to us in our analysis. What we've had to do is take the 3½ years of data that the regulator collects and then purchase data from a ratings agency and literally go through them one by one and match them up and staple them together so we get something a little more longitudinal in terms of long-term performance. Indeed, that's something you and I have discussed several times over past Senate estimates hearings, making sure we could do that long-term analysis to better understand the distribution and composition of the tale, so we've now done that. To that extent it is novel and new. We're not aware of it being done anywhere else globally or in Australia previously.

Senator KETTER: My question is really: why didn't Treasury or APRA do this previously?

Ms Chester: I think that's a question for Treasury and APRA.

Senator KETTER: APRA in particular has responsibility in this area.

Ms Chester: So that would be a question to ask APRA. I think it's clear in our report that we're underwhelmed and a little disappointed with the data that the regulators have retained, and indeed we've said the data the regulators have collected from the industry had two problems. Firstly, they weren't really collected from the members' perspective; they were collected from the funds' perspective. Secondly, some of the data the regulators have received over time are nonsensical and there have been no repercussions of funds providing nonsensical data—for example, zero investment management expenses for listed equities, which doesn't make sense.

Senator KETTER: What types of recommendations and policy options do you think warrant further investigation arising from that?

Ms Chester: We've been quite explicit with what we would like the regulators—we've taken a very forward-looking lens with respect to the regulators, based on our findings. So first cab off the rank is go forth and work out what is the best data to collect. Certainly what we've collected and analysed here, we would expect the regulators to use and do going forward. Indeed, I'm sure we'd be happy, post report, to share the datasets that we've established with them so they can hit the ground running. There's also a policy lens here in terms of what data government going forward would need to inform good public policy. Thus we recommended a task force with Treasury, APRA, ASIC and ATO to lift the tide on data collected by the regulators with input from Treasury through a public policy lens, and also for the regulators to have another look at what data capabilities they have to make sure they have the ability to do that work going forward.

Senator KETTER: Can you elaborate on your criticism of there being too many choices in the choice fund space.

Ms Chester: I think we used the term 'product proliferation' and members being 'lost in the weeds'. There are two angles here. One is that 40,000 options, or 40,000 products, in accumulation does seem to be a form of proliferation such that it would be difficult for any member to do any form of comparable assessment. Even a retired actuary, I think, would struggle to be able to assess products across that range. Indeed, we've heard from financial advisers and financial planners that also struggle. That's one perspective. The other perspective, apart from making meaningful member engagement and meaningful decision-making by members easy, is the cost. We did do some further econometric analysis around the cost impost that that has on members, having so many products with so few members in them.

Senator KETTER: What would you say about the level of competition in this area?

Ms Chester: In the choice segment?

Senator KETTER: Yes.

Ms Chester: 'Unhealthy' is the adjective we used in the report.

Senator KETTER: I'm going to move to a different area—

CHAIR: Senator Ketter, I'm conscious of the fact you've had more than 12 minutes and two other senators have questions for the Productivity Commission. I just wonder whether we should come back to you rather than move on. I'll move on and come back to you.

Senator STOKER: Thank you, Chair. The draft report on super makes a pretty big deal of the importance of avoiding balance corrosion through fees and charges. Can you please outline the findings on the potential impacts of members' retirement savings of fees, duplicate accounts and other charges, including insurance premiums.

Ms Chester: Yes. Wherever we found a problem in our analysis, we try to translate to the member experience through our cameos. Typically our cameos were of a 21-year-old new job entrant—a typical worker with average weekly earnings throughout their lifetime. In terms of fees and costs, to show the downside of compound interest when it's not working well for you through your working life, if you have fees and costs that are 0.5 percentage points greater, or 50 basis points greater, during your working life in an accumulation fund, you would be

\$100,000 worse off in retirement. In terms of unintended multiple accounts, we did analysis through our fund member survey and using ATO and APRA data to establish that one in three, or 10 million of the 30 million member accounts, are unintended duplicates. That means that those members are paying admin costs and insurance premiums that they don't need. The annual cost of that is about \$2.6 billion across the system. When you look at it as a cameo analysis for an individual fund member, that would see them worse off by \$50,000 when they retire. In terms of the performance side of the equation, taking a fund member from a bottom performing quartile fund and popping them in a top performing quartile fund throughout their work life, a new job entrant today would be \$365,000 worse off when they retire in 2064.

CHAIR: Sorry, if you take them from the worst quartile to the best quartile they would be better off, not worse off?

Ms Chester: Sorry, yes. I was getting ahead of myself in terms of policy changes, doing the flipside of the story in terms of the gains they would make. They'd be \$365,000 worse off.

CHAIR: Better off? If they go from the worst performing quartile to the best performing quartile they'd be \$365,000 better off?

Ms Chester: Let me say what the cameo is, because I flipped it around at the beginning. Someone who was in the bottom quartile, instead of being in the top quartile, would be \$375,000 worse off. The cameo flipside is if you take somebody who has defaulted twice into a bottom performance fund and default them once in a top performing fund, they would be over \$400,000 better off in their retirement. I've just got to make sure I don't confuse my cameos. Sorry; it's been a long week.

Senator STOKER: That's understandable. The government announced in the budget a packet of reforms aimed at protecting members' superannuation savings from erosion and reducing duplicate accounts by proactively reuniting them with members where possible. What impact do you expect those changes to have?

Ms Chester: We hadn't done any analysis around those options, because our report was finalised and with government just prior to the budget. That said, I think it's fair to say that there's quite a bit of overlap between those measures and our measures in terms of getting rid of inactive accounts and unintended multiples. So we are all heading in the same direction. The only cameo analysis that we've done is really around the unintended multiple accounts, and that's to do with defaulting only once. The government's package in the budget was more about—I guess the best way of describing it is that the government's measures were about mopping up the mess after it's occurred, and we've got recommendations that closely align with those. In addition to those, and where we did most of our quantitative analysis, it was about preventing the duplication from occurring.

Senator STOKER: Some of the industry have criticised the government's proposals in respect of insurance—in particular, the proposal to make new members under 25 opt in to insurance rather than opt out. I notice the report came to a similar recommendation. Can you explain why the Productivity Commission regarded the opt-in approach as preferable?

Ms Chester: We'd consulted on that quite extensively following on some good work that had been done previously by Rice Warner. Our terms of reference asked us to make sure that members were getting insurance that was value for money. When you look at the needs of the under 25s, it's hard to contemplate a world where having a life insurance policy would be value for money. You are then looking at income protection and whether or not that's something that would be better done on an opt-in basis. It was purely through that lens that we formed that view, prior to the budget, and it was also in the budget.

Senator STOKER: Some of the industry have also criticised the government's proposal to switch off insurance after 13 months of inactivity. Again, your report came to a similar recommendation. Can you talk us through how the Productivity Commission reach those conclusions?

Ms Chester: Again, largely based on consultation. If I recall correctly, that was in the original draft of the insurance code of conduct, which was widely disputed amongst industry funds, such that that was taken out. That's an area where we might refine our thinking. We've had feedback from other interested parties—in particular, Choice—that 13 months may still be too long a period of inactivity. The reason that we arrived at 13 months was informed by consultation around the incidence of people departing the workforce for paternity leave, and that seemed to us to be sensible. But, again, it's a draft report, so I'm sure we'll get some feedback and comments on that recommendation as well.

Senator STOKER: Do you think the government's reforms will lead to better outcomes for members and do you think the government's reforms will materially improve members' overall retirement savings?

Ms Chester: In terms of the budget measures?

Senator STOKER: Yes.

Ms Chester: Given they align with the direction that we're going in our report, and under our act we should be doing all of those things, yes, we do agree.

Senator WHISH-WILSON: Why did you so emphatically rule out—although it was only a very small couple of paragraphs where you talked about it—government ownership of the default super sector?

Ms Chester: A single, government-owned monopoly provider for the default segment?

Senator WHISH-WILSON: Yes. Peter Costello came out and called for this late last year.

Ms Chester: I think it's fair to say that that wasn't a model we would have typically contemplated ourselves, given we were looking at injecting a competitive dynamic into the system.

Senator WHISH-WILSON: I see Peter's laughing!

Mr Harris: No, no.

Ms Chester: That said, others did suggest it to us in the context of our enquiry, separate to suggestions that have been made within the Australian media—professors Barr and Diamond, two very highly respected pension plan academics who have informed Sweden, Norway and other places. So we did contemplate it but we didn't find it was warranted or without problems, and I think we articulated that over several pages, not a few paras.

Senator WHISH-WILSON: I only found a couple of small paragraphs to be honest. Maybe I missed the other pages. I'll go back and have a look. But there was a question about infrastructure—

Mr Harris: There was a clear-cut finding on it. If you turn the pages to 'Findings', you'll find there's quite a specific conclusion on that and the potential implications that might come from it.

Senator WHISH-WILSON: Okay. Could you very quickly say what they were? There was a comment about infrastructure and not trusting them to make the right decisions around infrastructure.

Ms Chester: No, I think our main concern was two-fold. There were three things. Firstly, it gives up on any contemplation of member engagement, even if you made things simpler and safer, and thus you also remove any competitive dynamic. There would without doubt be some form of political or implicit government guarantee on the performance of such a fund.

Senator WHISH-WILSON: Yes. Is that such a bad thing though?

Ms Chester: I think we point out in our report that one of the desirable qualities of the Australian superannuation system when it came about 27 years ago was that there wasn't such a government underwrite of the performance of the system. Indeed, that's the trend that other countries internationally are now following. So we would be having a bit of a groundhog day if we were to go back and do so. The other issue is, if it does bring with it an implicit government guarantee, any government would then want to make sure that single monopoly fund had a very conservative investment strategy such that it didn't underperform in any one year, and that would be at great cost to members, similar to the findings we made about life-cycle products, which take way too much growth off the table. So you would be—it would be similar to taking out—

Senator WHISH-WILSON: Would you say the same for the Future Fund? Don't they just all use IFAs anyway? They outsource their financial advice, as do some industry superfunds, for example.

Ms Chester: The Future Fund has an explicit investment strategy to meet an unfunded liability that the government has given it. So, to some extent, if we were to go down the route of having a government owned monopoly provider, thus with an implicit guarantee that would need to be funded, you would actually be expanding the scope of the Future Fund's need to further fund an unfunded liability.

Mr Harris: The other difference come from, if you were to do a default fund to this purpose, eventually it would have to manage paying out, which would meet a different investment strategy from the Future Fund, which may not have to pay out to individual members in pension phase. So there's quite a different investment strategy that would go with it. The presumption that the Future Fund's quite substantially effective rates of return are driven by exactly the same investment strategy you would use if you were saving for default members is an inaccurate assumption. It would be different. They would run a different investment strategy.

Senator WHISH-WILSON: I understand they would be different. I'd like to get into more detail about that, but I don't have time. But I would like to ask you, Mr Harris: how much longer have you got left with the Productivity Commission?

Ms Chester: That's a good longevity question.

Mr Harris: It is a good longevity question, yes. I'm coming into pension phase. I think I finish 10 September, if I get the whole way through.

Senator WHISH-WILSON: So we won't see you again at estimates?

Mr Harris: Unless there are some really remarkable events, that's probably right.

Senator WHISH-WILSON: Here's a chance to reflect on what your legacies are. Can you tell me what are some areas that you think are unfinished business?

Mr Harris: I'm not generally one for running too many statements of regret, Senator. I did a speech the other night—it's on the public record—about my background in infrastructure, which predates my time at the Productivity Commission. I have a view that we tried in infrastructure and have improved asset allocation and pricing strategies for almost every form of infrastructure, except for roads. That speech is on the public record. It indicates that inevitably we're going to have to go down the path of pricing road access. So I spend my time on that. That's not particularly related to the Productivity Commission; although, we have had a go at it twice in my time.

The Productivity Commission: for the rest of it, I guess, the job is a tremendously important job in my view, and it is important that we have access to pretty good staff who try quite hard. The first best approach to public policy can be difficult for politicians to implement, but, nevertheless, the story should be told from that perspective and then the political overlay can be applied to it. If you absent that kind of first best analysis you really don't have a pole star to aim at. I think that's the job, both at the chairman level and then down through the organisation.

I aspired to do this job because I had previously, in some of my other approaches to microeconomic reform going back 25 and 30 years, actually used the then Industry Commission for exactly that same purpose. When the opportunity came up and Gary Banks was retiring, I thought, 'This is a fantastically important job,' and I'm just pretty much grateful for the chance to have done it for 5½ years. It is the longest period, I might say, that I have ever spent in a job. It was all worth doing, Senator: thank you for the chance.

Senator WHISH-WILSON: Can I ask for your reflections on something? To be honest, when I read it, I didn't think I would ever see this, but this is the APRA report into the Commonwealth Bank of Australia—the *Report on the prudential inquiry into the Commonwealth Bank of Australia*. In the executive summary, they basically talk about all the problems with the CommBank's culture. They said that there is no simple answer to what has caused this. But they said:

However, a common refrain has emerged from the Panel's intensive analysis and enquiries over the past six months: CBA's continued financial success dulled the senses of the institution.

Have you got any comments you'd like to say about—

CHAIR: I'm wondering whether this is a relevant question for the Productivity Commission?

Senator WHISH-WILSON: Yes it is. They do all sorts of—just because you have your own agendas.

CHAIR: Others have other questions.

Senator WHISH-WILSON: I have my 10 minutes and you've got yours.

Mr Harris: Chair, I think I have a reasonable answer to that. We are actually taking that into account in our current inquiry into competition in the financial system.

Senator WHISH-WILSON: That's right.

Mr Harris: Perhaps I could just say that when that report is completed, which has to be before 1 July—that's our drop-dead date for that one—the government will then publish it at its discretion. But that particular report will be taken into account in one of the particular chapters, and will feature, potentially, a recommendation.

Senator WHISH-WILSON: Yes. And I'd like to say on record that I've probably got five or six questions specifically on that report, especially around where the IRB accreditation process can be improved. Some of these questions I've been asking all night, but I understand that we don't have you for very long so we can't really get into any detailed questions. Hence, some of my—

Mr Harris: There will more in the final of that report on the IRB process.

Senator WHISH-WILSON: Can you just tell me when you think that is due to be—

Mr Harris: It has to finish by 1 July. The government then chooses when to publish it, but the government will have it by 1 July.

Senator WHISH-WILSON: Okay, great. I'll give back to Labor; they have a few extra minutes.

CHAIR: Thank you, Senator Whish-Wilson.

Senator KETTER: I had some other questions in relation to the appointment of a Productivity Commissioner focused on Indigenous issues, but in the interests of time I'll ask that they be taken on notice.

Mr Harris: Thank you, Senator.

CHAIR: Thank you to the officers of the Productivity Commission. We'll let you go for the evening. Thank you for staying so—no?

Senator WHISH-WILSON: I did have one question about the Defence Export Facility that has been set up—the \$4 billion Defence Export Facility. You've made fairly scathing comment about the lack of success and failures of that kind of approach in the past. Will you be doing any work on this particular area? Or more generally in defence procurement?

Mr Harris: I don't think we have anything programmed to do on that. The comments that we made were in the context of this analysis we do every year on levels of assistance to industry—the TAR report, as it is. But no, I don't think we have anything programmed on that one.

CHAIR: Thank you to the officers of the Productivity Commission. We will let you go and in the last five minutes we will call the Commonwealth Grants Commission.

Senator WHISH-WILSON: Do you want to—

CHAIR: Sorry, Mr Harris, I didn't realise this was your last estimates! Thank you very much for your services, it's been a pleasure.

Senator WHISH-WILSON: Have we got time to thank him?

CHAIR: We'll sing 'For He's a Jolly Good Fellow'! Thank you, you've been absolutely terrific!

Mr Harris: I can't always say it, but, generally, it's been a pleasure!

CHAIR: Good on you!

Commonwealth Grants Commission

[22:54]

CHAIR: I now welcome to the committee the officers of the Commonwealth Grants Commission. My apologies for making you stay so late. I realise that we haven't got very long with you, but we do have a number of senators around the table who have some questions for you. I will start with Senator Pratt.

Senator PRATT: I understand that the Commonwealth Grants Commission has acknowledged that the treatment of mineral revenues has a distorting impact on economic development. I want to ask if any work's been under taken by the Commonwealth Grants Commission to look at the exclusion of lithium royalties from GST distribution.

Mr Willcock: I'm not sure about the first part of what you said. I'm not sure that the commission is saying—

Senator PRATT: Has ever said that?

Senator WILLIAMS: Sorry? I can talk about lithium, but the first part—

Senator PRATT: My notes are taken from the state government of Western Australia. They have said that you have said that both the Productivity Commission inquiry on horizontal fiscal equalisation and the Commonwealth Grants Commission's current review of its methods have acknowledged that the treatment of minerals revenues is distorting. It's distorting in the context that it has clearly become a disincentive, as identified by the Productivity Commission, for states to necessarily invest in what they need to do to exploit their mineral resources. That's been identified by the Productivity Commission.

Mr Willcock: I'm not sure that I would agree with that.

Senator PRATT: You don't need to agree with it. That's fine. It's not important to the question. The question is: have you done any work on lithium royalties and excluding them from the calculations?

Mr Willcock: The short answer is no, we have not done any work on excluding lithium royalties from the commission's assessment. If I could go on a little?

Senator PRATT: Yes.

Mr Willcock: The commission currently doesn't separately identify or assess royalties associated with lithium mining. It groups those royalties in with a range of other mineral royalties for zinc, tin et cetera and puts them into a category called 'other minerals'. There is only a very small amount of money that's raised through lithium royalties. I understand that WA expects only \$89 million in lithium royalty revenues to be raised this financial year.

Senator PRATT: That's right. But they do expect it to grow dramatically.

Mr Willcock: They may well do. And it may well be the case that it does end up growing. But at the moment they expect this financial year to receive \$89 million.

Senator PRATT: That's right.

Mr Willcock: Just to get a sense of scale, they also expect to receive more than \$5 billion in other mining royalty revenue in total. So lithium royalties is a very small part of the total mining royalty revenues that WA raises. The commission works on the basis of lagged assessments using three years of data. So we work on the basis of what has been, not what may be. For WA, there's been some press coverage suggesting that lithium production volumes may increase significantly, and that may well result in a significant increase in lithium mining royalties down the track. But the commission doesn't operate on what might be; it operates on the basis of report of royalties.

Senator PRATT: But you could, if you were asked to, exclude lithium royalties from GST distribution?

Mr Willcock: If the government, through terms of reference to us, instructs us to do something, we will do it.

Senator PRATT: And you're aware that the Western Australian government has asked the Commonwealth government to do that in the case of lithium. I note what you've said—

Mr Willcock: I'm not aware of that.

Senator PRATT: You're not aware of any?

Mr Willcock: I'm not aware that the WA government asked for that.

Senator PRATT: It seems to me that Western Australia is estimating that lithium royalties are expected to grow rapidly due to the rapid growth of demand for lithium and they're arguing that the time to exclude lithium royalties is now, while the impact on other states is small, and that's what the Western Australian government is asking you to consider. And you're essentially saying you can't consider it unless the government directs you to?

Mr Willcock: As the secretary of the commission, I am not aware of the Western Australian government asking the Commonwealth Grants Commission to do anything in relation to lithium mining royalties.

Senator PRATT: Okay, well, I'll have to make sure. I'm pretty sure that request has gone to the Treasurer but it may not have been passed on to you. So you're not aware of any other work around government and other departments that points to this question?

Mr Willcock: On lithium royalties, no. I have seen one or two press items recently but that's it—press commentary—nothing from the WA government.

Senator PRATT: Can I ask why the Northern Australia Roads Program is included in your calculations of income for the distribution of GST?

Mr Nichols: I'm not aware of that particular payment offhand.

Senator PRATT: Are you aware that the West Australian Treasurer wrote to the Commonwealth Treasurer to request that the northern Australia funds be quarantined from the GST distribution process?

Mr Nichols: No.

Senator PRATT: The Commonwealth Treasurer has rejected that request already. But noting that estimated loss of funds for some of the states and territories appears to me to be so significant, it may undermine the viability of the very projects it is intended to fund, if that makes sense, in terms of whether states and territories might be willing to proceed with those projects. Just by way of example, Western Australia was estimated to lose around \$40 million—21 per cent of the \$188 million it would receive for the Northern Australia Roads funding from the Commonwealth—with estimated losses being greater for Queensland at 41 per cent and the Northern Territory at 78 per cent. Would you concede that losses of that amount could foreseeably undermine the commitment of that jurisdiction to the development to start with?

Mr Willcock: I'm not really sure how I can engage on that. I suppose the best thing I can do is to say that the commission assesses state revenue raising capacity and state spending needs. In looking at revenue raising capacity, it looks at what states raise themselves and it also looks at various Commonwealth payments that are made to states for payments for specific purposes et cetera. Where the Commonwealth makes payments—specific purpose and other payments—in an area that contributes to a state's capacity to finance its government service delivery as a state, the commission typically considers that that's a revenue source available for the state to deliver state services; therefore, it includes it in its assessments.

Senator PRATT: Yes.

Mr Willcock: However, there are particular payments that the commission is instructed by the Treasurer in terms of reference to exclude from its calculations. In the trade that's called 'quarantined payments'.

Senator PRATT: Yes.

Mr Willcock: So it is open to the Treasurer to instruct the commission specifically to quarantine particular payments and, where it does so, that's what we would do. In other cases, the commission may look at particular payments and say that this is a payment flow being delivered by the Commonwealth to the state, not to deliver state services but to, in effect, purchase something for the Commonwealth or achieve or deliver a Commonwealth purpose rather than a state service. In this case, the commission would also not include those sorts of payments. Depending on the nature of the payment, the commission considers the particular payment and its purpose and then seeks to treat it appropriately.

Mr Nichols: Payments that are considered to be on the national network for roads are also only 50 per cent affecting states relativities.

Mr Willcock: I'm sorry, I'm not aware of this particular—

Senator PRATT: The state government asked the Commonwealth Treasurer to direct you to quarantine Commonwealth grants under the Northern Australia Roads Program and the Northern Australia Beef Roads Program from the GST distribution process. I understand what you're saying about a Commonwealth priority, that the Commonwealth will pay for them because you're not necessarily offsetting what the state's priority is to the same extent. But if the Commonwealth wants to see northern roads as a priority, surely they should be quarantined from the Commonwealth grants?

Mr Willcock: That is a course of action that's open to the Treasurer to adopt, if the Treasurer believes that's what the Commonwealth wishes to achieve. Similarly, it may be open to any relevant state government to say, in a particular circumstance, that it doesn't wish to receive the money or it will only receive the money on the condition that the Commonwealth quarantines it. These are conversations that I'm sure will take place and have taken place between different state governments and the Commonwealth, over a number of years, in relation to lots of different things. I don't know where the situation is.

Senator COLBECK: Your role, effectively, is to administer the rules or the payment systems as laid out under the agreements that are your role to manage. It's not necessarily your role to interpret why.

Mr Willcock: Indeed. In particular, our role is to act in accordance with terms of reference given to us by the Treasurer. For example, the most recent one we received, in relation to our 2018-19 update, is two pages long. It specifies the treatment of various Commonwealth payments to the states and particular ones. It specifies the approach that we are to take and, in particular, specifies that we are to adopt the methods we used in the previous update and methods which reflected our methodology review that we conducted in 2015. So there is a considerable amount of work that the commission does, usually on a five-yearly cycle, to review its methodology, involving consultation with all eight state and territory governments and the Commonwealth.

This results in the production of a voluminous report to describe how it is that the commission proposes to assess each state's expenditure needs and revenue-raising capacity. Commonwealth treasurers, then, typically instruct us to follow that method, when we assess annually, through the five years that follow, the relative fiscal capacities of each state to determine what we believe would be an appropriate sharing of the GST revenue. We don't just make it up from year to year; we follow a precedent. We review the method in a very consultative and comprehensive way over an extended period of time. Indeed, right now, we're in the middle of such a review that will report in early 2020. We do this on the basis that each state and territory knows the approach that the commission is likely to follow.

As part of this annual cycle of looking at what recommendations to make in a particular year for GST shares, commission staff identify so-called new issues which they then identify to each state and territory Treasury for the purposes of consultation to allow each state and territory to say: 'This is how we think you should treat this issue. This is the way that particular payment flow should be managed in a way that is consistent with the overall approach of HFE.' So, as much as possible, the commission works on consultation and a no-surprises basis. As I said, the terms of reference ultimately are the mandate given to us by the Commonwealth Treasurer, consistent with our legislation, and that's what we have to comply with.

Senator PRATT: Which of the issues raised by Western Australia have you been asked to actively consider?

Mr Willcock: Annually we produce an update on GST revenue-sharing relativities. We did that most recently at the end of March for the fiscal year 2018-19. That was pursuant to terms of reference issued by the Treasurer that specified certain payments in relation to WA. A specific one is a \$1.2 billion payment to Western Australia related to the re-allocated Perth Freight Link infrastructure funding. There was a payment to a hospital in

Tasmania. There was a payment in relation to a regional rail program in Victoria. There are some payments that are available to all states on the national health reform, Quality Schools funding et cetera. They were specific instructions delivered to us for the purposes of the 2018-19 relativities.

Senator PRATT: To be excluded from the GST?

Mr Willcock: We were specifically directed by the Treasurer on the way that we are to treat them.

Senator PRATT: Can I ask on notice for a list of everything that you've been directed on in terms of how they should be treated?

Mr Willcock: You mean in relation to the 2018-19 relativities?

Senator PRATT: Yes.

Mr Willcock: Sure.

Mr Nichols: Is that quarantine payments?

Senator PRATT: Anything that you've been directed on.

Mr Willcock: In relation to Western Australia or in relation to all?

Senator PRATT: It is important to compare it to other states as well.

Mr Willcock: It is effectively two pages in the terms of reference. We can provide you with a copy of those pages from the terms of reference.

Senator PRATT: Thank you.

Mr Willcock: It is on our website.

Senator COLBECK: Are those documents public?

Mr Willcock: They are certainly public. They are all on our website.

Senator PRATT: Okay, I'll look there.

CHAIR: Thank you very much, Commonwealth Grants Commission. There being no further questions at this time, the committee's consideration of the 2018-19 budget estimates will resume tomorrow morning. I thank Minister McGrath, officers of the Department of Treasury and agencies and all witnesses who have given evidence to the committee today. Thank you, Hansard, for staying late. I declare this hearing adjourned.

Committee adjourned at 23:12