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SENATE
ECONOMICS LEGISLATION COMMITTEE

Wednesday, 23 October 2019

TREASURY PORTFOLIO

In Attendance

Senator Cormann, Minister for Finance
Senator Seselja, Assistant Minister for Finance, Charities and Electoral Matters
Senator Hume, Assistant Minister for Superannuation, Financial Services and Financial Technology

Department of the Treasury

Dr Steven Kennedy, Secretary
Mr Damien White, Chief Adviser, National Security Team

Macroeconomic Group

Ms Meghan Quinn, Deputy Secretary, Macroeconomic Group
Ms Victoria Anderson, Executive Director, Centre for Population
Mr Merrick Peisley, Principal Adviser, Centre for Population
Ms Laura Berger-Thomson, Acting Division Head, Macroeconomic Conditions Division
Mr Ray Harris, Senior Adviser, Macroeconomic Conditions Division
Ms Lisa Elliston, Division Head, International Policy and Engagement Division
Mr Jim Hagan, Chief Adviser, International Policy and Engagement Division
Mr Christopher Legg, Chief Adviser, International Policy and Engagement Division
Ms Riki Polygenis, Principal Adviser, International Policy and Engagement Division
Mr Ian Beckett, Acting Division Head, Macroeconomic Modelling and Policy Division
Mr Dan Andrews, Chief Adviser, Macroeconomic Modelling and Policy Division
Mr Michael Kouparitsas, Principal Adviser, Macroeconomic Modelling and Policy Division
Mr Damian Mullaly, Principal Adviser, Macroeconomic Modelling and Policy Division

Corporate Services and Business Strategy Group

Mr Damien White, Acting Deputy Secretary, Corporate Services and Business Strategy Group
Mr Robert Twomey, Chief Financial Officer, Chief Financial Officer Division
Mr Mike Webb, Chief Information Officer, Information Services Division
Ms Cristy England, Division Head, People and Organisational Strategy Division
Ms Melanie Moore, Acting Division Head, Communication and Parliamentary Division

Fiscal Group

Mr Simon Atkinson, Deputy Secretary, Fiscal Group
Mr Robert Jeremenko, Division Head, Retirement Income Policy Division
Mr Darren Kennedy, Principal Adviser, Retirement Income Policy Division
Mr Robb Preston, Principal Adviser, Retirement Income Policy Division
Ms Michelle Dowdell, Principal Adviser, Retirement Income Policy Division
Ms Nicole Mitchell, Acting Principal Adviser, Retirement Income Policy Division
Mr Jonathan Rollings, Division Head, Budget Policy Division
Mr Adam McKissack, Principal Adviser, Budget Policy Division
Ms Vicki Wilkinson, Division Head, Social Policy Division
Ms Joanne Evans, Principal Adviser, Social Policy Division
Ms Philippa Brown, Principal Adviser, Social Policy Division
Mr Mark Cully, Head of Deregulation Taskforce
Ms Kate Phipps, Division Head, Commonwealth-State Relations Division
Mr Peter Johnson, Principal Adviser, Commonwealth-State Relations Division
Mr Damien Dunn, Acting Division Head, Structural Reform Division
Ms Lucy Vincent, Principal Adviser, Structural Reform Division
Ms Marianne Dolman, Principal Adviser, Structural Reform Division
Ms Trudie Wykes, Senior Adviser, Structural Reform Division

Revenue Group
Mr Graeme Davis, Division Head, Tax Framework Division
Ms Maryanne Mrakovcic, Deputy Secretary, Executive
Mr Simon Writer, Division Head, Law Design Office
Ms Marisa Purvis-Smith, Division Head, Individuals and Indirect Tax Division
Mr Paul McCullough, Division Head, Corporate and International Tax Division
Ms Kathryn Davy, Principal Adviser, Corporate and International Tax Division
Mr Geoff Francis, Principal Adviser, Corporate and International Tax Division
Mr Patrick Boneham, Division Head, Black Economy Division
Mr Matthew Brine, Division Head, Tax Analysis Division

Markets Group
Mr Paul Verschuer, Deputy Secretary, Markets Group
Ms Diane Brown, Division Head, Financial System Division
Mr Warren Tease, Chief Adviser, Financial System Division
Ms Nghi Luu, Principal Adviser, Financial System Division
Mr James Kelly, Chief Adviser, Financial Services Reform Implementation Taskforce
Ms Mohita Zaheed, Principal Adviser, Financial Services Reform Implementation Taskforce
Ms Neena Pai, Principal Adviser, Financial Services Reform Implementation Taskforce
Ms Christine Barron, Division Head, Consumer and Corporations Policy Division
Ms Kate O’Rourke, Principal Adviser, Consumer and Corporations Policy Division
Ms Kate Lynch, Principal Adviser, Consumer and Corporations Policy Division
Mr Roger Brake, Division Head, Foreign Investment Division
Ms Kerstin Wijeyewardene, Principal Adviser, Foreign Investment Division
Mr Tim Baird, Principal Adviser, Foreign Investment Division
Mr Andrew Deitz, Principal Adviser, Foreign Investment Division
Mr Jared Henry, Acting Principal Adviser, Foreign Investment Division

**Australian Bureau of Statistics**
Mr David W Kalisch, Australian Statistician
Ms Jenet Connell, Deputy Australian Statistician and Chief Operating Officer, Corporate Services and Transformation Group
Ms Teresa Dickinson, Deputy Australian Statistician, Census and Data Services Group
Ms Luise McCulloch, Deputy Australian Statistician, Statistical Services Group
Dr Paul Jelfs, General Manager, Population and Social Statistics Division
Mr John Shepherd, General Manager, Industry Statistics Division
Dr Anders Holmberg, General Manager and Chief Methodologist, Methodology Division
Mr Chris Libreri, General Manager, Census Division
Mr Marcel van Kints, General Manager, Statistical Data Integration Division
Mr Steve Hamilton, General Manager and Chief Information Officer, Technology and Security Division
Ms Lily Viertmann, General Manager, Chief Finance Officer and Chief Risk Officer, Finance, Risk and Planning Division
Mr Bjorn Jarvis, Program Manager, Macroeconomic Statistics Division

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The Hon. Dr Gary Johns, Commissioner, Australian Charities and Not-for-Profits Commission
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Mr Jeremy Hirshhorn, Second Commissioner, Client Engagement Group
Mr Ramez Katf, Chief Information Officer, Enterprise Solution and Technology
Ms Melinda Smith, Chief Service Delivery Officer, Service Delivery Group
Ms Janine Bristow, Acting Chief Finance Officer
Mr Brad Chapman, Deputy Commissioner, ATO People
Mr James O’Halloran, Deputy Commissioner, Superannuation
Mr Jeremy Geale, Deputy Commissioner, Review and Dispute Resolution
Ms Sue Sinclair, Deputy Commissioner, ATO Corporate
Mr Jonathan Todd, ATO General Counsel, ATO Corporate
Ms Jane Mitchell, Assistant Commissioner, ATO Corporate
Mr Cameron Sorensen, Assistant Commissioner, Debt and Lodgement
Ms Jane Sansom, Assistant Commissioner, Debt and Lodgement
CHAIR (Senator Brockman): I declare open this meeting of the Senate Economics Legislation Committee. The Senate has referred to the committee the particulars of proposed expenditure for 2019-20 and related documents for the Treasury portfolio and the Industry, Innovation and Science portfolio. The committee may also examine the annual reports of the departments and agencies appearing before it.

The committee has set 31 October 2019 as the date by which senators are to submit written questions on notice and has fixed 12 December 2019 as the date for the return of answers to questions taken on notice. Under standing order 26, the committee must take all evidence in public session. This includes answers to questions on notice. Offices and senators are familiar with the rules of the Senate governing estimates hearings. If you need assistance, the secretariat has copies of the rules. In particular, I draw the attention of witnesses to an order of the Senate of 13 May 2009 specifying the process by which a claim of public interest immunity should be raised, which will be incorporated in the Hansard.

The extract read as follows—

Public interest immunity claims

That the Senate—

(a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;

(b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;

(c) orders that the following operate as an order of continuing effect:

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ECONOMICS LEGISLATION COMMITTEE
(1) If:

(a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and

(b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.

(2) If, after receiving the officer’s statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.

(3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.

(4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.

(5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.

(6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.

(7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).

(8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

(d) requires the Procedure Committee to review the operation of this order and report to the Senate by 20 August 2009.

(13 May 2009 J.1941)

(Extract, Senate Standing Orders)

Witnesses are specifically reminded that a statement that information or a document is confidential or consists of advice to government is not a statement that meets the requirements of the 2009 order. Instead, witnesses are required to provide some specific indication of the harm to the public interest that could result from the disclosure of the information or the document.
I ask members of the media to follow established media guidelines and the instructions of the committee secretariat. As set out in the guidelines, senators' and witnesses' laptops, mobile phones, other devices and personal papers are not to be filmed or photographed. I remind members of the public and everyone in the gallery that they are not permitted to speak or interfere with the proceedings or with witnesses at any point during the hearing. Security is present, and they will be asked to remove anyone who does not follow these instructions.

The committee's proceedings today will examine the Treasury portfolio, beginning with the Department of Treasury Macroeconomic and Corporate groups. The hearing will then follow the order as set out in the circulated program. The committee's scheduled break times are listed in the program or as required.

Department of the Treasury

[09:02]

CHAIR: The committee will now begin consideration of the Treasury portfolio. I welcome the Minister for Finance, Senator the Hon. Mathias Cormann, representing the Treasurer. I also welcome the Secretary to the Treasury, Steven Kennedy, and officers of the Treasury. I will point out, Dr Kennedy, that this is your first time here and my first time in this particular chair. Welcome.

Dr Kennedy: Welcome, Chair.

CHAIR: Minister or Secretary, do you wish to make an opening statement?

Senator Cormann: I don't, but the Secretary to the Treasury does have an opening statement.

CHAIR: Please go ahead.

Dr Kennedy: Good morning. I do have an opening statement, which I will table, but I'll read out some dimensions. It is a privilege to appear before this committee for the first time in my capacity as Secretary to the Treasury, and today, as is the usual practice, I'd like to give the committee an update on global and domestic economic conditions before turning to an update on the fiscal outlook.

Over the past year, global growth has slowed. Several major economies, notably Germany and the United Kingdom, as well as close trading partners in our region, such as Korea and Singapore, have recently experienced negative quarters of growth. There has been little growth in global trade volumes this year, and manufacturing activity in a number of economies has weakened noticeably. As a result, the IMF and the OECD have recently revised down their outlooks for global growth over the next couple of years. Forecasts for global growth in 2019 are for the slowest rate of growth since the global financial crisis. That said, the forecast for global growth in 2020 is for a pick-up to the region of three to 3.4 per cent, which one could regard as reasonable global growth.

At play have been a number of factors, chief among them the ongoing and still evolving trade tensions between the United States and China. There is no doubt that trade tensions are having real effects on the global economy, which you see in trade data from the US and China. The IMF estimates that trade tensions could reduce world GDP by about 0.8 per cent by 2020. But trade tensions are not the only story. There are a number of other factors, including Brexit, financial stability concerns in some economies, the ongoing turmoil in Hong
Kong, and geopolitical and economic difficulties in a number of emerging market economies. Combined, these factors are leading to an increased level of uncertainty around the outlook for the global economy. Concerns around global trade have been further compounded by a downturn in the global electronics cycle, which has led to particularly poor trade outcomes in the East Asian region as well as a downturn in automotive production. Central banks and governments across the world have responded to slowing global growth by supporting their economies. A large number of central banks, including our own, have loosened monetary policy this year, and some countries, including South Korea and Thailand, have also provided more supportive fiscal policy.

Here in Australia, growth slowed in the second half of 2018 before growing more strongly in the first half of 2019. The June quarter national accounts showed real GDP grew by 1.4 per cent through the year to the June quarter. In year average terms, the economy grew by 1.9 per cent in 2018-19. A number of factors, some of which are temporary, have contributed to the recent weakness in the economy. Household consumption, the largest component of the economy, grew by 1.4 per cent through the year to the June quarter. A couple of factors are contributing to slower consumption growth. Household income growth has been modest, with strong growth in employment outcomes partly offset by weak wage and non-wage-income growth.

In more recent years, the decline in housing prices has also played a role. This can directly affect spending by reducing confidence and increasing borrowing constraints. The recent downturn in the housing market has other, more direct impacts on the Australian economy. Dwelling investment has fallen, as expected, by around nine per cent over the past three quarters and has contributed to weakness in residential building approvals, which suggests that dwelling investment is likely to continue to fall through 2019-20. Low rates of housing market turnover have led to significant falls in ownership transfer costs, which is a small component of GDP associated with the transfer of assets. Ownership transfer costs detracted 0.3 percentage points from total economic growth in the year to June 2019.

Turning to business investment, in 2018-19 mining investment fell by almost two per cent, detracting around 0.4 percentage points from real GDP growth over the year. Most of this fall reflects the completion of a number of large LNG projects that had been holding up strong activity. Non-mining business investment was weaker than expected in 2018-19, and this is consistent with an easing in business conditions and confidence.

Despite the recent weakness in household consumption and investment, there are reasons to be optimistic about the outlook. Recent data has shown early signs of recovery in the established housing market. Combined capital city housing prices have risen for the past three months for which we have data, and housing market turnover and auction clearance rates have also picked up. In addition, the recent legislated personal income tax cuts and declines in interest rates are providing support to disposable household incomes, and we expect this to flow through to increased consumption. Although we have some indicators of consumption available for the September quarter which have not shown a particularly large improvement, these are only partial, and it is difficult to know what these indicators would have been had the tax cuts not been implemented. We will continue to assess the data on consumption as it becomes available, but it is worth noting that, even if households initially use the tax cuts to
pay down debt faster, this will still bring forward the point at which households could increase their spending.

The substantial investment in mining production capacity continues to boost exports, and there remains significant demand for our education and tourism services. In addition, the prospect for mining investment is positive. We expect mining investment to grow this year for the first time since the peak of the mining construction boom. Public sector spending has made a substantial contribution to economic growth in recent times, contributing one percentage point to real GDP growth in 2018-19 and an average of 1.1 percentage points per year over the past four years. This compares with an average contribution of 0.8 percentage points over the past 20 years.

Unfortunately, dry weather conditions have generally persisted in drought affected areas. The drought conditions being experienced across large parts of Australia have weighed on domestic activity, with farm output directly detracting around 0.2 percentage points from real GDP growth in 2018-19, consistent with the PEFO forecast. As a result, the latest forecasts from the Australian Bureau of Agricultural and Resource Economics and Sciences predict that the farm sector will continue to experience weakness, with the gross value of farm production expected to fall by nearly five per cent in 2019-20.

Despite modest economic growth overall, labour market outcomes have been very positive. Employment growth continued to be strong, increasing by more than 300,000 over the past year. While we have seen strong growth in employment, the unemployment rate has been broadly flat. This is because near-record rates of people are being drawn into employment and the labour force. We have seen a step up in participation in particular parts of our labour market—for those in older aged cohorts and for women returning to the labour market after having children. While strong employment growth is very welcome, it does give rise to an issue that is not unique to Australia—that of recent low productivity growth. Labour productivity growth in Australia has slowed, from an average rate of 1.5 per cent annually over the past 30 years to just 0.7 per cent annually over the past five years, noting that this rate is still higher than that of all the G7 countries.

There is no single explanation for the slower rate of productivity growth, and we are unsure of how much of the current slowing is cyclical and how much is structural. This is an area of ongoing analysis and research in Treasury and elsewhere. We do know that business investment is important to supporting productivity growth, with capital deepening—that is, having more capital available for each worker—accounting for around three-quarters of a per cent of labour productivity over the past 30 years in Australia. Given historically low interest rates around the world, it is somewhat of a puzzle that business investment has not grown faster. Partly this could reflect the fact that the rates of return that businesses use when looking at the viability of new opportunities—so-called hurdle rates—have remained high despite lower interest rates. The current uncertainty surrounding the global economy and significant technological advances may be contributing to this. Structural factors may also be at play. It is not clear what business investment looks like in a world where more than two-thirds of our economy is now services based.

Another issue in the Australian context is also one shared globally. In Australia, as elsewhere, inflation rates have remained subdued. In part, this is related to slower wage growth, which has been slower than forecasters around the world expected. While no-one has
come up with a complete explanation, there are a range of explanations that go some way to
shedding light on the phenomenon. One factor that may be affecting the relationship between
unemployment and wage growth in Australia is that the traditional relationship between spare
capacity in the labour market and the unemployment rate may be changing. One tangible way
we can see this is that the rate of underemployment, which typically moves with the
unemployment rate, has not declined to the same extent as the unemployment rate in this
cycle as it has in the past.

A number of other long-running changes in the labour market may also be affecting the
relationship between unemployment and wage growth. An increasing concentration of
economic activity in the services industry, the effects of demographic and technological
change, and globalisation may also have played a role. Ultimately it is difficult to draw firm
conclusions on the effect of these structural factors on wage growth, given that these factors
have been occurring over a long time frame, yet slow wage growth globally is a more recent
phenomenon. With these uncertainties in mind, the pace of the pick-up in wage growth and its
relationship to the labour market is likely to continue to be different than in previous
economic cycles.

Turning now to the fiscal outlook, last month the government released the 2018-19 final
budget outcome. This showed that the budget was broadly balanced, with an underlying cash
deficit of $690 million. There was an improvement of $13.8 billion compared with the
estimate at the time of the 2018-19 budget. In light of discussions at the IMF annual meetings,
which I attended last week, on fiscal stance and its impact on growth, I thought it might be
useful to the committee if I made a couple of remarks, before finishing, on the interaction of
medium-term fiscal frameworks, discretionary fiscal actions and structural reforms. Medium-
term fiscal frameworks are designed to deliver sustainable patterns of taxation and
government spending. As is the case in Australia, they usually also look to minimise the need
for taxation. Medium-term fiscal frameworks reflect an assessment that apparent short-term
economic weakness or unsustainably strong growth are best responded to by monetary policy.

Within a medium-term fiscal framework, automatic fiscal movements will still assist in
stabilising the economy. For example, revenues will weaken and payments will strengthen
when an economy experiences weakness. These automatic movements are called automatic
stabilisers. Allowing these automatic stabilisers to work is entirely consistent with a medium-
term objective. In an open economy such as Australia’s, a medium-term fiscal framework in
concert with a medium-term monetary policy objective has long been held to be the most
effective way to manage the economy through cycles. In periods of crisis, there is a case for
further temporary fiscal actions. It is important to consider separately broader policy
objectives and temporary responses to crises, as confusing these objectives can lead to
unintended consequences. The circumstance or crises that would warrant temporary fiscal
responses are uncommon.

The case for structural reform is ever present. Improvements in employment and wages and
in the profitability of businesses are the most obvious important drivers of this case. The most
important long-term contribution to wage growth is labour productivity. The presence of
weak global and domestic growth, low interest rates, and heightened global trade and
geopolitical tensions has elicited a discussion of fiscal responses and structural reform and an
interweaving of the two issues. For example, calls for additional infrastructure expenditure, as
part of supply-side or structural reform and to assist in stimulating the economy, sound straightforward but in practice are difficult to achieve. The timing requirements of fiscal stimulus are hard to give effect to while ensuring large projects are well planned and executed and cost and capacity pressures are managed. There are some opportunities though, usually related to small projects and maintenance expenditure. The Commonwealth and state governments are currently actively exploring these opportunities.

In developing policy we need to be mindful of the particular circumstances present in the economy. A feature of the current weakness in the global and domestic economy is heightened uncertainty among consumers and businesses. Given this uncertainty, medium-term fiscal and monetary policy frameworks can play an important role in contributing to a stable and predictable environment that is supportive of growth. In the statement I've tabled I've included some information on the organisational priorities, but, in the interests of time, I'll finish my remarks there. Thank you for the opportunity to provide this update.

CHAIR: Thank you, Dr Kennedy. Just before we move on, we will formally accept that document, there being no objection.

Senator GALLAGHER: Thank you, Dr Kennedy, for your opening address, and congratulations on your appointment to this important role. I have some questions coming out from your statement. Perhaps we can begin at the top. How would you describe the performance of the Australian economy at the moment, in succinct terms?

Dr Kennedy: I'd describe the general economic conditions as being modest economic conditions. As I said in my statement, there is some general weakness. The really interesting thing is that is counterposed by some very strong labour market outcomes. It's part of the puzzle or phenomenon that I was talking about. Employment growth at around 2½ per cent is strong. Even though the unemployment rate is tracking sideways, we're seeing this step-up in labour force participation, where we've got employment-to-population ratios at record—or near record—highs. So there are a couple of conundrums in the economy. Typically, we'd expect to see quite strong output growth counterposed to, or at least running ahead of, strong employment growth. But we've seen some general weakness in the economy, but this continuing strong employment growth. Frankly it's a mixed story. There are a couple of sectors which are showing some signs of strengthening now. The housing market is the obvious example, with house price increases we've observed, and the increase in turnover of the mining investment that I mentioned. But we are yet to see a significant turnaround in household consumption and business investment more broadly

Senator Cormann: I might add to this and also pick up on the secretary's statement. The important thing to remember is that the Australian economy continues to grow. We're now into our 29th year of continuous growth. Employment growth is strong, well above what we'd forecasted at budget time, for example—for the 2018-19 budget. If you compare the actual performance of 2.6 per cent employment growth to the forecast of 1.5 per cent, that's obviously significantly stronger growth than anticipated. Indeed, workforce participation is at record levels. If you look at what's happening in other parts of the world, as the secretary mentioned in his opening statement, Germany, the UK, South Korea and Singapore have all been experiencing negative quarters of growth. So, comparatively speaking, given what's happening in the global economy and how that is impacting an open trading economy like Australia, given some of the challenges we've had to deal with domestically—the impact of
the floods earlier this year and the impact of significant ongoing drought in large parts of regional Australia—the fact is that we continue to grow and that the outlook, as the Reserve Bank governor also said in recent days, is comparatively positive. He's expecting, and we are expecting, a gradual strengthening of growth. I think the governor said the other day that he expected a return to trend growth within 12 months. All of these things show that the Australian economy is actually very resilient in the context of some of the challenges and headwinds that we've had to deal with. So, in that context, we believe it's very important for us to continue to stick to the plan that we put forward, to respond to it, if and as required, in an orderly and methodical fashion rather than to react to what we would describe as hyperventilating commentary from some quarters which would want us to pursue a more panicked response, which we are not prepared to do.

**Senator GALLAGHER:** Dr Kennedy, if there's one feature of the economy that would keep you up at night as secretary of the Treasury, what would it be?

**Dr Kennedy:** I think it's important to wind down when you go home from work, so I sleep well.

**Senator GALLAGHER:** What? So you don't think? Nice for some!

**Dr Kennedy:** It's from my former career as a nurse; I learnt how to switch off after the end of a shift.

**Senator GALLAGHER:** What keeps you up in the day then? During business hours, what worries you? Is there a particular feature that would concern you?

**Dr Kennedy:** At the moment I'm cautiously optimistic about the way the economy is going to strengthen through the current cycle. There's no doubt we've been going through a period of what could have in the past been termed mid-cycle weakness. But my view is that the settings are right for the economy to strengthen. I don't carry really significant concerns about the near-term or medium-term outlook for the economy. Having said that, it's really the global conditions, frankly. Those IMF estimates of 0.8 per cent of world GDP in 2020 are significant. I suppose the set of issues that I'm watching very closely are how these global tensions around trade resolve themselves and how global uncertainty resolves. I think the features of the domestic economy are strong and well-balanced, but it's the potential for a global shock to come through, so it's worth watching that. Having said that, the recent de-escalation in trade tensions between China and the US is a very welcome sign. I'm in no better place than perhaps anyone here to comment on Brexit arrangements, but, if they were to resolve themselves, they would all provide an upside boost to the global outlook, and that would assist Australia.

**Senator GALLAGHER:** The follow-on from that is perhaps you, as secretary of the Treasury, has not a huge influence on impacting those global headwinds or resolving them. It's almost something that's outside of our control. But, if you're concerned about that and the flow on effects to the domestic economy, what work would Treasury be doing to monitor that and then look at how you can support the domestic economy in light of those global concerns? And again, what area would you focus on?

**Dr Kennedy:** You're right; in the first instance, it is important to monitor them as closely as possible. It was helpful, frankly, for me to have the opportunity to travel with the Treasurer to attend the IMF meetings to get a firsthand sense of how countries are seeing the outlook. It
was pleasing to hear of more confidence in the outlook, particularly in the US and China—though Europe continues to experience weakness. In terms of the department's ongoing advice to government around how to manage these circumstances, part of what I want to discuss today is the importance of maintaining medium-term objectives.

Senator GALLAGHER: Yes, I noted that in your statement.

Dr Kennedy: What's really important when uncertainty is heightened is that businesses and consumers can see a predictable way that governments will respond. That's why I wanted to not only highlight the importance of, for example, allowing automatic stabilisers to work in the usual way through the budget but also make clear that if the government needed to respond to a very significant crisis, which is rare and which I don't feel we are in at all today, the government would respond. We do all the work that is necessary to advise governments on those circumstances.

Senator GALLAGHER: Your statement, certainly from the point where you start commenting on domestic economic conditions, does identify some concerning features of the economy: household consumption; weak wage and non-wage income growth; the decline in housing prices in recent years; and confidence overall. You link to the fact that public spending has made a substantial contribution to economic growth. You certainly identify some of the challenges, and you then reach the conclusion that, at this point of time, you don't see that we've reached the point where the Treasury needs to respond beyond the frameworks that you have in place at this point in time.

Senator Cormann: To be fair, you are describing some of the outcomes of some of the global economic headwinds we have been experiencing and some of the domestic downside risks we have been dealing with. Just picking up on one, wages growth has actually been picking up. If you look at the 2018-19 wage price index, it rose by 2.3 per cent through the year to the June quarter—the strongest financial year result since 2013-14. Indeed, real wages in 2018-19 grew by 0.7 per cent through the year to the June quarter—above the 20-year average of 0.6 per cent and above the rate of 0.4 per cent through the 2012-13 year, when Labor was last in office. I know that the opposition always wants to look at how terrible things are—

Senator GALLAGHER: No, we are trying to explore what the Treasury response is.

Senator Cormann: but the truth is: things are actually quite positive in the context of the global economic conditions we find ourselves in. The plan that we've put in place as a government is working—

Senator GALLAGHER: That remains to be seen, frankly.

Senator Cormann: and, as we always do, of course we will continue to make judgements along the way in an orderly and methodical fashion. That is what you would expect us to do.

Senator GALLAGHER: I'm not trying to be political here, Minister. I'm just trying to use the time we have with the Secretary of the Treasury to explore the comments he has made in his statement.

Senator Cormann: Indeed. I just felt there was a level of verballing that was taking place.

Senator GALLAGHER: I was trying not to verbal, actually. It seems to me that the conclusion reached is that the medium-term fiscal framework is something that Treasury is
quite content with at this point of time, and that you do not believe further responses, based on domestic economic data, are warranted at this time. I guess my flow-on question would be: what would need to change for you to escalate out of that framework?

**Dr Kennedy:** My point is that we would always remain in that framework. It's been a framework that has persisted through a number of governments.

**Senator GALLAGHER:** Or supplement—

**Dr Kennedy:** It is probably most clearly articulated in the Charter of Budget Honesty, when that was introduced, but it has been thought about for some time. The framework provides the broad scaffolding in which decisions are made. In terms of the recent data that we have seen and what that means inside such a framework, my general sense of the outlook would accord with what the governor has been talking about. This is a gentle turning point. I do see the economy strengthening from here. That's all consistent with what we are observing inside the framework, because there has been this discussion about fiscal responses and, as I said, this interweaving with structural reform. I just thought it might be useful, for the committee, for us to tease out the longstanding way we have thought about those sorts of issues.

Just briefly, the conversation at the IMF meetings was not mostly about fiscal responses; it was mostly about structural reform and the importance of strengthening economies. I think that, while there are some conundrums in wage growth, there is just no doubt that the long-term driver of wage growth is labour productivity. The sets of structural reforms that governments have to increase the productivity of labour so that people can enjoy sustained, ongoing wage growth was really the crucial piece, and a crucial take-out, of those meetings. My point was simply that that case is always present. It's perhaps a bit more heightened when one sees uncertainty, and in some ways you can give more confidence to the business sector and to investing if they can see a clear reform program or a clear strengthening of the structural underpinnings of the economy. In a sense, that was my view about how we can best support the economy—to maintain our consistent frameworks but also for governments to focus on reform opportunities like, for example, some of the things that the Productivity Commission identified in its *Shifting the dial* report.

**Senator McALLISTER:** If I may follow up, Dr Kennedy, you made the point in your opening statement that the circumstances or crisis that would warrant temporary fiscal responses are uncommon. Should I understand from that that you do not consider that we are presently in circumstances that would warrant a temporary fiscal response?

**Dr Kennedy:** Yes.

**Senator Cormann:** This is very important. Today's medium term, in the not-too-distant future, will become the short term. Our plan is designed to ensure that Australians today and into the future, over the medium and long term, have the best possible opportunity to get ahead. We want to ensure that the decisions we make today strengthen the economy and make it more resilient, and ensure that we can continue to sustainably fund all of the services Australians rightly expect over the medium and long term. We can't just look at next week. Our decisions have got to be framed around the impact over the medium and long term—

**Senator McALLISTER:** Thank you, Minister.

**Senator Cormann:** which we are doing.
Senator WHISH-WILSON: Not enough.

Senator Cormann: That might be your view. We are doing a lot.

Senator WHISH-WILSON: It's not just my view.

CHAIR: Senator Whish-Wilson! Senator McAllister, you have the call.

Senator McALLISTER: Dr Kennedy, you indicated that you do not think we are in a circumstance that warrants a temporary fiscal response. How should we understand the Reserve Bank governor's calls for a major spending program on infrastructure? It—

Senator Cormann: I think you're verballing him there.

Senator WHISH-WILSON: How is that verballing? That's what he said.

Senator McALLISTER: May I finish? We only have a limited amount of time for each of the senators.

Senator GALLACHER: We could always go into next week!

Senator McALLISTER: That's true; we could go into next week.

CHAIR: Let's stop interrupting. Senator McAllister, you have the call.

Senator McALLISTER: The Reserve Bank governor has repeatedly called for a bring-forward of infrastructure programs. He concedes, in the same way that you do in your statement, that there are some capacity constraints in major capital cities, but he has strongly, publicly and repeatedly made the point that there are small-scale projects that could be brought forward and that there is capacity in other capital cities and regions around the country. It doesn't seem to me as though what he is talking about, in making those calls, is a long-term structural reform program. It looks to me like he is calling for an immediate fiscal response, and I am asking you whether you are rejecting that call in the statement you are making this morning.

Dr Kennedy: I might try and distinguish between a couple of activities. When people think about a short-term, temporary response, they think about a significant action—the sort of action that you might have seen, for example, in the response to the global financial crisis—where a very short, large, targeted, temporary response looks to bring forward activity in some way. I noted in my remarks that there are some opportunities to bring forward some of the infrastructure spending. When I was the infrastructure secretary I gave a speech that identified some of those opportunities, but I did warn that it was very difficult to move the large projects. The large projects really need to be well planned and carefully executed. But there are some opportunities. I understand the Prime Minister has written to the premiers on these matters—

Senator Cormann: It is a matter of public record.

Dr Kennedy: and it was raised in the Treasury's COAG meeting. I would regard this infrastructure spending as a supply-side measure. It is not structural reform in the sense of changing the tax system or deregulating, but it is a long-term contribution to the supply side of the economy.

Senator WHISH-WILSON: What about productivity?

Dr Kennedy: And it is about our productivity, as the senator identifies. It lifts the productivity of the transport system. So I would regard it—and I am perhaps mixing two
issues a bit here—as investment in the supply side of the economy in the same way that structural reform contributes to the supply side of the economy. To the extent there is a no-regrets opportunity to deliver that, to either accelerate reform or deliver needed infrastructure, then governments should take that opportunity.

When I was talking about fiscal stimulus, I was talking about it in the sense that is more classically known—that is, a large, temporary measure. When we talk about supply-side or structural reforms, we are usually talking about something that is going to have a sustained effect on the budget or some sort of sustained effect on the economy. I grant you, Senator, that there is a spectrum here; one person's stimulus sounds like it is another person's structural reform! But I was talking about stimulus in the classic way it is understood, which is a temporary increase in welfare payments or some form of a temporary tax cut—words to that effect. The tax cuts that have been instituted this year are having a positive effect, and the timing is useful in the context of the weakness in the economy. But they are not temporary; they are permanent tax cuts, and they are now a permanent feature of the economy. Any feature that we're changing that is permanent in that sense should always be considered on its own merits, as part of the structural aspects of the economy. The temporary stimulus effects are useful, but there are secondary considerations. The first consideration is: is this a good project? Is this a good infrastructure project? Is this a high-quality tax cut? That was my point about distinguishing your thinking about these types of issues.

**Senator Cormann:** On infrastructure, we do have a very ambitious $100 billion federally-funded infrastructure investment pipeline. But quality projects—productivity-enhancing, economy-enhancing projects—do have, necessarily, a run-up time. There is a time and a capacity issue for proper execution of these sorts of projects. But we are, course, looking at opportunities to bring forward some of the projects, where that can appropriately be done, and the Prime Minister has indeed written to premiers and chief ministers in order to bring that about. What we will never do, though, when people call in a breathless fashion for more infrastructure stimulus, is throw money at school halls—

**Senator McALLISTER:** Calling in a breathless fashion?

**Senator Cormann:** I am talking about the Labor Party.

**Senator McALLISTER:** Is that really what you're saying—breathless?

**Senator Cormann:** I am talking about the hyperventilating from the shadow Treasurer; that's what I am talking about. We will never do what the shadow Treasurer apparently supported when he was chief of staff to then Treasurer Swan, which was putting $1 billion worth of pink batts into people's roofs. To then spend $1 billion taking them out again—

**Senator GALLAGHER:** We actually kept the country afloat during the GFC.

**Senator Cormann:** because houses were burning down—

**Senator GALLAGHER:** We know your views on it.

**CHAIR:** Order!

**Senator Cormann:** We will never throw money at school halls—which those schools didn't want—as you did, just because you wanted to push money out the door as fast as you could. High quality infrastructure investment, of course, we support. And, of course, we support rolling that out as fast as possible—but also as fast as appropriate—to make sure there
is a lasting productivity enhancing effect from these quality projects that are appropriately prioritised and appropriately selected.

Senator GALLAGHER: I'm trying not to get baited by him, but I would point out that Labor's response during the GFC did prevent the country from falling into recession—

Senator Cormann: It pushed interest rates up—

Senator GALLAGHER: maintained jobs and actually supported the economy—

Senator Cormann: which made a large part of the economy internationally less competitive because it drove the exchange rate up.

Senator GALLAGHER: throughout the biggest, most difficult economic circumstances faced in modern times.

CHAIR: How about senators on this side stick to the questions rather than having discussions.

Senator GALLAGHER: Dr Kennedy, you mentioned the recently legislated personal income tax cuts and I think you made some comments here this morning that they are having a positive effect. I think you've only got partial results in. Can you update the committee on what those positive impacts are?

Dr Kennedy: It's early, and they are partial. After some pretty weak growth in retail trade I wouldn't have described it as a strong monthly outcome.

Senator GALLAGHER: No.

Dr Kennedy: It was, I think, around the average monthly outcome. I'll check with my colleague in a moment. There have been mixed results reported. I would have read the same reports in the press that you have about what the banks are seeing. Some banks have seen some flowthrough and others haven't. One of the points that I was trying to make there was: trying to observe in the macrodata the effect of tax cuts is difficult because we never observe what they would have been without the tax cuts. My general assessment is that they will be having a positive impact, but it may be the case that consumption was a bit weaker than we otherwise thought and, hence, the macroeffect doesn't look as strong. Alternatively, if people are choosing to pay down debt a little bit earlier, as I identified, that will still lead to consumption coming forward. I had seen some commentary that they're having no effect. I think that's unlikely. If they were having an effect, it is quite hard to distinguish exactly what that effect looks like. I'm quite confident it would be the mainstream interpretation that it is supportive of the economy, but trying to pick that out of the macrodata is difficulty to see. We should wait a little longer, frankly—

Senator GALLAGHER: Do you have an idea on what 'waiting a little bit longer' is? What's the time frame?

Dr Kennedy: At least how the effect appears to be flowing through the macroaggregates will become clearer towards the end of this year. We will never know the counterfactual; we will never know what it would have been without these impacts. That's why, when studies look at the impacts of what tax cuts do for consumption, they try and do it in some sort of controlled experimental type of way where you observe a group who didn't get the tax cuts and you observe a group who did get the tax cuts. The general consensus from economists would be: they would be having an effect.
Senator GALLAGHER: I think the effect is unclear.

Dr Kennedy: I guess your question is focused on how much of this will turn up in the macroaggregates in the new term.

Senator GALLAGHER: Yes.

Dr Kennedy: It will be clearer across the next few months, I think.

Senator GALLAGHER: The comments you're making today are based on feedback from banks and average retail figures. Do you have access to other data that we are not privy to that is giving you that view?

Dr Kennedy: No, I don't have a secret data source.

Senator Cormann: To correct: given Senator McAllister's reference earlier alleging and asserting and, I would say, verballing the RBA governor around the proposition that somehow he called for a massive infrastructure package from the government, I refer you to the governor's most recent evidence before the Standing Committee on Economics—and I'm quoting him:

But, if the economy is not doing well and the global economy is not doing well, we need all arms of public policy to support the Australian economy. But that's not a call for the government to do more now.

I just want to be clear about that. He also said:

Can I just clarify something: I have not called on the government to do fiscal expansion.

So just to, again, push back on what the Labor Party have consistently done, that is completely overreaching in your interpretation of what the governor has and hasn't said.

Senator GALLAGHER: Dr Kennedy, you've made a couple of references to the importance of structural reform. Have you been given clear direction from the Treasurer on what the government's structural reform priorities are and, if so, what are they?

Dr Kennedy: Some of them are being legislated. They relate to changes to the tax system and the personal tax arrangements. At the recent Heads of Treasuries meeting, we had a presentation from Michael Brennan, the head of the Productivity Commission, and shortly all the heads of treasuries will be meeting. Part of the government reform program needs to cut across federal and state governments and how they work together—for example, how infrastructure projects unfold but also health and education. I see substantial opportunities there.

On the deregulation opportunities, I've got an example in the tabled statement. We set up a deregulation task force to look at those opportunities, and one of the areas we are looking at is food export. People obviously have the best intent around the regulations in the food sector. You can develop what you could almost think of as a thicket of regulations. What we have found, for example, for food exporters is that people potentially have to deal with more than 200 pieces of legislation and as many as 30 agencies. I'll have to confirm that for you. We try to solve problems from many dimensions. They can begin to cluster and create real difficulties for people to get sectors going. So it's not the case that there shouldn't be any regulation there, for example, but they do need a sharp focus. That would be my view. You get real opportunity when you take a task force and you just focus in on an issue. There's complexity here. There are three levels of government, as you know well.
It perhaps doesn't sound as exciting as other things, but I think you have to be really persistent and energised in trying to pick those issues off. In my view one of the best ways is to focus very strongly on those. I think there are genuine opportunities where the public sector is engaged—for example, the health sector. We have made real progress on the productivity of the health sector through the way we have approached average pricing, for example. But we also need to think carefully about how we deal with chronic disease and how we cluster things together. Those things will turn up in productivity. They will turn up in better outcomes. They are some of the issues that we in Treasury, with the Treasurer, have been focused on, particularly in the COAG setting.

**Senator GALLAGHER:** Can you identify the structural reform priorities clearly that the Treasurer has identified? I agree with the ones you have listed. Some of them are business as usual, frankly. Deregulation has been around as long as I've been in politics, and there have been task forces probably on a yearly basis. No offence, but it is cutting red tape. They are named different things—tiger teams or whatever. You set them on a job. Dereg is important but also business as usual. In terms of direction from the government to the Treasury on what the structural reform priorities are, has that been made clear to you as Secretary of Treasury?

**Dr Kennedy:** I would say yes. I haven't got them all in front of me, but a clear guiding document here would be—and I'll just confirm with my colleagues—the 28 areas identified by the PC commissioner in the *Shifting the dial report*. We will try to pick those off. There are others in other sectors. Things like the consumer data right, financial services reform and all of those things I would see as part of our overall—

**Senator GALLAGHER:** Has the Treasurer written to you about the structural reform priorities of the government?

**Dr Kennedy:** I don't usually find that my ministers write to me; they usually tell me, and it's an ongoing conversation. So there's been no formal exchange in that form, but, certainly, he's talked to me about his priorities.

**Senator SINODINOS:** Welcome, Dr Kennedy, it's great to have you here, and I'm sure you'll do a great job. On the tax cut, you were talking about the fact that 'tax cuts initially may be used to pay down debt faster, but, ultimately this brings forward the point at which households could increase their spending'. But if I pay down debt and the money goes to a bank or someone else, that money circulates back into the economy. So, in a sense, isn't it still stimulatory, whether it's initially saved by a household or not?

**Dr Kennedy:** Yes. I was trying to identify—people have been looking particularly at the partial indicators on retail—

**Senator SINODINOS:** At the consumption indicators, yes.

**Dr Kennedy:** To try and identify those effects. There is a broad general equilibrium effect that you are identifying, that, when you provide that tax cut and someone pays down debt, and, as you said, the money circulates more broadly in the economy, it has had a stimulatory effect. My point, really, was to focus particularly on the individual consumption elements and just respond a little to the notion that I had read occasionally that it was having no effect, because you couldn't see it in the retail trade numbers—

**Senator SINODINOS:** The point of my question is that maybe that notion has been overstated. We have to look at the broader macro effects.
Dr Kennedy: That's correct.

Senator SINODINOS: In terms of the tax cut itself, you talked about it more as a structural measure, rather than a stimulus measure per se, given it's a permanent measure. Do you estimate the potential labour force participation effects of these sorts of measures? How do you measure it being a quality measure?

Dr Kennedy: Since I've spoken a lot, I might draw my colleague in here, because I wasn't here for the analysis that would have been done. In broad terms, I would expect the type of effect that you just described to flow through, but in terms of the analysis that was undertaken, I might ask Meghan to comment.

Ms Quinn: When we looked at the implications of the tax cuts to include in the forecast for the budget, we did look across the full spectrum at the implications for consumption, what that might mean for savings, and then what that might mean for the labour market. We haven't separately identified the implications, but they would be positive at the margin for participation, particularly for particular sectors of the community, such as second-income earners and the like.

Senator SINODINOS: When you look at those participation effects, you're talking about second-income earners—do you think that could be bigger bang for the buck?

Ms Quinn: The evidence is that if you reduce the disincentive to work, then people will increase their labour supply over time, so we would expect there to be a positive benefit on participation. But, given the size of these changes, and the disaggregated nature over time, it would be difficult to disentangle the precise implications.

Senator SINODINOS: Is one of the issues at the moment that we seem to have quite a big pool of people potentially willing and able to come back into the labour force—either people who are working less hours than they would like and are willing to work more hours, or others willing to come into the labour force from not working? Is that right? Is there quite a pool there?

Ms Quinn: We have certainly seen in recent times a very big increase in the number of people entering the labour force—coming from outside the labour force—and either looking for work or working lower numbers of hours. As we've had a big increase in the participation rate, we've also seen average hours come down, which suggests that when those workers are coming in, they're working in lower-hour jobs, not on average—that's been full-time—but at the margin. So we have seen a very large increase in participation—larger than what we were expecting.

Senator SINODINOS: Is that a population effect, or is that secondary income earners coming back in? What composition of people is there?

Ms Quinn: When you look at the employment to population ratio, we're at record highs for the number of people who are working, relative to population. So it's not a population story. Given a fixed number of people, there's more people coming into the labour market. And the cohorts where we've been surprised, relative to expectations, is older workers in the plus 55 bracket and the cohort of women returning to the workforce after childbearing ages.

Senator SINODINOS: You would have heard the Reserve Bank governor talk about a non-accelerating inflation rate of employment of around 4.5. Do you do estimates of the NAIRU and the like?
Ms Quinn: We do update estimates from time to time. Our current estimates in the budget are for 5 per cent for the NAIRU, but there's a range of uncertainty with that. The OECD has a number of about 5.2, the IMF has got a 4.8 number and, as you mentioned, the Reserve Bank has recently updated their view to 4.5.

Senator SINODINOS: Based on your number of five per cent, clearly we're closer to the NAIRU than some other people would suspect. Is that right?

Ms Quinn: The current unemployment rate is 5.2. Given the degree of uncertainty, you'd say it's somewhere in the vicinity of the NAIRU. As Dr Kennedy mentioned, we are looking at the relationship between the unemployment rate versus the underemployment rate and wages, and one of the questions we are asking ourselves is whether there is a bit more labour market slack—given this big increase in participation that's coming in, and given the nature of the people coming in, whether there is actually more labour market slack than just the unemployment rate itself would suggest. That might be one of the factors for real wages picking up—until recently, wages were lower than expected, but, as Senator Cormann mentioned, real wages have picked up in very recent times to be above the 10-year average.

Dr Kennedy: I'd encourage people to not get too fixed on the precise estimates of things like NAIRUs or estimates of Beveridge curves, because these are, frankly, estimates in models. As you would know, there are always bands around these issues, and the disequilibrium frameworks in which we estimate these things mean that it's not particularly insightful to estimate them in aggregate, because of the particular relationship, say, between wages and inflation and the unemployment rate. I think it is more valuable to be digging into the detail of the labour market in the manner that Ms Quinn identified—this increase in participation for older age cohorts, for example, and women returning to the workforce—and really trying to understand some of the labour dynamics. And then also bringing yourself back to, fundamentally, what, that you know, is going to drive good outcomes here? And you do know, for example, that labour productivity in the longer term will be the key driver of wages. So, those estimates are useful guideposts as we try and manage the economy through these cycles—particularly for the bank, with its understanding of how the strength of the economy is interacting with inflation, for it to manage inflation targets. With our focus particularly on efficiency and the competitiveness of the economy, we tend to focus more on what exactly are the dynamics of the labour market and particularly how to lift labour productivity to improve wages.

Senator SINODINOS: I guess the reason for raising it, though, is that there's been this focus, particularly from the Reserve Bank, on getting the employment rate down to get inflation up into the two to three per cent band that they've set themselves as the target range. I think that's part of the reason why people are asking these questions: they're trying to get some guidance as to what the numbers suggest about when we're likely to reach that nirvana, if you like. But what you're suggesting is there's a lot more uncertainty around that.

Dr Kennedy: There's always uncertainty around those estimates and how they interact with the conditions. The US, for example, has a lower unemployment rate at the moment. It has more inflation and wages are stronger too, I think, Meghan. But it's employment-population ratio is below our, so they have not drawn people back into the labour market to the extent that we have drawn people back into the labour market, and we've been drawing people of working age into the labour market at about half a percentage point a year, I think,
over the last three years, to hit these record levels. If we'd taken a judgement in the past that we were at the top of labour force participation, and we hadn't had this labour supply response, it'd be a very tight labour market today. But it's not, because we've drawn this extra labour supply in, which I can only think is a good thing. It's difficult to know where that ends, because we've not observed it at these levels before. And also this interaction with underemployment, which, as I noted in my opening statement, did not come down to the same extent when the unemployment rate came down. We're continuing to dig into these issues and try and understand them more clearly. I wouldn't want to leave people with the impression that these are not useful guideposts for the way we go about setting policy, but they are guideposts.

Senator SINODINOS: Finally, you mentioned in your statement hurdle rates in the private sector. You think they've remained relatively high compared to where interest rates are now?

Dr Kennedy: This was one of the conversations at the IMF meetings: whether the uncertainty that's become apparent in the economy has taken the space of the lower cost of capital that's come about by lower interest rates. I note Senator Whish-Wilson, from his background with the business sector, has probably heard this conversation. I note you nodding, Senator. And yes, I'm hearing the same thing: that's potentially where this uncertainty turns up. The other thing I would say is, it can take some time for people to reset expectations around exactly what's a reasonable hurdle rate or not in low-interest rate and sustained low-interest rate environments, or in other environments. People's rules of thumb for investing, or any activity, even their rules of thumb in the housing market, or a range of activities—we all adapt with a lag, we all adapt slowly. That's a feature we often see in economies. But probably the main conversation at the moment around the hurdle rates is, 'Has increased global uncertainty taken up the space between lower interest rates and what businesses need to see on a return?' Part of my argument is, one of the contributions governments can make in this environment is to behave in a predictable way. That does not mean they don't respond to circumstances; it's just that they're predictable in the way they would respond to circumstances.

Senator WHISH-WILSON: I was just, if you don't mind, going to add to that. Apart from the uncertainty, it's also about alternatives, and when they can buy back shares rather than investing in business and get a better return, that's factored in.

Senator Cormann: Buying back shares, and I know it gets mentioned from time to time, that is actually—

Senator WHISH-WILSON: A lot.

Senator Cormann: It's an important feature of an efficiently operating market, because—

Senator WHISH-WILSON: That may be the case; I'm not disputing that.

Senator Cormann: If you've got a business that hasn't got the opportunity to expand, buying back shares, giving the capital back to the investors, that means that they can invest in businesses that do have the opportunity—

Senator WHISH-WILSON: I'm not disputing that. I'm just saying it's part of their figuring as to why they have higher hurdle rates.
Senator Cormann: Sure. But from time to time, in recent discussions on things like the right level of business taxation, buyback of shares is somehow branded as if it's a bad thing. It is actually an important feature in an efficiently operating capital market—

Senator WHISH-WILSON: Well, if you want business investment, it potentially can be a bad thing.

CHAIR: Senator Sinodinos, have you—

Senator SINODINOS: My final point was going to be, apart from governments being more stable and certain, and having a medium-term framework, reducing the costs of investment in that context could be one way to actually encourage more investment. Is that right?

Dr Kennedy: Yes, it could be.

Senator SINODINOS: Whether it's through after tax returns, through cutting taxes, or through other things that reduce the cost of doing business, in a sustainable way.

Dr Kennedy: They do have that effect, yes.

Senator SINODINOS: Thanks.

CHAIR: Senator Whish-Wilson. For the committee's information, after that we will go back to Senator Gallagher, and then Senator Roberts has indicated he has a short line of questioning. That may be after the break, Senator Roberts, because we break at 10.30. Senator Whish-Wilson, you have the call.

Senator WHISH-WILSON: Thanks, Chair. As an added observation, we held a select inquiry, Dr Kennedy, a couple of years ago, into infrastructure spending, and took evidence from nearly 150 witnesses. Most of those businesses were saying that hurdle rates were still stubbornly high, in infrastructure specifically, because they felt the issue was too political. The process that led to infrastructure spending had been highly politicised and there'd been a number of high-profile failures, and that was one reason that they didn't want to invest in more infrastructure. I'm happy to send you a copy of the report and its recommendations.

Dr Kennedy: Do you mind if I make a quick comment in response to that?

Senator WHISH-WILSON: Yes, please.

CHAIR: These are supposed to be questions rather than comment, but—

Dr Kennedy: If it helps. Apologies, Chair. One of the reasons, when I was in the infrastructure portfolio—I think this is something that would be shared all around the room—I was quite keen on the 10-year pipeline profile. Frankly, the notion of an infrastructure budget that gets optimised is it gives more predictability to infrastructure businesses as they are trying to think forward. So one of the things that government was doing and, to be frank, we were encouraging them to do, was to fund more business cases and try to create a pipeline so people could see beyond the next two or three years what the next project was likely to be and what the process was that it would go through and, as much as possible—we work very closely with our state colleagues—to have alignment around what you would see as the priority in Hobart or in Brisbane or in another jurisdiction. I am not sure. I personally felt it was a very useful step forward to move to a medium-term 10-year pipeline framework and then to publish those projects which the government was doing and also to publish the profiles, to try and give business some predictability about when we would expect to start and
when we would expect to do things. As I said, I think there would be wide support for that around this room.

**Senator WHISH-WILSON:** That is a good suggestion, Doctor Kennedy. We had many other good suggestions in that report too, which I will make sure I forward you. In relation to house prices reflating the economy, the Treasurer recently quoted a Treasury estimates figure that a 10 per cent increase in house prices could result in a 0.5 per cent increase in GDP. Do you know if that analysis has been published?

**Ms Quinn:** Yes, it was in the budget statement, in budget paper No. 1, this year. We put a box outlining that scenario that the Treasurer has called on.

**Senator WHISH-WILSON:** Did it outline what the assumed increase in private borrowing requirement would be to find a 10 per cent increase in house prices?

**Ms Quinn:** We looked at what the economic effect would be of a 10 per cent change in house prices, looking through the implications on consumption, dwelling investment, the transfer in ownership costs and other effects on the economy. We were looking at the GDP component. So we were not looking at the financing side of the house price component; we were looking at the kind of macroeconomic impact of house pricing.

**Senator WHISH-WILSON:** In terms of the macroeconomic impact, I am sure you are aware a number of commentators over the years have talked about housing investment as being unproductive or speculative investment versus business investment. I wondered if you had considered that implication of taking more money into potentially speculative property investment versus business investment?

**Ms Quinn:** We were looking at the indications of an increase in house prices and how it flows through the economy through the consumption effects, through the income and wealth effects, dwelling investment side of things. It was looking at the demand side specifically, not necessarily looking at the longer run component between supply and demand.

**Senator WHISH-WILSON:** Doctor Kennedy, I got here at the end of your opening statement. It just seemed a bit weird to me, because only three or four years ago we had a conversation with one of your predecessors, Mr Fraser, and he mentioned the 'b' word—the bubble word—in here around housing prices. It was widely reported at the time and it seemed quite controversial. But it seems within a few years we have gone from being worried about house prices inflating and causing systemic risks—we have had a royal commission since then—to a number of regulators tightening up housing lending. We have gone down that road yet it seems as though now we're putting hope in house prices reflating the economy. Do you see any risks from that, from house prices going up, say, 10 per cent or a targeted number?

**Dr Kennedy:** To put it in context, we have frankly only seen a couple of months of increases, not a long run.

**Senator WHISH-WILSON:** I know, but everyone is very keen to see more.

**Dr Kennedy:** As Ms Quinn was saying, in terms of their broader impact, it is certainly better to see them stable and increasing. You might be referring to concerns around asset prices. When there are very low interest rates in place and the potential for asset prices to grow quickly—

**Senator WHISH-WILSON:** Well, that is what caused the GFC, essentially.
Dr Kennedy: and the impact on financial stability, for example. That is something that the Reserve Bank and all those regulators would watch very closely and we do, of course. These are very early days. We are just seeing some house prices increase. As you know, the housing market is quite different across Australia. Down in Tasmania—

Senator WHISH-WILSON: It is booming.

Dr Kennedy: it is booming and it is pretty tight. People are struggling to find houses, and we really do need to see a supply response. In some parts of Australia, house prices are quite modest. In the cities, they tend to grow quickly, and that was the thing that we were talking about. These are issues that are always at a watch point. I wouldn't characterise it that I am thinking that the future of the economy is pinned on house price increases. I just wanted to identify it as a sign there was a strength in a sector that had been weak for some time. The real response, the increase in supply, will take some time too. I noted that in my comments. It will take some time because we have not yet seen a pick-up in approvals—the sorts of things that would encourage you to expect that construction will increase—but we would expect those things to follow. I take your point about asset prices when interest rates are very low, and certainly it is something we watch very closely.

Senator WHISH-WILSON: I suppose it is also, from my perspective, looking at alternatives to help stimulate the economy versus trying to reflate the housing market. It is a technical term—I hope Senator Cormann doesn't mind me using it—but I think it is no secret that the Treasurer since the federal election has been jawboning the regulators and the banks to lend more money and there has been a concerted push, I think, to lower lending standards, even following the royal commission.

Senator Cormann: I wouldn't describe it that way.

Senator WHISH-WILSON: Well, I could describe it in a lot harder terms—like encouraging irresponsible lending—but I chose not to.

Senator Cormann: He is definitely not doing that.

Senator WHISH-WILSON: Well, he is certainly encouraging people to borrow more.

CHAIR: Senator, is there a question here?

Senator WHISH-WILSON: Yes, there is. Are you confident this is not the main lever that Treasury is trying to pull to stimulate the economy?

Senator Cormann: I have to just respond there. APRA have acted to strengthen household balance sheets and lending standards, and the policies have meaningfully reduced vulnerabilities, so we are now in a somewhat different position, and APRA are making further independent judgements in the context of a different environment and that is entirely appropriate. I completely and utterly reject the implications of your commentary there. That is not what has been happening.

Senator WHISH-WILSON: Okay.

Dr Kennedy: The only thing I would add is lower interest rates aren't all about the housing sector; they are also about business investment. We spoke a little bit about that earlier. The monetary transmission mechanism—Ms Quinn is better placed to talk about it if you are interested in us talking through it—is much wider than simply the housing piece. I hope it wasn't unhelpful; I was trying to draw out in my opening remarks that that was one
part of the economy that we have seen stabilise and strengthen. It would be great to see business investment picking up as well.

**Senator WHISH-WILSON:** On that point—you mentioned it in your speech—have you examined or tried to survey businesses as to why they seem so reticent to invest at the moment? Is Treasury going through any exercise there to get some qualitative feedback?

**Dr Kennedy:** Look, having recently joined Treasury, I am not sure what has gone on in the past. I might just pass to Ms Quinn on that.

**Ms Quinn:** About 18 months ago we did do a very large project with the state treasurers through the council of federal financial relations, looking at business investment intentions and the causes behind non-mining business investment weakness at that time. A lot of those findings still stand today. In more recent times, we have increased our focus in our business liaison program, talking to our counterparts, asking people about business investment intentions. It is a standard question that we ask whenever the senior Treasury officials talk to businesses about what their intentions are, their plans. It is quite interesting. It is very sector based in terms of the feedback we get from businesses. There are quite a lot of technology changes happening, and boards are working through what implications they will have on their business plans and on their business strategies. There is also restructuring happening to take advantage of that technology. So that's one of the main reasons we hear back from businesses.

**Senator WHISH-WILSON:** It would be very interesting to get more information on that. In relation to your speech, Dr Kennedy, you say that high hurdle rates, which we discussed earlier, reflect risk and this reticence to invest. I will, if you don't mind me, Senator Cormann, quote Philip Lowe? It was at a different forum to what you quoted. It was at the ANU Crawford leadership program in June 2019 when he said: 'If the government can build productive capacity by borrowing at low interest rates, it seems like a good thing to do.'

**Senator Cormann:** That is a statement of fact. We don't disagree with that.

**Senator WHISH-WILSON:** It's quite a general quote. But wouldn't government's borrowing at record low interest rates and increasing long-term infrastructure spending with required planning actually reduce business risk and uncertainty, and stimulate the economy?

**Senator Cormann:** But you still have to have high-quality projects ready to go.

**Senator WHISH-WILSON:** Of course. We've been talking about this for five years. How you are going to do this?

**Senator Cormann:** The truth of the matter is that we are carrying a fair amount of debt. The key obviously has been to get the budget back into a position where the government lives within its means in terms of recurrent expenditure. We are in a position now where, on a net operating balance basis, we are in surplus now. But, in the end, how you finance them are always the sorts of trade-off decisions you are able to make.

**Senator WHISH-WILSON:** You can borrow off the balance sheet at a time in history—

**Senator Cormann:** But you still have to have the projects and you are still going to have the state and territory governments on board.

**Senator WHISH-WILSON:** I'd like to recommend my select committee report to view that comments exactly about this issue and how you could use a whole new way of financing. This is collected from a lot of businesses. I will make sure you see a copy of that. We've been
talking about this infrastructure pipeline now for some years. Can I give you a figure? I'm happy to provide you with our analysis in a minute.

CHAIR: I just want to point out I am going to share the call around.

Senator WHISH-WILSON: You gave me 20 minutes, Chair.

CHAIR: I didn't give you 20 minutes.

Senator WHISH-WILSON: That was my understanding.

CHAIR: No, you requested 20 minutes of the secretary.

Senator WHISH-WILSON: But I haven't finished my question.

CHAIR: We will come back to you later on.

Senator WHISH-WILSON: Can I finish this one question?

CHAIR: I'm letting you know we will share the call after this question.

Senator WHISH-WILSON: I am halfway through, so if you can let me finish, that would be great. In terms of infrastructure spending and trying to get businesses to commit to more spending, what do you think is the key lever that the government can pull? You don't believe that government has a role to play in co-investing, for example, in a lot of projects? We identified the infrastructure gap as: how long is a piece of string? There are at least a trillion dollars' worth of projects that people want funded. Of course, some of them are not shovel-ready but, nevertheless, all around the country there is a massive infrastructure gap waiting for financing or funding if it was available.

Dr Kennedy: I do see opportunities for the private sector to be partnered with the public sector in delivering infrastructure. For example, there is an unsolicited bid by a range of parties around the Melbourne Airport Rail connection that's been talked about in Melbourne and there would be a range of other parties. The private opportunity usually comes about where there has to be a revenue stream, frankly, that can be related to it, and it's usually in the stronger population areas. There is still a very strong role for all governments to invest in general transport infrastructure both inside and outside of capital cities. I do see an opportunity for all governments to be able to partner with the private sector in delivery of that infrastructure. I suppose I would just comment that there is quite a lot of infrastructure being delivered at the moment. If you look at the stackable charts of work yet to be done, they are very strong. The states are delivering very significant increases in public transport infrastructure in Brisbane, Sydney and Melbourne, and I welcome it. I think there's a very significant and important investment going on at the moment in transport infrastructure. Even on the private side, Brisbane has a privately funded runway being done at the moment, Melbourne's talking about another runway, and the government's investing in Western Sydney Airport. By 2025-26, that will be a very substantial increase in aviation capacity on the east coast, and, as you know, with some support, there's been an extension down in Hobart, and that's proving very positive.

Senator WHISH-WILSON: But, Dr Kennedy, in non Defence terms, our capital spending is declining over forward estimates in this country. Are you aware of that?

Dr Kennedy: The grant funding?

Senator WHISH-WILSON: Yes.
Dr Kennedy: I have to refer these back to my colleagues in Infrastructure, and unfortunately they've met before us, but, to try and get a clear picture of at least the Commonwealth's flow of money into infrastructure, one also has to account for the substantial amount of money that goes in through equity. For example, the $5.3 billion—I hope that's right—that's going into the airport does not turn up as a grant. That goes into that government business enterprise as an equity investment. Similarly, the very significant moneys, which the finance minister would know better than me, which go into Inland Rail also go through in that form. NBN goes through in that form, as does the Moorebank intermodal terminal. So there has been, by any realistic measure, quite a significant step up in the government flow of infrastructure spending, and also longer-term commitments over time. I'll try and do something on notice for you if you like. I'll finish there, Chair.

CHAIR: I will go to Senator Roberts. He has a brief line of questioning. Then we will have a break and we'll come back to Senator Gallagher. I understand, Dr Kennedy, that you need to leave at 11.15?

Dr Kennedy: I think the understanding is that I stay for corporate and macro—

Senator Cormann: Session 1—that's what it always is.

Dr Kennedy: which is scheduled to finish at 11.15.

CHAIR: I just wanted to make that clear to everybody. Senator Roberts.

Senator ROBERTS: Thank you, everyone, for coming. I'd first like to clarify something and gain some understanding, so I'll put these comments to Senator Cormann and also to you, Chair. When I first came into the Senate in late 2016, the committee chair was Senator Hume, and I asked her for an opportunity to question the RBA. She said, 'The RBA doesn't appear.' I said, 'But taxpayers pay their wages.' She said, 'I'll get back to you,' so she came back with an option. She said I could either have the RBA in Senate estimates in six months time or a closed session then, so I chose the latter. My office, in trying to arrange this session today, said we would like the RBA to appear and was told that they can't appear because they're not a callable Commonwealth entity. Another staffer later called to get more information and was told that the legislation says that, and that there is a six-monthly appearance at the House of Representatives. Why is the RBA so secretive?

Senator Cormann: I don't believe that they're being held secretly. But, obviously, public comments by the RBA are market sensitive, and I suspect that there is a level of management where you get the right balance between openness and transparency by appearing in a scheduled fashion in front of the House of Representatives Economics Committee, rather than three times a year in front of the Senate estimates committee. I'm happy to take that on notice and make further inquiries, but I think it's a matter of finding the right balance between being available for parliamentary scrutiny while making sure that we recognise the particular status and independent nature of the RBA and the sensitivity of the function that they perform in the context of the Australian economy.

Senator ROBERTS: Thank you for taking that on board. I think there's a need for a better balance between the house of review's fundamental accountability for reviewing and the point you just made about the RBA's public comments being sensitive. I understand that point, but, surely, there can be balance there, because the house of review needs to do reviewing.
Senator Cormann: Obviously, they would comply with legislation as it was passed at the time, and that legislation was put in place, but I'm happy to make some further inquiries.

Senator Roberts: Thank you, Senator Cormann.

Chair: And, from my point of view, I did inquire after your office contacted my office, and the advice I received from the secretariat is that we cannot call them at estimates. That was a specific decision made at the time of forming the RBA as an independent entity. So, I'll take it under advisement as well, but that is my current understanding of the situation.

Senator Roberts: Thank you, Chair. Secretary, given that a role of the Reserve Bank is to consider and set the prevailing cash rate, why is there no mechanism to force the private banks to pass on the changes in interest rates to Australian consumers? I preface my comments by saying that I'm new to this, so I don't claim to be an expert. They're just questions that I'm genuinely exploring.

Dr Kennedy: I might pass that to Ms Quinn, who has more history here. The only reason I'm being a little bit reticent, Senator Roberts, is that I think that question is fine, but, questions that go to monetary policy and specifically about existing RBA operations, because they are an independent body, I would always leave with them. But I think you're asking a broader policy question here. It would typically be raised—and I don't want to stuff you around in terms of timing—in our Markets Group setting, where we discuss those frameworks. I know your time is valuable, Senator. So, Meghan, do you want to make some comments?

Ms Quinn: I'll just give a high-level overview, and, if there are more specific questions about the legislative structure of the Reserve Bank, we can talk to our Markets Group colleagues. But the operation of monetary policy in Australia at the moment is that the Reserve Bank sets the overnight cash rate, and that sets the base rate on which the financial market then applies risk, and that flows through the economy to different interest rates in the economy. In historical perspectives, prior to the Reserve Bank setting monetary policy in that way, governments used to set interest rates, and we found, on average around the world, that that was an inefficient allocation of capital because it's very difficult for one institution to be able to set the interest rates for different types of capital across the economy. On average, most economies have found it to be efficient for those capital allocations to happen in the supply and demand system in the financial markets. So the base rate is set by the central bank, and then the individual interest rates for the different types of capital are set by the demand and supply conditions for those particular sources of capital.

Senator Roberts: That's a fine explanation. My concern, though, is that, the way things are at the moment, the big four banks have a huge and dominating influence on the market, and, in some ways, they're an oligopoly and they control the market. I've seen that in their products and their behaviour. Is it time for legislation to either diminish the banks' power or force them to actually come to heel in some ways? They have got a lot of power.

Ms Quinn: They aren't the only providers of capital in the market. There are other players other than the big four, and we do see the shares shift over time. Consumers or small businesses are able to get mortgages from other capital providers in the economy, and we have seen the overall share of the big four shift. The Treasurer has announced the ACCC is having an inquiry looking into the precise arrangements that the big four have for passing
through interest rates, and it will be interesting to see what their view is of the pricing decisions.

Senator ROBERTS: As I understand it—and I'm not confident about this, because I only looked at it briefly some time ago—deposits in Australia are 90 per cent held by the big four banks, and that is an increase after the global financial crisis.

Ms Quinn: There was an increase during the global financial crisis—a sort of flight to safety—but the government then introduced the lending security deposits. I don't know the exact numbers, but my Market Group colleagues could provide that on notice for you. It does shift over time. Deposits aren't the only source of funding for small institutions to be able to provide lending. They also can use capital markets to draw funds to be able to lend, and they do so.

Senator ROBERTS: In regard to credit cards, we now see the benchmark rate at around 0.71 per cent, and credit cards at 18 or 20 per cent. They haven't changed, whereas the other interest rates have come down. Is there something that can be done about that? Does the RBA need something there?

Ms Quinn: There are a whole range of interest rates in the credit card market, so some have adjusted. It's quite a complex market, the credit card market, because there are lots of different services—not just the provision of credit but also other services that come with credit cards. This is something that has been looked at in great detail, and people can shop around and get much lower interest rates than the ones you've talked about. It depends what services people want from their credit cards and the interest-free periods and those sorts of bundled goods.

CHAIR: We will have to leave it there, Senator Roberts, but we do have Markets Group later this afternoon, so you can come back to it then.

Senator GALLAGHER: Just before we finish, we have a few more questions for Dr Kennedy. In previous times, the secretary has been free to depart—

Senator Cormann: Are you suggesting that, if we do another 15 minutes, we might take a break at quarter to 11. Do you want to finish up with Dr Kennedy and then go to the break?

Senator GALLAGHER: What I was going to suggest is that we still would have questions for macro and corporate, but, in previous hearings, officers have been able to remain once the secretary has departed. I'm saying that you don't have to endure the whole chunk.

Dr Kennedy: Okay.

Senator GALLAGHER: I just have a few more for Dr Kennedy. I'm not sure whether you do or you're happy to go to officials.

Senator WHISH-WILSON: I do have some for Dr Kennedy.

Senator Cormann: Do you want to keep going now to finish this off?

Senator GALLAGHER: Senator Whish-Wilson also has questions—

Senator Cormann: Let's go to the break.

CHAIR: We'll go to the break.

Senator GALLAGHER: We don't have much further for you, Dr Kennedy.
CHAIR: We will suspend and resume in 15 minutes.

Proceedings suspended from 10:31 to 10:45

CHAIR: We will resume this hearing.

Senator GALLAGHER: Just a little bit to finish off with you—not with you; that sounds awful—

Senator Cormann: We knew what you meant.

Senator GALLAGHER: finish asking questions with you.

Senator McALLISTER: We're not finishing anyone off.

Senator GALLAGHER: No-one is finishing anyone off. Based on the answers you have given, there isn't a consolidated list of priorities in relation to structural reform that Treasury is working on.

Dr Kennedy: There is a list, but I might leave it to my colleague, Mr Atkinson, who has the structural reform division, and his section. I can identify for you the list of actions that I've become familiar with as I've joined the department. I didn't have the opportunity to attend the COAG meeting; I was on leave at that period—

Senator GALLAGHER: Lucky you, I reckon.

Dr Kennedy: which was most unfortunate from my perspective, so—

Senator GALLAGHER: Was there a little bit of humour there? A bit of sarcasm?

Dr Kennedy: if you don't mind, I might leave it to him.

Senator GALLAGHER: If a list exists, can we get a copy of it on notice or provided when Mr Atkinson appears. That would be great. In your comments this morning you made a couple of references to the impact of drought and dry weather conditions. You gave a figure of farm output directly detracting about 0.2 percentage points from real GDP growth in 2018-19. You then went on to say that, based on ABARES predictions, gross value of farm production is expected to fall by nearly five per cent in 2019-20. Have you done any work on the impact on GDP if that occurs?

Dr Kennedy: We may have. I might pass to Ms Quinn to answer that, if she wants to comment. Anything that has occurred between PEFO and what will now be MYEFO will be incorporated into that update.

Ms Quinn: The impact in 2018-19 we know—it's in the national accounts—and the fall in farm production took a direct quarter point off GDP. We will incorporate the fall in 2019-20 into our forecasts at MYEFO. We haven't published additional information at this stage.

Senator GALLAGHER: How do you use the ABARES information then? Does that feed into your forecast?

Ms Quinn: It does, yes.

Senator GALLAGHER: Did they make a prediction for the 2018-19 year?

Ms Quinn: They did. They have updated through time, and farm production ended up being a bit higher in 2018-19 than they originally estimated. It was partly about how they calculate what happens on farm versus what happens in the market. Sometimes lack of
rainfall can mean we have increased production because we have increased slaughter rates, for example. They did end up having an increase in farm production in 2018-19 overall.

Senator GALLAGHER: If farm production is expected to fall by nearly five per cent in the 2019-20 year, are you expecting that to have a bigger impact on GDP than the 0.2 percentage points from 2018-19?

Ms Quinn: At this stage we are expecting it to be about the same, but we will have to do the detailed analysis.

Senator GALLAGHER: But it will be updated in MYEFO.

Ms Quinn: That's right.

Senator GALLAGHER: Dr Kennedy, the Treasurer and Prime Minister have said that drought funding is a number one call on the budget and a priority for the government. Minister, you said yesterday that it is a number one call on future spending. What work is Treasury doing to examine options around further drought relief or support—based on the comments from the Prime Minister, Treasurer and Finance minister.

Dr Kennedy: We are involved in the ongoing whole-of-government assessment on the impact of drought and, on an ongoing basis, in advising the Treasurer. I'm sorry but I might have to throw that one to Mr Atkinson too. If you want some sense of what advice has been provided and that type of thing. He's in fiscal group. He follows us.

Senator GALLAGHER: He's later. We can ask him further questions. But Treasury is involved at a whole-of-government level. Is there a working group?

Dr Kennedy: I believe so, but will get him to confirm that when he comes in.

Senator GALLAGHER: We will come back to Mr Atkinson.

Senator McALLISTER: I know we are going to have detailed questions to the macro and corporate groups after you depart, Dr Kennedy, but is it possible for Treasury to circulate an updated org chart? I have one that does not have the acting personnel.

Dr Kennedy: Yes, we'll do that.

Senator GALLAGHER: Just a comment around wages: I note the Reserve Bank governor has made some comments around the public sector wages cap and the impact on wages growth more broadly.

Senator Cormann: Wages growth in the public sector has been running above private sector wages growth.

Senator GALLAGHER: You haven't even let me ask my question before you've come in with a—

Senator Cormann: The implication of your question is that somehow public-sector wages are depressed.

Senator GALLAGHER: How do you know? I haven't even asked it.

Senator Cormann: They're running above inflation too, incidentally.

Senator GALLAGHER: I was just doing the preamble to the question. It is state and territory governments as well as the Commonwealth. The governor has said that he would like
to see three per cent or more—a three in front of it. Do you agree with those comments from the Reserve Bank governor?

Dr Kennedy: Typically what's happened with public-sector wages is they move in line with private-sector wages. What we're looking for in private-sector wages, as I spoke about earlier, is to see them increase, and the best way to do that in a sustainable way is through labour productivity. Frankly, it's a matter for governments, and I'm not going to speak to how they go about setting public-sector wages.

Senator Cormann: I think you'll find that public-sector wages on average are higher than private-sector wages on average, and in recent times over various periods public sector wages growth has been slightly above private sector wages growth. I think at the moment they are broadly aligned, consistent with what the secretary just indicated. But the point is that, if we were to increase public-sector wages by more, we would have to fund that through higher taxes, which ultimately would have a negative impact on economic growth into the future. Ultimately that would have to be funded by higher taxes than otherwise would be the case from individual taxpayers or business, and that's not something we are proposing to do.

Senator GALLAGHER: Do you think public-sector wages set the standard for private-sector wages?

Senator Cormann: No.

Senator GALLAGHER: You don't?

Senator Cormann: Nine out of 10 Australians work in a private-sector business. All sorts of factors come into it, but fundamentally there is a market at play, where you have demand and supply, and as the unemployment rate goes down and excess supply in the labour market reduces, you would expect that increased competition would put upward pressure on wages. Ideally, on the back of stronger productivity growth, these increased wages and this stronger wages growth can be sustainably afforded in the economy, but you can't have public sector wages growth completely out of whack with private sector wages growth, because the other effect would be that the public sector starts to compete away labour from the private sector.

Senator GALLAGHER: I didn't ask that. You are answering a question that I didn't ask.

Senator Cormann: In the year to June 2019, I remember, public sector wages growth was running at 2.6 per cent; the private sector was at 2.3 per cent.

Senator GALLAGHER: That was from state governments leading the way.

Senator Cormann: This is in aggregate across the economy.

Senator GALLAGHER: You have a wages cap of two per cent or worse.

Senator Cormann: The average annualised wage increase across all current federal enterprise agreements in the March 2019 quarter was 2.7 per cent.

Senator GALLAGHER: I'm not going to argue with you about what wages outcomes should be. I think they have been inadequate in the Commonwealth. I think the states are bolstering those numbers. But the Reserve Bank governor has made it clear that he would like to see both public and private sector wages with a three in front of them. Are you on the same page as the Reserve Bank governor, who would like to see wages growth of three per cent—acknowledging that they have just revised it back to 2.3 per cent for the next two years, so it's
way off where the Reserve Bank would like to see it. Where would Treasury like to see wages growth?

Senator Cormann: You are asking the secretary now for an opinion. As he quite rightly pointed out, this is a matter for government. Fiscal policy is a matter for government.

Senator Gallagher: No, wages growth is not a matter for government.

Senator Cormann: Fiscal policy is a matter for government; monetary policy is a matter for the RBA. Our argument has been very clear. Of course we want to see stronger wages growth into the future, but on the back of stronger economic and productivity growth, the unemployment rate continuing to come down and workforce participation continuing to increase. It's a matter of getting the balance right. I would point out again that private sector wages growth through the year 2018-19 has been the highest in four years.

Senator Gallagher: That's small comfort really.

Senator Cormann: Real wages growth is above the 20-year average of 0.6 per cent. When people talk about wages growth now, they forget to mention that inflation is also very low if you look at it in the broader context.

Senator Gallagher: 'People have never had it this good' is the argument you're running this morning?

Senator Cormann: You have to look at how wages are tracking compared to inflation.

Senator Gallagher: And then you have to see it in the cost of cost of living, don't you.

Senator Cormann: If you are looking at how wages are tracking compared to inflation—

Senator Gallagher: My question was to the secretary.

Senator Cormann: as I said before, there is 0.7 per cent real wages growth through the year 2018-19, above the 20-year average of 0.6 per cent and above the 0.4 per cent of Labor's last year in office. Wages growth is picking up. We would like to see stronger wages growth, but it's not going to happen through government fiat. It's not going to happen because the government prescribes and imposes on the economy a level of wages growth which, if business cannot afford, would lead to higher levels of unemployment. In the end you have to remember: if you force businesses to pay more than businesses can afford, they will end up hiring fewer Australians, which means that more Australians will end up unemployed. That is the truth of the matter. That is why, of course—

Senator McAllister: Are you arguing for lower wages?

Senator Cormann: The Australian people understand this. That is why at the last election they voted for us instead of you. We had the biggest swings towards us in the lower income areas, because they understood that your higher taxing agenda, which would have made the economy weaker and driven unemployment up—

Senator Gallagher: Because that's where you concentrated your scare campaign.

Senator Cormann: would have actually led to lower wages over time.

Senator Gallagher: Chair, this will be an extremely long day if the minister takes this approach.
Senator Cormann: I'm happy to have a long day. You asked a question about wages, and I'm telling you—

Senator GALLAGHER: I don't think my question warranted a lecture 101 from you.

Senator Cormann: I'm answering a question; I'm entitled to answer the question.

CHAIR: Let the minister finish and then we'll get back to questions.

Senator Cormann: We are implementing a plan to build a stronger economy, which will lead to lower unemployment than otherwise would be the case.

Senator GALLAGHER: Play the record.

Senator Cormann: Of course we would like to see wages grow over time. We're saying that the alternative plan that was put to the Australian people at the last election would have made the economy weaker, because the last thing we needed in the current global economic context was a higher taxing agenda.

Senator GALLAGHER: Chair, estimates is not for a platform the minister to run political lines about other parties' election commitments; it is an accountability and transparency measure, and you are avoiding it.

Senator Cormann: A weaker economy would have meant higher unemployment and lower wages over time. I'm entirely entitled to speak on our agenda at this committee.

Senator GALLAGHER: You are not speaking to your agenda; you are criticising an agenda that another political party took—or didn't; it's your version or your interpretation of it.

Senator Cormann: I'm comparing and contrasting the two alternative ways forward.

CHAIR: Senator Gallagher, if you are not raising a point of order, let's let the minister finish and then we'll get back to questions.

Senator Cormann: I am entitled to answer questions as I see fit.

Senator GALLAGHER: How long will the government force people to wait—

CHAIR: Order! Senator Gallagher.

Senator GALLAGHER: for an appropriate increase to wages? How long will it be? We know they're going to be stagnant for the next two years. Is it three years? Four years?

Senator Cormann: Let me tell you, wages growth today is stronger than it would have been if the Labor Party had been able to implement their high-taxing agenda.

Senator GALLAGHER: Again, that's your interpretation.

CHAIR: Senator Gallagher—

Senator GALLAGHER: I disagree. That is a political statement.

CHAIR: Senator Gallagher, you invited this answer, so now listen to it.

Senator Cormann: Chair, if I could finish an answer.

CHAIR: Please, Minister.

Senator Cormann: The next point I could make—

Senator GALLAGHER: I'm not going to listen to something that is not answering the line of questioning that I am pursuing.
CHAIR: Senator Gallagher, we're just wasting time now.
Senator Cormann: I am 100 per cent answering the question.
Senator GALLAGHER: I'm wasting time?
CHAIR: Yes, you're wasting time.
Senator GALLAGHER: Excuse me!
CHAIR: The minister has the call. You asked a question.
Senator Cormann: I'm entitled to answer questions. Furthermore, over the last two years we have legislated about $300 billion worth of income tax relief, which boosts take-home pay for hardworking Australians. Effective wages growth is actually—
Senator GALLAGHER: People have never had it this good!
Senator Cormann: over and above the 2.3 per cent that is reflected in the data. Moving forward, we are actually making sure that people end up with more of their own money in their pocket because we have legislated substantial income tax relief.
Senator GALLAGHER: I would take that to the streets of Australia and try to run that argument.
CHAIR: Let's try to avoid the discussion and get back to questions and answers, Senator Gallagher.
Senator GALLAGHER: I think I've finished on wages, although we will have more throughout the day. In terms of Treasury, Dr Kennedy, which is where I started, does Treasury have a view of where they would like to see wages growth, and the speed with which they would like to see improvements to wages growth?
Dr Kennedy: We would like to see wages strengthen as quickly as—
Senator GALLAGHER: Do you have a figure of what you would like to see?
Dr Kennedy: We do have a forecast about what we expect wages to strengthen to, which I don't have off the top of my head, which would be at PEFO and updated at MYEFO.
Senator GALLAGHER: But the forecast wouldn't necessarily be your view about what would support the economy. That's what I'm asking for here.
Dr Kennedy: This is why I talk repeatedly about labour productivity. The sustainable way to get wages up is through labour productivity, if we could increase labour productivity and wages could increase in a sustainable way. In the past, in nominal terms, we would have talked about inflation of 2½ per cent, labour productivity at 1½ per cent and nominal wages growing at roughly four per cent. That's what we saw last time when I was in Treasury.
Senator Cormann: And inflation was running out.
Senator GALLAGHER: I understand.
Dr Kennedy: Once again, I would like to see a sustainable increase in wages come as quickly as it could, consistent with the inflation framework and labour productivity. That would be a great outcome. It would be good to see wages strengthen in line with that.
Senator Cormann: But the way you frame the question implies that you think we should somehow run a central planning economy where the government prescribes a specific rate that should be applied across the economy.
Senator GALLAGHER: That is your interpretation, Minister.

Senator Cormann: That is not the way it works. In the end, we operate in a free market.

Senator GALLAGHER: I had a very reasonable line of questioning which you sought to interfere with.

Senator Cormann: Which I sought to answer.

Senator GALLAGHER: You have wasted time—

Senator Cormann: I disagree.

Senator GALLAGHER: which is probably exactly the outcome you were after.

Senator Cormann: I'm using my prerogative as a minister.

Senator GALLAGHER: But I have finished. Thank you, Dr Kennedy. I really appreciate the cooperative way in which you have approached questioning this morning, unlike someone sitting next to you.

Dr Kennedy: Thank you, Senator.

Senator WHISH-WILSON: Dr Kennedy, I wanted to ask you these questions because I know you have previously worked on the Garnaut report looking at long-term impacts of climate change. The IMF has recently released a working paper called *Macroeconomic and financial policies for climate change mitigation: A review of the literature*, which you may or may not have had a chance to read. There are a couple of strong statements in that. One says, 'Climate change mitigation requires a transition in the structure of economic activity on a massive scale.' Recently the Reserve Bank deputy governor, Guy Debelle, called climate change in Australia a 'first-order economic effect'. I was interested in your views. You mentioned earlier looking at long-term risks and whether Treasury are going to be doing some work. I won't ask your views on climate change, because I know that will lead down the Senator Cormann rabbit hole, but I am interested in whether you have done any sensitivity analysis or risk analysis of the long-term effects of climate change.

Dr Kennedy: I am going to pass to Ms Quinn because I don't know what has been done formally in Treasury. I do know that, in general terms, whenever we are thinking about the medium or long term, or even the short term, we try to take into account all relevant factors in the way the climate might be changing. For example, we talked earlier about how the drought might unfold. We listen carefully to what the scientists have to say about those activities.

I would also just say, as an overriding comment, that often people are looking for a preciseness about how these things get incorporated, and that information, from what I've seen in the past, does simply not exist. This is about a probability of risks and how one then takes a broader judgement. But I'll pass to Ms Quinn, who might be in a better position than me to answer that and how it fits with our assessment of the economic outlook.

Ms Quinn: As you know, Senator Whish-Wilson, we have previously undertaken analysis. In more recent times, Treasury has not done so. We have worked with colleagues across the Public Service to provide input on various government policy advice, but we've not undertaken independent modelling within Treasury.

Senator WHISH-WILSON: In relation to that preciseness, Dr Kennedy: I know that Mr Garnaut's 2008 *Climate change review*—which, obviously, you worked on—forecast a 92 per
cent decline in agricultural productivity of irrigated agriculture in the Murray-Darling by 2100 if global warming wasn't mitigated. That would have probably been prior to the Paris targets.

Senator Cormann: Since then, we have of course put our climate action plan in place.

Senator WHISH-WILSON: But, even assuming that action plan is in place and we meet our Paris targets, at the recent climate summit, the World Meteorological Organization stated that the world is on track for up to 3.4 degrees of warming. That's under existing nationally determined contributions, despite the signatories of the Paris agreement. Perhaps Ms Quinn may answer this: you may not have done the forecasting or modelling for that kind of scenario, but would you consider doing a discussion paper on that or have you had internal discussions about these risks?

Dr Kennedy: I'll just correct one small thing for the record: I didn't do the 2008 report; I did the 2011 update. The Garnaut review was in two versions. There was the 2008 one, which looked at both the benefits and costs. Then it was updated—I think the year was 2011—and that was the secretariat that I led.

Ms Quinn: We do look at reports in terms of longer term implications, like the IMF work you mentioned and other work. We look at articles and research from international institutions when we look out at the longer term. For example, we have looked at the IMF analysis that you referred to.

Senator WHISH-WILSON: Would Treasury consider doing a discussion paper? I know you do them on different topics of interest as they arise. There's been a lot of momentum in this area recently and a lot of commentary coming out from all around the world, but would you consider doing, for example, a scenario analysis on that kind of projection and what potential economic impacts might occur under such a scenario?

Ms Quinn: The direct policy agency responsible for this is the department of environment, so they would have to take the lead on any analysis of that sort.

Senator WHISH-WILSON: Would you do the economic modelling for them with Treasury?

Ms Quinn: It would depend on how they would like to structure that work. There have been lots of different versions at different times, some done by individual agencies and some done cooperatively through different agencies. It would depend a bit on how they'd like to take the project.

Dr Kennedy: It wouldn't be unusual for us to do the modelling.

Senator WHISH-WILSON: On carbon risk, which is also becoming very topical and is part of the subject of that IMF paper—are you doing any new work at all to quantify Australia's economy's exposure to carbon risk, under the way it's defined in its three key categories?

Ms Quinn: Our financial regulators are looking at elements of the risk. You've seen the APRA members, for example, talk about the public work they're doing, and you can ask them questions later.

Senator WHISH-WILSON: I know. I'm familiar with those papers. I was particularly interested in whether Treasury considered making carbon risk an explicit item in the statement of risks in the Budget Paper No. 1, when you release it going forward. You have
been very constructive around some Greens suggestions in the past, so I ask that with some optimism.

**Dr Kennedy:** The budget documents are government documents, so it's a matter for government. Of course, we provide advice, but they are government documents. Just to be clear: they are not Treasury—

**Senator WHISH-WILSON:** Could you provide some advice to the government on this suggestion? Have you provided advice?

**Senator Cormann:** The government always, in the lead-up to every government budget and budget update, considers what is appropriate information to include, and will continue to do that into the future.

**Senator WHISH-WILSON:** Can I take it that you are not working on that currently, though, Ms Quinn?

**Senator Cormann:** We are not working to any significant changes to the presentation of the budget papers. You are quite right.

**Senator WHISH-WILSON:** Senator Cormann, you were in the budget estimates yesterday when I asked about the RBA, APRA, and ASIC all endorsing the framework by the Taskforce On Climate-related Financial Disclosures. Could I ask Treasury again whether you're examining the applicability of the TCFD framework to the Australian economy? Have you examined the applicability of this framework to quantifying the Australian government's carbon risk—just various agencies in the public service?

**Ms Quinn:** That would be a question for our fiscal group colleagues, who look at climate change policy, or our market colleagues, who look at the overall financial stability framework.

**Dr Kennedy:** I am sorry, I am not yet across those issues in my new role. Otherwise I would answer.

**Senator WHISH-WILSON:** In the IMF's *World economic outlook*, released last week, they said that countries where debt sustainability is not a problem—like Australia—should borrow to fund infrastructure investment to address climate change. We talked a lot about infrastructure investment this morning, but it seems as though you could kill—actually I won't use that term about killing birds with stones. It is not a very Green thing to say! But in terms of looking at capital investments going forward, has there been any work done on infrastructure? You mentioned smaller infrastructure projects around the nation, Dr Kennedy, like pumped hydro, for example. Is there any work going on on potential infrastructure investments in climate change adaption or mitigation infrastructure?

**Dr Kennedy:** As you know, a lot of infrastructure is delivered by states. I think one of the most pragmatic ways is to think carefully about what science is telling us about changes in the climate, and to ensure that any investment in infrastructure takes that into account. That is classically what adaptation would be looking a. It takes into account what those effects might be, because infrastructure is long-lived and we should think carefully about those effects. That is drawing on previous work, to be honest. I haven't yet had the time to see if there has been a conversation between the federal treasuries and the state treasuries. I haven't had a chance to get across that yet.
Senator WHISH-WILSON: I will put some questions on notice on that aspect. Can I just ask a few quick questions on the surplus? In your understanding, Dr Kennedy, what effect generally does a government surplus have on inflation? We are going to Economics 1.01 here.

Dr Kennedy: I am going to sound like an economist. It depends on the circumstances you are in and how you generated that surplus. For example, if you generated it by a large cut in payments or a very large increase in taxes, and your economy was going strongly, it would likely diminish it.

Senator WHISH-WILSON: Diminish economic growth?

Dr Kennedy: It would in that environment. That would be countercyclical fiscal policy, for example. To give you a broad sense of what I feel is in the numbers at the moment—perhaps that is the best way to think about this issue—as I noted in my comments, the budget is broadly balanced. I noted that, frankly, the surpluses that appear in the forward estimates are modest. They are typically around half a per cent or less. They don't change much from here. I don't see significant fiscal contraction in those types of estimates. The predictability is important. That is why I talked about the medium-term frameworks, but I also talked about how all budgets have within them automatic stabilisers. If the economy were to weaken, the surplus might be somewhat less than it otherwise would be, and that would be a sensible and usual thing to allow to happen. The effects are clear, but what a surplus in any given year is doing really depends on the circumstances. If you are generating a surplus from a very large flow from profits in mining revenue, for example, but elsewhere revenues are weak, even that becomes a more complex interpretation of what that surplus means. It could well be that automatic stabilisers are operating effectively through the rest of the economy but the government is enjoying a flow of revenues from the mining sector. Alternatively, if you are generating that surplus in a different way, you could be constraining growth significantly more.

Senator WHISH-WILSON: That's right. It is often raised in relation to putting a handbrake on the economy. But I am interested that in a period of record low interest rates and low inflation, in a time of history that we have never seen before with interest rates, what advice have you given to the government, if any, about the current benefits of running a surplus strategy going forward?

Dr Kennedy: What I talked about in my opening statement was the value of running a medium-term fiscal and monetary policy framework in concert. The medium-term monetary policy framework is focused on average, and a medium term fiscal objective, which in the government's case is to run modest surpluses in the near term but to pay down debt over time. I think that in the current circumstances, as we sit here today, that's sensible. I did talk in my opening statement about how it is appropriate to respond fiscally when circumstances deteriorate rapidly, but I did not see that that was the case at the moment. I talked about the importance of being predictable in the way you are managing your fiscal affairs, and your monetary policy frankly, to do your best to reduce the level of uncertainty for business so that government, business and consumers can predictably see what people are doing. But we also spoke in some of the conversations about how, where there is an opportunity to accelerate an infrastructure program and the returns are there, both on the supply side in the long term and some benefits in the short term, that's a perfectly reasonable thing to do.
**Senator WHISH-WILSON:** Is it true, though—I've heard Senator Cormann talk about this—that we are at one of the lowest levels of government debt in the OECD at the moment? Is the aim to get to the lowest, or is it more to push it—

**Senator Cormann:** The projection over the medium term is that that debt would be paid off by 2029-30. That's the current projection based on current fiscal policy settings.

**Senator WHISH-WILSON:** Just to be clear, then, the key reason that we are running a mild surplus and that's the strategy going forward is to engender business confidence in the economy?

**Senator Cormann:** Also, Australia is an open trade economy. Our terms of trade are quite a bit more volatile than the OECD average, so our balance sheet needs to reflect that. I don't think it would be prudent for Australia to sustain the sorts of government debt levels that some of the economies across Europe or indeed the United States are sustaining, because we have got the different risk profile. A former French socialist finance minister, Pascal Lamy, came to Sydney a couple of years ago and made precisely that point, so it's not just an extreme right-wing perspective. Australia's terms of trade are more volatile and in a broad sense we do go through commodity price cycles and the like that have flow-on consequences. When the times are good they can be very good, but when times are challenging, they can be quite challenging. So you do need to ensure that your fiscal settings are such that your budget is resilient and that your capacity as a government to provide the level of services and programs that Australians expect can continue to be fiscally sustained over the very long term. That is part of the reason why Australia will always be well advised to run comparatively lower debt levels than some of the other economies around the world.

**Senator WHISH-WILSON:** Does it bother you, Senator Cormann, that a number of respected commentators have questioned the concept of running surpluses?

**Senator Cormann:** You know what? In this business there are always lots of commentators with all sorts of views. It's our job to make decisions. If any of those commentators think they can do a better job, they can put their hand up for our job. In this business of course you take on board the various perspectives that people put to you. But in the end you have got to make judgements on what you believe is the best way forward. That is what we are doing as a government.

**CHAIR:** Dr Kennedy, you can go with our thanks. We will stay in macro and corporate for the time being.

**Senator McALLISTER:** I think Treasury personnel have provided an updated org chart in response to my request, so the chart that has been circulated for October 16 is the correct one. Ms Berger-Thomson, you are the acting division head in your division—are you acting or are you permanently appointed now?

**Ms Berger-Thomson:** I'm just acting.

**Senator McALLISTER:** Mr White, there's been a change in your area. You are acting as the deputy secretary in corporate services and business strategy division.

**Mr White:** Yes.

**Senator McALLISTER:** When did you take up your role?

**Mr White:** This week.
Senator McALLISTER: How long will you be acting for?

Mr White: I don't know, but according to the secretary, probably at least a month.

Senator McALLISTER: Thank you. I want to ask some questions about the Treasury gender equality action plan. Treasury has been working on this since 2012—is that correct? Or some version of this? The progressing women strategy was established under Dr Parkinson?

Mr White: That's right.

Senator McALLISTER: There are a range of initiatives. At the time I think your assessment was that you had essentially 50-50 representation in the more junior roles in the department, but the challenges in meeting gender equity were the in SES.

Mr White: That's my recollection.

Senator McALLISTER: I'm conscious that you are acting and you have just started. You were previously responsible for national security.

Mr White: I'm still responsible for national security as well.

Senator McALLISTER: You are also responsible for national security. Perhaps Ms England can assist. Can I get an update on where you are up to in terms of SES representation?

Mr White: As of this month, Senator, 39 per cent of substantive SES are women.

Senator McALLISTER: What's the overall proportion of women in the Treasury?

Mr White: Half.

Senator McALLISTER: So you are at 50 per cent now.

Mr White: Yes.

Senator McALLISTER: There have been some other initiatives around flexible work. Can I get an update on how that is progressing?

Senator McALLISTER: Treasury has a flexible work policy. The policy is in place and applies to staff who may elect to request a flexible work arrangements.

Senator McALLISTER: I note on the website that the gender equality action plan was updated on the 5 April 2017. I am struggling to find very much about the Progressing Women Initiative on the website. Has there been any change—I suppose I am really asking whether the senior leadership of Treasury remains committed to this, or whether it is in a bit of a hiatus. Is there a reason that nothing has been posted for a couple of years about the Gender Equality Action Plan?

Ms Quinn: As a member of the executive board—I am a permanent deputy secretary and member of the executive board—I can say that there's been no step back from the department's commitment to the Progressing Women Initiative. We have expanded our discussion around diversity of inclusion. We have a strategy that includes other workstreams as well, including our Indigenous employment strategy and reconciliation action plan, a disability employment strategy and a whole suite of other diversity and inclusion initiatives. There's certainly been no step back from the Progressing Women Initiative. There's a great deal of work still going on in the department at all levels, both bottom up and top down.
Senator McALLISTER: In relation to bottom up, of the 2019 Treasury graduate cohort, how many were women—or, perhaps more accurately, what proportion of the cohort were women?

Ms England: The 2019 graduate program included nine women.

Senator McALLISTER: And how many men?

Ms England: Twenty-eight.


Ms England: I'm pleased to report that the 2020 Graduate Development Program will include 21 women and 19 men.

Senator McALLISTER: I see. That's quite a big change, isn't it? Did the secretary at the time of the 2019 intake play any role in selecting the graduates?

Ms England: I would have to take that question on notice.

Ms Quinn: I can confirm—no. The offers made in 2019 were much more balanced on gender grounds, but sometimes people don't take up the offers. We did have a look at the outcomes of that and realised it wasn't something that we supported at the executive board level. There was a very clear-eyed focus on the processes around the recruitment process for 2020 to make sure that we could ensure that the same thing didn't happen again.

Senator McALLISTER: What have you changed?

Ms Quinn: Partly, we've looked at what happens when people are provided the offers and, if people take up other opportunities, the re-offer rate and what subsequently happens in that process. That's been the main area of focus. There has always been a very strong focus on it when shortlisting, during the interview process and at the offer process, but we've increased our focus on the last stage, which is: if people do not take it up, what are the re-offer rates and who do they go to?

Senator McALLISTER: Right. Your indication before was that Mr Fraser didn't have any role at all in the graduate program?

Ms Quinn: He didn't have any. The previous one was Undersecretary Gaetjens. The secretary doesn't have a direct role. The board discusses the overall resource allocation, the overall numbers, and then the process of graduate recruitment is undertaken by a senior staff member in the department.

Senator McALLISTER: Are there any other cultural issues that the Treasury is seeking to address in terms of retaining women within the organisation?

Ms Quinn: There's the part-time 'if not, why not?' strategy. There are discussions around the training of staff, in terms of unconscious bias; a focus on work allocation and work-job focus; and a review of remuneration and opportunities. These are all things that have been in place for a large number of years. In more recent times it's been around the design of the workplace and the design of jobs. There's been a particular focus on that, not just for women but for all people who would like to work part-time or have different arrangements—flexible work. They're the main areas of focus, which are not dissimilar to what colleagues across the Public Service and the private sector are looking at.
Senator McALLISTER: Is there other support for young women coming through the organisation?

Ms Quinn: The graduate program has a dedicated process of training and development. There are opportunities for all staff to take up mentoring if they desire—there are various programs in different parts of the department for them to do so—and there are networking opportunities both within and outside the Treasury.

Senator McALLISTER: If women are experiencing challenges or problems at work, is there an obvious place that they can go to raise those challenges or problems?

Ms Quinn: I'll defer to Cristy on this, but we certainly have formal processes around bullying and harassment and other workplace concerns. We have all the usual processes that you would expect, on top of the legal minimum.

Senator McALLISTER: That's your responsibility, Ms England?

Ms England: That's correct.

Senator McALLISTER: Perhaps you could elaborate.

Ms England: As Ms Quinn referred to, the department has a policy on preventing and managing bullying, harassment and discrimination in the workplace. Under that policy, employees can communicate their individual staffing matters through the appropriate channels.

Senator McALLISTER: Thanks, Ms England. That's helpful. Is there going to be an ongoing process of publishing outcomes against the Progressing Women strategy? I have in the past been able to access some of the progress that the Treasury was making. There was a strong focus on communicating progress and outcomes.

Ms England: That's right. The Progressing Women Initiative reports to the department's Inclusive Workplace Committee. As at the last meeting, which I understand was around July, the focus of that meeting was on a stocktake of all the diversity networks in the department, providing the former secretary an update on the activities going on in each network. From here, the Inclusive Workplace Committee will meet again towards the end of November or early December, and the outcomes of that meeting will be communicated to staff, including an update on where the Progressing Women Initiative is up to.

Senator McALLISTER: It's due to expire in 2020. Is any work underway to renew the strategy?

Ms England: I understand there is.

Senator McALLISTER: Who's leading that work?

Ms England: Simon Atkinson, Deputy Secretary Fiscal Group, is the Progressing Women Initiative champion in the department.

Senator McALLISTER: Why is it that it doesn't sit in the HR area of the business?

Ms England: Functionally it does; however, a senior leader in the department champions the policy within the department. My division is functionally responsible for making operational many elements of the overall strategy.

Ms Quinn: We've taken a decision at the board for senior leadership about employment diversity strategies. Senior staff take a leadership role to provide clarity and direction,
working with different parts of the department that have operational responsibility. We do that on the Progressing Women Initiative. I am the department's Indigenous champion. We have a diversity champion, and on we go.

**Senator McALLISTER:** So how is—

**Ms Quinn:** All report to the Inclusive Workplace Committee.

**Senator McALLISTER:** So responsibility for renewing the strategy sits with—could you remind me of his name?

**Ms England:** Deputy Secretary Simon Atkinson.

**Senator McALLISTER:** Mr Atkinson is appearing later today, is he?

**Mr White:** In Fiscal Group, yes.

**Senator McALLISTER:** Is that work being done through the Inclusive Workplace Committee?

**Ms Quinn:** There are quite a few different elements of it. Each group has a Progressing Women Initiative workgroup of different types all working together through a network. There's also work that gets done in Cristy's division and other parts of the department. It’s a multipronged approach. There are plans, people put them down, we report on them, and that ultimately goes to the Inclusive Workplace Committee.

**Senator McALLISTER:** Okay. But I'm talking about a strategy, which is a written-down document, that describes what the Treasury is going to do about having an inclusive workplace. I'll be honest with you: my sense was that it wasn't a very high priority under Mr Fraser. And we had numerous exchanges in this room about the strategy. Can someone give me any concrete description—and I think it ought to come from Corporate Services and Business Strategy Group—of what is happening to renew the strategy? Surely there is a plan. It expires in a couple of weeks.

**Ms England:** There is work underway, as Ms Quinn referred to. Each group within the department has a Progressing Women Initiative network. All of those networks meet together under the champion of the Progressing Women Initiative to consider the work in this space. There will be an inclusive workplace committee meeting later this year. There will be an update provided to the inclusive workplace committee.

**Senator McALLISTER:** What will they be updating on? The actions that they are undertaking under the existing plan?

**Ms England:** That's correct, and actions to formulate or develop a new plan.

**Senator McALLISTER:** So it's a distributed process where everybody is coming up with their own actions and then you will compare notes at the committee later in the year?

**Ms England:** The departmental champion then is the umbrella for all the networks within the department and coordinates all effort.

**Senator McALLISTER:** Is it going to be documented?

**Ms Quinn:** Yes, it will be documented, and we have a very top-down, bottom-up approach. We've had a very deliberate strategy of including as many people who want to be included in the process, and there has been a huge take-up amongst staff at all levels. So we
have a bottom-up, top-down approach, which we also did, for example, in developing a reconciliation action plan. We follow similar processes for the different diversity elements.

Senator McALLISTER: Is there any plan to update the website about progressing women, at any point soon?

Ms England: The website will be updated.

Senator McALLISTER: Ms Quinn, I think your evidence before was that Mr Fraser did not intervene in any way in the graduate recruitment program. Is that correct?

Ms Quinn: I left the graduate recruitment process under John Fraser for one year, and there was certainly no involvement directly other than setting the overall strategy at the board level in that process at that time.

Senator McALLISTER: So no intervention in terms of the selection or the rejection of any particular candidate?

Ms Quinn: Not that I'm aware of, from when I ran the program—no.

Senator McALLISTER: Thanks, Ms Quinn.

Senator GALLAGHER: Dr Kennedy spoke quite a bit about labour productivity as the way to improve wages growth over time. Can you update the committee on what the productivity growth was in 2018-19, please?

Ms Quinn: So, through the year, in the most recent quarter, labour productivity on a per hour worked basis in the market sector was negative 0.6 per cent through the year.

Senator GALLAGHER: In 2018-19?

Ms Quinn: Through the year to the June quarter in 2018-19.

Senator GALLAGHER: So negative 0.6. Is that particularly weak—those results?

Ms Quinn: Yes. Labour productivity has been weak in recent times, reflecting the strong employment growth and modest growth in output.

Senator GALLAGHER: Do you know what labour productivity is at the moment?

Ms Quinn: That is the most recent.

Senator GALLAGHER: When will those figures—

Ms Quinn: The June quarter national accounts.

Senator GALLAGHER: So no update from that—

Ms Quinn: No. Those are the most recent national accounts.

Senator GALLAGHER: What is the productivity assumption that you use in the budget?

Ms Quinn: It depends on which part of the budget you are talking about. We forecast employment and GDP over the first few years in the forecasts, and that depends on what we think is happening in the near term. In the longer term projections and the medium term, initially we return to a long-run average that's assumed, which is a 30-year average of labour productivity, which is 1.5 per cent.

Senator GALLAGHER: And you say that you use different figures in the short term?
Ms Quinn: That's a long-run average—

Senator GALLAGHER: Yes, over 30 years.

Ms Quinn: Initially, we look at the most recent outcomes for employment and GDP and we forecast those. The labour productivity is not an assumption; it's a residual item.

Senator GALLAGHER: If I understand this, the figure you used is 1.5 per cent, but the latest figure is negative 0.6 per cent.

Ms Quinn: That's because we've had the strong employment growth—stronger than GDP growth in recent times.

Senator Cormann: A key way to boost productivity is to attract additional capital investment. It is of course why you always—

Senator GALLAGHER: We'll get to that.

Senator Cormann: keep an eye on the competitiveness of your—

Senator GALLACHER: You're on strike at the moment.

Senator Cormann: the international competitiveness of your tax policy settings—

Senator GALLACHER: Tax policy's not working.

Senator Cormann: to ensure that we can continue to attract capital to boost future business growth and future business investment in their capital investment.

Senator GALLAGHER: We'll come back to capital investment. I think Senator Gallacher has some questions on that. In your medium-term model, what are you thinking in terms of productivity picking up to those levels?

Ms Quinn: The long-run average is 1½ per cent. In the forecast period, we forecast GDP to be about 2¼ per cent and employment to be about 1½ per cent in the budget. That implies a one per cent productivity growth rate. We do have productivity picking up gradually over time to the 1½ per cent.

Senator GALLAGHER: What is 'gradually over time'?

Ms Quinn: Over the next three years.

Senator GALLAGHER: Over the forward estimates, from negative 0.6 to one per cent. What would need to happen to deliver that? What would you need to see to get to one per cent productivity over the forward estimates?

Ms Quinn: Return to around-trend growth in GDP, which is what both the Reserve Bank and we are expecting, and a moderation of the recent strong growth in employment.

Senator GALLAGHER: Are any other reforms needed?

Ms Quinn: There are ongoing reforms in the economy that are needed to underpin productivity over time, but there is a difference between cyclical and structural productivity. Some of what we've seen recently is just temporary, different dynamic movements between employment and GDP. It's not all to do with structural reform. There are also cyclical impacts on productivity.

Senator GALLAGHER: We'll come back to the structural reform later. Is that in Fiscal Group?

Ms Quinn: Fiscal Group looks after the policy processes, yes.
Senator GALLACHER: Going back to the secretary's opening statement, where he lays out concisely the effect of capital deepening on two-thirds of the productivity increase. You have low interest rates and you've got a corporate tax rate that is more favourable. What is the problem with this absence of capital backing up labour productivity?

Senator Cormann: The corporate tax rate for every business with a turnover of about $50 million at this stage is at the higher end internationally. When you say 'more favourable', it continues to set at 30 per cent.

Senator GALLACHER: This paper says that, historically, two-thirds of labour productivity has come out of capital being available to invest.

Senator Cormann: It did.

Senator GALLACHER: So there's no change there.

Senator Cormann: Our corporate tax rate, in relative terms, has changed, because in relative terms quite a lot of other countries around the world have substantially lowered theirs. Australia, for reasons that you would well understand, has chosen not to for businesses with a turnover of about $50 million.

Senator GALLACHER: I can understand that being your position—

Senator Cormann: No, that is not a position. That is the reality.

Senator GALLACHER: Call it whatever you like. I call it facade and you call it reality.

Senator Cormann: From India to France, the UK and the US, countries around the world have lowered their corporate tax rate, and ours is now one of the highest in the world.

Senator GALLACHER: The secretary goes to the viability of new opportunities in the so-called hurdle rates, which have remained high despite lower interest rates. Can you flesh that out a bit for me so I can understand it.

Ms Quinn: Mining investment has been very strong in response to the increase in demand for our resources, and we have had a once-in-a-century increase in mining investment, including opening up of new opportunities such as the LNG export industry, so we've had a very large increase in mining investment, and that is coming through production. On the non-mining business investment side, it has been weaker than expected in recent times. When we talk to businesses about why it is that they're not increasing their investment as a share of output, some of it goes to business uncertainty and views about what is happening in the global economy, and what that means for their value chains and demand; some of it goes to technology and how they're adapting their business strategies in response to new technology; and others are just partly a temporary weakness in domestic demand which has got them pausing. But you would expect over time, with low interest rates and the low cost of borrowing in general through equity markets and the like, conditions to be quite favourable for businesses to look to invest once they resolve these uncertainties in their business strategies.

Senator GALLACHER: You were able to describe all the different aspects of the problem. What are the policy settings—just wait and see, allow interest rates to be low and hope it gets better? Are there any policy settings there?

Senator Cormann: It's not the only thing we're doing. The official cash rate is obviously low by historical standards—
Senator GALLAGHER: Low? Aren't they at emergency levels?

Senator Cormann: The RBA Governor said in recent times, which is consistent with our view, that he expects economic growth to gradually strengthen on the back of lower interest rates, lower taxes, obviously income tax cuts, continued high investment in infrastructure, a pick up in the resources sector, stabilisation in the housing market and an internationally competitive exchange rate. So there are a whole range of factors that work in our favour. The government continues to pursue an ambitious free trade agenda to ensure that our exporting businesses have the best possible access to markets around the world, to sell more Australian products and services. We're continuing to work to bring down the cost of electricity for households and business. So, across the whole spectrum of economic and public policy, we are working to ensure that we're in the strongest possible position moving forward.

We have a deregulation agenda, which Senator Sinodinos led the charge on for us from opposition. We're now having the second wave being led by Assistant Minister Morton. There are a whole range of areas where we are pursuing policy reform to ensure that we are in the strongest possible economic and fiscal position in the future. So the proposition that we are sitting back and waiting I reject in the strongest possible terms.

Senator GALLAGHER: I'm almost at the point where I could give you the speech as well. I have heard it that many times. My point is this—

Senator Cormann: The Australian people endorsed—

Senator GALLAGHER: Come on!

Senator Cormann: that particular plan that was put at the last election.

Senator GALLAGHER: This secretary gave this paper this morning and pointed very clearly to a position where there isn't the investment in labour productivity from capital, and it is a real concern. I'm curious as to whether you have a specific policy aspect in mind or if you are just going to let it continue to go as you've explained. Do you think that you have all the settings right? Do you think it's not a problem?

Senator Cormann: Fundamentally, we did go to the last election with a plan to build a stronger economy. Of course, it also included a $100 million infrastructure pipeline and our commitment to further reform in the skills and vocational education space. In the lead-up to every budget—

Senator GALLAGHER: Chair, I have a point of order.

CHAIR: Minister, he has a point of order.

Senator GALLAGHER: Chair, I draw your attention to standing order 26, which is the preamble and the setting out of the conduct of estimates. I'd like you to raise with the President, in your capacity as chair, whether the minister's overabundance of goodwill in answering questions which are not asked is in conformity with standing order 26.

Senator Cormann: I'm directly answering the question that was asked, so I'm quite relaxed about the chair taking it—

Senator GALLAGHER: No, the President can give us the answer.

CHAIR: I'm obliged to take that matter to the President now, and I will do so. Minister, you have the call.
Senator Cormann: Thank you very much, Chair. I'm disappointed that Labor senators are not more interested in all the things that the government is doing to strengthen the economy moving forward.

Senator Gallacher: We want an answer.

Senator Gallagher: We've heard it several times this morning alone. It's repetition.

Senator Cormann: I thought it was a very good morning session actually.

Senator Gallagher: I'm sure you all did.

Senator Cormann: From time to time when political points are made and political questions are raised I obviously need to respond.

Chair: I think when there's—

Senator Gallagher: Chair, I wouldn't inflame it.

Chair: Keep the interjections to a minimum and I'm sure we'll get through a lot faster.

Senator Gallagher: If the minister would stop baiting senators. I don't know why he is doing that. Mathias, you must have a free afternoon today. You obviously don't want to get out of here.

Chair: Minister, you have the call.

Senator Cormann: Katy, it's always good to be here with you. Let's continue to deal with questions and answers.

Chair: Minister, have you finished your answer?

Senator Cormann: I wonder whether Senator Gallacher could repeat his question. There has been so much back and forth now with points of order.

Senator Gallacher: It's a very simple question. The secretary has raised a very important aspect of the economy. We're not achieving the productivity target that we'd all like. He has three paragraphs there. He points to a little bit of uncertainty in the department's mind as to what to do. I'm curious whether—despite all the settings you have in place, which you believe are 100 per cent correct—you are going to take any action to develop a clearer policy on this absence of capital investing in a more productive outcome.

Senator Cormann: The answer to that question is that, in the lead-up to every budget and budget update, of course we continue to review all of the economic data and the impacts of policy decisions and reforms that have been pursued in the past to make adjustments moving forward. Certainly, in the context of making sure that Australia's internationally competitive to attract additional capital investment into the future growth of our businesses so that businesses which are more successful can hire more Australians and pay better wages over time, we continue to reflect on those things. There will be announcements in the usual way in the context of budgets being delivered in the future. That is the normal process that we follow.

Ms Quinn: I'd just like to clarify that our forecast is for an increase in business investment over the forecast period. The budget did have a five per cent increase in business investment in 2019-20 and a 4½ per cent increase in 2021. The outlook for mining investment looks slightly more positive than we had at budget time, which the Treasury secretary also alluded to. The Reserve Bank of Australia is also expecting business investment to pick up. So, over
the forecast period, we are expecting business investment to contribute to GDP and for capital deepening to resume.

Senator Cormann: I wouldn't want to go into too much detail of all the great things that are happening, because otherwise I would be accused of delivering excessively long speeches. But I would like to commend to the committee the Treasurer's speech to the Business Council of Australia on 26 August 2019, where he went in some detail through the government's approach and plans when it comes to addressing Australia's productivity challenge.

Senator Waters: I want to build on some of the questions that Senator McAllister was asking earlier but on a slightly different tangent. On the proportion of women on boards that sit under the purview of Treasury, the figures I've got from the PM&C annual report is that Treasury has one of the lowest—in fact, I think it's the second lowest—representations of women on the boards that you oversee at 42.3 per cent. I'm just wondering why. What's being done to meet the 50 per cent target for all departments that is meant to be met next year?

Mr White: As of June, the end of the last financial year, 43.3 per cent of board places were held by women in the Treasury portfolio. This has increased each year for the last four or five years.

Senator Waters: Perhaps that 42.3 figure is for the preceding year.

Mr White: No, it was 2017-18.

Senator Waters: I see. I was going off an old PM&C figure, so thanks for updating that. It's still not reaching 50, though. Are you on track to reach 50 by next year, which is the stated target?

Mr White: We have initiatives that are ongoing to get us towards or at the 50 per cent. I don't think I'm able to promise here that we will end up at 50, but we are still working towards getting to 50 and we are on the right path.

Senator Waters: What are those initiatives?

Mr White: We have regular communication with stakeholders about our gender balance target and Treasury's progress. We provide advice to our ministers, and we are trying to build a diverse talent pool through the online Treasury portfolio board appointments register and active use of the government's BoardLinks database. We are using that register and BoardLinks to provide dual sources of high-calibre female candidates for vacancies. Those are the sorts of things we are doing.

Senator Waters: So where is Treasury now compared to other departments? As we have worked out, for 2017-18 you were the second worst. Has that position improved since then?

Mr White: I don't know the answer to that. We will have to take it on notice.

Senator Waters: Can I ask whether you have any conversations with other departments about strategies that they might be using to more readily reach the 50 per cent target, because indeed I believe some other departments have. Is there that ongoing dialogue with other departments to glean good strategies that work?

Mr White: Again, we will have to check that. We will take it on notice.
Senator WATERS: Thank you. Can I move to the review of the retirement income system? I understand the advocacy group Women in Super has recently written to the Treasurer—

Ms Quinn: It's probably best to pose those questions to our fiscal group. They look after retirement income policy in the department. They are on after us.

Senator WATERS: Okay. My question was going to be: will there be an explicit reference to 'women' in the terms of reference? I'm not sure I'm going to be able to make it later on.

Ms Quinn: We are happy to take that on notice and get our colleagues to reply on notice.

Senator WATERS: Thank you. For the folk watching, I just wanted to ask whether or not that correspondence has been received and if proper consideration has been given to it and whether the Treasurer can now commit to including the economic security of women in retirement as an explicit term of reference in the review. Some interesting evidence was given yesterday that some people assume that it is implicit, but it is clearly not explicit. So, why don't you just make it explicit and put that beyond doubt, if that is the intention?

Ms Quinn: I am happy to follow it up.

Senator WATERS: I have a question about wellbeing indicators. New Zealand just moved away from GDP as their sole indicator, as I am sure you know. They have developed a range of wellbeing indicators to help guide policy. Has a briefing been provided to the Treasurer on that new approach.

Ms Quinn: That would go to the framing of the budget, which is best placed with our fiscal group, who look after the budget documents and the framing of the budget strategy.

Senator WATERS: Perhaps for the benefit of fiscal—if they are watching—if you could take that on notice on their behalf. I'm also interested in whether any work has been done by our government to consider similar approaches or to look at diversifying GDP as the sole measure?

Ms Quinn: Sure. We are happy to take that on notice.

Senator SINODINOS: I want to follow up on something in the secretary's opening statement. He talked about a new Centre for Population was established within macro group on 1 July. If you could just talk about the establishment of the centre and what it's meant to do and how it relates to other arms of government policy.

Ms Quinn: I will start and then pass off to my colleague who is the head of the centre. This was a budget measure in last year's budget. It's got a very clear focus on coming up with a population strategy and working with states, in the first instance, in terms of improving information available for all parties involved in decision-making about what the outlook for population is in Australia. But just with that very high level purpose, I'll hand over to Victoria Anderson.

Ms Anderson: The centre has been established as the primary location for population related expertise in the Commonwealth. Our objectives will be to enrich the evidence base to make sure that we have the best available data to support decisions that are relevant to population across a range of policy areas. As Ms Quinn said, we will be working with a range of people, both across the Commonwealth government and with states and territories, and,
through them, with an impact on all three levels of government, with local government as well. Our role also will be to inform policy, through our research and publications in insight and advice. This is the first time the government has had a centre in a central agency. It represents a bit of a step-change in how population issues will factor into policy decisions across the government. We are still in our early stages of developing a work agenda. We will have a research program and, as Ms Quinn said, we will support the development of a population statement every year and a plan every few years, which we'll consult with the state and territories on. We expect that the establishment of the centre will lead to a better evidence base for decision-making about population going forward.

Senator SINODINOS: How are you going to input? Is there some whole-of-government strategy you are inputting to? Is it to a cabinet committee? How are you coordinating policy across government?

Ms Anderson: At this stage we anticipate establishing an interdepartmental committee at the officials level, and I think within government the COAG agenda has had a national planning framework. That was recently supported by the Treasurers' Forum on Population and will now go to leaders for endorsement. That framework will really bring together all of the elements of what the centre is supposed to be doing, both across the Commonwealth government and with state and territory colleagues.

Senator SINODINOS: In terms of interacting with state and territory colleagues, that will also cover planning, infrastructure policies, transport policies and that sort of thing?

Ms Anderson: Yes. Minister Tudge held a National Planning Minister's Forum recently, as an inaugural and relatively informal way of discussing with the states the best way of ensuring that population information is available and is factored into planning decisions at the state and territory level. I think we are looking to formalise that going forward, but at this stage we are still developing our future approach to that. I guess from our perspective we are open to all relevant parts of the state governments that are interested in access to information sharing and more transparency around population information.

Senator SINODINOS: My colleague John Alexander is going to be chairing I think it's a joint committee looking at options for financing faster rail. Will you be inputting into those sorts of considerations? Will you be looking at financing options for infrastructure and the like? Is that part of your purview?

Ms Anderson: Not specifically. What we aim to do is ensure that all agencies are using similar assumptions for the data that will input into planning at both the federal and state level. We will be speaking to the people working on faster rail, and we have been working with them within the infrastructure department. They'll still carry responsibility for that, but our role will be to ensure that we're all acting from a similar set of assumptions about what population that sort of infrastructure will be servicing.

Senator SINODINOS: And you'll be looking at locational issues as well in terms of the population distribution across the country?

Ms Anderson: That's correct, yes.

Senator SINODINOS: Good.

Senator BRAGG: Ms Quinn, can I just ask briefly about the trade position? With the trade surplus, can you talk about what may have driven that or what might be driving that?
Ms Quinn: Australia experienced a current account surplus in the most recent data, which is somewhat unusual for Australian circumstances. We've had quite a long time with a current account deficit. Partly this is because of the step up in exports of commodities as a result of the increase in investment that we've seen in recent times. It's also a response to high commodity prices. So, on the trade side, we've got very strong growth in exports and continued growth in tourism and other services export—students and the like. It's also partly because we had less strong growth in imports as a result of modest consumption growth. And, on the capital account side, on the interest differential flows, we've also had quite strong numbers with Australian investments overseas doing quite well, and that's supporting our current account position.

Senator BRAGG: Is that linked to the relatively new trade deals?

Ms Quinn: Certainly the trade deals have increased access for our exporters. They've increased access to new markets or reduced the cost of entry into different markets. So that would have positively benefited, yes.

Senator GALLAGHER: The Treasurer attended the IMF and G20 meeting last week. What officials travelled with him? I know Dr Kennedy was there.

Ms Quinn: Dr Kennedy travelled with him. I also attended, as did two other members of the department—the division head for our International Policy and Engagement Division and a junior member of that division—so there was a party of four from the department.

Senator GALLAGHER: Does Treasury believe that global cooperation is important in advancing Australia's interests?

Ms Quinn: Yes, we do.

Senator GALLAGHER: Why?

Ms Quinn: Australia is a trading nation, as I just mentioned to Senator Bragg. We have an open current account and we benefit greatly from trade and also investment. On balance we've imported more capital to exploit our national resources. Given we're an open trading investment nation, it's important that international frameworks support free and open trade and investment. That's one aspect. The other aspect is that we're interconnected with capital markets, so stability in international capital markets is very important for us, as well as other nations. Institutions such as the IMF are crucial for the global financial safety net. We work across the economic institutions to support the rules of engagement and also to support the resolution of disputes as they arise.

Senator GALLAGHER: Has Treasury been asked to participate in DFAT's audit of global institutions and rule-making processes?

Ms Quinn: We will be part of that process, looking at the economic institutions that the Treasurer has direct carriage of. Treasury and the Treasurer look at economic international institutions, such as OECD, the IMF, the World Bank and other development bank, and membership of forums, such as the Finance track of the G20 and Apec.

Senator Cormann: From time to time, in the past and no doubt into the future, the government, through the Treasury Portfolio, has supported reform of these institutions. As global economic—

Senator GALLAGHER: I didn't ask about reform.
Senator Cormann: No, I'm just adding to the answer.

Senator GALLAGHER: It doesn't matter what I ask, I'll get an answer.

Senator Cormann: From time to time, as global economic circumstances change, there is obviously an opportunity and often a need for reform to these institutions.

Senator GALLAGHER: Thank you for answering a nonquestion; I appreciate it.

Senator Cormann: It was a very important answer to that question.

Senator McALLISTER: I have a follow-up question, Ms Quinn. You listed a large number of global institutions where Treasury takes the lead in terms of the relationship. What exactly is your understanding of the terms of the audit of global institutions?

Ms Quinn: I'm happy to take that on notice; I'm not familiar with the precise details, because I've been travelling while this was being discussed internally.

Senator McALLISTER: Have they been communicated to Treasury?

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

Senator McALLISTER: Have they been communicated in writing to Treasury?

Ms Quinn: I'd have to take that on notice as well. I'm happy to.

Senator McALLISTER: Would you be able to table the terms of reference for the audit of global institutions?

Ms Quinn: I'm happy to take that on notice.

Senator GALLAGHER: And the time frame? I presume Treasury hasn't finished the advice it's provided to DFAT at this stage—the time frame for that.

Ms Quinn: I am happy to take that on notice.

Senator GALLAGHER: Thank you.

Senator KENEALLY: Hello, Ms Quinn, thank you for being here today. I want to ask some questions about the population growth numbers in the budget. Just for the benefit of those who might be listening in, and just to be clear as to why the budget contains population growth numbers, I'm sure you would agree it's because they help create a baseline for growth in relation to many key economic indicators—things like household consumption, employment, gross domestic product estimates and those sorts of things. Correct?

Ms Quinn: That's correct, yes. The numbers go into underpinning—our population growth impacts on our GDP numbers and also impacts on the distribution of GST to the states.

Senator KENEALLY: Yes. It's things like, 'How many new people are earning an income?' Or how many people might be using a government service as well.

Ms Quinn: That's right, yes.

Senator KENEALLY: Can you confirm for me that budget paper No. 1 estimates a population growth or average around 1.7 per cent per year over the forecast period? That's correct?

Ms Quinn: That's correct, yes. It's on page 2-5 of economic statement 1.

Senator KENEALLY: This is noticeably higher than the 1.58 per cent average growth observed in the previous four financial years. Is that correct?
Ms Quinn: It is a little bit higher, yes, as a result of higher student numbers.

Senator KENEALLY: We're going to come back to that, because—

Senator Cormann: Obviously, international education is one of our key export earners as a nation. In fact, all states are very keen to increase the number of international students coming to Australia.

Senator KENEALLY: I want to unpack this just a bit more, thank you, Minister. First of all, is it correct that the government is estimating in the budget that Australia's population will be 27 million by 2022?

Ms Quinn: We look at growth rate numbers. I'd have to have a look at the actual level. I don't have that in front of me.

Senator Cormann: So we'll take that on notice.

Senator KENEALLY: Okay, I find it a little confusing that you can't just answer that question.

Senator Cormann: We want to make sure that we provide you with an accurate answer, given that level of detail you're asking us for.

Senator KENEALLY: It's your—

Ms Anderson: It's in—

Senator KENEALLY: It's in budget paper No. 3. Do you want to—

Ms Quinn: You're correct, Senator.

Senator Cormann: So you already know the answer?

Senator KENEALLY: I want you to confirm that.

Senator GALLAGHER: We want it confirmed.

Senator Cormann: So you're asking us to—

Senator KENEALLY: What is the government's opinion—

CHAIR: The officer has obviously just confirmed that, so let's move on.

Senator KENEALLY: You've confirmed that, thank you very much, I appreciate that.

Ms Quinn: Sorry, I didn't have budget paper No. 3 in front of me.

Senator KENEALLY: That's fine. Is it right that the budget assumes natural increase in population will be at, frankly, historically high levels?

Ms Quinn: We assumed a fertility increase of 1.78 in 2018, and it's assumed to rise to 1.9 in 2021. This is all set out on page 91 of budget paper No. 3. These are the assumptions that we made.

Senator Cormann: You're not suggesting that we should lower the fertility rate in Australia, I hope?

Senator KENEALLY: Do you know what the largest 12-month period of natural increase in history is for Australia?

Ms Anderson: No.

Ms Quinn: Not directly now, because—
Senator KENEALLY: The Parliamentary Library advises me that the record number for natural increase was recorded in 2012, and that number was 163,100. But your estimates have the natural increase in Australia in 2019 at 167,300, followed by 2020 with 177,700; 2021 with 187,400; and then the year after that 192,200. That's four years of back-to-back records in natural increase—that is, babies being born. Is the Australian government, in this budget, predicting a new baby boom?

Ms Quinn: I don't believe so.

Senator KENEALLY: You're going to have four years of back-to-back records of natural increase—that's what you project in this budget. Minister, what do you know that Australian couples don't know about what's going to happen over the next four years?

Senator Cormann: I can see what you are trying to do here, but let me just put this to you. Look at our final budget outcomes, of actual performance, compared to forecasts, and then put them up against yours. For the last three financial years—

Senator KENEALLY: You have forecast that the Australian—

Senator Cormann: Over the last three financial years, our bottom line—

Senator KENEALLY: That's pathetic!

Senator Cormann: outcomes were substantially better than forecast—

Senator KENEALLY: So are you—

Senator Cormann: whereas, under the Labor Party, of course, the final budget outcomes always significantly deteriorated compared to budget forecasts.

Senator KENEALLY: Chair, the minister is not being relevant to the question.

Senator Cormann: So we stand by our forecasts and our projections—

Senator KENEALLY: A point of order, Chair—

Senator Cormann: because they've proven to be—

Senator KENEALLY: A point of order, Chair—

Senator Cormann: more credible over time than yours.

Senator KENEALLY: The minister is not being relevant to the question asked.

Senator Cormann: I am being relevant to the question. You are asking me about projections and forecasts and assumptions, and we stand by our projections, forecasts and assumptions.

Senator KENEALLY: I want to know on what you are basing your assumption—

Senator Cormann: On Treasury advice.

Senator KENEALLY: What does Treasury know, then—

CHAIR: Let's listen to the official's answer. The minister's completed his answer. Let's hear what the officials have got to say—if anything.

Ms Quinn: We based our assumptions, which are set out on page 91 of budget paper 3, on the fertility and mortality rates. As mentioned there, the mortality rates come from the life expectancy projections in the ABS medium scenario, and the fertility rate assumptions are consistent with the Intergenerational report in 2015.
Senator KENEALLY: So the government is quite confident—in fact, Minister, will you stake your reputation on it?—that the Australian people are going to get so busy over the next four years, we're going to have a baby boom of historic proportions?

Senator Cormann: Ho, ho, ho! What I'll stake my reputation on is that our final budget outcome has continued to be better over the last three years compared to forecasts and we will continue to work to ensure that we outperform our forecasts and projections with actual performance.

Senator KENEALLY: You're going to outperform on babies! Congratulations! What would it mean for the budget if we did not achieve this record high natural increase?

Ms Quinn: It would have very little impact on the budget in the near term because the birthrate et cetera only impacts on working-age population, which drives GDP, in about 15 to 16 or 18 years time.

Senator KENEALLY: So, if the government's wrong, it doesn't matter because—

Ms Quinn: Not in the near term—

Senator Cormann: But, again, I would just point to the fact that, if you look at 2016-17, 2017-18, 2018-19, every budget for which we have final budget outcomes, after we stabilised the deteriorating trajectory we inherited from Labor, on every occasion our performance against budget, when you look at the underlying cash balance, has actually been substantially better.

Senator KENEALLY: I'm not asking about your budgetary performance—

Senator Cormann: One of the key reasons for that is—

Senator KENEALLY: I'm asking about the performance of Australian couples—

Senator Cormann: employment growth; employment growth, for example—

Senator KENEALLY: to conceive and bear children.

CHAIR: Senator Keneally—

Senator Cormann: Employment growth both in 2017-18 and in 2018-19 was substantially higher than the 1.5 per cent forecast—

Senator KENEALLY: What else is substantially higher—

Senator Cormann: across a whole range of indicators—

Senator KENEALLY: is your population growth projections.

CHAIR: Order!

Senator Cormann: that obviously the budget is based on—

Senator KENEALLY: including the fact that we're apparently all going to be having more babies!

Senator Cormann: on forecasting assumptions; projections are based on a projection methodology—

Senator KENEALLY: Anyone here want to volunteer to have another baby to help out? No? Okay!

Senator Cormann: and, in the end, you'll be able to ask us questions when we deliver the final budget outcome for 2019-20 as to how we've performed against the forecasts—
Senator KENEALLY: It's not your performance I'm asking about, Minister!

Senator Cormann: and projections. I mean, that is the way the system goes.

CHAIR: Ms Quinn, would I be oversimplifying it to say that we'd just be seeing, as Senator Keneally has characterised it, record increases on the back of a higher base? Population is increasing; therefore, the natural rate of growth is going to continue to—

Ms Quinn: As to forecasting, there is a base effect, because we forecast the fertility rate per person. So, as there are more people, the absolute number goes up. But we take the best available information that we have, when we do our population projections, and we put that into the budget.

Senator KENEALLY: Well, it's not, over the next four years, Chair. To follow your logic to its conclusion, that would assume that elderly people and young children are having babies over the next four years—

CHAIR: No, it would not assume that at all.

Senator KENEALLY: and they're not going to be.

Senator Cormann: You're being misleading there.

Senator KENEALLY: No, your budget paper—

Senator Cormann: You are being totally misleading, Senator Keneally.

Senator KENEALLY: 177,000 in 2020—

Senator Cormann: If there is an overall increase in the population, obviously there is also an increase in the population of an age that—

Senator KENEALLY: 187,000 in 2021 and 192,000 more in 2022.

CHAIR: Let's cease talking over one another.

Senator KENEALLY: Let's go to net overseas—

Senator Cormann: In fact, you were quite misleading there just now, Senator Keneally.

Senator KENEALLY: I'm quoting the budget!

Senator Cormann: If I may: if there is an increase in the population—

Senator KENEALLY: I am quoting the budget.

Senator Cormann: If I may, Chair?

CHAIR: Minister Cormann, you have the call.

Senator Cormann: If there is an increase in the population overall, you would of course expect that there's an increase in the relevant component of the population that is having babies. Indeed, if you look at the population profile and the way it adjusts, for example, through migration and the like, you will find that there is actually a particular boost in the relevant age group through migration which has the effect that Senator Brockman just described.

Senator KENEALLY: Let's go to that, Minister.

Senator Cormann: You're coming here for the purpose of a bit of a stunt. I get that. But what I would suggest, if you're actually interested in information substantially, is that we take on notice your question about the underlying assumptions and what is driving the numbers that Treasury has put to government.
Senator KENEALLY: I would love to know why Treasury thinks we're going to have a historic natural increase.

Senator Cormann: We'll be able to have a more informed conversation.

Senator KENEALLY: I would love to know. Thank you. Let's talk about net overseas migration figures—

Ms Quinn: Just to clarify: we certainly haven't got historically high fertility rate assumptions. Our assumptions are numbers that we've seen in recent times in Australia. I'm happy to take on notice the combination of the fertility and the mortality that go together to give you the natural increase. It wouldn't be fair to say that our assumptions of the rates are historically high, because we've certainly based those on historical analysis.

Senator KENEALLY: All right. Let's wait and see what happens. I take you to the net overseas migration figures in table A.2 on page 92 of Budget Paper No. 3. Comparing that to the figures in the 2018 budget, what is the year-by-year increase in the net overseas migration figures?

Ms Quinn: The numbers are set out on page 92, as you mention. Would you like the actual—I can get a calculator and calculate them? The absolute number of net overseas migration goes from 259,600 in 2018 to 271,700 in 2019. It is fairly flat, at 271,300, in 2020. It falls slightly, to 267,600, in 2021. It falls further, to 263,800, in 2022.

Senator KENEALLY: Well, let me go back then to my question. Comparing that to the figures in the 2018 budget, by my maths—and you can tell me if I'm right or wrong—it seems that the year-by-year increase in the net overseas migration figures is a 40,300 increase in 2019, 43,900 in 2020 and 46,200 in 2021.

Ms Quinn: That's correct. I have the same numbers.

Senator KENEALLY: Why are these numbers considerably higher than in the 2018 budget? It seems to me that there will be 155,400 more people than we estimated last year.

Ms Quinn: These numbers are provided by the Department of Home Affairs. I believe they answered these questions on notice last time. The main reason for the increase in net overseas migration over that period relates to international students coming into the country.

Senator KENEALLY: Are they going to be having babies? Sorry, that was cheeky.

Ms Quinn: Some of them do, I believe, Senator.

Senator KENEALLY: What's the impact on the budget and the economic parameters as a result of this increase?

Ms Quinn: I had this conversation last time with Senator McAllister. It depends a little bit on the composition of the net overseas migration. Obviously the increase in student numbers is positive for education exports, and that boosts our export numbers and therefore boosts GDP. That's the main route through which these have an impact on the overall economic forecasts in the near term.

Senator KENEALLY: Is it fair to say that net overseas migration is the key migration driver of economic parameters?
Ms Quinn: Net overseas migration is a significant contributor to overall population growth—that's true. But the implications it has for the economy depend a bit on the source of what's happening.

Senator KENEALLY: Let me put the question this way: the government claims that the reduction in the planning level of the migration program for permanent migration from 190,000 to 160,000 has no budget impact. Is that still the case, and is that the case because of the increase in net overseas migration?

Ms Quinn: I would have to defer to my colleagues in Fiscal Group in terms of the payments and things like that related to migration. I believe there are some fees and things like that, which would have a minor impact on the budget. In terms of the economic component of the budget, it's the total overseas migration matters for what's happening in the economy. And, as you said, it's gone up a little bit. But where it comes through will depend on the type of people. Students are obviously contributing to education, but they're not necessarily contributing to other parts of the economy as permanent migrants would.

Senator KENEALLY: Just a summing up: it's fair to say that the budget's projections in terms of economic growth are based on the natural increase projections as well as the increase in that overseas migration?

Ms Quinn: That's correct. That goes into the population that gives us the supply side of the economy. But in terms of looking at the GDP forecasts over time, we also look at the demand side, and that comes through where we expect expenditure to occur, and that's not a direct relationship to the population numbers.

Senator KENEALLY: Well, we'll prepare for the baby boom.

CHAIR: We will move on to Fiscal Group.

Senator McALLISTER: Mr Atkinson, in earlier discussions you were named as being responsible for the Progressing Women initiative. I just wondered whether you might, very briefly, provide us with an update of what is happening. It seems that there is some kind of bottom-up process happening to assemble a new strategy when the current strategy expires.

Mr Atkinson: Since the first Gender Equality Action Plan in 2011, Treasury's come a long way. We had a 22 per cent female SES at that point. We now have a 39 per cent female SES, and nine of the 16 people more recently promoted to band 1 were women. We also have two women on our executive board.

Senator McALLISTER: Two women out of—

Mr Atkinson: Six.

Senator McALLISTER: So, 33 per cent, on the executive board.

Mr Atkinson: Yes. There's been a number of initiatives across Treasury. Inside groups we have very high levels of engagement. We have about 140 staff who are formally part of PWI networks, and we've introduced new policies, including flexible work, keeping in touch, domestic and family violence policies as well as a lot of work on career development and supporting women. That said, with all of that work, we've got a long way to go. It's our intention to refresh the Gender Equality Action Plan. I need to talk to the new Secretary about it, and then we'll take it to the Inclusive Workforce Committee, and then we'll be publishing a new plan.
Senator McALLISTER: Thank you very much, Mr Atkinson. I appreciate it. On a different matter, I understand that Fiscal Group is responsible for the retirement incomes review. Is that correct?

Mr Atkinson: Yes.

Senator McALLISTER: I understand that Treasury is providing a secretariat to the review. Is that correct?

Mr Atkinson: Yes.

Senator McALLISTER: Does that secretariat sit within your group?

Mr Atkinson: Yes.

Senator McALLISTER: How large is it?

Mr Atkinson: I'll pass questions on the retirement incomes review to Mr Jeremenko.

Mr Jeremenko: The size of the secretariat at this point is 15 people.

Senator McALLISTER: I note that your title formally is Retirement Income Policy Division. Is that all of your division or are there others in the division doing other work?

Mr Jeremenko: No, it's not all of the division. The division itself contributed around nine people to that secretariat. The Retirement Income Policy Division, without the secretariat, which is obviously a new addition, was around 35 people. Inclusive of the secretariat, we're at about 45 now.

Senator McALLISTER: So you're nine down because you've lent them to the secretariat. Who else is supporting the work of the secretariat? I assume personnel have been drafted from other agencies?

Mr Jeremenko: That's correct. I have here one of our principal advisers, Mr Preston, who is heading up the secretariat and reporting to me. In addition to those staff I mentioned from the existing division, we have staff from Department of Social Services that have been seconded across. We have a staff member from the Parliamentary Budget Office as well, and department of industry have also contributed someone.

Senator McALLISTER: So essentially you have six additional staff drawn from across those three agencies.

Mr Jeremenko: That's right.

Senator McALLISTER: Are they equally distributed—two from DSS, two from PBO?

Mr Jeremenko: I'll ask Mr Preston to clarify the exact breakdown.

Mr Preston: We have two staff from DSS who are already with the task force. We have one person coming from the PBO and one person from Industry who's with the task force already. And we'll be having one person from the ATO, who will be joining next week. There are some other potential secondments that have yet to be finalised.

Senator McALLISTER: So it may be somewhat larger than 15 at the end of it all?

Mr Preston: It will be in that order.

Senator McALLISTER: The terms of reference require you to establish a fact base of the current retirement income system that will improve understanding of its operation and the
outcomes it is delivering for Australians. In terms of the analytical work that the secretariat will do to support that objective, what are you proposing?

Mr Preston: At this stage, we are only a few weeks into our work, so we're in a planning stage, as you may appreciate. I might just talk in general about the types of resources we'd be looking to draw on. The Treasury’s analytical work is housed in Tax Analysis Division, which is part of Revenue Group. They will be providing support to the secretariat. They have established a project team that is dedicated to provide resources to us. In addition, we will be looking to engage other relevant modelling resources. The AGA, the Australian Government Actuary, have expertise in this space and are housed within Treasury, so we’ll look to engage them. We may also look to engage analytical support externally, as appropriate.

Senator McALLISTER: So there will be modelling undertaken by the actuary and possibly by external resources.

Mr Preston: Primarily, as I said, supported by a project team established within Tax Analysis Division.

Senator McALLISTER: Using some of the existing models within Treasury?

Mr Preston: That's right.

Senator McALLISTER: I've had this discussion before, some years ago, with Ms Wilkinson, but I was at that time seeking information about Treasury's capability in modelling gender outcomes within the tax system, in particular. Thinking about the analytical capabilities you have just described, is there any capability within any of those models to do distinctive gender analysis so that that will be understood as part of the review?

Mr Preston: Yes, there is that capability, and, yes, we intend to use it.

Senator McALLISTER: Could you elaborate on where that sits within that group of resources?

Mr Preston: The tax analysis division has the capability to look at, through several of their models, outcomes that affect gender.

Senator McALLISTER: Which models in particular?

Mr Preston: The expertise on this is—it's probably best to talk through with the tax analysis division but they have a cameo model, which is known as EMORI. Apologies, it gets a bit jargonistic.

Mr Atkinson: Senator, it might be best if we raise this with revenue group if that's alright because it's their models and it's all of their detailed work.

Senator McALLISTER: Okay. Can I ask what Treasury's role was in developing the terms of reference for this review? It was jointly announced by ministers Hume and Frydenberg. Was Treasury involved in providing advice about the terms of reference?

Mr Atkinson: As is usually the case with these, the terms of reference for the review were developed up through normal cabinet processes, and we participated in those as we usually do.

Senator McALLISTER: When was Treasury first advised that a review would be taking place?
Mr Atkinson: The review itself came out of the PC review into super. It was a recommendation. And that was then considered through normal cabinet processes.

Senator McALLISTER: So cabinet considers the Productivity Commission's report and Treasury considers it in that context.

Mr Atkinson: Sorry?

Senator McALLISTER: Treasury provides advice through the cabinet process in relation to the PC report and that is the first time you engage with the proposition around a review? I am looking for timing.

Mr Atkinson: The PC report recommended the review. I think that was the first time it was publicly out there. I am not sure about other private discussions that had happened.

Senator McALLISTER: Have you provided advice to the minister about the scope of that review?

Mr Atkinson: The scope of that review, obviously, was considered through normal cabinet processes, and we would provide advice as part of that.

Senator McALLISTER: You'll be aware that the outcomes for women in the retirement system are very different to the outcomes for men, particularly in the superannuation system. Why is there no specific reference to women's outcomes in the terms of reference?

Mr Atkinson: The terms of reference are drafted very broadly. There isn't specific reference to many, many key elements of the system. I would assume that it is implicit that that would have to be part of what is looked at.

Senator McALLISTER: The problem is that women's interests have been assumed to be implicit in all of the decisions about the retirement income system, particularly in the super system, and it has completely failed women because women are retiring with just over half the super balances of men and their numbers in the ranks of the homeless are growing very, very quickly. It is a direct consequence of the settings which are gender blind, but, in fact, as a consequence disadvantage women very specifically. How does the secretariat propose to properly consider women's interests? Do you propose to consider them as a distinct demographic cohort?

Mr Atkinson: We are just in the scoping phase of what the analytical work will be. We will be working with a panel on that body of work. I anticipate that this will be an important issue that is properly considered by the review.

Senator McALLISTER: Minister, what is the government's view about gender analysis as part the Retirement Income Review?

Senator Cormann: We will get advice and we'll be informed by the same work that's being done. We will make judgements at the right time.

Senator McALLISTER: So you can't commit to taking women's interests into consideration?

Senator Cormann: Of course, we always take women's interests into account but you are talking about a very specific methodology.

Senator McALLISTER: No, I am not. I'm asking about doing—
Senator Cormann: Well, you are. You are asking about specific analysis, and you're going into some detail in relation to all of this. As a matter of course, the government always makes appropriate judgements in relation to women's interests in a policy context. Let me just say that, under our government, women's workforce participation has reached record levels.

Senator GALLAGHER: Another answer to a question you didn't ask.

Senator McALLISTER: I actually question whether or not the government always takes women's analysis into—

Senator Cormann: Sorry, say that again.

Senator McALLISTER: I actually question whether or not the government always takes women's issues seriously as a distinct category.

Senator Cormann: That is a political—

Senator McALLISTER: Could I finish my question.

Senator Cormann: That is not a question; it's a statement.

Senator McALLISTER: I am about to ask—

Senator GALLAGHER: Says someone who has been giving statements all morning.

Senator Cormann: I've been answering. It is actually my job to make statements. It's your job to ask questions.

CHAIR: Minister, let's have the question finished without excess commentary, if we can.

Senator McALLISTER: When I asked previously about whether or not women's interests have been specifically considered in relation to tax changes, the public comments from government ministers were that we don't have pink forms and blue forms in the tax system so there was no need for specific gender analysis.

Senator Cormann: Well—

Senator McALLISTER: I am asking: in this context, are you planning to look at the outcomes for women as a distinct category as part of this review?

Senator Cormann: The point to make, just in relation to the first part of that question, is that the tax system is gender blind, as it should be. There is no difference between the tax treatment of men and women in the law. I think I've heard you suggest in the past—and that's sort of the argument that was run when we legislated on income tax relief—that somehow this was favouring men over women because men would get more of the tax cuts. That was the argument that you were running. The flip side of that argument is that you're suggesting that somehow men are discriminated against in the tax system because on that basis they are paying higher taxes than women. Both of those arguments are wrong. The tax system, appropriately, is gender blind. In terms of the second part of the question, I refer that to the deputy secretary.

Senator McALLISTER: No, I actually would like an answer from you, Minister, because, with respect, you are part of the cabinet and you are a leader.

Senator Cormann: We consider women's interests, of course, as and where appropriate. We have a very effective and strong advocate for women's interests, of course, in Senator Payne, who has the dedicated responsibility within our government to prosecute all of those positions where that is appropriate. Indeed, previously, former Minister Kelly O'Dwyer
equally prosecuted those arguments with some vigour, and indeed she introduced the women's economic statement, which I'm sure you would be aware of.

**Senator McALLISTER:** I asked questions about this on Monday with Minister Payne and the Office for Women. At that time, the Office for Women had not been contacted by anybody in relation to the retirement incomes review. They hadn't been contacted prior to the announcement or consulted on the terms of reference, and they haven't been contacted since the announcement by anyone in the secretariat. I observe that there are no representatives from the Office for Women in the secretariat at this point in time. Is it the government's intention to incorporate personnel with specialist expertise in women's economic interests in the secretariat?

**Senator Cormann:** You know who is on the panel, and you know that there are high-quality, outstanding women on the panel. I might just say that, when it comes to superannuation policy settings, I seem to remember that the Labor Party opposed, for example, our reform to facilitate catch-up concessional contributions to superannuation savings, which obviously overwhelmingly supported women with interrupted work histories. That's something that the Labor Party stood in the way of. So don't give us lectures. We always consider very carefully how we can improve policy settings across the board, where that is appropriate and desirable, with specific focus on and reference to women.

**Senator GALLAGHER:** Minister, just following up from that, do you accept that women, as participants in Australia's superannuation system, suffer particular disadvantage or that results for women are certainly not comparable to those for men in Australia's superannuation system?

**Senator Cormann:** Of course. That is——

**Senator GALLAGHER:** So, because of that——

**Senator Cormann:** Hang on—if I can finish my question, please——

**Senator GALLAGHER:** Your answer.

**Senator Cormann:** If I may finish my answer, rather——sorry. Of course I accept that, and the government has actually made that point on a number of occasions. A number of our superannuation related reforms have gone directly to that point. I make the point again: the Labor Party has actually stood in the way of a number of those reforms.

**Senator GALLAGHER:** No, I'm not asking about Labor Party positions. It's not relevant to the line that we are pursuing at the moment.

**Senator Cormann:** That is partly because women today are still more likely to have interrupted work patterns, obviously, in the context of family time. That is a reality that is still there, and there are a number of other issues that lead to the outcome that you have just referenced, which is a matter of the data. We will continue to reflect on how that can be most appropriately addressed into the future.

**Senator GALLAGHER:** So you accept that. Do you accept that women over the age of 55 are the fastest-growing demographic in terms of people experiencing poverty in country?

**Senator Cormann:** Well, experiencing poverty is a subjective term.

**Senator GALLAGHER:** Living in poverty.
Senator Cormann: I'm not going to go down that path, but I certainly accept that improving our policy settings into the future to deal with some of these challenges continues to be a challenge that we need to—

Senator GALLAGHER: Doesn't the retirement incomes review give you an opportunity to address some of those challenges? Why are you finding it so difficult to say that women's interests or, specifically, economic interests will form part of the retirement incomes review?

Senator Cormann: I am not finding it difficult at all.

Senator GALLAGHER: Well, you are.

Senator Cormann: No, I completely reject that proposition.

Senator GALLAGHER: So you will take advice?

Senator Cormann: I can't get one single sentence out in the answer. Honestly, this is unbelievable.

Senator GALLAGHER: I don't think anyone watching this will feel sorry for you.

Senator Cormann: Chair, if I could be allowed to finish one sentence, that would be really helpful.

CHAIR: Senator Gallagher, let's listen to the answer and then we will ask the next question.

Senator Cormann: Thank you, Chair. Of course we will consider women's interest in this context, as we do in all other relevant contexts. But I think your questions went somewhat deeper than that. We've got a panel that has been given a job and that panel does include some outstanding women, and I'm sure they will give us high-quality feedback.

Senator McALLISTER: I've got a handful of questions about the review. Depending on the length of the answer, they probably could be tidied up within five minutes. We can come back and deal with them after lunch, but I wonder whether we could just go on a little bit?

Senator Cormann: No, I can't. It's a quarter to one.

Senator McALLISTER: I might leave it there and will come back to my other questions after the break.

CHAIR: In that case, we will suspend slightly early and we will resume in one hour's time. Thank you.

Proceedings suspended from 12:43 to 13:44

CHAIR: We will resume this Senate Economics Legislation Committee hearing for estimates. We're currently with Fiscal Group. Senator Gallacher, you have the call. I understand we've got about 10 or 15 more minutes.

Senator GALLAGHER: Maybe a bit more than that. I'm not sure we said that. Jenny had a few.

CHAIR: Deputy Chair.

Senator GALLAGHER: I want to go to robo-debt and the ATO's participation in that.

Senator Cormann: ATO is in revenue, and that's after. I know that it says Revenue Group, but we haven't come out of Fiscal Group yet.
CHAIR: So we might leave that. Senator McAllister, I believe you still have some questions for Fiscal.

Senator McALLISTER: I do. Broadly in relation to the Retirement Income Review, there have been a number of policy constraints placed on it, but can I just confirm that it's not intended that the review will make specific recommendations?

Senator Cormann: That's right.

Senator McALLISTER: Can you explain that, Minister? What is the point of a review that doesn't make recommendations?

Senator Cormann: There have been many reviews, of course, which did make recommendations in recent times. The Retirement Income Review was commissioned in order to improve understanding and establish a basis of factual information which will facilitate understanding and debate about future opportunities. But Australians want certainty and stability around policy settings in relation to superannuation. The commitment that we made in the lead-up to this election is that we would provide that certainty and stability. While this is a review that was recommended by the Productivity Commission review, we are going through that process, but essentially it is about helping to improve understanding of how the current system operates and the outcomes it delivers rather than having another major wave of significant reforms.

Senator McALLISTER: So you don't expect that it will prompt a major wave of significant reforms?

Senator Cormann: Sorry?

Senator McALLISTER: Can I take it from your answer that you do not expect that this review will prompt a major wave of significant reforms?

Senator Cormann: I anticipate it will prompt an improved understanding and will help inform public debate. Obviously, over time that public debate may lead further adjustments. But there have been significant reforms in this space in recent years, and the government's judgement is that this is the time to let some of these reforms settle and to ensure that Australians can benefit from certainty and stability in policy settings. The feedback that we have received loud and clear is that Australians are concerned about the constant tinkering and changing of superannuation policy settings, and that's the message that we have received loud and clear.

Senator McALLISTER: Okay. So it is in that context that the Treasurer has ruled out including the family home in the pension asset test?

Senator Cormann: It's very clear that none of these things that the Treasurer has ruled out are on the table or ever have been on the table, but, of course, people like the opposition will from time to time try to play politics with these things. So, in an abundance of clarity, an abundance of helpfulness and to make sure there is no misunderstanding, the Treasurer has been very explicit in making sure that certain things are not on the table.

Senator McALLISTER: Was the department made aware of the Treasurer's intention to rule out including the family home in the pension asset test?

Senator Cormann: The Treasury is obviously aware of the Treasurer's views.
Senator McALLISTER: My question is a process one. Was the Treasury specifically advised prior to the media comments?

Senator Cormann: If I may, these sorts of judgements are made through relevant cabinet or cabinet subcommittee processes, and Treasury is an integral part of these processes, as you would appreciate.

Senator McALLISTER: So that's a no?

Senator Cormann: That's a yes. I don't know how you get a no from that—

Senator McALLISTER: Because it's such an easy question to answer and you are evading it. So I wonder—

Senator Cormann: I'm just explaining to you, as a matter of course, that Treasury is part of the processes that lead to policy decisions in government.

Senator McALLISTER: That's true, but it doesn't make them omnipotent—or omniscient.

CHAIR: Senator McAllister, you are continually interrupting the minister. Allow the minister to finish.

Senator McALLISTER: I thought he had finished.

Senator Cormann: Treasury are part of the process; they are embedded in the process. Of course Treasury was aware before that announcement was made.

Senator McALLISTER: Is Treasury aware of any other policies that have been ruled out as part of the review?

Mr Atkinson: The discussions around the detail of the review, as the minister said, were part of ERC processes and we can't talk about those.

Senator McALLISTER: Have changes to the pension been ruled out?

Senator Cormann: This review will not lead to any change. This is a retirement income review which will present a fact base which will inform the public about where the system is at and where it operates. It will not lead to policy change.

Senator McALLISTER: In the area of retirement incomes broadly, have you ruled out delays to the increase in the superannuation guarantee?

Senator Cormann: You asked me that same question yesterday and I was very explicit that the government policy is to stick to the legislated timetable. You're asking me the same question today.

Senator McALLISTER: I was reflecting on your answer. Certainly it is government policy at the moment. Can you rule out any changes in future to the timetable for the increase in the superannuation guarantee?

Senator Cormann: If you asked me whether the Labor Party in future, should you get back into government, might change or not change, I can't speak on behalf of what happens in the long-term future. What I can say is that the policy of our government is not to make any change to the timetable as legislated.

Senator McALLISTER: Is there any intention to change the compulsory nature of the superannuation guarantee?
Senator Cormann: No.

Senator McALLISTER: Are you aware of the open letter to the Treasurer, Mr Frydenberg, from Women in Super?

Senator Cormann: Not specifically.

Senator McALLISTER: Chair, can I table a copy of this letter. It is a public document.

CHAIR: There being no objection, go ahead.

Senator McALLISTER: This is an open letter to the Treasurer and it is signed by more than 100 prominent Australians working in senior roles in business, particularly but not exclusively in the finance sector. It's been signed by Diane Smith-Gander, Jennifer Westacott, Cath Bovtibell, Sally McManus and Cate Wood, who is the chair of Women in Super. The process of preparing the letter has been coordinated by Women in Super. It points to the issues I was raising earlier about the systemic problems in the superannuation system for women and asks that a specific new point be added to the terms of reference for the Retirement Income Review requiring gender analysis of current and alternative policy settings.

Senator Cormann: We believe that the current terms of reference appropriately cover the issues that are raised in that letter. I would specifically point you to how the retirement income system supports Australians in retirement—that's obviously men and women—and also the distributional impacts across the population over time. I think the issues, which are raised in that letter, which are legitimate issues, can be appropriately addressed in the context of the terms of reference as they stand.

Senator McALLISTER: I think the point that's being made by Women in Super and all of the people who've signed this letter is that in the past the absence of a specific consideration of women's economic interests has led to their interests being overlooked. Will you consider changing the terms of reference for the review to specifically reference women's interests?

Senator Cormann: As I've indicated, the terms of reference are sufficiently broad to cater for the issues raised in this letter. I would also point out that two-thirds of the panel are high-quality, outstanding women with extensive experience in this area of policy.

Senator McALLISTER: The terms of reference drive the content of the process. Are you intending to direct the review to specifically consider women's interests?

Senator Cormann: I've already answered that question. I would expect the panel to review and to assess all relevant issues, including the issues you are raising. I'm very confident that that's what they will do in the ordinary course of events, given they've been asked to assess and to identify how the retirement income system supports Australians in retirement—men and women—and to identify the distributional impacts across the population over time. I'd be extremely surprised if the panel that was appointed—two-thirds of whom are outstanding and highly experienced women in this area of policy—does not address some of the issues that you've identified.

Senator McALLISTER: In the ordinary course of events, women have been badly let down by the retirement income system, repeatedly—review, after review, after review. I am surprised that you don't share my concern that they will be let down on this occasion again.
Senator Cormann: I completely reject that proposition. I again point out that our government, in a series of reforms to our superannuation tax policy settings, have pursued reforms to better support the retirement income requirements for women. A number of these reforms were not supported by the Labor Party, even though they were clearly going to lead to better retirement income outcomes for women.

Senator McALLISTER: On that exact point, one of the reasons I didn't support those changes was because there was no specific analysis on how they would support women. There was no modelling. There were no numbers—

CHAIR: Is there a question?

Senator McALLISTER: There is a question. Chair, in the to and fro of this committee it is acceptable to provide some background in the lead up to a question.

CHAIR: There's a lot of commentary going on.

Senator McALLISTER: What I'm putting to the minister is that, to date, women's interests have not been expressly considered by Treasury when formulating policy. I'm asking you to commit that they will be expressly considered by Treasury, in undertaking this review.

Senator Cormann: Personally, enabling concessional catch-up contributions to superannuation savings is self-evidently something that is in the interest of women. I think you'll find women around Australia very much share that view, because it enables them to tax advantageously and put more money into superannuation, recognising the fact that through interrupted work patterns, in times of having a family, they might not have been able to take full advantage of the tax concessions to contribute in tax advantageous way early in their lives. That's self-evidently something I would have thought women would recognise as being in women's interests. In terms of the broader issues you've raised, I think I have extensively addressed that now. The terms of reference cater for the issues that you've raised. I'm very confident that the panel will expertly deal with the issues that you have raised.

Senator McALLISTER: I think we're going to have to agree to disagree, because history doesn't demonstrate that that will be the case.

CHAIR: Fiscal group.

Senator GALLACHER: Perhaps we can ask some question of Treasury. Ms Wilkinson, did you appear in the legislation inquiry?

Ms Wilkinson: Yes, I did.

Senator GALLACHER: Just for the record, from recollection, your advice was that it was a decision of government to proceed with the First Home Loan Deposit Scheme.

Ms Wilkinson: Yes, it was an election commitment by the government.

Senator GALLACHER: The parliament was prorogued, so that precluded you from working on advice or giving advice or research to the minister about this scheme.

Ms Wilkinson: During the caretaker period we did not work on this scheme.

Senator GALLACHER: Subsequent to proceeding further, how are we going with the draft investment mandate? Is that in your purview?

Ms Wilkinson: The legislation passed the parliament on 15 October. The investment mandate is being drafted and it is with the minister for housing.
Senator GALLACHER: So it's not publicly available yet?
Ms Wilkinson: Not at this stage.

Senator GALLACHER: Is there any draft mandate that has been consulted on or released?
Ms Wilkinson: No. In the explanatory memorandum the government indicated it would release the investment mandate for public consultation. That hasn't yet been released.

Senator GALLACHER: Are you devising it in your own circles or are you consulting with other people? How is it working?
Ms Wilkinson: Treasury has provided advice to the minister on the investment mandate, and it is with the minister.

Senator GALLACHER: Have you sampled the people who are interested in this space? How did you get your advice together?
Ms Wilkinson: In the course of developing the legislation and developing this policy, there was consultation with a broad range of stakeholders. There were two reference group meetings that were held with a broad range of industry, consumer and other interested parties, and there have been a range of one-on-one consultations with a range of different parties.

Senator GALLACHER: Just to recap, what parts of the draft have been finalised? Or is it entirely finalised?
Ms Wilkinson: Drafting has occurred and advice has been provided to the minister.

Senator GALLACHER: Is it possible that a draft copy of that investment mandate could be tabled to this committee?
Ms Wilkinson: No, that is under advice to the minister under normal cabinet processes. I think the minister will—

Senator GALLACHER: So it's only after the minister releases it that we will get to see it, or anybody will get to see it?
Ms Wilkinson: Yes.

CHAIR: It will be released for consultation.

Senator GALLACHER: Right. We had some discussion on the day about how this program is actually going to increase the number of first home buyers. Do you have anything further to add on that? I think the evidence was 100,000 first home buyers.

Senator Cormann: You're talking about the First Home Loan Deposit Scheme? The First Home Loan Deposit Scheme will provide up to 10,000 guarantees per financial year, so I am not sure where your 100,000 came from.

Senator GALLACHER: The question is: will that 10,000 come out of 100,000 existing first home buyers, on a basis of best organised, first in, best dressed; or will it mean 110,000 first home buyers?

Senator Cormann: Our expectation is that it will enable people to get into the first home buyers' market when they otherwise wouldn't be able to do so because they don't have a sufficient deposit. That's the purpose of it.
Senator GALLACHER: But most of the evidence we took on the day was that it was a little unclear whether it was going to be out of the existing 100,000 or whether there would be 110,000.

Senator Cormann: We believe it will enable additional first home buyers to get into the market. Ultimately you will be able to ask us these questions once the scheme has been in operation. It was a scheme that you supported, of course, during the campaign.

Senator GALLACHER: I am sure we supported it on the basis it is good policy to get people into their first home, but the devil is always in the detail, and the detail here is: what about the price caps? Do we have any information on the price caps yet?

Ms Wilkinson: The investment mandate will include details of the price caps.

Senator GALLACHER: Some of the information we scrutinised on the day meant you wouldn't be able to get a house in Sydney or Melbourne, for argument's sake, with a price cap of $400,000-odd.

Ms Wilkinson: I don't think there was any information that you looked at on the day of that committee because that information was not publicly available. What the government has said is that there will be price caps based on metro and regional areas. The actual detail of that will be contained in the investment mandate.

Senator GALLACHER: Will this scheme allow people—first home buyers—to buy a first home in Sydney or Melbourne?

Ms Wilkinson: The intention of the scheme is that the guarantees will be available to first home buyers throughout Australia.

Senator GALLACHER: Why, then, was the discussion about regional areas?

Ms Wilkinson: In looking at price caps, they will be looked at in terms of metropolitan areas and regional areas.

Senator GALLACHER: Without giving the detail of those price caps, can you just go into that a bit more fully? Are you talking about a price cap that applies to Albury Wodonga versus Melbourne or Sydney versus Armidale or Adelaide versus Mount Gambier?

Ms Wilkinson: The setting of the price caps is a decision for government, and government is currently considering that.

Senator GALLACHER: So it's a decision of the minister, basically, or government?

Senator Cormann: No, it's a decision of the government, and the government will announce the decision once it has been made and once we're in a position to do so.

Senator GALLACHER: I'm just trying to get to the intent. Is the intent that you make people not able to get into the market in rural or regional areas? Are they a priority, or is it Sydney—

Senator Cormann: The intent is obviously to make sure that the support to get more Australians into the housing market is appropriately well targeted, which is why we want to ensure it's appropriately well targeted, in terms of household income or the income that you target but also in terms of the value of the asset or the value of the house that's being purchased. I think, as the officer has indicated to you, some of these matters are yet to be finalised.
Senator GALLACHER: Will the 10,000 be allocated regionally? Is that the intent of the government? Is it that, out of the 10,000 people who are able to seek a 15 per cent guarantee, that is going to be allocated on a—

Senator Cormann: Can you speak up, please?

Senator GALLACHER: Are the 10,000 places going to be allocated regionally? Is the ability for people to pick up a 15 per cent guarantor going to be allocated on a regional basis? Or is it going to be on an as-needs basis?

Ms Wilkinson: Again, part of that will be the result of how this scheme is operationalised by NHFIC, but the intent is that the guarantees will be available for first home buyers throughout Australia.

Senator GALLACHER: So there'll be no regional caps, so to speak?

Ms Wilkinson: The investment mandate will contain greater detail about how it's operationalised.

Senator GALLACHER: Is there a risk that people who may be getting a parental guarantee at the moment will, if they are really well organised and resourced and supported, just withdraw from that and seek a government guarantee and there will be no net benefit?

Ms Wilkinson: The investment mandate will set out a range of criteria, and not all first home buyers will meet those criteria or find them attractive, depending on what their objective is. But those who do fall within those criteria will be eligible, potentially, for the 10,000 guarantees.

Senator GALLACHER: Do you agree with the evidence that the price of the lenders insurance is about $60 per month?

Ms Wilkinson: Lenders mortgage insurance?

Senator GALLACHER: Yes.

Ms Wilkinson: I'm not aware of that figure of $60 per month.

Senator GALLACHER: That was the evidence on the day. It was that it added about $60 per month to a mortgage.

Ms Wilkinson: That wasn't Treasury evidence. I'm not aware of the stakeholder that raised that and I haven't looked at that evidence.

Senator GALLACHER: Were you aware of the evidence that lenders mortgage insurance products were profitable and that there was a sufficient investment from QBE and others in the market and that they were meeting, I think, 235,000 customers in a year and that there didn't seem to be any shortfall in that take-up?

Ms Wilkinson: Again, I'm aware that we have a well-functioning lenders mortgage insurance market in Australia. But again, I have not looked at those specific details.

Senator GALLACHER: There's a well-functioning insurance market; that's agreed. The evidence we saw on the day was that they appear to be making a reasonable amount of profit, there appears to be a very low default rate and it was a successfully operating segment. Most of the questioning from all of the people, who incidentally supported the scheme, was: how do we see this actually adding either 110,000 or 115,000 first home buyers? That was their only question, really. It was a little unclear, absent the investment mandate and the caps on
price and the allocation regionally, whether it's actually going to be a success or not. That's what happened. Is Treasury still of the view that it's unclear whether there will be 110,000 new participants or 10,000 new participants?

**Senator Cormann:** Obviously after this has been in place for a while there will be an assessment of how it is operating and we will be able to give you better information. Our anticipation is that this will lead to Australians getting into the housing market who otherwise wouldn't be because they haven't got sufficient deposit to be able to secure a home loan on the current terms. That is our expectation. That is what we believe will happen. We are seeking to design the program accordingly. As is always the case, when you pursue a new initiative you have to assess how it has performed against expectations.

**Senator GALLACHER:** What was the review period?

**Ms Wilkinson:** There was amendment passed to the legislation as it was passed through parliament. It's 12 to 18 months, but I think it's 12 months after the commencement of the scheme.

**Senator GALLAGHER:** I have pretty straightforward questions so I think we can whip through them pretty quickly if we don't get too many long answers.

**Senator Cormann:** I will just ignore that little slight.

**Senator GALLAGHER:** It wasn't a slight, it was genuine feedback on the morning session. On the *Intergenerational report*, can Treasury confirm that the next *Intergenerational report* is due in March 2020?

**Senator Cormann:** It's due in 2020. The precise timing I think is yet to be announced.

**Senator GALLAGHER:** My understanding is that the Charter of Budget Honesty requires the treasurer to publicly release and table an *Intergenerational report* within five years of the preceding report. The last report was March 2015.

**Senator Cormann:** Exactly. My answer is not inconsistent with what you have just read out. The precise timing is yet to be determined.

**Senator GALLAGHER:** But by March 2020.

**Senator Cormann:** Sure.

**Senator GALLAGHER:** So we accept that by March 2020 there will be one. Are Treasury working on this report now?

**Mr Atkinson:** Yes.

**Senator GALLAGHER:** Have you got a team that is managing it?

**Mr Atkinson:** We do have a team. Like all of our budget work, it feeds in through the ERC processes. We are working to support the government in preparation of that.

**Senator GALLAGHER:** Has the Treasurer set priorities for the report already?

**Senator Cormann:** That goes to the deliberative processes of cabinet.

**Senator GALLAGHER:** It is yes or no. Have they all haven't they?

**Senator Cormann:** We are going through the process.

**Senator GALLAGHER:** You have confirmed you will meet the legislative deadline for the report.


Senator Cormann: The precise timing of the release will be announced at the right time. We are aware of what the requirements are.

Senator GALLAGHER: The question is, will you meet the legislative deadline?

Senator Cormann: Of course we will always comply with the law.

Senator GALLAGHER: Has the Treasurer requested any analysis of the impact of climate change to be included in the report?

Mr Atkinson: All of the considerations of the development of the IGR are through the ERC process, including the scope and all of the issues that they ask us to develop as part of the IGR, and I cannot comment on what is in the ERC processes.

Senator GALLAGHER: I'm just asking whether the subject of climate change—I am not asking the details of what that would be.

Senator Cormann: You are going to the content of the report. These are all matters that are subject to cabinet's deliberative processes.

Senator GALLAGHER: I am moving on from the Intergenerational report to the big stick legislation, which I think is being debated today. Did Treasury perform any economic analysis on modelling of the big stick reforms' impact on electricity prices?

Mr Atkinson: I might ask Mr Dunn if he has any comments.

Mr Dunn: No, we haven't done any modelling.

Senator GALLAGHER: You didn't. Why? Were you not asked to by the government—it wasn't part of the development process of the legislation?

Mr Dunn: The legislation is designed to support the ACCC's ongoing electricity price monitoring. The legislation is designed to ensure the good functioning of the market. We weren't asked to model those aspects.

Senator GALLAGHER: The government has used the big stick reforms as legislation that will put downward pressure on prices, I think I've seen a number of times. But you're saying that Treasury hasn't been involved in any of the advice to government or the economic analysis of substantiating that claim.

Mr Atkinson: Obviously advice to government is part of the cabinet processes. It's very difficult to quantify the impact of this type of legislation.

Senator GALLAGHER: It's not me making the claims.

Senator Cormann: This is legislation that you are supporting, of course.

Senator GALLAGHER: Yes. The exercise of estimates is about transparency and accountability of government process. There's no problem with supporting something but asking for further information on it. It doesn't mean you support something and never ask about it again. I'll move on to the Deregulation Taskforce, which I think Dr Kennedy mentioned this morning. Is that managed in your area, Mr Atkinson?

Mr Atkinson: Yes.

Senator GALLAGHER: Who is on the task force? Is it whole of government? What agencies?

Mr Atkinson: I'll ask Mr Cully to speak to it. He's the head of the task force.
Mr Cully: I've been seconded from the industry department to head up this task force, along with approximately—it does move about a little—15 staff from 12 other Commonwealth departments, seven staff from within the Treasury and a private sector secondee.

Senator GALLAGHER: Where does the private sector person come from—not name or anything, but what sort of sector are they coming from?

Mr Cully: An industry body.

Senator GALLAGHER: How many Treasury people is it?

Mr Cully: Seven.

Senator GALLAGHER: Seven plus the private sector rep, plus 15 others seconded from across government. That's quite a good group. Can you briefly outline or table, if you have it ready to hand, the priorities of the task force?

Mr Cully: The terms of reference for the task force are available on the Treasury website. They were released on 12 September. On the same day, the Treasurer and Assistant Minister Morton issued a joint press release where they announced the first three areas we are to look at. Those are food manufacturing with an initial focus on exporting; helping sole traders to hire their first worker; and looking at ways to speed up the approval processes for major projects.

Senator GALLAGHER: Outside of those three, are there other areas? You've got 22 or 23 people. It's a good number. Are they all working on those three areas, or are there other areas?

Mr Cully: No. We are working exclusively on those three areas. When we've finished our work on those, the government will make decisions on the next lot of areas that we might examine.

Senator GALLAGHER: How long do you expect it will take you with those three areas?

Mr Cully: We are still underway on those three areas and working on a range of activities there.

Senator GALLAGHER: So you don't have a timeline. How long has the task force been focusing on these areas?

Mr Cully: Since the middle of September, when the government made that decision.

Senator GALLAGHER: So not before that date?

Mr Cully: Only in terms of providing advice.

Senator GALLAGHER: But you don't have an end date or an estimate for when those three priorities will completed?

Mr Cully: I think the assistant minister has said publicly that in the first instance the task force is expected to run through until the end of next May, and a decision will be made ahead of that as to whether its work will continue beyond that time.

Senator GALLAGHER: So there is the chance those three issues will take you to the end of May.

Mr Cully: There is a chance, but I would anticipate we might be moving on to other areas at some point.
Senator GALLAGHER: We will talk about this at the hearing, probably. There is one in February we can go back to. I've got some questions about GST. Is that this group too?

Mr Atkinson: GST collection is revenue group. Distribution we can talk about.

Senator GALLAGHER: It is about distribution. The government has legislated a guarantee that no state would be worse off from the GST change that they made.

Senator Cormann: That's right. In fact everyone would be better off.

Senator GALLAGHER: If everyone is going to be better off, what is that expected to cost this year?

Senator Cormann: I may have to take that on notice. Obviously that is a number that would move around, and you've got to compare it to what the previous arrangement would have been.

Senator GALLAGHER: Where you say no-one will be worse off, you obviously have a baseline year.

Senator Cormann: There is a baseline. If you look at the relevant Productivity Commission report, which assessed the national productivity and growth implementations of the horizontal fiscal arrangements, there are obviously a whole range of models. The government settled on a particular approach, which is now reflected in legislation, as you know. Yes, there is a baseline in terms of activity and dollars, but obviously it depends. Compared to how the system would have operated in the absence of reform, based on the decisions that we have made every state and territory would be better off compared to the previous arrangements. That is on the basis that we are actually supplementing the pool with additional federal contributions into the overall pool.

Senator GALLAGHER: I haven't really been engaged in this because I was out of the parliament for a period of time, as we all know. But how does that commitment relate to, say, a significant change in the Commonwealth Grants Commission's relativities for states? If they significantly revise, as they did with WA—

Senator Cormann: The reform has ensured that there will be less volatility moving forward. One of the structural reforms over time is that instead of going to the highest, which historically, looking back, has been Western Australia for some time, in terms of assessing the relativity, we are going to the higher out of New South Wales or Victoria.

Senator GALLAGHER: So there will be less movement.

Senator Cormann: It will be less volatile. Over time it is not expected that there will be the sort of volatility of relativities that we have seen in the past when it was equalised against Western Australia.

Senator GALLAGHER: I've been advised the ACT is going to take a GST financial hit under the revised regional weighting rules. I'm just wondering how that will align with the no-worse-off commitment.

Senator Cormann: What you are suggesting does not relate—

Senator GALLAGHER: It's outside of?

Senator Cormann: That's separate, yes.

Senator GALLAGHER: The no worse off commitment—
Senator Cormann: That relates to the impact of the reforms we have pursued in order to address the significant issue of Western Australia.

Mr Atkinson: The issue you are talking about is the normal operation of the CGC.

Senator GALLAGHER: I might have to look into this a bit further. The relativities could change through the CGC process, which would reduce a territory or state's relativity and therefore GST, and that can happen outside of and regardless of the commitment of no worse off because it's under the reform process. Is that right—there are two things going on?

Mr Atkinson: There's the ordinary operation of the CGC relativities. The no-worse-off guarantee is no worse off with respect to before the legislated reforms came in.

Senator GALLAGHER: But wasn't it the normal operation of the CGC that led to the problem that WA experienced?

Senator Cormann: No. There was a particular aspect that caused the extreme volatility. That was on the way up as well as on the way down.

Senator GALLAGHER: That's right. It was a recipient state for a long time.

Senator Cormann: That is the aspect that was addressed in the reforms. The commitment is that no state will be worse off, and in fact every state will be better off, as a result of reforms to address that volatility issue.

Senator GALLAGHER: So no worse off relates to the volatility issue, not the general review of relativities.

Senator Cormann: It relates to the legislated reforms, yes.

Senator GALLAGHER: Is the Commonwealth Grants Commission here? Do they appear with you or at any part of the program?

Senator Cormann: They can appear if you call them. I have called them in the past. Western Australian senators have called them in the past. But I don't believe they have been called on this occasion.

Senator GALLAGHER: All right. We might save that for another day. So you will take on notice the legislated guarantee and what it's expected to cost this year. Could you also take on notice how that compares to the estimate when the guarantee was announced?

Senator Cormann: Sure.

Senator GALLAGHER: We can take from the answer, presumably, whether the guarantee is going to cost the Commonwealth more than expected. I've just got some questions on loans to states. Is that here too?

Mr Atkinson: Yes, to the extent that it's us rather than Finance. It depends on the question.

Senator GALLAGHER: Okay. My first one is: does the Treasury administer loans to the states?

Senator Cormann: It depends.

Senator GALLAGHER: Let's cut this short. What are the loans that fall within your portfolio that I can ask about?

Mr Atkinson: I might pass to Ms Phipps to go through those.
Senator GALLAGHER: I'm just trying to work this out: there are different loans. There are debts and then there are loans. Well, loans are debts, aren't they? This is what I'm trying to work out.

Senator Cormann: Unpaid loans are outstanding debts—that's right.

Senator GALLAGHER: I can ask about debts, but the loans might be Finance.

Mr Atkinson: If it's about debt forgiveness, that's Finance.

Senator GALLAGHER: We had a bit of a crack on that yesterday.

Senator Cormann: You talked about that yesterday.

Senator GALLAGHER: It's a general question around how the Commonwealth manages the debts to the states in particular. I understand that there are some loans or debts to the Commonwealth that can't be paid out earlier. Are they all like that or does it depend on the terms of the loan?

Mr Atkinson: It depends on the terms of the agreement when it was struck, which usually reflects market and loan conditions at the time. Each of the individual agreements have different terms in them.

Senator GALLAGHER: What would be the oldest of your loans? They go back some time, don't they?

Mr Atkinson: Yes, a long time, I think. We can take that on notice.

Senator GALLAGHER: Yes, take that on notice. Do they all have different interest rates?

Mr Atkinson: There's a variety of interest rates.

Senator Cormann: It depends on the time that the agreements were struck.

Senator GALLAGHER: Maybe you could take this on notice. I don't know whether you've got an average figure of the interest rates across the states—whatever you can provide me in relation to rates of interest across those loans.

Senator Cormann: We will happily take that on notice.

Senator GALLAGHER: Also, with the interest rates coming down and the rate of borrowing coming down over time, are they then adjusted to reflect those lower rates of borrowing?

Mr Atkinson: That depends on the terms of the agreement—effectively, whether they're on a fixed rate or whether they're on a floating-rate. It's not dissimilar to your choices with a bank loan. Fixed-rate agreements won't change. Sometimes those were good deals for states when they signed into them; sometimes they might not have been, as things have moved up and down. But, over a long-run period, there is a series of different rates.

Senator GALLAGHER: Perhaps you could provide me with as much information as you can around that issue.

Senator GALLAGHER: Is that really productive? It floats on a loan at four per cent, and a couple of years down the line it's 1.8 per cent, and you're saying, as the Treasury, 'You signed an agreement. Just keep paying the four per cent.' Wouldn't it be better to adjust your rate and let people borrow more money and get more—
Senator Cormann: No. Agreements obviously are entered into freely by both sides, and the terms of the agreement determine the circumstances in which adjustments are made. States are always free to approach the Commonwealth to renegotiate agreements, because obviously consenting parties can adjust agreements, but you are not going to unilaterally just make a decision in breach of the terms of the agreement to vary the terms.

Senator GALLACHER: I said, 'Is it productive?' The opportunity could be to service a debt at a lower level and there could be more infrastructure spend.

Senator Cormann: Or we end up doing less because we end up getting less back on behalf of the Commonwealth than was provided for in the agreement, and then we end up having less money for whatever purpose. It's swings and roundabouts, really, but ultimately there are agreements struck between consenting parties, and consenting parties can vary agreements if they can reach an agreement to revise any terms. That's the way the process works here, as it works everywhere.

Senator GALLACHER: Have you been approached by any state and territory governments to renegotiate the terms of the loan, recognising the very low interest rate and the borrowing cost environment that the Commonwealth is experiencing—that we all are experiencing?

Mr Atkinson: Yes.

Senator GALLACHER: And how does that get progressed?

Mr Atkinson: That will be a decision of government as to whether or not they wish to engage with the renegotiation of a loan.

Senator GALLACHER: Can you tell me how many states and territories have approached the Commonwealth?

Senator Cormann: We might have to take that on notice.

Senator GALLACHER: Can you also take on notice whether it's around renegotiating a loan or waiving a debt?

Senator Cormann: We're happy to take that on notice.

Senator SINODINOS: Could Mr Cully elaborate on the deregulation agenda? There were a number of case studies mentioned, including in the food area. Could you explain what the challenges are there that you're seeking to address?

Mr Cully: In food manufacturing—the number sounds rather scary—there are 200 pieces of regulation administered by 30 different agencies.

Senator SINODINOS: Are they all Commonwealth agencies?

Mr Cully: That's a mixture of state and Commonwealth but primarily Commonwealth. That's involving getting goods across the border. If you look at the World Bank ease of doing business study, which comes out annually, Australia has fallen to I think 103rd in the ranking of countries in terms of the costs of getting goods across the border. It's been falling steadily for a substantial period of time. It's likely that's partly a reflection of the extent to which other countries are moving ahead with modernising their trade regime. We've been out talking to a range of food manufacturing businesses—one who export and ones who are prospective exporters. The minister has asked us to stand in the shoes of the business owners and understand what their day-to-day experience of complying with the existing suite of
regulations is. We've identified a number of pain points, as you might call them, and areas where there might be opportunities to streamline some of those processes.

Senator SINODINOS: More broadly, you've talked about streamlining federal and state regulation—is that right? Is that part of your remit?

Mr Cully: That's certainly part of our terms of reference—that is, to look at the regulatory and administrative burdens across all three levels of government. We've been very open with the states and territories about the processes that we're following. We've consulted them on the terms of reference, and we're engaged with a number of states and territories in some of our activities.

Senator SINODINOS: Are local governments involved?

Mr Cully: Not as yet.

Senator SINODINOS: But the intention will be to cover the three tiers of government?

Mr Cully: The intention is. That's true, yes.

Senator SINODINOS: Obviously some of the pain points we've seen in the past are in areas like environmental regulation where you have both federal and state levels. Are you looking at areas like that as part of this?

Mr Cully: There is a statutory requirement to undertake a review of the Environment Protection and Biodiversity Conservation Act. That's due or imminent. We've been out talking to a number of proponents, engineering firms and contracting firms, both in the area of publicly-funded infrastructure projects and also in big commercial projects and resource and energy projects.

Senator SINODINOS: The idea of that is not to derogate from environmental standards but just to have a more effective way of meeting those standards while avoiding duplication.

Mr Cully: That's correct.

Senator SINODINOS: What's the time line on this work on the agenda?

Mr Cully: As per my answer to Senator Gallagher, the task force is currently scheduled to cease its work next May. So, we would be putting advice and proposals et cetera before the government for consideration between now and then. But there might also be a decision around what form the task force takes beyond next May as part of that.

Senator BRAGG: I have a question about superannuation. There's been quite a lot of legislation passed in recent months in relation to superannuation—the 'putting members' interests first' bill and the 'protecting your super' package. I was just wondering whether you've been able to calculate what type of benefit that will deliver to members in terms of higher retirement incomes.

Mr Jeremenko: That's correct. Those two bills, which are now acts, were initially part of the one package—the 'protecting your super' package—from the 2018-19 budget. They both serve to ensure that superannuation members' retirement balances are protected—as in, unnecessary erosion of their balances does not occur. I'll run through a couple of the measures for the benefit of the committee. The 'protecting your super' package capped administration and investment fees for low-balance accounts—accounts of $6,000 or less—at three per cent. It also banned exit fees on super accounts across the board for any level. The estimate there is that that saves around seven million people some hundreds of millions of dollars in super.
We've also required superannuation funds to only offer insurance on an opt-in basis in relation to initially inactive accounts—those accounts that are inactive for 16 months or more. And then the 'putting members' interests first' bill extended that so that people who are 25 years or under and with accounts of $6,000 or less are not being made to or put in a position where they have to opt out of their automatic insurance. They can decide to have that insurance. That alone will save some five million people about $3 billion in insurance premia.

The third major part of the package was making sure that the tax office consolidates those inactive accounts I mentioned earlier—the accounts inactive for 16 months or more with amounts of $6,000 or less—and the tax office will start that on 31 October. So, just a few days away, that first sweep will occur. The estimate is around three million people being reunited with up to $6 billion of their superannuation. The tax office will, within 28 days, find an active super account with a substantial balance to make sure that the total's above $6,000 and reunite that—without the member's consent, which might sound a little unusual, but, before, the tax office was only allowed to do that with consent, and because of the lack of engagement of so many people with their superannuation, they found that very hard to get, even if it was just a click on an official email from the tax office. So, this allows the tax office to effectively require people to have their own money, which is good for them.

Senator GALLACHER: On those investments you've made, do you disaggregate it between retail funds and industry funds? Is there a different outcome if you look at an industry fund member and a retail fund member?

Mr Jeremenko: The legislation is agnostic. It applies across the board.

Senator GALLACHER: But you've calculated some projected savings of hundreds of millions of dollars. I'm asking you: have you calculated whether there's any difference between a member in a retail fund in enjoying an insurance product that you say they don't need and a retail fund?

Mr Jeremenko: Just so that no-one's unclear: I didn't say that people don't need insurance. Some people may not need the insurance. What I neglected to add on the 'putting members' interests first' act is that there's an option for dangerous-occupation employees. So, super funds nominate that those members of their fund receive the automatic insurance. But no, there's been no breakdown between industry and retail, because the legislation doesn't distinguish.

CHAIR: It seems like that might be all for Fiscal Group. You go with our thanks.

Australian Taxation Office

[14:43]

CHAIR: Welcome. Mr Jordan, I understand you have an opening statement, is that correct?

Mr Jordan: Yes, Chair. Thank you for your request for me to be here today.

CHAIR: You are in great demand as always.

Mr Jordan: Thank you. I am always grateful for the opportunity to speak to this committee, to inform you of the work that we are doing, but at times to correct the record. It has been a big year for the ATO, and I would have hoped to speak today about some of our many achievements and highlights. But, unfortunately, those issues which should be the focus
of this committee and my role really must take a backseat for today. Why is this? Because this week began with a public campaign across all the major media outlets that included the claim:

The Tax Office can take money directly out of people's accounts but you're not allowed to know.

Wow. Imagine if that were true. Go for your life on a Right to Know campaign, but, please, if you are seeking the truth, please try to use it yourself, at least insofar as it relates to the ATO.

We've got a debt book of almost $45 billion and we have around eight million debt interactions a year, following up people to pay that debt. We attempt to engage with taxpayers for an extended period and provide them with every chance to rectify their tax situation and pay the amounts due under the law. We use garnishees and other firmer actions only after these attempts to engage the taxpayer have failed. On average, there have been 19 interactions or attempts to engage a taxpayer before we exercise garnishee powers.

I am the chief tax collector. It's not a particularly easy or popular role, but it's one that I did take on voluntarily. But, in discharging my duties, I must say I must do the best I can—the best I can to ensure that we at the ATO act with empathy, where appropriate, but at the end of the day collect the tax that is due, which is often GST on sales that businesses have made, tax withheld from wages and salary, and superannuation not paid for employees. One thing I can say with certainty is that, if we don't do this, that $45 billion in our debt book will grow, and we'll take funds away from the provision of government services, and employees will miss out on their future retirement benefits.

The Right to Know campaign also reignited misleading public commentary about the tax office's attitude towards whistleblowers, and the accompanying editorials in many papers made specific claims about former ATO employee Richard Boyle. This continues on from last Friday, where claims were made at the inquiry into the performance of the Inspector-General of Taxation that warrant immediate correction—in particular, around the cases of the two former ATO employees—because I want to inject some balance into this conversation. The facts that I'll talk about are not salacious or sensational. However, they reinforce why potential breaches of the law in Australia should not go unchecked. To do so, I will be referring to the specific cases of these past employees. No doubt, I will attract criticism for doing so and may be accused of being defensive. It is something I would normally refrain from speaking about, but, as the individuals in these cases have repeatedly sought out the public eye and made public claims that are potentially damaging to our organisation and the administration of the tax system, I am obliged to respond in this way to ensure the facts are put on the table.

So today I will clarify issues regarding our treatment of whistleblowers, and, contrary to what has been written by some commentators, the ATO takes whistleblowing very seriously, and we actively engage disclosures—so we actually encourage disclosures—where people feel they are warranted. There are many avenues available to staff to make a public interest disclosure, or PID, and we have a culture that encourages and supports it. Our latest census results highlight an improvement in the level of staff awareness and understanding of policy and procedures in this area. In fact, 88 per cent of respondents from the ATO are confident in knowing what to do when suspicious behaviour is observed in the workplace, and we have seen this trend continue to rise in recent years.

Since 2013-14, when PID was introduced, we have had 198 employees make public interest disclosures, and 24 of those were substantiated; 89 were unsubstantiated, with no
disclosable conduct found; 79 were discontinued under section 48 of the PID Act because they had already been investigated under other processes, were vexatious, frivolous or did not concern serious disclosable conduct, or could be more appropriately investigated under another process; and six are still under investigation.

We rarely ever receive complaints about our handling of PIDs, yet currently we have two public cases where former employees believe they have tried to whistle-blow on ATO activities and feel that the system has not afforded them adequate protection. I note that both employees were subject to ongoing workplace performance or conduct issues that were close to finalisation and were likely to result in their termination. This was well before seeking these whistleblower style protections, and this is in stark contrast to the public portrayal that they were terminated as a result of whistleblowing.

The first of these employees was Mr Ron Shamir. He appeared on Friday at the inquiry into the performance of the Inspector-General of Taxation and he alleged:

… the issues that allegedly led to the termination had been ongoing for 2½ years and had not resulted in termination in that time. But, yes, you could say it was a coincidence that the day before I was marched out the tax office had confirmed from the IGT that I had been issued with that notice.

This is actually factually incorrect or, at least, seriously misleading. Our records show that Mr Shamir was served with the notice on 18 May and we were well aware of this notice on 26 May when Mr Shamir’s lawyer advised the ATO that he had received the notice. He attended work but refused to perform his assigned duties for 10 days in the period before he was finally put on leave with pay on 10 June, during which time he could have fulfilled the requirements of the section 9 notice.

Contained in the notice served to Mr Shamir was a request for information that should have taken very little time to provide—simply some procedural documents and case details or reference numbers. It should not have taken days and it should certainly not have taken over a week. This is an employee who was counselled over a number of years because of his persistent and inappropriate behaviour towards fellow employees and managers. When Mr Shamir’s workgroup was restructured, he simply refused to perform other duties, notwithstanding multiple re-training opportunities. This is an employee whose unfair dismissal claim was rejected, with the Full Bench of the Fair Work Commission stating that his termination was a result of his unjustified non-performance of duties. And I should say that Mr Shamir did not raise any arguments, in the hearing of this unfair dismissal case, that he was dismissed because of any whistleblowing in relation to identity fraud or other issues.

I understand that, before joining the ATO, Mr Shamir had a somewhat similar experience with the Victorian Country Fire Association. Today I am tabling a detailed time line of Mr Shamir’s employment, and the incidents that occurred, to underscore the extensive and serious nature of his behaviour and to emphasise that his termination was not any form of reprisal for his role in the IGT inquiry but was simply for refusing to perform any duties. Do I have permission, Chair, to table?

CHAIR: We’ll have a look at that first and then we’ll make a decision. You can circulate that.
Mr Jordan: The second employee is Mr Richard Boyle. As much as I would like to, I can't respond to Mr Boyle's claims in detail because of an ongoing criminal matter before the courts. However, I will speak to clarify some of the blatant and persistent misrepresentations that surround the commentary around the case. I believe they may undermine the community's trust and confidence in the tax system or deter genuine whistleblowers from coming forward.

The reporting has attempted to obscure and conflate two separate issues: firstly, a set of allegations about our culture and debt policies—and these have been found to be unsubstantiated by the Inspector-General of Taxation—and, secondly and separately, what is before the courts: the alleged offences of providing personal taxpayer information to a third party and allegedly recording people's conversations without their approval. These alleged offences were not as a result of any content reported in the *Four Corners* program or any other reporting.

The commentary around the second issue has been at times deliberately sensationalist, with reports that the defendant is likely to face 161 years in jail. This is simply a blatant and knowing mischaracterisation of our current sentencing systems. Convention holds that sentences for similar related offences are usually imposed concurrently rather than consecutively, having regard to the overall circumstances. Just this morning, yet again, the ABC reported:

Mr Boyle is facing the threat of life in prison (161 years maximum to be exact) for speaking out about heavy-handed debt collection tactics he witnessed at the ATOs Adelaide office …

The charges do not relate to speaking out about heavy-handed debt collection practices but rather to allegedly providing taxpayer files to third parties and allegedly recording conversations. These files were not referred to in the *Four Corners* program or any other reporting.

Let me be clear: the threat of a prison sentence is not about speaking out about debt collection practices. We drum into all ATO staff and take very seriously the taxation secrecy laws. Australian citizens and taxpayers have a right to privacy. To not take action against alleged breaches of taxation secrecy laws would undermine public confidence in our administration of the taxation system. We simply cannot turn a blind eye to alleged contraventions of the law. I don't think anybody in this room would want their private personal information that is collected under legal compulsion to be made publicly available contrary to the laws protecting it. We have over 18,000 employees, so there can't be grey areas or space for people to interpret things as they see fit, contrary to the requirements of the taxation secrecy laws, the Privacy Act and the Public Interest Disclosure Act.

Just imagine for a second how you would feel if any one of our employees started shopping your private information around to media outlets. Imagine if you knew that your data and records were subject to the individual discretion of some unknown tax officer. That's exactly what happened to a real taxpayer, who had to reach out to us for assurance that we would take action to protect their affairs from being made public. They were contacted by *Four Corners*, who were looking to use the taxpayer's details in their story. The ATO was first made aware of alleged privacy breaches to media not through the media itself but through being contacted by an affected taxpayer, who was asking for our assurance that we would protect their private tax affairs from being made public. The disciplinary process for Mr Boyle was substantially completed before we knew anything about the alleged disclosure of taxpayer files.
So I feel compelled to speak out for ordinary taxpayers who don't want their private data stolen and used in a manner contrary to both law and good ethical judgement, for taxpayers who expect us to fulfil our obligations and collect the revenue that keeps this country running. Taxpayers expect us to create a level playing field and to use, with empathy and appropriate consideration, tools like garnishee notices, when needed, to ensure compliance. I am not telling you these things to deflect from honest and useful criticism of where we could be operating better. We know we don't always get things right, and we are committed to acting on constructive criticism, correcting and repairing mistakes and improving, where improvement is needed. But the current commentary has simply got out of control. It is an unbalanced depiction of our organisation and does a disservice to the important role we play in upholding a fair and effective tax and superannuation system for all Australians.

To be clear, there are alleged breaches by Mr Boyle of the taxation secrecy and listening device laws that are criminal in nature and could carry a prison sentence, but Mr Boyle's whistleblowing allegations of the garnishee practices that were found to have no substance by the IGT do not carry any potential for a prison term. Those are two separate matters. Given the ongoing criticism of our powers and the seriousness of these claims by commentators, I would expect them to use their own substantial powers for influence with much greater accuracy and faithfulness to the facts. Where they don't, we believe people have a right to know. Thank you, Chair.

CHAIR: Thank you, Mr Jordan. I think you've put the ATO's position very well. I will point out, as chair of this committee, which is holding the inquiry into the performance of the IGTO, that, in discussion with yourself and the government and other members of the committee, we have been very cautious not to reveal people's private information publicly. We've taken the vast majority of information in confidence. My preference would be to consider this document more closely before we make a final decision on receiving it. Obviously you are free to refer to any information contained in this document during questioning to come. I'm happy to hold a private meeting if we need to, but I think if we continue on that basis—I think you understand my position in regard to that. We've received a lot of information, and the tax office has been very forthcoming with information, but we have kept the vast majority of it confidential, for reasons of protecting people's personal positions.

Mr Jordan: As I say, it gives me no joy having to talk about the detail of people in this way, which I would not normally go anywhere near doing.

Senator PATRICK: Could I make the recommendation, Mr Jordan, that, rather than table this, you provide it to the inquiry into the performance of the inspector-general, and then we can properly consider exactly the information in here and we can work with it and we can work out what the committee would consider to be confidential. We can't do that for estimates. We're not in a position to do that.

Mr Jordan: Sure. I just wanted to inform you of material that we felt necessary to put in context. The commentary around, 'I received notice on the ninth; the tax office marched me out on the 10th'—that's just not the case, and there's a history to the matter. But I will take whatever instructions from you that you think appropriate.
CHAIR: I just think that an abundance of caution in these areas is probably a worthwhile way to go. I think you've put the position of the ATO very clearly and, I guess, have addressed some of the incorrect information that's in the public domain.

Mr Jordan: Can I just say, Chair—and I know that was a talk—that the issue that's got out of control is the fact that a prison term of life could be for speaking out about garnishee issues. It's not—you can't. There's no prison term for the whistleblower on that—

CHAIR: No. And I suspect—

Mr Jordan: The only prison term is about the other things that were never used in any whistleblowing activity.

CHAIR: I suspect some senators will go to the issue at hand, as well, as we go through the process of asking questions. But I think—

Senator GALLAGHER: Just before we get to the questioning section of today: Mr Jordan, that's quite an extraordinary statement you've given today. It's not one I've heard before from a senior public servant around individuals in this way, despite the merits or otherwise of the issues at hand. Did you take any legal advice before you put your opening statement together?

Mr Jordan: Our General Counsel has reviewed in detail the material that I have spoken about.

Senator GALLAGHER: Okay, and was—

Senator PATRICK: Who is your General Counsel? Sorry—just the name.

Mr Jordan: Jonathan Todd.

Senator GALLAGHER: And, presumably, because you've given it, they were comfortable with this approach? I would take that. Did you advise the Treasurer that you would be making a statement along these lines to the committee today?

Mr Jordan: No.

Senator GALLAGHER: Okay.

Senator Cormann: Of course, the tax commissioner is an independent statutory officer.

Senator GALLAGHER: I understand that. I'm asking the question whether he had advised the government about it.

Mr Jordan: I fully understand it is an unusual situation—

Senator GALLAGHER: It's extremely unusual—

Mr Jordan: but we find ourselves in an unusual commentary—

Senator GALLAGHER: This is supplementary budget estimates—

Mr Jordan: that's sort of got really quite out of hand.

Senator GALLAGHER: Yes.

Senator PATRICK: I wonder why he perhaps didn't offer to make a submission of this nature to the committee that's actually dealing with this issue?

Mr Jordan: That was on Friday, I think—

Senator PATRICK: That committee has ongoing work and would happily have accepted a submission from you.
Mr Jordan: Well, I'm happy—

Senator Cormann: Well, it's still sitting. Obviously, it's quite open to the tax commissioner to make statements to this estimates committee—

Senator Patrick: Okay, but we might end up with a spillover hearing because we may now need to address immediately, out of fairness, a number of the issues that the tax commissioner has raised. And—

Senator Cormann: You're free to address whatever issues—

Senator Patrick: Of course. But we also have a program to run and a number of senators who want to get to stuff. That's why I suggest it might have been better—and this committee would always have accepted any request to appear before that particular inquiry.

Senator Cormann: We are in the hands of the committee.

Chair: I will point out, Senator Patrick, with the inquiry into the Inspector-General of Taxation: obviously we had the ATO before it recently, and I expect we probably will do so again.

Senator Patrick: Sure.

Chair: So I think—

Senator Whish-Wilson: Can I ask about the process before the Chair? Can I ask if any senator wants to suspend the committee so that we can have a discussion about this and a timetable on this issue? How much time do you want on this? If you feel like it needs to be addressed—

Senator Patrick: It may be a good idea.

Chair: If a member of the committee wishes to suspend, I will suspend.

Senator Patrick: Yes, I think that is a good idea, Senator Whish-Wilson.

Senator Whish-Wilson: Yes.

Senator Cormann: There is going to be something to think about.

Chair: We will suspend briefly.

Proceedings suspended from 15:08 to 15:17

Chair: We will resume this hearing. Commissioner Jordan, I think you'd agree that was probably a slightly unusual opening statement from a tax commissioner, but we certainly appreciate why you felt the need to give it. The committee has resolved at this stage to ask you to make this a submission to the IGT inquiry, so we won't publicly receive it at this point. The committee also resolved, on a request from Senator Patrick—and I know this is very unusual—to make a few remarks about your opening statement and then move on to questions.

Senator Gallagher: On other matters.

Chair: On other matters.

Senator Cormann: Senator Patrick put out a press release on Friday saying he wanted to pursue this issue with questions in this committee, so we're not going to have questions in relation this matter?

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ECONOMICS LEGISLATION COMMITTEE
**Senator PATRICK:** That had been my intention, but there's a different course of action now.

**CHAIR:** Senator Patrick has the call to make some short remarks.

**Senator Cormann:** But if they're short remarks then I assume the commissioner will have the opportunity to respond to that.

**CHAIR:** Yes.

**Mr Jordan:** Could I also say, in terms of the submission—

**Senator PATRICK:** I'm responding to—

**Senator Cormann:** It's a question and answer, so I'm not sure that I'm—

**Senator GALLAGHER:** It's not a question and answer.

**CHAIR:** The committee has resolved, Minister, to allow Senator Patrick to make some short remarks in response and to try and take this matter as much as possible out of the estimates hearing. I'm happy—

**Senator Cormann:** But, depending on what is said, I'd just reserve the right of the commissioner to have his say. The right to know also includes the right for senior officials appearing at estimates to be heard.

**CHAIR:** Absolutely. Senator Patrick, you have the call.

**Senator PATRICK:** Thank you, Chair. It was an unusual opening statement, and I would like to respond just to put on the record that you have a perspective. You're entitled to that perspective and to lay out the facts, but so too are the people involved. They may have a different perspective, as other people may have. Indeed that's why it's probably better to shift this out of estimates and back into the committee, where we're dealing with those sorts of matters relatively exclusively.

I want to give you some other perspectives, just very top level. I accept you might not agree with them, and you might have great reason for that. You will be given an opportunity at the other committee to respond to those. For example, in relation to both of the people that you talked about, I just remind you that this committee resolved to hold an inquiry into the performance of the IGT. This committee invited submissions, and it was this committee that invited people to appear before the committee. I know there has been other media, but a lot of that media flowed from those hearings and was not necessarily sought out by the people involved.

In relation to Mr Boyle, there are some questions in relation to the way in which the ATO conducted issues, for example the handling of the PID. The committee is looking at that confidentially at this point in time. There is the issue, for example, that the ATO self-investigated Mr Boyle. I was hearing the Integrity Commissioner, Michael Griffin from ACLIEI, yesterday—I was asking him about investigating matters related to his own operation, and he said he would never do that as that would create a conflict. There is also the issue of you personally signing the summons and the court orders. The IGT and indeed the small business ombudsman have raised concerns about anomalies in the Adelaide office at the time that Mr Boyle was there. So, once again, I feel we need to look at that closely.

In relation to Mr Shamir, there are some questions. The ATO indicated that he definitely had some issues in relation to employment. But for example—and on affidavit on submission
to the Fair Work Commission by the ATO—Mr Shamir had an impeccable record up until 2012, when he made a disclosure. Flowing from that—or, perhaps to be more fair, after that—certainly there were some workplace issues that developed. The ATO told us quite explicitly on Friday that Mr Shamir wasn't marched out of the office on account of his section 9 notice, yet your submission to the Fair Work Commission actually goes to the details and concerns about him exercising that. In fact Justice Tracey, in dealing with that matter in court, was concerned about the ATO frustrating an IGT investigation. Indeed, you had your own lawyer make a statement to Justice Tracey, suggesting that the first time you had seen the section 9 notice was the day before the court, which is about a month after he was walked out of the office.

So there are some anomalies. I'm not saying that what I've just said there is necessarily correct. But the correct forum for us, I think, is to go to the committee. We need to just accept, at this point in time, that there are different perspectives and that we should consider those all very carefully.

CHAIR: Thank you for keeping it brief, Senator Patrick. If you want to, Mr Jordan, I will allow you to respond briefly, but do please keep it brief.

Mr Jordan: Very briefly—obviously this is the first opportunity we've had to respond to the matters raised in the hearing on Friday. We did not know what Mr Shamir was going to say. Obviously, Mr Boyle was in camera. The Right to Know campaign only started after that, on the weekend, and Monday was when I first saw that statement around you're not allowed to know if we're taking things out, which was just totally misleading. In relation to ACLEI, I'll need to read what you said, but I think the PID Act requires us to investigate. We'll talk about that later ourselves, to do that. But—

Senator PATRICK: I was referring to the alleged unlawful conduct investigated by the AFP, not the PID.

Mr Jordan: There are a lot of issues there, but we did go to the hearing. It's just that subsequent to that it was the first opportunity to address some stuff—the Right to Know campaign, responding to what Mr Shamir said that we felt was not right, and we got a lot of adverse commentary on the weekend about marching him out the day after, when we got a letter from his lawyer well before that. And none of that had anything to do with the way the Inspector-General conduct their investigations, which I think was what the hearing was about. I just wanted to re-emphasise that it is the first opportunity to do that. As I say, it's no great joy, but we have to try to maintain confidence in the ATO and when repeatedly misleading statements are made, we have to try to address it.

CHAIR: Let's try to get back to estimates. Senator Patrick, you still have the call.

Senator PATRICK: Thank you. This question goes to tax revenue, taxable incomes and tax paid. I'm very encouraged by the tax transparency tables that you are now publishing. I think you are a little bit slow in publishing them, but nonetheless—perhaps, Commissioner, you could look to real-time publishing as you receive the data. But, what that data shows is that there are many companies that don't end up paying much tax. I understand the difference between revenue and taxable income, but ultimately there are some companies that year after year after year don't pay tax. Because you only deal with the companies above $100 million per annum, I'm just wondering if we could negotiate some sort of aggregation of sectors, say
the mining sector for example. It might be above $10 million or $20 million, and we can talk about what might be sensible but just trying to get across each sector an aggregate of the total revenue, the taxable income and the tax paid. I don't think that would present a problem to you, Commissioner.

Mr Hirschhorn: We do produce the corporate tax transparency data each year. It's an exception to privacy where we're compelled to produce those three fields and only those three fields. We do produce it, as you said. Generally we publish in December the year following. There's a few reasons for that. I understand why you feel it's a long lag after the end of the 30-June year, but we have some companies who balance as late as December. They then have another six months to lodge. We also have a process to check with people to make sure that our systems have the right number, and that is because we are required to publish the tax return as lodged, not the tax return as changed. We have to make sure that we're accurately doing the tax return as lodged, so we have a cycle where we confirm with the taxpayers. That data, on a taxpayer-by-taxpayer specific basis, you're absolutely right, is of companies over $100 million if they're public or multinational and over $200 million if they're private.

There are two other information sources which we do produce, which I would recommend to you. The first is the detailed taxation statistics which we published each year. There is some very interesting aggregate data in those, which will address some of your concerns. We also publish a document called *Tax and Corporate Australia* each year, which focuses on all large companies, not just those over $250 million. And it does provide detailed population-level, year-on-year trends of income and tax paid by those industries. Of course we're very happy to get a copy to you, and then, if those are not sufficient for your interest, we're very happy to work with you to see if there's extra data we can provide at a population level.

Senator PATRICK: That's greatly appreciated. Can I just move sideways again and ask: do you have a breakdown of the debts—Mr Jordan, you talked about $50 billion or $45 billion—

Mr Jordan: Forty-five billion.

Senator PATRICK: How has that tracked over the last, say, five years? Do you have that information here, just at the very top level? Is it getting worse?

Ms Smith: The debt book is made up of disputed debt, collectable debt and debt that is not economic to pursue. The quantities remain very consistent year on year. We can provide the breakdown for the last five years, giving the exact dollar amounts. My colleague has just provided the annual general report, which actually shows you the last three years, on page 178.

Senator PATRICK: Is that broken down into things like small business debt, large business debt, BAS debt and corporate tax debt?

Ms Smith: Yes, it is. It's predominantly broken down by client groups, but each of the client groups is made up of a variety of different activity types, debt types.

Senator PATRICK: That's good. Again, if I have an issue with that, maybe I'll come back on notice and ask for more. Thank you for that. Just finally, there was a matter that the tax office was involved in in respect of Glencore Investment, and you were unsuccessful in that litigation. I understand it's on appeal. Is that right? Can someone just give me the status of that?
Mr Mills: Could you just clarify about the Glencore case? I missed the last part of your question.

Senator PATRICK: Glencore Investment Pty Ltd v the Commissioner of Taxation of the Commonwealth—that's a matter on which a judgement was handed down on 3 September, and it was an unfavourable judgement.

Mr Mills: That's correct—single judge, yes.

Senator PATRICK: My understanding was that that followed a win in the Chevron case.

Mr Mills: That's right.

Senator PATRICK: That win resulted in a change of revenue in the order of $10 billion or something of that magnitude, and this may well affect that. Can you spell out what the effect of that ruling will now be, if it stands?

Mr Mills: The difficulty is that they actually dealt with quite different subject matters. While they both deal with transfer pricing at a high level, the Chevron case dealt with the pricing of debt, effectively, whereas the Glencore case dealt with the pricing of certain kinds of minerals. It does go down to the experts and what the right price for particular kinds of minerals is, and the court taking a view of what those experts put, as much as anything else. There is also an interpretational issue—which is why we're appealing, obviously—which goes to the way in which the law should be applied and in relation to the commissioner's power, in particular, to reconstruct, effectively, to put it in simple terms.

Mr Jordan: But it is true to say—and I think part of your question is—that, had that been a favourable decision, I think, some more of the amendments in the transfer pricing rules that were made a few years ago, because arms-length pricing is a difficult concept. Chevron was about how to price debt. This is about how to price a transfer. But it still is between related parties. If you argue, 'Under the treaties, they talk about how you have to be treated as though you're not related,' that might mean you charge a higher price, and that's where the breakthrough in Chevron came. That was an internationally new principle that was established. I think we would put all efforts into an appeal in that Chevron case. There are just a couple of little issues there.

Senator PATRICK: In some sense, I don't want to get into the legal aspects of it. You're suggesting it's an important case.

Mr Jordan: It's very significant.

Senator PATRICK: This goes back to even Multiflex. I wonder why, in circumstances where you have lost a matter on an interpretation, perhaps—I haven't read the full judgement—you don't simply go back to the minister and suggest a legislative change that might clarify that, as I think happened in Multiflex. Why do you go through the litigation of an appeal when, in actual fact, it might be much simpler, and make it very clear for others—

Senator Corman: It is not very consistent with the rule of law, though, to essentially say, 'Here is the law'—the courts are there to interpret the law as it applies. What you are essentially saying is: if the courts aren't interpreting the law the way the executive government or even statutory agencies want, then—what, we just change the rules as the process is going on?

Senator PATRICK: That's what the tax office did in Multiflex.
Senator Cormann: As a matter of principle, I don't think it is the best way of doing it.

Mr Mills: If I could add to what Senator Cormann has just said, the general approach—and often the faster approach, to be perfectly frank—is in fact to exhaust the procedure through the courts. A lot of effort has already gone into getting it to the stage it is at. The appeal is a process, and, yes, it will take a while for the courts to deal with it, but the point is that all of the effort has already gone in. Let's see what the full court has to say in how it reconciles the decision in Chevron with this decision, and whether or not the single judge in Glencore was right in distinguishing Chevron. There is a full court decision already there—a High Court decision, for that matter, around Chevron—and yet we have this one-judge decision at the moment. The right thing to do is to continue to pursue that and get reconciliation of those two things. If Chevron is upheld, then there is no need to bother parliament with making changes to the law.

Mr Hirschhorn: Can I add three quick points. The first point is around Multiflex. Multiflex was a case where, if it had been allowed to stand, the system was exposed to immediate fraud at a mass scale. It could not be allowed to stand because it opened the doors to fraud. It basically said, 'If you get a BAS, which asks for a refund, you have to pay it.' One of the elements of being an administrator who administers a VAT or GST, which allows for cheques to come from government, is that it is highly attractive to fraudsters. Just last month we had somebody claim a GST refund of $1.8 billion out of thin air. In the Multiflex case, if we had let it stand, there were arguments that—going back: if we couldn't contact them, because they had given us a false address and false contact details, we would have had to pay it. That was why there had to, in a sense, be an immediate response to the Multiflex decision.

The second thing I would say is that tax law is very complex and very long. The temptation is to add words to it too quickly. It is riddled with provisions where the law has been amended to address an interim decision, but then that decision has been overturned on appeal. And the amending law creates extraordinary distortions. If an amendment is unnecessary, because the law was actually different to what people understood, the patch can be worse than the problem.

The third thing I would say is that the transfer pricing laws in question in the Glencore case were not the most recent transfer pricing laws. The transfer pricing laws have been amended in the last couple of years to global best practice, so the decision in Glencore may well have been—if there is a problem, it may already have been fixed by the most recent superseding transfer pricing law, which is global best practice.

Senator Patrick: So there is a latency between when the event has occurred and when the judgement is handed down?

Mr Mills: Yes.

Senator Cormann: Tax laws are generally not changed retrospectively; they are changed prospectively.

Mr Hirschhorn: I would say that that is the great challenge of litigation. By the time transfer pricing—or what we would say are transfer mispricing cases, because transfer pricing is a natural part of the corporate landscape where you have a lot of inbound and outbound investment. Transfer pricing is entirely natural. It is what we need to have. It is the sign of a healthy system. What we are concerned about is where we think there is transfer mispricing.
At one level those cases are important for precedent, but they are also very taxpayer specific and very expert heavy. They generally take at least five years, often more, to get to court—so the years in question are often very old years. In this case, the law has developed in the meantime.

**Mr Mills:** Just to add to what Mr Hirschhorn has said, just to clarify and make sure there is no misunderstanding: we actually did pursue the Multiflex case through the courts, but we were able to continue to act in a way pending the final decision of a superior court. So we weren't exposed in the way that Mr Hirschhorn is talking about until such time as we had the final decision. At that point we needed to move quickly.

**Senator PATRICK:** Thank you; that's helpful. I am all for you in the multinational tax space, Commissioner, but there will be times when I am against you!

**Senator GALLACHER:** Can we go to robo-debt. Is someone able to answer questions on that?

**Mr Jordan:** We'll give it a go.

**Senator GALLACHER:** I've got a paper from the Parliamentary Library. Matching data has been around since the nineties; is that correct? Has the ATO been involved since the nineties?

**Ms Smith:** Yes, we have been involved in some form of data matching with other agencies for, I believe, as many as 30 years.

**Senator GALLACHER:** I hesitate to say you're a leader in it, but you have been familiar with it for nearly 30 years? Okay. Can you provide an interim report for the 13 July 2019 outage of the myGov and ATO websites? What happened there?

**Ms Smith:** I don't believe I am best placed to answer that question. Our head of EST could potentially make comments regarding the outage of MyGov.

**Mr Jordan:** Could I just confirm that date? There was an outage on—

**Senator GALLACHER:** On 13 July 2019, there was an outage of the myGov and ATO websites. Does that provoke an incident report of some sort?

**Mr Katf:** It does. I can't comment on the myGov one; that is operated by a separate agency. We had a hardware failure on some of our telecommunications componentry that acted at the same time as the myGov outage. We worked throughout that day to rectify the incident and bring the systems back up.

**Senator GALLACHER:** So what are the practical implications of an outage like that? Are they significant or ongoing? Do you rectify it quickly?

**Mr Katf:** 'Very infrequent' is probably the best way to describe it. We now keep very strong metrics about our service availability and our system uptime. On average our availability metrics are in the high nineties, which is very good by IT standards. Occasionally, as I am sure we all experience with our own devices, we have a hardware failure of some description. We act to remediate those failures as rapidly as we can. Unfortunately they sometimes have a client-facing impact, which we try and fix as quickly as we can.

**Senator GALLACHER:** What is the practical impact to a client on the day if there is an outage on your side? Do they suffer any penalty or diminution of ability to progress their business?
Mr Katf: It depends a little bit. We have been working very closely with predominantly software developers to have them enable their systems to continue to operate. But at times, if they need to access client information and our systems aren't available, they would not be able to. An example would be the superannuation industry, which sometimes uses or refers to our systems. We are actively working with them on a day-to-day basis, but there are occasions where they would not be able to get access to information.

Senator GALLACHER: On notice could we have a look at the incident report that you file in respect of that?

Mr Katf: Sure. I will take that on notice.

Senator GALLACHER: I want to go back to the development of algorithms related to the Centrelink online compliance program. Is that something that the ATO has been involved in? Did you develop the algorithm?

Ms Smith: No, we don't develop the algorithms. We have a memorandum of understanding with a number of agencies where we share data. Each of the requirements under each memorandum of understanding varies based on the data we're providing, the frequency and what form. The integrity of that data is obviously part of that. It's not something that we get involved in with regard to determining how they use that data.

Senator GALLACHER: You simply supply data, but you have an agreement on how that data is used?

Ms Smith: Yes, we have an understanding. I think it's right to say that, yes, we do. We have an understanding of why it's important to share that data. As to exactly how it's used, I would need to think about that. We engage with them to determine how it should be sent—the time frames. I guess that has relevance to how it is being used. But the policy is no.

Senator GALLACHER: You are very clear that the ATO supplies data to the Centrelink online compliance program. The subsequent question is: are there any controls on the use of this data by Centrelink, and is that a formal agreement?

Ms Smith: The controls would be within that agency, I believe, Senator. We wouldn't have controls. We have controls around how we send the data and what the data is. The controls around how it's applied once it's within that agency, within Centrelink, would be a question to ask Centrelink.

Senator GALLACHER: What level of human oversight in the ATO is there over the income averaging process used to assess debt under the Centrelink online compliance program? Is that zero?

Ms Smith: No. Most of it would be automated, but we never just rely—we always have checks and balances with anything we do using computer technology, because it's important to risk assess what's being done. I would need to take on notice exactly what the MOU is regarding that information and what involvement our officers would have on checking the veracity of it.

Mr Hirschhorn: I might clarify: are you asking whether we have oversight over how DHS average the data that we provide over a year?

Senator GALLACHER: I think that's exactly the question.
Mr Hirschhorn: I think there's a simple answer to that: we don't. We understand that they average the data that we provide. We have annual data and we provide annualised data.

Senator GALLACHER: So your data is from employers, tax returns or individuals?

Mr Hirschhorn: Yes. We have high-quality data based on employment records provided to us by employers, and we provide that to DHS.

Senator GALLACHER: How many inquiries and complaints has the ATO received in the past year in relation to the garnisheeing of tax returns?

Ms Smith: Could you repeat that question?

Senator GALLACHER: How many complaints have you had in relation to garnisheeing?

Ms Smith: In relation to where Centrelink has garnisheed—

Senator GALLACHER: For tax returns. Someone has done a tax return and they don't get it, because they have a debt. I think that's how it works, isn't it?

Ms Smith: Yes, that's correct.

Senator GALLACHER: If someone was going to get $1,000 back but they owe Centrelink $400, they get $600 back?

Ms Smith: That's right. Centrelink, effectively, are the ones that are garnisheeing the refund.

Senator GALLACHER: But they would complain to you, though, I imagine, because they look to you as the provider of the tax return which is diminished.

Ms J Mitchell: In terms of garnishees more generally for the last financial year, we had just shy of 180 complaints in relation to garnishees.

CHAIR: So not just Centrelink related?

Ms J Mitchell: No, this is all garnishees. But we'd have to take notice the specific numbers of complaints received.

Mr Jordan: That specifically, as I understand, is where they're due a refund but, as part of the few days before we send refunds out, there's a check with other agencies. If there is a Centrelink debt, as you say, of $400, we only send about $600. So it's how many complaints are about a reduction of that refund.

Senator GALLACHER: That was the question.

CHAIR: Would that information be held by you, or would it be held by Centrelink?

Mr Jordan: I thought—and my colleagues can correct me—that, when we get the returns, part of the reason we can't send the refund immediately is that we have to run it through our systems for the veracity of the information in there, I thought one of those processes was checking it against the debts that other agencies might have owing to them, typically DHS. They are often child support agency amounts, because the child support figures, from memory, are calculated on the last tax return lodged, and there might need to be adjustments to the payments that were made during the year. So you will get a number of these child support adjustments that just happened because the amount of the payment can depend on the income of the payer of that child support. But I think it is run against that debt so it isn't the case that we send the $1,000 out and then Centrelink say, 'Hey, give us back $400.'
Senator GALLACHER: Would that low level of complaints seem to indicate that people understood they had a Centrelink debt anyway?

Ms J Mitchell: May I just say one thing, please: the number of complaints we receive about garnishees is different to the number of complaints we receive where we offset someone's refund with a debt from another agency. I don't have the number to hand about the number of complaints we receive where we offset someone's refund with a debt from another agency, but we can certainly obtain it and provide it on notice.

Senator GALLACHER: Okay, perhaps on notice.

Mr Hirschhorn: I add that of course we would have data on our complaints, but we may not have data split out at that level of granularity. But equally, of course, you would expect, I would think, most complaints to go to the agency whose debt has been collected.

Senator GALLACHER: What's the uptake on the myGov site and particularly the ATO aspect of that?

Mr Jordan: It was slow to start, but it's grown really quickly—I think 3½ million or four million or something this year for tax returns done by individuals self-lodging.

Mr Katf: Yes. We've got about eight million people that interact electronically with us through myGov. There are obviously more than that that have a myGov ID and use it for things other than tax. As the commissioner said, we've had about a 10 or 15 per cent increase in numbers of people interacting with us.

Mr Jordan: But how many returns were lodged on myGov?

Mr Katf: I haven't got the latest ones. I'll take that on notice, but it was well over 3½ million.

Senator GALLACHER: Excellent. Given your long history—

Mr Jordan: You should give it a go. My children have said it's easier to use.

Senator GALLACHER: I find it very easy to use. I know exactly what's going on. I press the right button.

Mr Jordan: Well done!

Senator GALLACHER: Given that the ATO's been involved in this sort of data collection and data matching for nearly 30 years, what are you doing in respect of developing your own algorithms and perhaps assessing and collecting tax debts, which I think the commissioner said this morning are $45 billion?

Mr Hirschhorn: Probably that question falls a little bit between me and the chief service delivery officer, Ms Smith. We have a division called Smarter Data, and that is headed by its own deputy commissioner. Their job, or their remit, is to help us use data and analytics better across the organisation, on all aspects: how do we provide better service, and also how do we do better compliance work? It also extends to work that we do on how to better interact with people to make sure that they pay their tax.

Ms Smith: I'm just waiting for my colleagues to join me.

Senator GALLACHER: While you're doing that, I will ask about this: I get a paper from the Parliamentary Library occasionally, and I think they referred to the 2015-16 or 2016-17 tax year, where the ATO is quoted as referring to the difference between employers'
remittances in payroll and the compliance activities of the tax department. They estimated in excess of $2 billion worth of uncollected superannuation.

**Mr Hirschhorn:** Senator, I'd comment on that that our estimate of our superannuation guarantee tax gap has historically been about $2 billion per annum.

**Senator GALLACHER:** Do you have any thoughts about—

**Mr Hirschhorn:** That is people's retirement money, so we take that extremely seriously. If I could, I will go to a classic story. A business starts struggling. They start operating from, in a sense, an ATO overdraft, which will include, potentially, the super entitlements of their employees, the pay-as-you-go withholding which they've not remitted and the GST that they've collected from customers and not remitted. Under the old information sources, we really only found out about that well after the end of the year, and often, in the end, the business had failed and there was no money. There are things like Single Touch Payroll and also some data initiatives in relation to superannuation funds where superannuation funds report to us when they receive money contributions from employers by the employee. The employer tells us who they've paid and, thus, the withholding and super that they're intending to remit to a super fund later. It's early days. Already we are doing significant data matching to identify much more in real time when super obligations are not being met by employers. Really, our focus at the moment is that we're looking at how we send reminders to employers: 'Hey, we've noticed that it looks like you're a bit late on your super? It'd be a really good idea if you paid your super and kept paying it on time.' What we're really hoping is that, by being able to intervene and by having that information much earlier, we will now be capable of intervening in real-time before it's too late.

**Mr Jordan:** There used to be a system where, after year's end, you had a whole big dataset of wages and salaries, and you had a whole big dataset of contributions received from the super funds. But it was all after year's end, and then we'd do all that work. But the business might have gone broke in between those times, and whilst the government—

**Senator GALLACHER:** I understand how difficult it is, but—

**Mr Jordan:** stands behind the pay-as-you-go—you get the credit for that, even if it's not remitted—the super guarantee is lost; it's a real loss. This has now gone to more real time. I saw an ad this morning, actually. I think the industries' super funds association is doing a campaign, talking about paying super at the time you pay salary.

**Senator GALLACHER:** We've all seen it every day on Sky News.

**Mr Jordan:** I hadn't seen that ad before.

**Senator GALLACHER:** I just wanted to move on a bit. If I was not paying my BAS or my GST or whatever, what would you do? Would you close the business down immediately?

**Mr Hirschhorn:** This is probably for my debt colleagues.

**Senator GALLACHER:** Is there a difference between how you treat unpaid superannuation guarantee and any other due amount?

**Mr Sorensen:** In terms of people who don't pay their BAS liabilities on time, we have quite sophisticated analytic models that look to predict whether people will pay on time, and our first action is to send out reminder nudge messages, mostly by SMS. We probably issue, either just before the due date or just after the due date, in the vicinity of 1.8 million of those a
year. They’re really good at reminding people to pay and getting them to make those payments. It results in the order of probably 1.4 billion or 1.5 billion payments that otherwise would have been paid late. In terms of super guarantee liabilities that come out of that regime, we prioritise that work in the way we allocate our resources to undertake our collection actions on it. All other things being equal, we will undertake our collection activity on SGC, super guarantee, debts probably before normal debts. So it is given priority. We also have specific provisions, such as director penalty notices, that we issue for super guarantee as well, and we’ve just upgraded our systems to allow us to do that more efficiently but also, importantly, to make those debts visible to the directors in our online services.

Mr Hirschhorn: If I can, I will clarify that the first debt in the superannuation system is not a debt owed by anybody to us; the first debt is a debt owed by the employer to the employee's designated superannuation fund. We want that to be paid. If somebody does not pay that, that is when we come in with the superannuation guarantee charge, which is like a penalty that we collect on behalf of the employee. We absolutely treat that, as Mr Sorensen said, with great priority. But our first goal is to make sure that the primary debt is met, which is that the employer pays the employee's designated super fund.

CHAIR: We will come back to this. It being just after four o'clock, we will suspend briefly and return, still with the ATO and revenue group.

Proceedings suspended from 16:01 to 16:15

CHAIR: We are still in the Department of the Treasury Revenue Group and the Australian Taxation Office. One thing I neglected to do was formally receive and table your opening statements. There being no objection, we’ll do that.

Senator GALLACHER: Can I finish on robo-debt with three questions. If an ATO official makes a decision that a taxpayer disagrees with, there is obviously a way to contest that. If an algorithm makes a decision that a taxpayer disagrees with, how do they contest that?

Mr Hirschhorn: Are you talking about an ATO decision about somebody's tax affairs?

Senator GALLACHER: If you use an algorithm to assess a debt, how do you contest that?

Mr Hirschhorn: I would say—I'd never say never—algorithms don't generate debts.

Senator GALLACHER: You always do them by human intervention.

Mr Hirschhorn: There's always a human decision. Whether a decision can be objected to—every decision is a decision ultimately, legally, of the commissioner or the relevant deputy commissioner, and they are all contestable.

Senator GALLACHER: So there's a line of sight. Do you use debt collectors, or is your reputation sufficient?

Ms Smith: We do use external collection agencies for a small portion of our activities in the debt space.

Senator GALLACHER: Do you use a company called Panthera?

Ms Smith: If I could take that on notice, we'll get back to you.
Senator GALLACHER: Apparently they are under contract to Centrelink. Currently a subsidiary company is being sued by the ACCC for ‘harassment, coercion and unconscionable conduct’. You would have a panel of debt collectors, would you?

Ms Smith: We do have a panel. We have guidance and governance around how they operate and how they're trained and around the culture and the expectations we have of their staff when they interact with our clients.

Senator GALLACHER: Well, it's a tough business. You do use debt collectors, but you do it through a procurement panel or something similar.

Ms Smith: That's correct. In the debt space, we only use them for a small percentage of our debt collection activities. We're quite deliberate about where in the process we feel comfortable having a debt collection agency engaged and what the processes are for them to do that. There are parameters.

Senator GALLACHER: Would that space be literally where you can't find someone and they might be able to?

Ms Smith: In some instances, yes.

Senator GALLACHER: Is there another example?

Mr Jordan: I think also they're sometimes the more-straightforward, smaller debts. We keep the more-complex ones.

Ms Smith: That's correct.

Senator GALLACHER: So it's low-hanging fruit and invisible fruit.

Mr Jordan: Sometimes those agencies—that's their business. They're set up to do that, so they can do that at a lower cost if it's a simple, straightforward follow-up of an undisputed debt that's just sitting there. But things that take a lot more effort will tend to stay with us. It's the more straightforward ones.

Senator GALLACHER: I notice that on each tax return, or on each notice people get back, you recommend that people keep their records for seven years, obviously. Is there a legislative basis for that?

Mr Hirschhorn: Yes. There are legislative record-keeping requirements in the tax act.

Senator GALLACHER: Seven years.

Mr Hirschhorn: Seven years.

Senator GALLACHER: When you compile this data that you send to Centrelink, how many years are you asked to go back? Is there any limit to the amount of time you go back? Can you give 10 years worth of information that's data matching?

Ms Smith: I would need to refer to the memorandum of understanding with the agency. My understanding is that it's something that occurs in a routine fashion with an annual or biannual method. I'm not aware of us going back into our data for large periods of time. I'm not suggesting that we never have. It's not how it's designed to work. There may be one-off requests that have come across, which I'd need to take on notice, but, generally, it's something that happens as a routine every year before a refund is released. There are a number of checks, so it's not necessarily real-time, but it relates to the current tax year.
Senator GALLACHER: Is there anything in the tax act that allows you to get the client, or the taxpayer, to prove that they don't have a debt? I think the Centrelink example is that the onus is on the recipient to show why they don't need to pay a certain amount, which is, according to the Parliamentary Library, the substantive change over time. That action used to be done by Human Services, with people saying, 'Give us some information; we'll match it.' As I understand it, it's on the recipient of the Human Services payment to prove that they don't have a debt. Do you work the same way?

Mr Geale: There are, essentially, two sets of provisions. When there is a disputed tax liability, the onus is on the taxpayer to establish that the assessment is not correct and to show what the assessment should have been. If we then pursue a taxpayer to recover the debt—the liability—that would go through a normal court process, and it would be done on the balance of probabilities. So we would have to establish before court that there was a liability, and the taxpayer would then have to establish their defence. Their defence may well be, for example, that they have paid the debt. That would be on the balance of probabilities.

Senator McDONALD: This is for the commissioner. You are aware of the drought stricken areas, in New South Wales and Queensland in particular, where farming families are struggling financially. Many of these families have superannuation accounts, either self-management or retail, which they identify amongst their liquid assets. The guidelines for how these farming families can access the funds held within these accounts can be difficult to navigate, and clarity is sought for those families who may see these accounts as their family's final remaining hope. I wonder if you could please detail the ATO's role in regulating access to funds held in super accounts for those in financial hardship.

Mr Jordan: I'll ask James O'Halloran, who is in charge of the super area, to explain the process of applying and the guidance that we have on the circumstances in which we will agree to release money. While he is preparing, I should say that, other than the super, we do a lot of other things for people in designated drought areas or disaster areas. We prioritise refunds, we say they don't have to lodge BASs for a period of time, we often even send people out to the area to help. We delay collection of debt, delay the lodgement of BASs and prioritise the refunds to people in those designated postcode areas.

Mr Hirschhorn: To put some numbers to that, in relation to the Townsville floods we suspended debt recovery actions for people affected in those relevant postcodes. I think it was a bit more than 50,000 cases with a combined debt value of close to $1 billion that we deferred to allow that community to get back on its feet.

Senator McDONALD: How long was it deferred for?

Mr Hirschhorn: At this stage we have started bringing the community back into the tax system. Some are still outstanding and we are starting to engage with some to talk to them about how they come back into the system.

Mr O'Halloran: Firstly, with superannuation, unlike some of the other examples that have been given, by law there is a range of release conditions that need to be proven rather than us granting relief to allow people to access their superannuation. That's the frame in which we operate in. Certainly, whether it be for hardship or medical reasons, there are some schemes we administer where we try to look at that. The application process, and the like, work okay, but at the heart of your question, perhaps, what is the fact—and I'll leave that for
others to decide—is clearly that superannuation is effectively designed for people to, more often than not, keep their superannuation for their future. The government has introduced a range of schemes for access to that, some of which were picked up from DHS, and some of which are even being discussed at the moment in terms of future changes to allow what is often described as access during life events, if I could put it that way, in a general sense. But certainly for any application that fits within the law for hardship, or medical conditions or other life events, if it fits within the scheme that we administer we certainly seek to facilitate that as much as we can.

**Mr Jordan:** I think the question related specifically to natural disasters—in this case it was drought. Is there anything that specifically relates to the release for natural disasters?

**Mr O’Halloran:** The short answer is no.

**Ms Smith:** However, from a debt perspective, I’d asked my colleague Jane Sansom to come to the table—

**Mr O’Halloran:** As opposed to debt relief, if I could put it that way. I was addressing the access issue.

**Ms Sansom:** In relation to drought or flood or other natural disasters, we have a very tailored approach in the way we manage these clients, as the Commissioner and others have noted. All debt was suspended for those affected areas. We take a fairly broad approach from a postcode approach from that. Before re-engaging people or putting people back into the debt system for calling, we are taking a very tailored approach, individually calling these clients and working through where they are sitting and whether or not we need to consider either release of the debt or non-pursuit for hardship. So there is a range of factors that we consider. But in relation to the Townsville floods, as Mr Hirschhorn said, we are individually calling these clients in an outbound campaign, just to ensure that we fully understand their circumstances.

**Senator McDonald:** How are the guidelines around who can access their super for hardship determined?

**Mr O’Halloran:** Probably distinguishing access to the super as opposed to relief from the debt that may arise as a consequence. There are really two schemes. One is the compassionate release of superannuation, which is by legislation described around individuals who may need, for medical treatment, a loan to prevent foreclosure of their principal home, et cetera, which may arise as a consequence. So it's more around a circumstance and not the drought itself. That allows for a condition of release that has a range of conditions that we then try to work through, based on application. Some of it is as a consequence of what could be described as debt rather than debt as a category per se—that is, the declaration of a natural disaster, as my colleague has said, where a person might have a super guarantee debt or something like that as opposed to access to their own super. That's probably two slightly different characteristics. As I said earlier, there is no declaration of a national disaster arrangement where the commissioner, in the role of administering access to superannuation—that unless funds sometimes might in fact because of their charter or their deed of engagement with their members, sometimes superannuation funds may in fact allow some sense of perhaps mitigation. But from our point of view it's unlikely, because it's not the trigger in its own right for access to superannuation.
Mr Jordan: But foreclosure of your principal residence could be—

Mr O'Halloran: Correct.

Mr Jordan: If they had no money to pay that off.

Mr O'Halloran: Yes, it's a trigger.

CHAIR: I don't think you covered this but I may have just not heard. If someone did gain access to their super, through the reasons you've outlined, and they had a tax debt how would you treat that money?

Mr Hirschhorn: If they are in a position to get a superannuation refund, I would hope and trust that we would not be then pursuing debt action.

CHAIR: Okay, that's all I wanted to hear.

Mr Jordan: I hope we don't do that.

CHAIR: Sorry, Senator McDonald, where you still—

Senator McDonald: Yes, thank you. Just two more questions. Should someone find themselves beyond the parameters you have mentioned, are there any options available to them to attract special dispensation?

Mr O'Halloran: In a self-managed fund super context, which I think you mentioned, I would have to take it on notice, but I think the answer is likely to be no, because of the obligations of the trustee in terms of a self-managed super fund, and, obviously, their own individual superannuation. In terms of our administration there is nothing that particularly triggers that, but certainly the introduction by the government of anything from the first home savers arrangements to compassionate release of super. For some of them it's tied up with, as I say, foreclosure of principal homes or perhaps medical expenses that arise in the middle of things or conversely where there might be some form of hardship that happens around the circumstances they find themselves in. And that includes medical conditions or it includes issues that might be considered by two doctors as mental illness, however described. So they are in fact the manner in which we would be able to exercise an ability to direct or ask for funds to release money from superannuation, mainly through the symptom or the characteristic. The medical condition, or mental health, or perhaps acute illness, or perhaps to support spouses or other relationships, becomes the criteria by which we can, in fact, take that into account. Not the drought itself, but purely the circumstances in which people find themselves through anguish, hardship or perhaps what has happened to their family or the principal home.

Mr Hirschhorn: There is a list, and there is nothing on the list which says, 'or it would otherwise make sense'. There is a defined list of categories.

Senator McDonald: That is legislated?

Mr Hirschhorn: That is legislated.

Senator McDonald: I have examples of families who have superannuation. They haven't claimed welfare. They are not on support. They tried to managed themselves. There does seem to be a bit of a gap that they can't then access what is in effect their savings if that is their last resort.

Mr Hirschhorn: I think that's a policy matter.
Senator McDONALD: Indeed.

Senator WHISH-WILSON: I think one thing we can thank the last federal election for is a much higher level of understanding of franking credits in the general population of the country. I was genuinely interested in whether the revenue department had noticed an increase in the amount of excess franking credits being claimed in the last tax return.

Mr Hirschhorn: I would have to take that on notice, and, indeed, it will take a while for us to look at.

Senator WHISH-WILSON: Because they're still coming through?

Mr Hirschhorn: Because people are still lodging their returns. It is not yet the due date for returns. To all those listening, I encourage people to lodge by 31st October.

Senator WHISH-WILSON: That's just a for interest question for me anyway. Perhaps if you could let us —

Mr Jordan: Often people with more complex affairs use agents, and sometimes their returns aren't due until April 15 or May 15.

Senator WHISH-WILSON: And they would be the ones you would expect would be the most likely to be claiming franking credits. And whether, sometime down the track, you are going to be adjusting your forecast for the claims on franking credits? A couple of questions, probably to you, Mr Hirschhorn, on resource companies and tax avoidance. Court documents recently released have revealed that Shell is being required to pay $755 million as a result of making ineligible deductions against the Browse gas project. Can I confirm that you were originally seeking a payment of $2.2 billion in relation to ineligible deductions from them? Is that correct?

Mr Hirschhorn: Of course, I can only talk about what is on the public record. The $755 million is on the public record.

Senator WHISH-WILSON: The $2.2 billion is not?

Mr Hirschhorn: I can't comment on the $2.2 billion in the sense that I don't know if it is an accurate number.

Senator WHISH-WILSON: You never put it on the public record?

Mr Hirschhorn: The only number on the public record is $755 million in relation to a disputed claim for a deduction. The purchasing of a licence, we say, does not meet the conditions for an upfront deduction, and they say that it does. My colleague has suggested to me that $2.2 billion may well be the amount that they spent on the licence, but the $755 million is the disputed tax arising from whether that $2.2 billion deduction is available.

Senator WHISH-WILSON: Thanks for clearing that up. If it is possible to firm that up, I would be interested to know.

Mr Hirschhorn: If my evidence to that is incorrect, I will correct the record.

Senator WHISH-WILSON: Is the $755 million a court order or a negotiated settlement?

Mr Hirschhorn: That is our amended assessment. Our amended assessment increased their tax bill by $755 million. They are disputing that increase to their assessment. As with all taxpayers, they have recourse to the courts.
Senator WHISH-WILSON: That was my next question, whether you are in discussion with them and negotiating a settlement on that or whether that was going through the courts.

Mr Hirschhorn: I can't talk about individual taxpayer matters. We, of course, as a model litigant, have to consider all reasonable settlement offers. One of the things we consider in reaching a settlement is whether an issue is precedential and has industrywide effects, and sometimes on matters of very large size which have binary outcomes, particularly on a precedential matter, that makes it very hard to settle.

Senator WHISH-WILSON: Presumably, you would be able to say whether or not it had gone to court. Can I draw from that it hasn't gone to court?

Mr Hirschhorn: There hasn't been a hearing yet.

Senator WHISH-WILSON: I will leave the extra questions on that because I don't think I'm going to get anywhere with it. I think Senator Patrick—unfortunately I wasn't in here—asked you about Glencore and whether that appeal is under way. You have confirmed that it is under way. Are you able to say, just briefly, in relation to the ineligible deductions for Shell, whether it is an industry wide or a systemic issue?

Mr Hirschhorn: We made several submissions to the corporate tax avoidance inquiry over time. Within that, we did describe that as one of the significant industry issues. We were seeking, I suppose, to get clarity and, indeed, we thought that some participants had taken views contrary to ours.

Senator WHISH-WILSON: In relation to Glencore, to the High Court's decision to allow access to the Paradise Papers, I note that PwC was Glencore Australian arm's tax adviser. Is that correct?

Mr Hirschhorn: This is on the public record, that the legal advice provided to Glencore that was considered in the High Court case was provided to them by a Bermudan firm called Appleby, which had engaged Mallesons in Australia to provide tax advice as an input to its advice, who had engaged PwC to provide tax support into their advice.

Senator WHISH-WILSON: And that would be the Australian arm of PwC?

Mr Hirschhorn: Yes, they were Australian matters.

Senator WHISH-WILSON: The reason I ask this is, you gave a speech that has been well publicised. In fact it might have been from a question I asked you at the last estimates. You mentioned some particular partners were systemically important in terms of accounting firms and their devising of aggressive tax-minimisation schemes. Where any of the partners you singled out involved in advising Glencore in this case?

Mr Hirschhorn: I don't think I can comment on that. I would have to take on notice whether I can. I don't think that is a matter of public record. Actually, given that the world has access to the papers, people will know the partners who were involved in that advice, and so I can't comment.

Senator WHISH-WILSON: I know we got into this last time. You didn't name the partners and you weren't able to.

Mr Hirschhorn: The whole point with those papers is that, in a sense, the world has access to those papers if you know where to look. I suspect that some of those papers in the
public domain do actually include the name of the advising partners. So that would mean I cannot confirm whether those partners—

Senator WHISH-WILSON: Even generically speaking?

Mr Hirschhorn: I don't want to comment at all about whether those partners are some of the partners that I alluded to in the speech, because that would be naming individuals.

Senator WHISH-WILSON: So you think, even if you generically said yes, we could trace it back by accessing those documents and therefore—

Mr Hirschhorn: Yes, you would be able to identify the partners, so I can't comment—

Senator WHISH-WILSON: identifying them.

Mr Hirschhorn: one way or the other.

Senator WHISH-WILSON: That makes sense. Any idea when those papers might be available, by the way—the Paradise papers? You mentioned 'if they're ever available'.

Mr Hirschhorn: They are available.

Senator WHISH-WILSON: All of them?

Mr Hirschhorn: Sorry—you would have to ask the International Consortium of Investigative Journalists. We suspect we have a subset of those papers. You would have to ask the international consortium. I'm not sure if they've released all the papers.

CHAIR: I think we are going a little bit beyond what the official can answer.

Mr Jordan: If you want a shortcut to that, they have representative people here in Australia. I know Neil Chenoweth of The Australian Financial Review is a member of that organisation. I am not sure who else is, in Australia. But he might be able to let you know.

Senator WHISH-WILSON: We'll certainly follow up on that. Is it the same around the Shell case, Mr Hirschhorn, or are you able to say whether any partners you've singled out were involved in that case, generically speaking?

Mr Hirschhorn: I cannot, but what I would say is that the dispute in the Shell case is about the tax consequences of a natural business decision, which was to acquire a licence. And that is, in one sense, qualitatively different from disputes around the tax consequences of transactions entered into for tax purposes. That was a real third-party transaction; we're disputing the tax consequences of that.

Senator WHISH-WILSON: Right. I see. Last year's $866 million settlement with Chevron in relation to their use of intercompany loans—were any of the said partners involved in that case?

Mr Hirschhorn: I'm not sure of the origin of that $866 million figure, but there is some publicly available information, mainly through their financial statements, as to what happened ultimately in the Chevron case. But, equally, I cannot confirm.

Senator WHISH-WILSON: Okay. Can you confirm, then, even generically, whether these partners are associated with oil and gas companies in particular, in their use of tax minimisation schemes?

Mr Hirschhorn: You're probably referring to previous testimony.

Senator WHISH-WILSON: Yes.
Mr Hirschhorn: Indeed, in our oil and gas submission, we spoke about the use of particular financing techniques—for example, things like the use of cross-currency interest swaps, various techniques—and that they occurred in the oil and gas industry as large capital investors into Australia, and other industries which are also large investors, and we have separately provided taxpayer alerts on those types of financing structures. So there is an element where some of those schemes that we disagree with and are actively pursuing do occur in the oil and gas industry.

Senator WHISH-WILSON: Would those partners technically be the architects or would they just be using existing structures that are used elsewhere?

Mr Hirschhorn: Sorry, that would be speculation. I shouldn't speculate as to how these—

Senator WHISH-WILSON: Fair enough. And I will say, to be fair, the joint parliamentary committee is going to be looking at the issue of the big four accounting companies, so we will probably have further chats with you on that.

Mr Hirschhorn: Even though you've not directly asked this, I would say—and you referred to a speech that I gave—that we have been in discussions with the big four firms, and I think it's fair to say that they are taking our concerns very seriously.

Senator WHISH-WILSON: Excellent. Thank you. I note that you had an interview with Ben Butler of The Guardian. I will quote directly from the article, and you can dispute it if it's not correct. This is in the context of your discussion about resource companies. In reference to these resource companies, you are quoted as saying:

Our success will be as a tax office if they start paying tax, very significant tax, in 2021, 2022, which we're very confident will happen, rather than not paying tax up until the 2030s,

Can you just update us a bit on your thinking around that statement and what's going to change in the next couple of years that might not have happened otherwise.

Mr Hirschhorn: Yes, and it's a mixture of stuff that has already happened. Oil and gas companies, particularly the gas companies, have invested extraordinary amounts of capital into Australia. It's at an astonishing scale. It is natural that in the start-up phase, for the first few years, they produce no gas, and then when they start producing gas they have a lot of deductions which they've already incurred, which they have to recoup before they start making taxable profits.

Mr Jordan: And some generous capital allowances on that capital.

Senator WHISH-WILSON: I'm very familiar with how generous they are, yes. I'm not a fan.

Mr Hirschhorn: So one would not expect a gas company investing that sort of capital in that sort of project to pay tax for a significant time. As we spoke about in the gas inquiry, there were various techniques that were being used by some participants in the industry, including various forms of debt loading and financing—so various things. We saw transfer mispricing of related party debt—so charging themselves too high an interest rate. Obviously, that played out very much in the Chevron case.

As for the basis of the comment, do I have Treasury forecasts to support that? I do not. But it is more a matter of judgement. It was my professional judgement that, if we had not addressed things like the nine per cent interest rate that Chevron was charging itself—which
has now come down, according to their own financial statements, to more like three per cent—those companies would not have paid income tax until the 2030s. Assuming that gas prices hold up and maybe increase a bit—and they are actually quite low at the moment—I would be hoping that some of those new projects will start paying tax in 2021-22, and progressively more and more of those projects will start paying tax throughout the 2020s, and that will be annual tax coming from that industry over and above what it's currently paying in the order of billions of dollars.

**CHAIR:** Senator Whish-Wilson, are you close to the end of your line of questioning?

**Senator WHISH-WILSON:** Just a couple more.

**Senator GALLAGHER:** We're an hour and a half to two hours behind.

**Senator WHISH-WILSON:** Sorry?

**Senator GALLAGHER:** We're just getting so far behind. That's all.

**CHAIR:** So could you just try to wrap up relatively quickly?

**Senator GALLAGHER:** And short answers.

**CHAIR:** That would be good.

**Senator WHISH-WILSON:** Okay. I might put on notice the other questions about oil and gas companies. I was going to ask you about whether you use case studies from other countries that have had similar litigation, but I'll put that on notice. Could I ask you to quickly give us an update on MAAL. I know I ask this question every estimates. It's a piece of legislation the Greens are very proud to have led on.

**Mr Hirschhorn:** In short, I don't have too much to update on previous testimony on MAAL. It had a fantastic effect, I suppose, in bringing companies into the tax system and also encouraging the resolution of legacy disputes—transfer pricing and other sorts of tax disputes we'd had prior to the introduction of MAAL. Australian subsidiaries of multinational groups are now booking more than $7 billion a year in income in their Australian subsidiaries, which they never did before. You saw that last year starting to emerge in the corporate tax transparency release, and you'll see that really come into its own in this year's corporate tax transparency release. We're having more traditional, in a sense, tax discussions and then a more traditional transfer pricing discussion about what they'd paid to their offshore parent for their services. So it's been very successful.

**Senator WHISH-WILSON:** This is consistent with my earlier questions from other estimates. Do you have the updated figures for the 2018-19 financial year on the PRRT? I'm happy to put some more detailed questions on that one on notice, but do you have a new figure for us?

**Mr Hirschhorn:** The company-by-company PRRT statistics, which we publish each year, will be published in early December.

**Senator WHISH-WILSON:** Can you give us a consolidated number now, or will we have to wait for December? Rather than company by company—

**Mr Hirschhorn:** No, for company by company, you'll have to wait until December, I'm afraid, because that's when we publish it. In terms of the industry, I think in the past you've asked me for the carry forward expenditure.
Senator WHISH-WILSON: Yes.

Mr Hirschhorn: The most recent statistics I have, unfortunately, are the 2017-18 figures. The carry forward expenditure there is about $324 billion. The thing about those figures is that they do not reflect the recent amendments to PRRT last year. We suspect—again, this is as an order of magnitude—that about $150 billion of that carry forward expenditure will be eliminated as a result of those amendments.

Senator WHISH-WILSON: That much?

Mr Hirschhorn: Yes.

Senator WHISH-WILSON: That's more than I expected. Thank you. I'll put my other questions on that on notice.

CHAIR: Senator Gallagher.

Senator WHISH-WILSON: Senator Gallagher, I did note how over time we are, and how long the questions are—

Senator GALLAGHER: I know, I appreciate it.

Senator WHISH-WILSON: so I'm sure you'll take the same thing on board with your questioning.

Senator GALLAGHER: Yes, I will. In fact, I've had hardly any time.

CHAIR: Okay, let's leave that to one side and get on with the questions.

Senator GALLAGHER: I'm going to put lots to Revenue Group on notice, as well, just in the interests of time. I did have some questions for the ATO about your staffing profile, as to how the ASL cap has affected your workforce, whether you've seen problems from the ASL staffing cap, whether you've sought exemptions from it, whether you're using more labour hire to deal with workload—so just a general, short discussion around that.

Ms Curtis: As far as the ASL cap is concerned, we're actually quite a bit under our ASL cap at the moment, so we're not feeling any pressure from that cap. My colleague Ms Bristow can tell you a little bit more about how that has impacted on the mix of our workforce, but, as to our core workforce, our proportions stay relatively similar to what they have been in the past between ongoing, non-ongoing and casuals. Ms Bristow can tell you a little bit more about the use of contractors and outsourcers.

Ms Bristow: As Ms Curtis said, our ASL is very stable at the moment. Also, within MYEFO, we requested additional ASL, or ASL to deliver on some key measures, and that was in 2018-19. We received that ASL, which means our ASL is fairly stable over the forward years.

Senator GALLAGHER: Is that through the exemption system that the Department of Finance operates, or did it go through the NPP process?

Ms Bristow: We went through the NPP process. A number of our NPPs are PPs where we have ongoing staff doing the work, and that is because of the nature of the work that we do. Therefore, we requested ASL to keep those ongoing staff doing the complex work that we get funding for through PPs.

Senator GALLAGHER: In relation to labour hire companies, do you use those to any great degree?
Ms Bristow: Yes. We have a mix of external, supplementary workforce, and that includes labour hire, contractors, casuals and non-ongoing staff.

Senator GALLAGHER: Why is that? Why do you use all those different types—just to meet your operational needs?

Ms Bristow: It meets our operational needs, but mostly we use our external supplementary workforce to meet some of the seasonal peaks that occur—for example, tax time. We also look at where we need specialist skill sets, where we seek them for just a short period of time. We'd use our supplementary workforce for that. We also look at: where we have specific outcomes for government, where we're still looking at future considerations for staffing, we may use contractors in that space if it is for a defined period of time.

Senator GALLAGHER: So you use independent contractors, with an ABN or something, do you?

Ms Bristow: We have a mix of our supplementary workforce. That includes independent contractors, which we call labour hire. We also have casual staff, non-ongoing staff, and we also use outsourcers.

Senator GALLAGHER: ‘Outsourcers’—what is that?

Ms Bristow: That's where we contract, through our procurement processes, an organisation to do work for us. As Chief Service Delivery Officer Melinda Smith spoke about, that is what we do in the debt space, and we also do that in the contact centre area.

Mr Jordan: The largest part of that is in the contact call centres.

Senator GALLAGHER: So you would have larger contracts for labour hire where the contract would be to deliver certain things, not necessarily to provide so many staff—is that right?

Ms Bristow: As to our labour hire contractors in the contact centre space, our contracts deliver an outcome that we've worked with, with the labour hire company. It's not matched to the number of staff that the labour hire company uses to deliver that outcome.

Senator GALLAGHER: So it's outputs, and then they match how many staff? So you wouldn't have an hourly rate per staff member for those contracts, necessarily?

Ms Bristow: No, not for outsourced, we wouldn't.

Senator GALLAGHER: Have you done any analysis of whether those arrangements are value for money for the taxpayer—the different forms of engagement?

Ms Bristow: Yes. As to all our engagements around procurement, we certainly do a lot of work around value for money, and then, when the contract comes up, we do further work around that. That certainly includes the performance that we assess. We look at how the outsourcers or the casuals have performed, and we also look at what our organisational needs are at the time.

Senator GALLAGHER: Through your contracts, are you able to ensure that the labour hire companies are ethical in their approach to their workforce—that they adhere to certain laws and industrial protections and things like that? Are you able to have some leverage there?

Ms Bristow: We definitely do that in all our contracts. With our labour hire—
Senator GALLAGHER: Paying tax and super and all that sort of stuff?

Ms Bristow: Yes. They need to comply, obviously, with all legislative and government obligations and policy. We also require them to provide a satisfactory statement of tax, so that's part of what we do with all our contracts. So they need to comply, within those areas, and we actually follow that up with a range of audits, as well as meetings with those organisations, and we assess their performance as well.

Senator GALLAGHER: In terms—

Mr Hirschhorn: Sorry—can I just clarify one point?

Senator GALLAGHER: Yes.

Mr Hirschhorn: They are just ordinary taxpayers, and the tax office, in a sense, in this has two roles: one as tax office and one as procurer of services. My group cannot tell Ms Bristow's group whether somebody is compliant around their tax, and the audits that Ms Bristow referred to aren't ATO audits; they're procurement audits, but there is an extra layer of confidence, which is that now the service provider has to get a statement of tax record, in a sense, from my group, to provide—

Senator GALLAGHER: To go to their group?

Mr Hirschhorn: to Ms Bristow's group.

Senator GALLAGHER: So that's the way you manage it.

Mr Hirschhorn: That's right.

Senator GALLAGHER: So you've got the information, but you're keeping the lines, the delineation, there?

Mr Hirschhorn: It's a very important line.

Senator GALLAGHER: Yes, it is. I agree. You said the mix of your workforce has been relatively stable. Maybe you could just provide an update to the committee for the last three financial years—so, within the outsourced space, the different modes of employment that you use. Also can you—and I'm not sure this is possible, but I hope it is—provide the total cost to the taxpayer of engaging staff employed outside the Public Service Act and any ongoing additional costs with that.

Ms Curtis: We certainly can provide the first part of that quite easily for you because we do track that. The second part, I'm pretty sure we will be able to provide; I'll just have to get across the detail. We'll definitely do that on notice.

Senator GALLAGHER: Do those costs include training and development and support of staff, which the tax office would have to provide to them, I am presuming, on site?

Ms Curtis: I'd have to check with the Chief Service Delivery Officer as to what it includes, but, usually, there's a contract fee, and we pay per hour, anyway, not per staff member, so we'll just have to check what's in the contract, but we could get you those costs.

Senator GALLAGHER: I might put all my revenue group stuff on notice—lucky revenue group!—because there are a lot of people who want to talk to the ACNC.

Senator ROBERTS: Thank you for coming today. I refer to the recent decision of 12 August 2019 in the Federal Court, Fortunatow v Commissioner of Taxation. The matter under question was whether Mr Fortunatow's profile on LinkedIn constituted advertising for the
purposes of complying with the personal services income tax laws. The court ruled that it was advertising and thereby compliant. As a consequence, Mr Fortunatow now owes the ATO less than the ATO asserts. The ATO, I understand, is appealing the decision to the full bench of the Federal Court. Am I substantially correct so far?

Mr Mills: Yes, you are.

Senator ROBERTS: I am advised, firstly, that the matter has been ongoing since February 2014—five-and-a-half years, secondly, that Mr Fortunatow has made offers of settlement and, thirdly, that the amount of primary tax in dispute is around $33,000. Correct still?

Mr Mills: I can't confirm that. I can take those questions on notice. Just one thing: I should mention that the first instance decision was at the Administrative Appeals Tribunal and not the Federal Court. It was heard by a deputy president member, if my recollection serves me correct, which means that the appeal is to the full Federal Court.

Senator ROBERTS: How much has the ATO spent in pursuing Mr Fortunatow? Specifically, how much have the ATO spent on external lawyers in the administrative appeals matter?

Mr Mills: We'd have to take that on notice.

Senator ROBERTS: How much has it spent on external lawyers in the Federal Court matter? Same?

Mr Mills: I will have to take that on notice.

Senator ROBERTS: How much has it spent on internal ATO lawyers in the AAT? Same?

Mr Mills: Again, we'd have to take that on notice. We have not come prepared with that level of detail around this case.

Senator ROBERTS: The same with how much has it spent on internal ATO lawyers in the Federal Court matter? How much time has been spent by other ATO staff and what is the likely cost of that time?

Mr Mills: I'm not sure that it's possible to estimate that, but I will take it on notice.

Senator ROBERTS: It would be possible to estimate and not get it accurate. Lastly, the budget amount for the cost of the full Federal Court appeal?

Mr Geale: We'd have to take that on notice, but perhaps what I could say is with regard to any litigation, which is under taken by the ATO, the costs of the litigation and the impact upon the whole of the Commonwealth as well as the impact to the taxpayer are matters which are taken into consideration as they are also taken into consideration when we receive settlement offers and offers for alternative dispute resolution—

Senator ROBERTS: What was that last—

Mr Geale: Whenever we have alternative dispute resolution, like a mediation or a conciliation, or direct settlement discussions they are factors which are required to be taken into account and which are taken into account. That is set out under the Legal Services Directions, which my officers are required to act in accordance with and do act in accordance with.
Senator ROBERTS: You anticipated where I was heading, I think. Many every day Australians might see the ATO's decision to pursue Mr Fortunatow as punitive and a waste of money unless they realise that the ATO is more interested in stopping future similar claims—in other words, the consequences. I get that. So, really, this is my main question, this is how ATO can make tax law, isn't it? Because once a case is ruled then it becomes case law?

Mr Mills: I'm not sure if it is the ATO making tax law or the operation of the system in the sense that parliament makes tax law and the judiciary interprets the tax law and tells us how it plays out in operation.

Senator ROBERTS: So if the legislature can't cover every situation—and it can't—then the judicial system will make it more specific?

Mr Mills: Determine what parliament has said and try to fill in the gaps.

Senator ROBERTS: But in cases like that, essentially the ATO's position, if it is vindicated, then becomes law?

Mr Geale: Having decisions ruled upon by a court is actually one way in which we get clarification of how our laws operate. Can I also just go back in terms of the costs with regard to this? When the ATO appeals a decision of a court in circumstances where we are trying to clarify the operation of the law, we have a test case program and—

Senator ROBERTS: That's like a process you go through?

Mr Geale: No, a test case program is whereby we offer the taxpayer funding for their legal costs in pursuing the appeal. So where we are appealing a decision as in this case at the Federal Court, to the full Federal Court, our standard procedure would be to consider whether that was a case appropriate for test case funding. In most cases those cases would satisfy the criteria for test case funding and be granted funding for the appeal. So the taxpayer wouldn't be putting their hand in the pocket; they would be funded through that program to pursue the appeal.

Senator ROBERTS: The ATO is not just going to come out with a heavy handed approach is what you're saying, because that would be ridiculous and that would lose in the court. So, to ensure that isn't the case, you would provide funding?

Mr Geale: So it is not every circumstance. It is in, I would say, the majority of circumstances. There are some cases where because of the mischief involved in the case or other circumstances it is not appropriate to grant test case funding. There are other cases where the taxpayer themselves do not wish to receive test case funding.

Mr Mills: I might add that in terms of test case funding if, for example, taxpayer was seeking to pursue a case or a set of circumstances and interpretation of the law that had been well established and the case that they were pursing provided no new ground, if you like, or no new opportunities for interpretation of the law then that would be one also that we wouldn't necessarily fund.

CHAIR: Is that a limited test case funding pool? Do you have a particular allocation for that each year? I could imagine one year you might have half a dozen test cases and the next year you might have none. Or is it just on a case by case basis?

Mr Mills: We tend to get around 30-odd cases, or at least in recent years, we have had 30-odd cases a year—sorry applications.
Mr Geale: That is correct, we receive about 30 applications. Last year we funded $1.4 million in costs of the taxpayers for test case funds. There were 12 cases which were funded. These matters are reported in our annual report each year. There were nine matters in 2017-18 and seven matters in 2016-17 and in fact last year's figure was about twice what we funded in the last two years.

CHAIR: I was more interested in whether it's very lumpy spending or whether you have a consistent program line item?

Mr Geale: The cases are considered by a panel, which I chair, but we have three independent members who are senior practitioners and they provide me with advice as to whether or not test case funding should be granted. Having regard to the applications, it's determined by the merits of the application meeting the criteria, not the budget.

CHAIR: Interesting.

Mr Mills: Please correct me if I get this wrong, but notionally we set aside $2 million in the budget with the expectation, based on experience.

Senator ROBERTS: So this is an expensive way of making law, but it comes because of our taxation system being so complex that it is open to interpretation in many, many ways?

Mr Mills: Correct.

Mr Hirschhorn: I think I would use the word it reveals what the law is. It doesn't make the law.

Senator ROBERTS: I accept that.

Mr Hirschhorn: It takes away the curtain so we all can see it in all its glory.

Senator ROBERTS: In some cases.

Mr Hirschhorn: In some cases.

Senator ROBERTS: Does the ATO agree that Australia needs to invest in and to support research and development if we are to remain internationally competitive?

Mr Hirschhorn: I think this is my area. I would say that's a matter of policy. We, of course, have every interest in—if a scheme is law, we will administer it according to law.

Senator ROBERTS: Thank you. That was nicely done then. Very well. Because I was wondering how to do it myself. I refer to recent ABS data that shows that Australia's research and development spend is on a persistent downward slide and well below the OECD average. I refer to the ATO comments reportedly at the National Small Business Summit on 29 August where the ATO is reported as saying (a) that there is a structural problem with the R&D process and (b) the ATO is keen to step away from overseeing R&D. Is this correct substantially so far?

Mr Hirschhorn: I think the detail of that comment is describing the nature of the process where companies, in a sense, successfully claim an R&D offset only for it to be overturned on review years later. It's worth going through the process. An application is provided to AusIndustry saying someone intends to do something, and AusIndustry has a look at that and says, 'That's plausibly—'

Senator ROBERTS: Who is AusIndustry?

Mr Jordan: It's a little unit in the department of industry.
Mr Hirschhorn: They look at that and say, 'On what you've written to us, provisionally that could be eligible R&D.' The company or the person then claims R&D in their tax return, and the ATO will pay the offset, which could be a refundable offset. Subsequently, one of two things can happen. AusIndustry may review the case. So one option is that AusIndustry reviews the case and decides that actually what happened was not eligible R&D. That might be because what they did was not what they'd promised they would do, or it could be that when you look at it in more detail it really wasn't. If AusIndustry makes a finding that the research and development was not eligible, the expenditure was not eligible, the ATO must try to claw back the offset. Unfortunately, in many cases the company has spent the money, because they got the money based on the preliminary finding that something was eligible and, in a sense, acted reliant upon that. And then, several years later, the tax office says, 'Please give that money back.'

Could I say that we certainly do not see ourselves in the business of understanding what innovation is and what eligible R&D is. We see that absolutely as not our core skill set. Of course, if we were provided that responsibility we would acquit it very well and to the best of our ability, but we do not at the moment see that as our skill set.

Mr Jordan: But we do have to go in and say, 'Did you spend that money on R&D?' And a lot of it is apportioned, like overheads, so it's: is the apportionment that's allocated to the R&D the right amount?

Senator ROBERTS: It's complex, isn't it?

Mr Jordan: That's the classic audit technology. We can do that.

Mr Hirschhorn: That is the bit we do. That is option 2, which is: someone has put in their tax return and said, 'I spent a million dollars on R&D,' and we come in and say, 'Well, did you really spend a million on R&D?' In some cases they say, 'We didn't really spend it on R&D; we spent it on something else,' and in some cases the taxpayer cannot prove that they spent the money at all, and that's a more traditional tax audit.

Senator ROBERTS: As an aside, all of this just reinforces how complex the tax system is that you people have to administer. That's sympathy if you like.

I refer now to the April 2018 Four Corners show 'Mongrel bunch of bastards', where two of the persons interviewed on that show, Helen Petaia and Mark Freeman, claimed that their respective small businesses were wrecked by the ATO's admitted mishandling of their R&D claims. Has the ATO paid compensation to any parties in the last two years for the ATO's alleged mishandling of R&D claims, specifically any compensation paid to Helen Petaia, Mark Freeman or any others?

Mr Mills: The short answer is yes.

Senator ROBERTS: If the ATO does pay compensation for ATO mishandling of R&D, does the ATO require parties to sign confidentiality agreements before agreeing to compensation?

Mr Mills: That is our standard practice in relation to all compensation.

Senator ROBERTS: The decision as to whether or not something complies with the criteria for R&D is AusIndustry's, not yours?
Mr Hirschhorn: Eligibility questions lie with AusIndustry. Whether somebody spent money on the R&D project is a question for us.

Senator ROBERTS: Have the ATO reviewed this series of events and, if you have, what was concluded, because I don't think you like paying compensation.

Mr Mills: In relation to the compensation matters, or at least one of the compensation matters, where we have paid we have been through the case and noted that there were a series of mistakes or missteps that occurred. They included handover between three different auditors along the way, delays on the auditor's part in corresponding with the taxpayer or taxpayers involved, going on leave and not offering contacts, and sending letters to the wrong business address. So, there was a whole series of missteps, which is basically the reason we thought this was an appropriate case for the payment of compensation. As a result, these are the kinds of things we have been focused on in terms of improving our processes, and I think Mr Hirschhorn is about to talk about the program of work that we have in this regard.

Mr Hirschhorn: It's fair to say that we have looked very hard at our processes and what we do, not just in relation to these R&D cases but also in relation to other cases that have come to our attention, cases in the public domain as well as cases that are not in the public domain. We are very much focused on how to get better, and we've kicked off a project—and I will take responsibility for its naming—the Better as Usual project, which is looking at the things we have learned and where we have not done things well and how we can ensure that those things do not happen again, particularly where they have a high impact on the client.

Senator ROBERTS: The ATO comes in for criticism, and it seems that one of your biggest problems—and this is a statement, not a question—is that the tax system is so complex. And I might add, that complexity is costing this country a lot of money.

CHAIR: We are happy to release Revenue Group and ATO. You go with our thanks.

[17:18]

CHAIR: Dr Johns, do you wish to make some opening remarks? In the interests of time I'd probably prefer if you didn't.

Dr Johns: I'll be very brief, just to draw to the attention of senators that on Friday we table our annual report. I recommend it to you. It tells a good tale of all the hard work of people in the commission. It also indicates our failures, which are few, but they're all there to be read. I recommend it to you.

CHAIR: Thank you, and thank you for being so succinct.

Senator ABETZ: I want to ask some questions about the Tides Foundation and Environment Victoria, which I traversed last time. At last estimates I asked about an apparent $1 million donation to Environment Victoria, an Australian charity, from the US based Tides foundation, which is not accounted for in Environment Victoria's financial reports to the ACNC, and I submitted further information to you subsequently. Under the Charities Act, are you able to confirm whether or not, having reviewed this information, you've commenced an investigation into this apparent breach?

Dr Johns: Unfortunately, because of the secrecy provisions, I can't confirm that. All I can ever do is, at the end of a formal investigation, indicate to you a formal activity that I might
have undertaken, which might be a direction to a charity or the removal of some responsible persons or their removal from the register. Anything less than that I actually can't say. It's simply the way the act is written. But I do say that, on all of these occasions, we are ever alert to information that is given to us from whatever source, and we take all of those sources and all that information very seriously.

Senator ABETZ: This might be another Right to Know campaign. But let's move on from there. I understand that the ACNC can comment publicly on investigations if the charity or charities concerned give permission for this. Is that correct?

Dr Johns: Yes.

Senator ABETZ: That's correct?

Dr Johns: It's correct. It's an agreed form of words. For instance, if there is mention in a media source about an investigation, we would simply confirm the media source; we still wouldn't revealed anything unless it's—

Senator ABETZ: How many charities under investigation, if any, have been asked for such permission in the last year?

Dr Johns: We have about 100 investigations underway. I think there's only one that I can recall where—

Senator ABETZ: Take it on notice, if you need to clarify it.

Dr Johns: Yes.

Senator ABETZ: So it's very rare.

Dr Johns: Yes.

Senator ABETZ: If Environment Victoria and The Sunrise Project, the charities I'm concerned with, had denied such permission, would you be able to tell me whether they had denied that permission? In other words, if you sought permission from them and they had then denied that permission, would you be at liberty under the legislation to tell us that?

Dr Johns: I would not be.

Senator ABETZ: That's what I thought, but thank you for that.

CHAIR: Senator Abetz, could I ask a supplementary question there?

Senator ABETZ: Yes.

CHAIR: Dr Johns, in what circumstances would you go to a charity and ask their permission?

Dr Johns: In all cases of an investigation, we're really trying to preserve the charity, and these investigations can take some time. Say the source of the information that came to us is from a person who is unhappy with the charity, and say it has got into the public arena. I can't have that debate, so it's in the charity's interest to say, 'The ACNC is working with us,' or words to that effect. It's in their interests to allay fears, so it's something that they would generate.

CHAIR: It triggers that standard form of words; it doesn't allow you to speak publicly about the investigation.

Dr Johns: No.
CHAIR: Okay. Go ahead, Senator Abetz.

Senator ABETZ: Dr Johns, can you give an undertaking that, in the event these charities are under investigation—something you can't confirm—you will ask for such permission, even just insofar as to confirm their response to this request?

Dr Johns: I wouldn't necessarily ask for permission in a theoretical situation. The key thing is what formal action I will undertake, and, at the end of that action, I'm then allowed to say what I did, and not in much detail either.

Senator ABETZ: I will move on to Market Forces and Friends of the Earth. Friends of the Earth is a registered charity and it has certain 'affiliates'. Are you aware that Friends of the Earth openly touts for organisations to join its network of affiliates, some of whom, such as the GM-Free Australia Alliance Inc, Healthy Futures and Market Forces, then in turn tout for tax deductible donations routed via Friends of the Earth?

Dr Johns: Not offhand. I'd be more than happy to look at a situation where that—

Senator ABETZ: If you could, that would be good, because, for example, Market Forces' website tells potential donors:

Your donations will be processed by our parent organisation, Friends of the Earth. Friends of the Earth Australia … is a deductible gift recipient as defined in the Income Tax Assessment Act 1997 …

Dr Johns: I'm not giving away anything there. I'm simply saying there are many ways in which charities raise funds. This may be a method by which they do it.

Senator ABETZ: Yes, but this seems to be an affiliation of convenience to get tax deductibility which is otherwise not available to these particular organisations.

Dr Johns: It depends on whether the money's flowing back to the charity that has DGR status. It's an interesting proposition in a theoretical situation. It's always worth inquiring.

Senator ABETZ: Is there any general view you'd like to express in relation to organisations such as Market Forces piggybacking on Friends of the Earth's DGR status, which I gather it receives at least in part by virtue of being a registered charity?

Dr Johns: I think it's about the flow of funds, if it goes back to the organisation that has registration and DGR status. But I'd be more than happy to take that on notice and think about it.

Senator ABETZ: If you could, that would be very helpful. Thank you. Does Friends of the Earth's last annual information statement on the ACNC website, that of 2018, make mention of its 13 affiliates? Chances are you don't know.

Dr Johns: Yes.

Senator ABETZ: So could you take that on notice and then also advise whether you think they should be making such a disclosure in their annual information statement.

Dr Johns: Thank you.

Senator ABETZ: Friends of the Earth's financial reports lodged with the ACNC contain no dissection of money received on behalf of any of these affiliates. Again, should they be making such a disclosure?

Dr Johns: It's not uncommon. The amount of information in an annual information statement can be little, and many charities will simply say 'Grants received'—even less
information. So we're not able to be that prescriptive, but you raise an extra issue which is of interest.

Senator ABETZ: Yes, which is that there is an organisation that holds itself out and basically—this might be a bit too pejorative—launders money to direct it elsewhere and attract tax deductibility status on the way through. Are you aware that Market Forces has been behind many of the motions put up at company AGMs by activists with a minuscule and temporary shareholding in those companies?

Dr Johns: No, but I read of that sort of thing. It might be useful here if I just make plain that what charities do is measured against their purpose. The law is about their charitable purpose. How they go about that purpose is not prescribed by me or in law necessarily, so you can't easily say what is right activity or wrong activity, because I have to prove that it's not in pursuit of their purpose or has a separate non-charitable purpose. It is not an easy test, but it's one that we—

Senator ABETZ: It would be very difficult to see how that could be a charitable purpose. That was a comment.

Dr Johns: I won't comment on that.

Senator ABETZ: Are you aware that in the last few years Market Forces has received $340,000 from the US Tides Foundation, a donor advised fund, which effectively disguises the ultimate source of this money?

Dr Johns: No, but again, the source of income is not something that we require a great deal of information on. I remember being asked in this place when I first commenced whether we knew whether there were international sources of income. We don't keep those records. We simply note that these are the incomes.

Senator ABETZ: This has only come to light as a result of searching US records which indicate that the funds have been transferred to a particular organisation in Australia. So can I put on the record that I'm concerned, and I suspect others might be as well, that money the ultimate source of which is unknown is being used to fund campaigns against the legitimate operations of Australian corporations and ultimately against Australia's national interests. Do you think Australians have a right to know where Australian charities, and particularly groups that piggyback on their DGR status, are getting this sort of money from?

Dr Johns: It really is a policy question.

Senator ABETZ: It is. All right. And you don't want to comment on that?

Dr Johns: No.

CHAIR: In response to a question on notice—I think it was from last estimates—you described the compliance actions you could take, starting with formal warnings, directions, enforceable undertakings, injunctions, suspension of board, committee members, and finally, I guess ultimately, revocation of charitable status. Obviously, if you got to that last step, the public would know? Where does the public have a right to know in any of the five—

Dr Johns: Other steps? There are some that you describe that we'd call formal—so, if there's a compliance disagreement. These only apply to what are known as federally regulated entities, so that we have the power to impose some formal undertakings only on, if you like, a subset of charities. If we undertake those formal matters, one of which is revocation, we can
then say so, not in much detail, though. For all of those charities that aren't deemed to be federally regulated entities, a trading entity, we do as good as we can, short of revocation. In other words, why use the big stick if we can sit down and have a discussion with a charity to put it back on track? That's where the informal instruments are used. By and large we can't publish those—we can't make them public—unless a charity wishes us to.

CHAIR: Even in the case of revocation, you can't—

Dr Johns: No, sorry. In revocation, any charity on our register—

CHAIR: But you would give a statement as to why?

Dr Johns: No. You could in the UK; you can't in Australia.

CHAIR: You would just basically draw a line through them. They're no longer on the list?

Dr Johns: They'd be on the list with a line through them, that's right. We would publish the fact that they're revoked, as we do, but there's no explanation. The law does not allow for an explanation.

CHAIR: You probably can't talk to this. That's obviously the way the law works. Why was it set up that way? I know you're not allowed to answer that. It strikes me as being very odd. You can give formal warnings but the public can't know about them. You can give directions, but the public can't know about them. You can revoke a charity's status but the public can't know why?

Dr Johns: That's correct.

Senator GALLAGHER: In relation to call waiting times, in particular, I notice in the annual report it states that, on average, calls in 2018-19 were answered within seven minutes, compared to 38 seconds in the previous year. Could you just explain to me—I'm coming new to this—whether there's a story behind that?

Dr Johns: There is.

Senator GALLAGHER: And why those times blew out?

Dr Johns: Yes, and it's a shame that they did. We upgraded significantly our IT system. Now, part of the upgrade is that we have a new website, and charities have to not only dial in to the website but to use their own password on the website. We changed the system—this is one particular reason. We changed the system so that rather than just have one person in the charity have a password, it would enable all of the responsible persons to have a password. The reason we changed it is that you could imagine that in many small charities if the secretary, the treasurer or the president left and took the password with them, we would have to go through quite a rigmarole simply for them to get access to their own material on our website. So we made it more flexible. Of course, we did know that when you change something on a website, like a password and access, you would get more telephone calls. That's precisely what happened. We had thousands of calls about how you access the new password. That's what filled up the time. And the calls were more complicated than the ones we often get, so it took several minutes to get the person used to our system, rather than the fewer minutes that we would sometimes take. It is a very short-term issue; it's a transitional issue. Half of the charity sector are now through their current annual information statement and going through the system. The other half will go through early next year, and we anticipate that it will all settle down. We put a lot of effort and extra resources into answering
phones and so on, but we couldn't drain the entire commission and have them just answer the phones.

Senator GALLAGHER: The rectification you put in place in the short term was to deploy resources to deal with the phone calls. In the longer term, you think the solution is that it was a bit of a pull-forward from the new IT systems, but that will flatten out over time?

Dr Johns: Precisely. It's just getting used to a first time dial-in to a new system.

Senator GALLAGHER: I noticed in other parts of the annual report there are quite a few 'not met' statements, in terms of your goals and then also around service standards, which builds on the call waiting time, so it goes to general telephone inquiries—

Dr Johns: They all stem from that source, yes—

Senator GALLAGHER: Correspondence, approved forms, investigations—does that flow from the same problem?

Dr Johns: Yes. For instance, we do a process whereby with charities that haven't filled out their annual information statement for two years—not two years in a row, just for two years—every six months we would go through the system and clean it up. We were so intent on getting the new IT system up that we simply didn't do what we call our double-default process. That's what I mentioned. To be quite honest, we failed to do it. We just couldn't.

What I could have done, I suppose, is lower our standards and say, 'Just 50 per cent will do.' We kept our existing standards of numbers of phones answered and number of registrations in a week and so on. We held on to those, knowing that we wouldn't be able to make them in the short term, but it gives us a goal. We'll build back up and we'll be able to make those.

Senator GALLAGHER: Was there some inadequate planning in terms of the rollout of the new IT systems? Was this not identified on the risk register or the normal processes you would go through to implement major change within an organisation?

Dr Johns: This was workshopped to death. We did anticipate—I concentrate on this as the major issue, this change of password—that it would generate lots of calls. But I've got a hundred staff. You simply can't move, say, 20 across into a call centre when we have eight or nine who normally work there. I have to make trade-offs. I have to say, 'Okay, some of them will have to wait an extra number of minutes in order for us to assist them. But I don't want to take people away from registration, because I don't want people to wait longer for registration.' Or there might be a critical investigation taking place, where there's money at risk, or beneficiaries at risk. I don't want to pull someone out of there. Believe me, there was a lot of thought put into it, and we do realise it's a short-term response.

Senator GALLAGHER: So you knew this was coming? Is the answer that you knew this would come? But did it, to the degree that it did, impact on your performance?

Dr Johns: No, I don't think so. We had 12,000 extra calls in there. We didn't anticipate that number. But we do know our sector. There are 57,000 charities. Half of them are very small and employ no-one. So we anticipate that we're talking to people who probably will have problems with IT. Always think of your baseline. Before we upgraded the IT, people were sitting there for 20, 30, 40 minutes, trying to get onto the website because it was so slow.
It had been established seven years prior. A lot of problems have been fixed by that IT. I'm really very pleased with the site.

**Senator GALLAGHER:** So we'll see improvement in next year's annual report?

**Dr Johns:** Yes, we will.

**Senator GALLAGHER:** I have some people management issues. Both assistant commissioners have left in the last 12 months—is that right?

**Dr Johns:** Yes.

**Senator GALLAGHER:** Have they been replaced, or will they be replaced?

**Dr Johns:** The assistant commissioner services I didn't replace. We were under some budget pressure, and I took the view that I have six very good directors who had learned a great deal from that commissioner. I reckoned the place would run just as well without a replacement. That has proved to be so. With the assistant commissioner general counsel, we took the opportunity there—I've had an interim general counsel, and I'm replacing that person permanently on 28 November—that the skills required of an assistant general counsel have changed. In the early days I think it was important to have an expert in charity law. That was really good. But we now have six charity lawyers inside the commission, and other experts. So I'm looking for a different skill set in the AC general counsel. We're much more a data agency than we were. We have enormous privacy and reporting responsibilities, so I've gone for a person who's more expert in that. So it was timely. I am making a permanent replacement for the assistant commissioner general counsel.

**Senator GALLAGHER:** But in a modified role?

**Dr Johns:** A different role, yes.

**Senator GALLAGHER:** Is the assistant commissioner role occupied formally by Mr David Locke the one you're not replacing?

**Dr Johns:** Correct.

**Senator GALLAGHER:** Do you have at your fingertips how many executive staff have left the organisation in the last 12 months?

**Dr Johns:** Executive staff strictly are just SES band. That's the assistant commissioners, so it's just the two. It might be slightly longer than 12 months.

**Senator GALLAGHER:** I think there was a question on notice that you took from the April estimates, because I can't find the figure—I don't think it's reported in the annual reports—showing that the attrition rate within the ACNC had doubled in, I think, probably in the first year of your tenure at the commission. According to this answer on notice, it jumped from 8.1 per cent to 19.1 per cent. Acknowledging that we're dealing with relatively small numbers of staff here, is there a further explanation for that—essentially the doubling of the attrition rate?

**Dr Johns:** We call it separation rate. At September 2019 it is 3 per cent. At September 2018 it was 20 per cent. It's way back down now.

**Senator GALLAGHER:** What happened? Did you come in and clean the place out, or—

**Dr Johns:** I didn't need to. What I did was take the opportunity, when the assistant commissioner services went off and got a very big job—he did very well—to not replace him
and place more emphasis onto the directors. We're being pretty cautious with our budget. So, for instance, we rarely move on someone in a permanent position, but there are a number of people who are non-permanent, who might have been contracted for a year or two. When they came up, we just didn't replace them.

Senator GALLAGHER: So they would be counted in those figures?

Dr Johns: That's right. There's a fair bit of caution there in managing the budget. The other thing I must say is that a lot of these are quite young and ambitious people. There are a lot of good jobs out there. We simply can't provide what they want in a hundred people.

CHAIR: Can I ask, Dr Johns, do you have a board? Is it your decision that you replace two commissioners? Or is there a board that makes that decision?

Dr Johns: It is mine alone. We have a board which is—

CHAIR: What about a corporate structure that dictates positions? Is there that?

Dr Johns: No. The Act says there's a commissioner and resources will be made available to the commission. Now, the essential thing here is that all of my staff are employed by the tax office under Australian Public Service conditions. So I can, if you like, invite them in and invite them out, but I cannot affect their income or the provisions or the way they're managed. That's all very nicely done, I must say, by the ATO. But the question of hiring and moving out, yes, it's the commissioner's alone.

Senator GALLACHER: Solely?

Dr Johns: Yes.

Senator GALLACHER: Interesting.

Dr Johns: The board is an advisory board, so it's usually discussion about policy matters and so on.

Senator GALLACHER: Have you got other questions, Senator Gallacher?

Senator GALLACHER: No, I was just curious.

Senator GALLACHER: Again in your annual report I notice that, of the 20 FOI applications that were processed, none of them were released in full—which, again, stands out when you're looking at these things in annual reports. There were some partial releases of documents. Is there some reason why, in 100 per cent of the applications made, not one of them would be released in full? What's the nature of the information that's being withheld?

Dr Johns: Well, it might be to do with charities and that it's information that we can't release.

Senator GALLACHER: Do you review this? As commissioner of this organisation, would you look at that and think, 'Wow, better have a little look at what's going on in FOI'?

Dr Johns: I talk to our lawyers about those things, but more about the nature of requests we're getting, what the rules are. There's quite a bit of information we hold that we simply can't release. So, it's no—

Senator GALLACHER: Preventing for reasons like?

Dr Johns: Releasing information about charities that can't be released, for instance.
Senator GALLAGHER: Right. So in your legislation, as opposed to the FOI legislation, there are constraints on you.

Dr Johns: I presume—and don't quote me on this; I'm not the expert—FOI legislation would give us a good guide, and then we'd have to interpret that on the basis of the material that we hold.

Senator GALLAGHER: Okay. On notice, could you have a look at that for me—

Dr Johns: Certainly.

Senator GALLAGHER: and perhaps provide the committee with a bit of information. I'm not asking for individual documents that were withheld or anything like that. I presume there's a disclosure log that you've got.

Dr Johns: Understood, and happy to.

Senator GALLAGHER: It's more about, in a general sense, what information can't be released. All right. I've got two more areas to go to.

CHAIR: I think we will have to have a chat at the break about how we're going handle this evening. We break at 6.15—

Senator GALLAGHER: Yes, that's right.

CHAIR: because we are, obviously, a bit behind schedule.

Senator GALLAGHER: Actually, I'll put one of them on notice. Again, this might have come up at the last estimates, when I wasn't here, but there was some limited tender work that was provided to a group—Tulipwood Economics?

Dr Johns: Yes.

Senator GALLAGHER: I think you answered a question on notice at the time about that tender. Now, my advice is that contract was done at your discretion, without tender?

Dr Johns: Yes.

Senator GALLAGHER: Is that right?

Dr Johns: Yes. Yes.

Senator GALLAGHER: You received the quote on 13 September, according to this answer, and you accepted on 14 September. What process did you go through to assess the cost and assess that it was the best option, when it happened in the space of a day?

Dr Johns: We work very closely with the tax office here on procurement, and matters that are below $10,000, ex-GST, do not have to go out to tender.

Senator GALLAGHER: Yes.

Dr Johns: The point is it would cost you a lot of money for a very small piece of work. I wanted, from a known source, if you like, a very simple piece of work, which was a literature review—in economics—of various concepts that are in our act, because I wanted to start a conversation in the sector about our second object and the descriptions of the sector in that object. We've been fairly blind in understanding that second object. So, yes, we got a discussion paper, very cheaply, and it did help me generate discussion in the sector, and we're doing subsequent work.

Senator GALLAGHER: That was assessed through your executive team, was it?
Dr Johns: Yes.

Senator GALLAGHER: Are records kept of decision-making around tenders that fall within this category and that are made at your discretion?

Dr Johns: Absolutely. It's informal because there's nothing in the act, but we have an executive—an assistant commissioner, or two when there were two, or a director—every week or fortnightly, and just about every element of expenditure or policy matter goes through that.

Senator GALLAGHER: Okay. I'm advised that you have a connection to the director, or a director, at Tulipwood Economics that predates the contract to deliver services for the ACNC. Is that correct?

Dr Johns: Yes.

Senator GALLAGHER: Could you just outline for the committee how you managed that. Did you declare that conflict of interest or potential conflict of interest?

Dr Johns: Yes, I did.

Senator GALLAGHER: How was it managed?

Dr Johns: It will be noted. I worked with that employee, I think, seven or eight years previously. I haven't had much contact since, but I contacted that person because I know their economic skills and I wanted what was a pretty straightforward piece of work, which in another life I would have written myself, for a very small amount of money. I wanted to apply a good mind and a person with known skills.

Senator GALLAGHER: So you sought this director?

Dr Johns: Yes.

Senator GALLAGHER: I don't particularly want to name him, but you sought him out as the right person for the job that you wanted to do?

Dr Johns: Yes.

Senator GALLAGHER: You just mentioned that, in a previous life, you would have done the job. That raises the question with me: why didn't you?

Dr Johns: I was a bit busy at the time.

Senator GALLAGHER: Dr Johns, there have been a number of referrals to limited tender applications over the last few days, so I just happen to have the Department of Finance guidelines on it, and 10.5 says:

In accordance with the general rules for accountability set out in these CPRs, for each contract awarded through limited tender—

and I take this as a limited tender—

an official must prepare and appropriately file within the relevant entity's records management system a written report that includes:

a. the value and type of goods and services procured;

b. a statement indicating the circumstances and conditions that justified the use of limited tender; and

c. a record demonstrating how the procurement represented value for money in the circumstances.

Did you do that?
Dr Johns: Yes.

Senator GALLACHER: So that's available to the committee?

Dr Johns: I would think so, yes. Those are almost the precise words. We fill it all out. That's our statement to justify the nature of the tender in these circumstances.

Senator GALLACHER: Excellent.

Dr Johns: I don't know whether this rule applies more broadly, but certainly at the tax office that $10,000 is the limit.

Senator GALLACHER: Yes, I think there are different thresholds.

Senator GALLACHER: Well, these are the Commonwealth Procurement Rules, so they combine all—

Dr Johns: No, we take those very seriously and it's all filled out.

Senator GALLACHER: I'm wrapping this up. How were perceptions of a conflict of interest managed?

Dr Johns: It's declared to the executive, really. There is no conflict here.

Senator GALLACHER: No, I'm talking about managing the perceptions of a conflict. I think when you're seeking out a person you know and providing them with taxpayer money, no matter how much it is, the perception of conflict could arise and needs to be managed.

Dr Johns: Perception's very important. It's managed by declaring it. The overriding thing is value for money. I was able to do this quickly and very inexpensively, and, in my judgement, it produced a good-quality document.

Senator GALLACHER: Just to wrap this up, would you be able to provide the committee with a list of all of the direct tenders—I don't know how many there have been—agreed at your discretion for the last two financial years, with the name of supplier and the goods or services provided?

Dr Johns: Sure.

Senator GALLACHER: Sorry, I have one last question about a table you had. I think it's table 4.4, which is a useful table. You list the source of concern in one table and the types of concern in the other. I was wondering if there's a way that you could cross-tabulate so that you could actually see the types of concern and where they're emanating from. It's really a mix of the data that you've got in each table—I'm sure it would still be de-identified—but you could then see where it's coming from.

Dr Johns: We could, because we'll know—

Senator GALLACHER: Who's raising concerns about what, and is there a bit of a picture that flows from that.

Dr Johns: We could do that, yes. We could cross-reference, and it wouldn't identify anyone, because we don't identify any of these people.

Senator GALLACHER: No.

Dr Johns: As for patterns, we've found there isn't much of a pattern.

Senator GALLACHER: Okay. All right.
Dr Johns: That's the truth of it. The thing that stands out for us is where our information is coming from. It's been from the public, but more and more we're generating our own. The nature of things that go wrong is pretty much dominated by that private benefit and—well, we've written it up as criminal or improper purposes. It's mainly that someone's taken some money.

Senator GALLAGHER: Okay. That is done. Thank you very much, Dr Johns.

CHAIR: Really quickly, this is again on the question you took on notice from me. This is to do with Animals Australia and the cash-for-cruelty issue. You wrote publicly to the West Australian, and in the letter, which is published on your website, you state you're aware of the allegations, and 'as is our responsibility, we must review what has been alleged to determine whether or not action can be taken'. And that letter is publicly available. There have been further revelations in the media, and further information has been provided to certain members of parliament, including a statement from one of the deckhands. Are you aware of that statement?

Dr Johns: I am.

CHAIR: And can I ask if you have a copy of that statement?

Dr Johns: Almost certainly, because I can remember reading it. There is little that we don't know of if it has been made public. We're constantly looking at these things. If you have a copy, please furnish me with it, but I can't imagine I don't have it.

CHAIR: I don't, but I do know other members of parliament have.

Dr Johns: It's very familiar. If they want to provide a copy, please do, yes.

CHAIR: Okay, thank you very much. On that basis, I think we can release you. And I didn't formally welcome the minister, Senator Seselja—so, welcome!

Senator Seselja: Thank you.

CHAIR: Dr Johns, you're free to go.

Dr Johns: Thank you.

Inspector-General of Taxation

[17:59]

CHAIR: Ms Payne, I appreciate the copy of the opening statement. In the interests of time, do you mind if we just table it, or could you make it a very short opening statement?

Ms Payne: I'm happy for it to be tabled.

CHAIR: Thank you so much; we very much appreciate it. Do you wish to say anything briefly before we start?

Ms Payne: I'm happy to go straight to questions.

CHAIR: Excellent. Deputy Chair, you have the call.

Senator GALLACHER: These questions are in relation to the ATO's participation in the Centrelink robo-debt program. The first question is: do you have any oversight of the ATO's participation in that program? The data matching has been going on for about 30 years, I think.
Mr Pengilley: Under the act, our jurisdiction would extend to actions of the ATO as well as systems established by them. So to the extent that they were established by the ATO and systems established by the tax laws we would have jurisdiction.

Senator GALLACHER: So you've got jurisdiction. Has there been any request for you to look at the operation of ATO's participation in that?

Mr Pengilley: A request by the ATO or other representations?

Senator GALLACHER: It might have been from one of your customers; I don't know.

Mr McLoughlin: I'll give you some background as to how our functions sit together. We have a complaints function. In relation to complaints, if we see or identify something that may give rise to something of a broader, systemic nature then we would undertake a review or a broader investigation. That can originate from a request by a parliamentary committee, or the minister can direct that we undertake certain reviews, if necessary, in relation to areas of concern. It's always available to any of the parliamentary committees to make a recommendation to our office if they are so concerned about an area of tax administration that they believe we should review it.

Senator GALLACHER: I'll just run through these questions. But it's certainly a prescribed area. We're not speaking more broadly. The key issue is that you have jurisdiction because it is an action of the ATO.

Mr Pengilley: To the extent that they take the action, yes.

Mr McLoughlin: And that it relates to tax administration.

Senator GALLACHER: Has the IGT received complaints in relation to the Centrelink robo-debt program?

Mr Pengilley: To give you a firm answer on that I would have to take that on notice, but it wouldn't be substantial if there were.

Mr McLoughlin: If it's in relation to Centrelink as an agency, Centrelink is not within our jurisdiction. The Tax Practitioners Board and the ATO are the two agencies that we oversee in relation to our ombudsman role.

Senator GALLACHER: So the answer's no?

Mr McLoughlin: Yes.

Senator GALLACHER: You talked about actions of the ATO being within your remit. What about the ATO's increasing use of algorithms to calculate tax debt? I asked that of the tax commissioner or his deputy. You can always follow a person, make a decision and take legal action, but an algorithm is a bit difficult. Is there any automated decision-making by the ATO that's causing a concern?

Mr Pengilley: From time to time there have been issues raised with systems—ATO and automated decisions—where we've conducted a review, and that issue would have been part of the review. In relation to estimation of debt or algorithms of debt, we're certainly aware that there's a potential issue there. In terms of ATO systems, monitoring media, monitoring our complaints and monitoring what people are saying to us feeds into where we should put our resources to examine particular areas in greater depth.
Mr McLoughlin: The ATO certainly has automated processes. Whether the algorithms are going towards a particular concern—is that really what's behind the question, Senator?

Senator GALLACHER: It's a difficult question for you to answer. Clearly there's concern about the way Human Services is using algorithms and data from the ATO and—the Parliamentary Library tells me—the change from them proving the debt to having the recipient prove the debt or otherwise. That is an example in the public domain. Is there any evidence in the ATO's area where we may face a similar circumstance? Their evidence to us was pretty clear.

Mr McLoughlin: In relation to the memorandum of understanding and any of the other legislative provisions that allow the ATO to provide information to another agency, we can certainly look at that as a matter of tax administration. What the agency who receives that information does with it—if they are not the ATO or the TPB we can't review that.

Senator GALLACHER: That's consistent with what the ATO said.

Mr Pengilley: If I could add to that, if I understand the robo-debt arrangement properly, it is about how the provisions for calculating how much someone should have been paid a particular benefit are based on a fortnightly basis. However the data that the ATO sends is sent, I think, on a six-monthly basis. My understanding is that now, with the Single Touch Payroll System that's been recently implemented for most employers, they'll have greater granularity, because that data provided to the ATO is on a payroll-by-payroll basis. You would expect that there would be a time in the future would the ATO would be able to provide that granularity to Human Services, but that is something we haven't reviewed. It is based on publicly available materials.

Senator GALLACHER: So I suppose that, were the ATO to go down a similar path to Human Services, you're there, and a complaint can be raised. You then go and check the integrity of the application of the algorithm or data collection or process and you publish a response. Will you forward the person a response?

Mr Pengilley: If it's in relation to an action. So it's someone who has been aggrieved by the action, it would be private. We treat that as a complaint, and under our legislation it would be private. If we are going to investigate a system and look at how it's operating on a systemic basis then, yes, that report would be made public.

Mr McLoughlin: To give some context around that, just looking at debts in general, where there are tax debts or where there are other amounts that are taken or applied by the ATO we certainly look at those. We do get complaints about things like garnishee notices and about other methods or instruments that the ATO has under their power to do. We are able to and have done reviews in those areas.

Senator GALLACHER: The evidence of the tax commissioner was that there was $45 billion worth of book debt. If there was a move to automate or use algorithms or robodebt-style programs to recover portions of that or all of that, you would oversight that.

Mr McLoughlin: Correct. We would deal with the complaint and, if it was a significant enough issue, as you say at $45 billion, if that was something that emerged as an area of concern directly with the ATO. We would certainly deal with individual taxpayers and look to assist them and, obviously, if it was a significant enough issue, we could commence a broader investigational review, as we call them.
Ms Payne: Can I also add that it is always your prerogative as a member of a parliamentary committee to request that we undertake reviews that you think to be important in terms of the administration of the tax system.

Senator GALLACHER: The broader question is, were there to be some attempt to recover this $45 billion book debt through an algorithm-style, robodebt-style policy, would you have the resources to manage that investigation wise?

Mr Pengilley: It is subject to competing priorities.

Mr McLoughlin: Under the act, we're duty bound to undertake an investigation that the minister so directs and, in relation to other committees, we obviously give the highest level of priority. It's a question of resourcing for us, but we would certainly look to accommodate reviews that were asked for and investigations of a broader or systemic nature by any of the parliamentary committees.

Senator PATRICK: I have a couple of follow up questions from our discussions last week. I have had a bit of a chat to various agencies across a number of different estimates. My question goes to protections in relation to section 39 of your act, as we were talking about. The Ombudsman indicated that he had used section 9 on a number of occasions but had never had the need to offer protection, so there was never retribution. It actually appears that he doesn't have the same strength in his legislation—certainly nothing as clear-cut as yours. I also spoke to the Integrity Commissioner at ACLEI and he suggested that if anyone was in breach of his act he would certainly act, but he indicated that he would refer the matter to the AFP to avoid any conflict. I was wondering if you'd given any consideration to our discussion last week as to how you might view protection under section 39 of your act.

Ms Payne: I have. Section 39 under our act is enlivened by the section 9 notice under the Ombudsman Act. There is also a requirement under our act, in section 38, that if we have sufficient evidence before us to suggest there has been misconduct we should raise that with the Commissioner of Taxation or, if it is the Commissioner of Taxation, with the minister. My understanding of how our act would operate in those circumstances is that, in the first instance, we would raise the concern with the Commissioner of Taxation and if the evidence were sufficient we could also make reference to the Australian Federal Police and provide them with whatever information we had, circumstantial or otherwise, so that they might themselves choose whether to conduct an investigation or not.

Senator PATRICK: And potentially prepare a brief for the ODPP?

Mr Pengilley: If you're asking whether the AFP would prepare that brief—

Senator PATRICK: Yes.

Mr Pengilley: Yes.

Senator PATRICK: So that's clear. You're of the view now that you would go to the commissioner and perhaps procedural fairness would be invoked in that sense and then, if you still felt that the protection needed to be invoked, you would refer to the AFP?

Ms Payne: That's correct.

Senator PATRICK: I don't want to go into the details of the matters we were discussing in great length; I'm just looking at procedural stuff. But there is one point that I want to ask
you to clarify or perhaps on notice to provide further information on. I think everyone agrees that Mr Shamir left the ATO office on the 10 June. There is an email that went from—

Senator GALLAGHER: Can we go in camera for this?

CHAIR: We can't go in camera for estimates.

Senator PATRICK: No. I'm going to get to a date and whether or not you might like to clarify some things perhaps by way of submission to the other inquiry.

Ms Payne: Have you seen our response to the questions on notice lodged today to the other inquiry?

Senator PATRICK: I haven't. The thing that I'm most interested in—

CHAIR: Let's ask the question and then Ms Payne can answer it if she wants to or take it on notice, or she could tell us if she's already answered it.

Senator PATRICK: Sure. There was a clear email from the IGT—this is already in open evidence—to the tax office that said, 'Dear someone, I confirm our discussions,' and it basically went on to say that the section 9 notice had been issued and made some other statements. There's an email that took place on 20 August which is completely redacted, and it appears to be a continuation of that conversation. I'm wondering if you could look at providing that on notice in an unredacted form. If that's difficult, perhaps you could make an additional submission, requesting confidentiality if necessary, to the—

Ms Payne: To the other inquiry?

Senator PATRICK: Yes, to the other inquiry.

Ms Payne: I'm happy to table it for the other inquiry.

Senator PATRICK: Fantastic. Noting that I haven't seen your further submissions, I will now stop and thank you for your time.

CHAIR: Very good timing, Senator Patrick. As there are no further questions for the Inspector-General of Taxation, we will suspend for dinner.

Department of the Treasury

Proceedings suspended from 18:14 to 19:14

CHAIR: We will recommence this hearing of the Economics Legislation Committee. We are currently with the Treasury Markets Group. Welcome all. Welcome to you, Minister Hume, although you were here before the break. We will go straight to questions unless anyone has anything of burning need to say up-front. I hope not. Senator McAllister, you have the call.

Senator McALLISTER: Minister, I understand you held a drop-in session for coalition members and senators to discuss financial services and superannuation last night?

Senator Hume: I did. I'm glad I could extend the invitation to you, albeit unintentional.

Senator McALLISTER: Did any non-coalition members and senators attend?

Senator Hume: Yes—about a dozen.

Senator McALLISTER: Coalition members and senators?

Senator Hume: Yes.

Senator McALLISTER: But no-one from other parties?
Senator Hume: No.

Senator McCARTHY: They were gracious enough to accept that this was an invitation extended in error?

Senator Hume: I like to be consultative!

Senator McALLISTER: Did any departmental officials attend the briefing?

Senator Hume: No. It was an informal discussion.

Senator McCARTHY: Was a briefing prepared by the Treasury for the purpose—

Senator Hume: There was no briefing. It was simply a discussion session—an informal discussion session.

Senator McCARTHY: Your invitation said you intended to be candid and that the discussion would provide an opportunity for broad discussion on issues relating to portfolio. Were coalition MPs such as Tim Wilson and Craig Kelly able to candidly express their views in relation to cutting the superannuation guarantee?

Senator Hume: They didn't attend, Senator.

Senator McCARTHY: It seems a missed opportunity. Has the Treasury prepared any modelling in relation to cutting the superannuation guarantee for low-income workers, as suggested by Senator Bragg?

Mr Verschuer: That's not a question for Markets Group.

Senator McCARTHY: Whom is it a question for?

Mr Verschuer: Fiscal Group.

Senator McCARTHY: All right. Senator Hume, you may consider that this is something that lives somewhere else, but has the Treasury provided you with briefs about the impact of the $450-a-month threshold in superannuation?

Senator Hume: No.

Senator McCARTHY: Has the Treasury provided any of those briefs to Minister Frydenberg?

Senator Hume: I will have to take that on notice.

Senator McCARTHY: Minister, you've spoken about the $450-a-month threshold in the past. Do you still consider that the threshold provides an opportunity for unscrupulous employers to game the system by deliberately employing large numbers of staff for a few hours each?

Senator Hume: Are you referring to an article that I have written before?

Senator McCARTHY: Yes.

Senator Hume: I think I am on the record saying the $450 limit on superannuation per month is an anomaly in the system that has existed since 1992. I'm not entirely sure, though, how that is relevant for the Markets Group of the Treasury portfolio.

Senator McCARTHY: Well, we did discuss retirement incomes earlier, which you are responsible for and you elected not to be here for that part of the discussion, so I thought that, since you're here, it would be good to just ask a few questions. But if you don't think it is
relevant to Markets Group, I understand, and, if you don't want to answer the questions, that's all right.

**CHAIR:** We should try and stick as close as possible to the program and what we're here to discuss, which is Markets Group. I'm happy for the minister to take these questions on notice, but I'm just conscious of time. We are well behind schedule, so it would be good if we could stick to Markets Group in Markets Group.

**Senator McCARTHY:** It is not uncommon for us to be behind schedule. It is committees, Senator Brockman!

**CHAIR:** I know; I live in hope.

**Senator McCARTHY:** Poor Senator Hume had to chair it previously.

**Senator Hume:** I was far more efficient, though!

**Senator McCARTHY:** Well!

**CHAIR:** What will it take, Alex?

**Senator McCARTHY:** I want to ask about the implementation of the royal commission. Of the 54 recommendations that were directed to government, how many have been previously recommended by other public inquiries or reports?

**Mr Verschuer:** I'm going to have to pass that question to James Kelly, the head of the taskforce implementing the recommendations of the royal commission.

**Senator McCARTHY:** Thanks, Mr Kelly.

**Mr Kelly:** I'd have to work through the full 54. I'm not sure you want me to do that here, but a number have been recommended or have come up before. One, for example, relates to reforms to breach reporting in respect of reporting to ASIC breaches, and that was a recommendation coming out of the ASIC Enforcement Review Taskforce that the government accepted in principle at the time. There might—

**Senator McCARTHY:** That was in 2017—the ASIC enforcement taskforce?

**Mr Kelly:** That's right. There were the unfair contract terms and the extension to insurance. I think that came up in the parliamentary inquiry and I think in the review of the Australian consumer law as well. Outside of that, maybe claims handling is another, but I'd have to check whether that was the formal outcome of review. It was certainly something that the government had already committed to. As a general rule, the commission avoided repeating recommendations of other inquiries, but there were and in some cases he, in a sense, leveraged off them. Another example would be the establishment of the compensation scheme of last resort, which is a recommendation of the supplementary report of the Ramsay review, again in 2017.

**Senator McCARTHY:** Were there any recommendations that came out the Murray financial system inquiry that turned up again in the royal commission? To be honest, if you don't have a—

**Mr Kelly:** I don't have a full list. One that Ms Brown has drawn to my attention is that the financial system inquiry had a recommendation regarding a regulatory oversight body for the regulators. At that time, the actual form of the recommendation of the financial system inquiry was not accepted or agreed to by the government, and the royal commission made a
recommendation again for a financial regulatory oversight authority that in some respects differed from the original recommendation from the financial system inquiry. That possibly is the only one.

**Senator McCARTHY:** When did the Treasury commence work on the implementation road map?

**Mr Kelly:** It's hard to give a definitive date, but shortly after the release of the government response, we were beginning to plan internally what would be a plan of implementation for the royal commission recommendations.

**Senator McCARTHY:** Had any work been undertaken prior to 1 February 2019 when the RC reported on implementation arrangements? Had you started to anticipate any of the recommendations?

**Mr Kelly:** We'd certainly given thought to what the recommendations of the royal commission may be—yes.

**Senator McCARTHY:** Had you commenced work on any implementation arrangements at all prior to reporting?

**Mr Kelly:** Other than the sense of considering what may be our advice in respect of those recommendations, if they turned up, not the actual implementation of a reported recommendation.

**Senator McALLISTER:** I see. So this was anticipating what advice to government might be in response to recommendations by commissioner Hayne.

**Mr Kelly:** That's right.

**Senator McALLISTER:** But there were no implementation arrangements beyond that?

**Mr Kelly:** As previously discussed, there were a few that overlap with previous inquiries or things that the government had already indicated its position to do. Think about, say, the claims-handling recommendation. There had work done on that before. A number of the additional commitments the government made related to other aspects of the ASIC Enforcement Review Taskforce. There had been work done in Treasury, including on draft legislation for that as well.

**Senator McALLISTER:** On the enforcement task force recommendations, you had reached the point of having draft legislation?

**Mr Kelly:** It was not finalised draft legislation, but work had been done working through the details of preparing the drafting instructions. But further work was needed post the royal commission.

**Senator McALLISTER:** I'm just having a little bit of trouble hearing you, Mr Kelly. Did you say you were preparing drafting instructions?

**Mr Kelly:** The normal course of policy development for legislation in the Treasury portfolio is that you have the high-level recommendation, you go through the detailed policy work of that with our law design area, it gets turned into drafting instructions and then it is provided to the Office of Parliamentary Counsel. I can't remember exactly where that work had got to on the ASIC Enforcement Review Taskforce recommendations prior to the royal commission report, but it was certainly reasonably advanced.
Senator McALLISTER: Thank you; that's helpful. You'd reached the point of having drafting instructions, if not a piece of legislation to consider.

Mr Kelly: Or work had been done on the drafting instructions. I don't think it had got to the point where it was completely finalised on all aspects.

Senator McALLISTER: Okay. Six months seems a long time between the release of the commissioner's recommendations and report and the release of the implementation road map. Can you explain why it took six months to get that implementation road map finished?

Mr Kelly: The timing of the release of the road map and the implementation plan is a matter for the minister; it's the minister's choice.

Senator McALLISTER: When was it provided to the minister?

Mr Kelly: The question is when we provided advice as to a document that looks like the implementation road map?

Senator McALLISTER: Yes.

Mr Kelly: We would have first provided advice prior to the election.

Senator McALLISTER: Okay. And did the minister provide feedback about that document after the election—well, subsequently, either before or after the election?

Mr Kelly: I'm wary of commenting on what the ministers have provided back to the department or directly given us, but certainly we did further work on the implementation road map following the election, based on discussions with the minister and the minister's office.

Senator McALLISTER: For clarity while we're talking about this: which minister are we talking about? Is it Mr Frydenberg or Ms O'Dwyer?

Mr Kelly: We're talking about the Treasurer.

Senator McALLISTER: So it is Mr Frydenberg. Thank you. So a draft of the implementation road map is provided to Treasurer's office, subsequent work is then undertaken by Treasury and it's released in August?

Mr Kelly: That's essentially right.

Senator McALLISTER: Is the implementation road map still accurate?

Mr Kelly: The implementation road map remains the government's plan, and that's the plan we're working to. There have been developments since. The implementation road map, for example, refers to one of the things to be done by the end of the year being ending the grandfathering of conflicting commissions. That's been done. So in that sense things have already changed a bit. But, in terms of the program going forward, it still remains the program that we're working towards.

Senator McALLISTER: Are there any delays to rolling it out?

Mr Kelly: At this stage, I think we're pretty well on track to meet the commitments in the road map. There are a number of stages of the road map. There is a body of work to be done before the end of this year. Apart from the grandfathering issue, there are another four recommendation to the royal commission to be introduced into parliament by the end of the year. The ASIC Enforcement Review Task Force commitments and exposure drafts—all of those—have been released, and the consultation periods have ended. We're still on track to have that ready for introduction this year. The major part of the recommendations and
additional commitments are to be done or introduced into parliament before mid-2020. Work on all of those has commenced. For some of them, the consultation papers have gone out. For nearly all of them, if there's not a consultation paper that's gone out, a lot of consultations have happened with consumer advocates, industry and other stakeholders, and the drafting instructions and even in some cases the legislation have progressed. So I think we're pretty happy with where we're at. That's not to say that, as you develop, these issues won't turn up.

**Senator McALLISTER:** In terms of the specific matters that were to be dealt with by the end of 2019, you're confident that the implementation road map goals will be met. You will introduce the legislation in relation to those six recommendations and four additional commitments—noting your remarks about the grandfathering provisions?

**Mr Kelly:** Yes. Ultimately, we prepare the legislation, and then it's then the government's decision when and how they introduce it into the parliament. But we're confident we will have the legislation ready for introduction.

**Senator McALLISTER:** Okay. One of the things that the commissioner went to in recommendation 4.1 was the hawking of insurance products. These issues had been identified previously by ASIC in Report 587: the sale of direct life insurance. Did Treasury undertake any work prior to 1 February 2019 on developing policy or legislation to address those issues raised by ASIC in that report in 2018?

**Mr Kelly:** I don't think we can give a definitive answer to that question. We would have to take that on notice.

**Senator McALLISTER:** Were there any barriers that would have prevented Treasury from working on policy or legislation to address those issues raised by ASIC in that report in 2018?

**Ms D Brown:** I think it's just a matter of recall. We were aware of that recommendation. We did include comments on that particular issue in our submissions to the royal commission. So it was definitely an issue we were aware of and had given some consideration to; but, as for whether we had progressed or how far we had progressed down that path, I would need to check to not mislead.

**Mr Kelly:** To add to that: in some ways, one of the barriers would have just been that we were waiting for the recommendations of the royal commission.

**Senator GALLACHER:** Broadly, did you do any work about the ASIC review?

**Mr Kelly:** The ASIC enforcement review?

**Senator GALLACHER:** Did you have a team looking at it?

**Mr Kelly:** The ASIC Enforcement Review Task Force work was essentially led by Treasury. It was a process Treasury led. The government committed to a number of the recommendations up front and then a number of recommendations in principle, subject to the outcomes of the royal commission. The part that was, in a sense, progressed the most quickly and brought to the parliament before the royal commission had actually produced its final report related to strengthening the penalty arrangements for ASIC. I can't remember if that legislation passed before the final report or shortly afterwards, but it was around that time. So that was the area given priority.
Senator McALLISTER: You indicated just then that some of the recommendations in that enforcement report were accepted by government and others were accepted in principle, subject to the commission. What is the status now of those 20 recommendations?

Mr Kelly: The status is essentially that all the recommendations of the ASIC Enforcement Review Taskforce are to be implemented. The one area to caveat is a close reading of the recommendation relating to changes to industry code arrangements and ASIC's role in the approval process and around enforceable code provisions. The royal commission markedly differed from the approach taken in the ASIC Enforcement Review Taskforce. The work done by the task force is, in a sense, informing the policy development, but it's really the royal commission recommendation that's the key recommendation in that respect.

Senator McALLISTER: Right. So, with the exception of that question around changes to industry codes, the balance of the recommendations in the ASIC enforcement review has been accepted by government?

Mr Kelly: That's right.

Senator McALLISTER: Thank you.

Senator BRAGG: I'm just wondering if you can give us a sense of the scale of the reform program, which is coming through the works from the royal commission? Maybe you could compare it to some prior financial services reforms? Could you talk about the size and scope of the reform package and the ambitious plan it sounds like you've got for it?

Mr Kelly: Certainly. One way to think about it is as a simple account of recommendations and commitments from the government. So, there were 54 recommendations directed to government by the royal commission, and the government has accepted doing action on all of them. Some of them are pretty straightforward—three of the recommendations were to do nothing, so that's easy—but there are still 51 recommendations that require thought and largely involve legislation. There are also 18 additional commitments the government made; again, nearly all of those require legislation or a legislative instrument to be brought in. A number of those we have spoken about already, which are the ASIC Enforcement Review Taskforce recommendations, and they're all substantial pieces of work.

One way to get a sense of the scale is that the Treasury legislative program is, I think, the largest of all the departments in the government. We represent, on average, about 25 per cent of the legislative flow. And for the year—the span from the release of the implementation road map, the work on the royal commission, is effectively measured in terms of work rather than count. It measures about 75 per cent of what we would normally commit to the legislative program work, so it's a very large share of the Treasury program. As a point of reference to other reviews, the financial system inquiry, on a count of things to be done, I think it was around 41 or 40 recommendations?

Ms D Brown: You'll recall the FSI, the financial system inquiry, and its recommendations were in 2014. The government response was October 2015. There were 44 recommendations, of which 43 were accepted by government. I think four additional measures were also made by government. We've implemented over half of those, but we've probably still got a good—

Senator BRAGG: This is the FSI?
Ms D Brown: this is the FSI—20, maybe slightly less than 20, to complete. That work is ongoing. That gives you a scale of recommendations—the recommendations accepted in 2016 are still ongoing in 2019.

Senator BRAGG: Just so I understand exactly what you're saying, 25 per cent of the legislation—

Senator Hume: Legislative agenda.

Senator BRAGG: is going to be to deal with this royal commission?

Senator Hume: It is already Treasury portfolio—it almost always is—but about 75 per cent of that will be made up of the banking royal commission reform package. I think it's safe to say, Senator, the Treasurer is on record saying that the royal commission reform package represents the largest and most comprehensive corporate and financial law reform that Australia has seen since the 1990s.

Senator BRAGG: Okay. Senator McAllister addressed this in part, this issue of grandfathered commissions. Could you talk about some of the benefits that consumers may see because of this reform?

Mr Kelly: When you think about the recommendations, in a sense the essential reason for the recommendation from the royal commission relates to the fact that the continued existence of grandfathered commissions still created a potential conflict of interest for financial advisers that, notwithstanding the best interest duty, could lead to inappropriate outcomes for consumers. And since it's being retained in not the best product, the end of grandfathered commissions, in a sense, addresses that potential mischief.

The other thing that will happen—it still has to happen through regulations—is a requirement that with the end of the grandfathered commissions the product manufacturer rebates the commissions they would have otherwise paid to the financial advisers and other parties to the actual customer, either through a kind of direct rebate or through some other means. So, the regulations will ensure that the benefit ends up with the consumers and those who, in a sense, had products that were generating those commissions, rather than being retained by the product manufacturers.

Senator BRAGG: Thank you very much.

Senator GALLACHER: Can I just clarify a point on that legislative agenda? So, 25 per cent of the legislative agenda of the parliament normally comes from Treasury? That's what you said, isn't it?

Mr Kelly: That's my understanding.

Senator GALLACHER: Now with these 42 bills, does that mean you're going get to 35 per cent of the legislative agenda or 45? Or are you going to decrease your normal legislative agenda? The legislation committee want to know what's coming our way.

Mr Kelly: It might be a question better taken by the head of our Law Design Office.

Senator GALLACHER: I presume the 42 arising out of the royal commission are in addition to the 25. Am I wrong?

Mr Writer: Senator, in an average year we're producing about 25 per cent of the bills that parliament considers. We're not really sure what proportion we'll produce this year. We have additional resourcing to deliver this reform agenda and progress other priorities for the
Treasury portfolio. So, we'll have to wait and see what impact that has on the proportion of legislation that Treasury—

Senator GALLACHER: So the worst-case scenario is it's 25 per cent plus the additional work from the royal commission?

Mr Writer: Potentially. It depends on what other portfolios are doing as well.

Senator GALLACHER: All right; thank you.

Senator WHISH-WILSON: What was the percentage last year that Treasury produced? Was it about 28 or 29 per cent? Could you take on notice what it is for the last, say, four or five years?

Mr Writer: We can certainly do that.

Senator WHISH-WILSON: You said an average of 25 per cent, so just what you base that on.

Mr Writer: It certainly sits around 25 per cent, based on the number of bills, but also on the number of pages.

Senator WHISH-WILSON: If it was easy for you, if you could take that on notice just to give me an idea of what the last five years have been, that would be very useful.

Mr Writer: We can take that on notice.

Senator WHISH-WILSON: If it's too hard, let me know and I'll go to the Parliamentary Library and make them do it! Chair, can we ask questions on FIRB and Markets Group here?

CHAIR: Yes.

Senator WHISH-WILSON: I'll just ask one quick one on FIRB. I've asked questions previously on this, and I've written to the Treasurer and to FIRB on a couple of foreign investment matters relating to my home state of Tasmania. You may remember on 23 February 2016 the Treasurer at the time, the current Prime Minister, Scott Morrison, announced the decision to approve the acquisition of the land and assets of Tasmanian Land Company, or TLC, which owned Van Diemen's Land, or VDL, Company. That was bought by a Chinese investor, Moon Lake Investments.

In announcing the approval, the then Treasurer noted the commitment by Moon Lake to create an additional 95 jobs in Tasmania and invest an additional $100 million into its farms to upgrade infrastructure, ecological restoration and other matters and that, therefore, based on that undertaking, that he was 'satisfied Moon Lake's acquisition of TLC was not contrary to the national interest'. I have raised the issue with you previously that no additional investment has been made by Moon Lake since their investment. Now, there have been various levels of reporting on this, on what they have or haven't invested. Reportedly they've invested up to $20 million of that undertaking. My question to you today, Deputy Secretary, or to your staff, is: is it possible for the Treasurer to impose a new condition on Moon Lake, under section 74 of the Foreign Acquisitions and Takeovers Act 1975, which will compel the company to give details on how it intends to meet those undertakings and invest the outstanding amount of the original undertaking, which would be around $75 million, into its operations? And how do we actually make this binding rather than a voluntary commitment?
Mr Verschuer: I will hand over to our head of the Foreign Investment Division, but, as I'm sure you know, we do try to avoid commenting on particular cases and particular screening issues. Let me hand over to our head of the Foreign Investment Division.

Senator WHISH-WILSON: This is not under consideration at the moment, but I would understand if something were under consideration. This has already been approved, but I was asking: is it your understanding that it's legally possible to do that?

Mr Brake: Under the Foreign Acquisitions and Takeovers Act, in section 74(6) of the act, the Treasurer has power to vary what's called a 'no objection notification' by imposing a new or varied condition, in only two circumstances: where the foreign investor agrees to the variation, or where the Treasurer is satisfied that the new condition does not disadvantage the foreign investor.

Senator WHISH-WILSON: That's the legal advice that I got. But, if a company has made an undertaking, and that was the basis upon which the Treasurer made the decision that this was in the national interest, how could it be disadvantaging them to make that commitment? That's a pretty valid question. If you don't know the answer to that, I'm happy for you to take it on notice. Have there been any precedents or any other case studies or examples of where this has occurred previously?

Mr Brake: I'd have to take that on notice. I am not aware of any circumstance where a non-legally-binding commitment under the foreign investment regime was subsequently adopted as a legally binding condition. But let me take it on notice, because obviously the act has been around for a long time.

Senator WHISH-WILSON: If you could. The reason I ask this is that obviously I'd like to see that investment in Tasmania—particularly the north-west of Tasmania needs the jobs—and, as a Green, I'd like to see that money for ecological restoration, especially around the Tasmanian devil, which is what it was designed for. Also, it's a very sensitive issue in my home state, especially Chinese investment of assets. I don't have a problem with foreign investment at all per se, but, when people see these kinds of things, where they see a Treasurer standing up saying, 'I approve this; this is in the national interest because of this investment,' and it doesn't happen, it undermines everyone's confidence in the FIRB laws and the FIRB system, and that's why I bring this to your attention. I'll look forward to continuing that conversation. Could I ask questions on a couple of other quick issues?

CHAIR: Quickly.

Senator WHISH-WILSON: I asked Senator Cormann and Treasury officials about share buybacks this morning. Recently the Treasurer has—the term is 'jawboned'—jawboned businesses publicly, urging them to invest, to increase their investment rather than buy back shares. I don't have the exact words that he's used, but I think that's a fair assessment. We saw a similar debate in the US recently, after the corporate tax cuts—a kind of indirect pressure to get businesses to increase investment, increase employment and increase productivity. Has the Treasury analysed any recent trends in Australia on changes to share buybacks in equities?

Ms D Brown: Not any recent studies. We could probably take that on notice, because the Revenue Group might have looked at it.

Senator WHISH-WILSON: Especially considering we've got record low interest rates, I'm interested in whether that's having a perverse effect, I suppose, on encouraging share
buybacks rather than business investment. I think this morning that was labelled up by the Treasury secretary as probably the No. 1 issue that he would like to see improved in the country—because there's an incentive for companies to shift their capital mix, based on the low interest rate. I was interested in whether you had any views on whether that's a particular issue at the moment.

**Mr Verschuer:** We'll take that on notice.

**Senator WHISH-WILSON:** Take that on notice as well, please. I'll put a couple of other questions in relation to this to you on notice. Also, could you take on notice whether there have been any changes to executive remuneration based on increases in share buybacks in Australia and whether there are any other policy settings encouraging an increase in share buybacks? Lastly—Chair, I'm flying through these. Surely it seems like that!

**CHAIR:** Let's fly further and faster!

**Senator WHISH-WILSON:** We could do 20 minutes on each of these questions. Another topic I've asked about in the past is beneficiary ownership. The government, I understand, is committed to the G20 High-Level Principles on Beneficial Ownership Transparency and has made specific commitments to begin work to implement a government decision on transparency of beneficiary ownership of companies. I want to know exactly what the government's decision is on transparency of beneficial ownership.

**Mr Verschuer:** The government is committed to enabling regulators and law enforcement agencies to tackle illicit activities, such as tax evasion, terrorism financing and money laundering, by giving them access to information on who owns and controls companies, allowing authorities to follow the money and to reveal the natural person that ultimately benefits from a company. As part of Australia's first Open Government National Action Plan 2016-18, the government consulted publicly from 13 February to 13 March 2017 on improving the transparency of beneficial ownership information for all companies, both public and private. The government has consulted on a number of options to improve beneficial ownership transparency, including the establishment of a central register. The government is considering how best to give effect to this commitment while not imposing unnecessary regulation on business.

**Senator WHISH-WILSON:** That sounds exactly like the answer I got last estimates. It's almost word for word exactly the same answer.

**CHAIR:** Certainty in stability.

**Senator WHISH-WILSON:** I reckon if I went and checked *Hansard*, I would be right about that. Assistant Treasurer Kelly O'Dwyer at the time agreed there needed to be a register of beneficial ownership. She was quoted in the media saying that. Can I take it that there's still a commitment to do something on this? Can you give me an idea when there might actually be some policy legislation coming before the parliament?

**Mr Verschuer:** I think that's a matter for government.

**Senator WHISH-WILSON:** Minister, are you still committed to a beneficial ownership register?

**Senator Hume:** I'll have to take that on notice. I haven't discussed it with the Treasurer.

**Senator WHISH-WILSON:** Okay. I'll put my other questions on notice.
Senator McALLISTER: I have quite a bit more to go on market scruple.

Senator BRAGG: I've just got a couple of quick questions on the Payments System Board. It's looking at buy-now pay-later. Is that you, Ms Brown?

Ms D Brown: Yes, the RBA did put their annual report out.

Senator BRAGG: What sort of input will Treasury provide for that review?

Ms D Brown: That's a review that was done by the Payments System Board. It was in their annual report. That's a body whose secretariat services are provided by the RBA. The RBA indicated, I think, in the report that they were thinking of doing a review. It will be something run by the Payments System Board in the RBA.

Senator BRAGG: Would you provide advice to them on that?

Ms D Brown: It might come to the Council of Financial Regulators, where we might have a discussion about it. And there are often conversations between regulators where we might share our thoughts on it.

Senator BRAGG: There's a policy question here about balancing consumer protection against innovation, isn't there?

Ms D Brown: Yes, there's always a balance between wanting to support growth, productivity, innovation with the risk to the consumers, and getting that balance right is always an important policy consideration.

Senator BRAGG: Thanks. That's all.

Senator McALLISTER: Minister, do you have a charter letter?

Senator Hume: I do.

Senator McALLISTER: Who issued that letter to you?

Senator Hume: The Prime Minister.

Senator McALLISTER: Was that issued in July?

Senator Hume: That was issued sometime after July. I can't give you the exact date.

Senator McALLISTER: I'm just curious because the opposition has received a response to an FOI request in relation to your charter letter, and it indicates that no such document exists. Can you imagine why Prime Minister and Cabinet might not have a copy of your charter letter?

Senator Hume: I'm trying to think of the exact origin of the letter. It may have come via the Treasurer's office.

Senator McALLISTER: Is it signed by the Prime Minister?

Senator Hume: I honestly can't remember, to tell you the truth, Senator.

Senator GALLACHER: You can't remember whether it's signed by the Treasurer or the Prime Minister?

Senator Hume: I honestly can't remember.

Senator GALLACHER: I would remember if he signed my letter of instruction.

Senator McALLISTER: Does the Treasury have a copy of the charter letter?

Senator Hume: You have to ask the Treasury.
Senator McALLISTER: Not the Treasurer, the Treasury.
Senator Hume: Yes, you have to ask the Treasury.
Senator McALLISTER: I am asking the Treasury.
Mr Verschuer: Apologies, Senator. Not to my knowledge; I'd have to take it on notice, sorry.
Senator McALLISTER: I see. Minister, would you be willing to table your charter letter?
Senator Hume: I don't know whether that's entirely appropriate, Senator McAllister, but I can take that on notice.
Senator SINODINOS: That would be in confidence.
Senator McALLISTER: Your initial evidence was that you had a charter letter from the Prime Minister. I think your evidence now is that you have a charter letter, and it may be from the Prime Minister or from the Treasurer—is that correct?
Senator Hume: Senator, I have a letter which outlines where my responsibilities start and stop. To be honest, I paid more attention to what was in the letter than exactly where it came from or who signed it. I don't keep a copy in my handbag.
Senator McALLISTER: Senator Hume, I'm asking because the Prime Minister's department doesn't have a record of a charter letter for you?
Senator Hume: You may have to ask the Prime Minister's department about that. I can't enlighten you on that.
Senator McALLISTER: And you'll take on notice the question as to who signed the letter?
Senator Hume: It is, I think, irrelevant who signed the letter.
Senator McALLISTER: With respect, Senator Hume, it's not irrelevant and it doesn't really matter whether it is in it. I'm asking a question—
Senator Hume: I can tell you that it was a confidential letter—Senator Sinodinos is right. It's inappropriate for me to table it, and I can't understand why you would need that—
Senator McALLISTER: You really don't need to understand—
Senator Hume: while you are questioning the Markets Group.
Senator McALLISTER: Senator Hume, it's an estimates process. I'm asking a question of fact, and I think you took it on notice. Is that correct?
Senator Hume: I am happy to take on notice what it is that is appropriate to provide you or not.
Senator McALLISTER: Okay. Senator Hume, it doesn't work like that. You can either take the question on notice or not, and you may subsequently provide a response, which goes to some of those other issues. But I am asking you: who signed your charter letter?
Senator Hume: Honestly—and I'm not trying to be evasive, Senator—
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Senator McALLISTER: But you could just take it on notice, and we could move on. Who signed your charter letter?

CHAIR: No, as Senator Sinodinos pointed out, it could well be a cabinet-in-confidence document—

Senator McALLISTER: At which point—

CHAIR: in which case—

Senator McALLISTER: that would be the response provided to the answer to my question on notice. I ask you the question, 'Who signed your charter letter?' You say, 'I'll take it on notice.' Move on.

Senator Hume: I will take on notice, providing you whether that information is appropriate to provide to you or not, but I can't tell you who signed the charter letter now. And I also can't tell you whether it's appropriate to provide that information now.

Senator McALLISTER: Okay. I'm going to submit—

Senator Hume: It's a very obscure question, Senator.

Senator McALLISTER: It's not an obscure question; it's a very straightforward one with a yes-no answer. I'm going to submit it in writing, because I don't really understand the nature of your response.

Senator Hume: I don't understand the nature of the question.

Senator GALLACHER: Well, it's a pretty straightforward question—

CHAIR: Can I suggest we move on?

Senator GALLACHER: about Minister Payne and others, if they had their charter letters.

Senator Hume: Well, they're ministers and I'm an assistant minister.

CHAIR: Can I suggest we move on? We are behind schedule.

Senator GALLACHER: And they said, 'Yes, it's from the Prime Minister. It's that simple.'

Senator McALLISTER: I wanted to ask some questions about the bank competition inquiry. Who's the official I should direct those questions to?

Ms D Brown: That would be me.

Senator McALLISTER: Thanks, Ms Brown. The Treasurer directed the ACCC to undertake an inquiry into home loan pricing, and I understand that took place on 14 October 2019—that's correct?

Ms D Brown: That's correct, Senator.

Senator McALLISTER: Was there any communication between Treasury and the ACCC about this direction prior to him providing it?

Ms D Brown: Yes, there was. The ACCC was funded in their 2017-18 budget to set up a financial services unit. They got $14.2 million over four years for the purpose of doing inquiries into competition in the financial system. This was an inquiry coming out of that. By having a direction from the minister gives them additional powers to obtain information, and so there were discussions between Treasury and the ACCC over the form of those terms of reference in order then to provide advice to that Treasurer.
Senator McALLISTER: There were media reports about pushbacks from government MPs against the ACCC's push for a deep-dive inquiry into the major banks. Did the government restrict the ACCC in any way in the terms of reference for this inquiry?

Ms D Brown: I think there was a discussion on the terms of reference. They were agreed terms of reference, so I don't think that you could say there was a restriction on the particular ones announced. There were discussions before that around what would be appropriate, but they were an agreed position. That's my understanding, but further questions might need to be directed to the ACCC itself.

Senator McALLISTER: In September, Mr Sims appeared before a House inquiry, I think, and made some remarks in relation to a banking competition inquiry. At that point in time had these discussions about the terms of reference commenced?

Ms D Brown: As I said, the ACCC had been funded in the 2017-18 budget for these types of inquiries so there had been discussions around the types of inquiries the ACCC were going to have as part of that funding.

Senator McALLISTER: I'm asking about this really specifically: there has been a direction to the ACCC to undertake an inquiry into competition in the banking sector. I understand the general capacity issue that you're alluding to, but the specific inquiry that Mr Sims made reference to in September when he made those public remarks were conversations already on foot between the ACCC and Treasury about the terms of reference for the inquiry that has since been directed by the minister.

Ms D Brown: There were discussions on foot about having an inquiry—

Senator McALLISTER: But not the terms of reference?

Ms D Brown: which included discussions about what the inquiry would look into. But the very particular one that was announced was subject then to further discussions after that date.

Senator McALLISTER: I see. As you noted, the PC has previously considered the question of price transparency in its inquiry into Competition in the Australian Financial System. Am I correct in noting that there has been no government response to the last inquiry into Competition in the Australian Financial System?

Ms D Brown: By the last inquiry, I take it that you're referring to the PC report from 29 June 2018?

Senator McALLISTER: Yes, correct.

Ms D Brown: The obligation on government for Productivity Commission reports is to table the report within 25 sitting days. The government did that. It's then a matter for the government as to how they respond or the form of that response. The government have responded to a number of recommendations as part of responding to the royal commission, and there have been other recommendations to which they've already responded as well. There hasn't been a formal response directly to each and every recommendation, but a number of recommendations have been progressed and are being implemented.

Senator McALLISTER: Has Treasury prepared a draft response to the report as a whole?

Ms D Brown: Because of my changing roles over the past 18 months my recollection gets a bit vague, so I might pass that one to Mr Kelly.

Mr Kelly: Yes, there has been draft responses prepared.
Senator McALLISTER: Did you say draft response, or responses?

Mr Kelly: Sorry. A response can often be, 'Here is the formal document,' which is this single thing. But in terms of: at any point in time have we been at a place where we've been able to say, 'In respect of each recommendation out of the PC inquiry would there be a possible government response?' yes. We have had a set of responses to all the recommendations at a particular point in time which the government could have used to form a full response.

Senator McALLISTER: What gap in the Productivity Commission's previous report is this new inquiry by the ACCC intended to address?

Ms D Brown: The ACCC will have additional powers to seek information. Mr Kelly might want to add something here. The PC's report was an overarching review into competition in the financial system. The ACCC Financial Services Unit will be able to do deep dives into very particular points of competition in the financial sector, so this inquiry is looking very particularly at the prices charged for residential mortgages and ways that might be preventing customers from switching lenders in much greater detail and specificity than the Productivity Commission did.

Senator McALLISTER: There was also a previous ACCC inquiry into residential mortgages, which reported on 11 December 2018. What action has the government taken to address the findings from that report?

Mr Kelly: That was an inquiry established following the imposition of the bank levy, and the primary focus of that inquiry was about whether the bank levy had been passed on to customers. From memory, that inquiry found that there was no evidence at that point in time that there had been any pass on of the bank levy to bank customers or to borrowers. There were no actual recommendations out of the inquiry. The inquiry provides the ACCC with a much greater understanding of the mortgage market and, to that extent, it provides an evidence basis by which they'll start the new inquiry.

Senator McALLISTER: It does seem like a lot of inquiries into bank competition. The case for doing another one would be more compelling if there'd been more action on the recommendations from the last ones. Could I get a quick update on the modernising business registers project? There was legislation introduced into the parliament in February 2019. Is that legislation progressing? Is it being reintroduced?

Mr Verschuer: I'll pass to the head of the CCPD, Ms Barron.

Ms Barron: When and whether the legislation will be reintroduced into parliament is a decision of government.

Senator McALLISTER: Does the legislative framework that was introduced in February 2019 remain the government's preferred framework for implementing the modernising business registers project?

Ms Barron: Yes, there has been no change in policy.

Senator McALLISTER: Has the business case for the project been completed?

Ms Barron: Yes, it has.

Senator McALLISTER: Has it been released?

Ms Barron: No, it hasn't.
Senator McALLISTER: Why not?

Ms Barron: As you are aware, I think, from testimony at previous estimates hearings, the government is still considering how best to fully implement the policy. The business case is part of that government ongoing consideration.

Senator McALLISTER: What details can you provide about the cost of the project?

Ms Barron: That's part of ongoing government consideration. I can't provide you with any details of that.

Senator McALLISTER: I see. I do feel like I've been asking questions about this for a long time. Minister, I understand the officials are not in a position to tell us much about it. What is the government trying to do with the modernising business registers project?

Senator Hume: I think I can safely say to you, Senator, that the policy hasn't changed. The government are considering the business case that's before us, and we'll have more to say on it in due course.

Senator McALLISTER: What is the hold up?

Senator Hume: It's a very full legislative agenda. I think we've already discussed that.

Senator McALLISTER: So there are other things on your plate?

Senator Hume: There's a lot going on.

Senator McALLISTER: It's not that it has become too expensive and you don't wish to expend the money?

Senator Hume: The policy hasn't changed.

Senator McALLISTER: Any indication of a timetable for this? It does have real-world consequences. It's a very boring-sounding project, but the reason it's significant is that it goes to phoenicing and combating phoenicing, which is a real economy problem for a lot of normal people.

Senator Hume: Yes. I think I've said the government will have more to say on that in due course.

Senator McALLISTER: Would you say it's a priority?

Senator Hume: I think that I can safely say the government has many priorities, and this is one.

Senator McALLISTER: This is a priority?

Senator Hume: I think I can safely say that we have many priorities.

Senator McALLISTER: And this is one?

Senator Hume: I think that this is one of the many priorities that we have.

Senator McALLISTER: In a similar vein, it has been a very long time since the government first released its exposure draft on the small amount credit contract laws. Minister, can you tell us what's happening on this?

Senator Hume: It's still under consideration by government. We will also have more to say on that in due course.

Senator McALLISTER: Is it a priority?
Senator Hume: The government has many priorities, and that is one of our many priorities.

Senator McALLISTER: Is action on payday lending and small amount credit contracts a priority for government.

Senator Hume: Yes. I think I answered that the government has many priorities, and this is one of them. It's still under consideration.

Senator McALLISTER: It's pretty much exactly two years since the exposure draft legislation was published on the Treasury website. That was 22 October 2017. It's now 23 October 2019. What issues is government trying to resolve here? What is wrong with the exposure draft legislation that means it can't just be progressed? There's broad support across the parliament. You know that our side of politics wants to do something about this. What are the specific problems that need to be resolved before this can be progressed?

Senator Hume: I think that there are a number of issues with this legislation. As you would know, Senator—I think you and I sat on the same committee in the last parliament—there are a number of stakeholders with significant interests and issues with the legislation as it was proposed or the recommendations as they were proposed. It's an issue that's under consideration by this government. This government takes it very seriously and it is a priority issue but there are many priority issues, as you heard from Markets Group today.

Senator McALLISTER: Can I get a quick update on the review of the design and operation of the financial institutions supervisory levy?

Ms D Brown: Yes, there was consultation on that. Submissions were received. That's currently under consideration. We're preparing advice for the Treasurer on that.

Senator McALLISTER: So the timetable is under consideration by the Treasurer, or the advice on the levy methodology is under consideration?

Ms D Brown: The latter.

Senator McALLISTER: Is there a timetable to implement any changes to the methodology?

Ms D Brown: As you've heard before this evening, the time of introduction of legislation is always a matter for government. That methodology does look at removing some of the maximum caps that can be applied to the larger institutions. It would be good to have that done before the next year, by 30 June next year, so that that restriction doesn't apply again as it did this year.

Senator McALLISTER: Treasury's position is that there are no remedies for the anomalies that emerged when the levy was last applied, but you're intending to fix those anomalies by the time the levy is next applied?

Ms D Brown: Yes. In the APRA levy collection there's a system of unders and overs. There was an undercollection this year that will remedy for the caps that are upgraded this year. That will be fixed by an overcollection next year, provided that the statutory caps have been amended by legislation.

Senator McALLISTER: I see. So, specifically for those in the customer owned banking sector who feel that they bore an unreasonable proportion of the burden in the levy collection
process this last time around, this is a problem you are seeking to fix by the next time we get to levy collection?

**Ms D Brown:** That's right.

**Senator McALLISTER:** Minister Hume, any sense about the timetable on that one?

**Senator Hume:** I don't think I can enlighten you any further.

**Senator McALLISTER:** But it's a priority for government?

**Senator Hume:** This government has many priorities. That would be one of them.

**Senator GALLACHER:** Presumably your priorities are in your charter letter that we can't see.

**Senator Hume:** No, you can't.

**Senator GALLACHER:** And neither can the Australian public.

**Senator Hume:** No.

**Senator McALLISTER:** When the PMO sent the note to journalists about the government's priorities on 14 October 2019, top of the morning note was a sort of idea that the government's priorities are to reduce the cost of doing business, energy deregulation, finance and getting paid on time. That's a priority for government, too, I understand: business getting paid on time. What is Treasury doing to ensure businesses are getting paid on time across the economy? Any work on that?

**Ms Barron:** In terms of government payment to business, that's a responsibility of the Department of Finance.

**Senator McALLISTER:** Is that correct, Minister Hume, that in the talking points for government MPs, when it says 'getting paid on time', that's just about government paying businesses on time, or is it about on time payments more broadly across the economy?

**Senator Hume:** I think the talking points that you are referring to were referring to government paying their contractors and businesses on time.

**Senator McALLISTER:** Is there any action being taken under the Corporations Act to ensure that big business are paying their suppliers on-time?

**Ms Barron:** There is nothing under the Corporations Act but there is a policy that's the responsibility of the Department of Industry, Innovation and Science.

**Senator McALLISTER:** I see. We can ask them about it tomorrow. That is all I have for Markets Group, Chair.

**CHAIR:** Then I think we can move on. Thank you very much for your contribution this evening. You go with our thanks. We are formally releasing Treasury Markets Group and the Foreign Investment Review Board.

**Financial Adviser Standards and Ethics Authority**

[20:18]

**CHAIR:** Welcome. We'll get straight into it. I'm conscious that this is the first time FASEA has appeared before the committee. I suspect you've probably got an opening statement, Mr Glenfield?

**Mr Glenfield:** I do. A short one.
CHAIR: Can we try to keep it as narrow as we can? We are obviously a bit short of time this evening. Please go ahead.

Mr Glenfield: Thank you, Chair. By way of opening comment, because it is FASEA's first visit to Senate estimates, I thought it opportune to reflect on FASEA's role and highlight the progress that we've made to date in a fairly short period of time before we have discussions.

In April 2017, the Corporations Amendment (Professional Standards of Financial Advisers) Act 2017 set the education, training and ethical standards of licensed financial advisers in Australia. The magnitude of implementing industry-wide higher education, training and ethical requirements, we believe, requires a universal effort to meet a demanding set of challenges. Just as the advice industry has made or is making the necessary adjustments to legislative change, FASEA's efforts are targeted at bringing the legislative requirements to life. Over the next five years, we expect the combined effort to deliver significant benefits and build important signposts to consumers that the industry has been on a journey towards becoming a trusted profession. Equally importantly, consumers of financial advice are set to gain fresh perspective and clarity on the important role of financial advice in their lives.

By its statutory nature, FASEA's work is clearly laid out. The design and subsequent obligations of the Corporations Amendment (Professional Standards of Financial Advisers) Act 2017 are quite clear. The amendment makes changes to the Corporations Act to raise the education, training and ethical standards of financial advisers by requiring relevant providers to hold a degree or higher or equivalent qualification, to pass an exam, to undertake a professional year, to undertake continuous professional development and to comply with a code of ethics. Transitional arrangements exist for existing advisers and are reflected in the work of FASEA. FASEA's task is to bring to life that professional standards framework of the legislation. This means our role is to approve bachelor or higher degrees or equivalent qualifications; to approve an exam; to set requirements for continuing work and training, or the professional year, as you would better know it; to specify a word or expression to refer to a provision or relevant provider; to make a code of ethics; and to respond to applications for foreign qualifications. To date, FASEA has worked hard to develop and release a standards framework that we consider is balanced, workable and which draws upon a process of wide consultation. With those standards now legislated and released, FASEA continues working hard with industry stakeholders to deliver on those higher education and ethical standards. In doing so, we are keenly conscious of the need to recognise the qualifications and study already undertaken by existing advisers and to sit exams that we consider are fair to all advisers.

In assessing the long-term impact of the reforms, it is important to consider what this will look like after it beds down. After the implementation of the FASEA reforms, consumers will be able to approach an adviser in the knowledge that that adviser has achieved a minimum education level to enter or stay in the profession. If it is a new adviser, they will know they will have completed a professional year under the guidance of an experienced practitioner. Consumers will understand their prospective adviser has passed an industry-wide examination verifying that adviser's ability to apply their knowledge of relevant law, ethics and understanding of client needs to real-life scenarios. They will also be aware that the adviser is regularly refreshing their technical, regulatory, client care, professional and ethical knowledge
through their commitment to continuing professional development. Consumers will recognise they are dealing with an adviser with a high standard of technical and practical knowledge, bound by a legislated code of ethics comprising principles and core values which commit the adviser to a high standard of consumer service by addressing values of competence, diligence, fairness, trust and honesty, and that ensures that the adviser provides appropriate, informed advice in the consumer's best interests. All of this we consider will increase consumer confidence that their adviser is providing them with a professional service, fulfilling their expectations in the same way they would be able to expect to receive from professional counsel from their lawyer, accountant or doctor.

CHAIR: Thank you, Mr Glenfield.

Senator GALLACHER: Mr Glenfield, just to look at some of the logistics in this sector, how many people are in the sector? Is it 200,000 people?

Mr Glenfield: In terms of the relevant providers that we are setting our legislation around, it's around about 25,000.

Senator GALLACHER: Is there a community up to 200,000 in the financial advisory sector? I mean, I have had representation on this, and they say this affects businesses which employ about 200,000 people.

Mr Glenfield: I don't have those numbers.

Senator GALLACHER: Anyway, there are 25,000 registered financial planners, and they may employ people.

Mr Glenfield: That is correct.

Senator GALLACHER: So your timetable in upskilling of this sector has been delayed by another 12 months; is that correct?

Mr Glenfield: There are proposals to change the requirement for existing advisers to comply with the exam and with their educational requirement, but they're not yet legislated.

Senator GALLACHER: Has that been driven by an examination of the logistics?

Mr Glenfield: That was a decision by government.

Senator GALLACHER: So the government's made the decision, and you just go along with it. Given that some of the participants in this sector have been about for 170 years, are you actually saying that there is a lack of due diligence, honesty and truthfulness in the sector?

Mr Glenfield: From a FASEA viewpoint, we are charged with discharging the legislation. The legislation came about due to a number of reviews and the royal commission and other inquiries. Our role within it is really setting the standards.

Senator GALLACHER: You're going to set a standard, and you finished off that assessment of those standards as akin to doctors and lawyers and the like. I think the problem is people don't pay for financial advice in the way that you pay for a medical specialist or a doctor or a lawyer?

Mr Glenfield: It's putting it in terms of moving towards a profession acting to serve the interests of those that they are advising, in a similar way that you expect other professions to serve the people that they are dealing with.
Senator WHISH-WILSON: I think other professions would like to be paid the way financial advisers get paid, Senator Gallacher—previously speaking.

Senator GALLACHER: A $3,000 plus up-front fee for a financial plan: have you got any indication of how much that is prevalent in the sector at the moment?

Mr Glenfield: No, I don't. FASEA's role, as I said, is dealing with writing the standards.

Senator GALLACHER: How many staff do you have to carry out the task that you're on?

Mr Glenfield: We have 10 staff.

Senator GALLACHER: What are the logistics of 10 staff versus 25,000 financial planners? Do you devise a curriculum and put it online? How does it actually work?

Mr Glenfield: No. It depends on what we're looking at. In terms of the exam, we have the responsibility for design and implementation of the exam. We use a provider to assist with that, but we set exams for advisers that are currently running quarterly and will run bimonthly next year. We have a role in approving higher education providers' degrees as being bachelor or higher level or equivalent to meet the education standard. We have the role to approve foreign qualifications for those advisers who got their degree, or higher, overseas and to assess the equivalence of that against Australian degrees. And, on top of that, we set the standards for CPD PY.

Senator GALLACHER: Is it true that the final version of the legislative professional standard was released only days before professionals in that industry are required to comply?

Mr Glenfield: To which standard are you referring?

Senator GALLACHER: The legislative professional standard?

Mr Glenfield: There are about seven standards.

Senator GALLACHER: All seven or one of them?

Mr Glenfield: The standards were consulted on twice throughout 2018 and then registered at varying time frames towards the end of 2018, into 2019. In terms of time frames for compliance, the major compliance was the Code of Ethics for 1 January 2020. The code was registered in February 2019.

Senator GALLACHER: Notwithstanding the good work that you have embarked upon, are you aware that there are sectors of the industry who make representations in this parliament that there is extreme angst amongst financial planners about their future viability and, in fact, their current mental health? Does that get fed back into your department?

Mr Glenfield: I am aware of those, but, again, for FASEA, our role is setting those standards. We aren't the supervisor.

Senator GALLACHER: Is there a suggestion that there will be a delay in these standards being enacted?

Mr Glenfield: No, the standards are all in place today.

Senator GALLACHER: Do you think the original time period of five years is sufficient to meet the FASEA educational standards?

Mr Glenfield: For existing advisers with that time frame, the maximum education an existing adviser needs to do is a graduate diploma, which is eight subjects. Generally, on a
part-time basis, that can be done over two years, but I am aware of a stakeholder view that it is a tight time frame, and I've been aware of that since I joined FASEA. I think that's probably reflected in some of the discussion that's going on today around the time frame.

**Senator GALLACHER:** Is it possible that there might be consumer detriment in the period to 2026 because we won't have enough qualified financial advisers?

**Mr Glenfield:** From the evidence we're getting to date, the first major step for the advisers is completion of the exam, which currently has a deadline for the end of next year, but they're considering a further year. To date, we've had over 5,000 advisers either sit or register for the exam. So over 20 per cent of the industry have already put their hands up to carry on. So, to that extent, advisers are, in my view, pushing forward.

**Senator WHISH-WILSON:** They've been pushing for it for a long time, just quietly.

**Senator GALLACHER:** What are they doing?

**Mr Glenfield:** I said they're pushing forward to do the exam, and to—

**Senator GALLACHER:** Five thousand out of the 25,000 are—

**Mr Glenfield:** Yes, over the first period. The June exam remains open, so I expect that number will rise somewhat more. And we're offering the exam six times next year to take people through.

**Senator GALLACHER:** So when you get to, say, 10,000, would that be enough to make sure there's no consumer detriment—that people just couldn't get advice?

**Mr Glenfield:** Again, that's outside of my ambit.

**Senator Hume:** Senator, we would assume that the vast majority of financial advisers, of that 25,000, would sit that exam within the time frame. But we realised that it was tight, which is why the government has announced a policy to extend the time by which advisers can sit the exam by one year.

**Senator GALLACHER:** Was there any consideration of compassionate grounds, illness, or missing a deadline in respect to the two years, or is it just, 'Do it and get a licence, or you don't'?

**Mr Glenfield:** The way the legislation is written, you must pass the exam within the time frame.

**Senator GALLACHER:** No compassionate reason or anything would get you over—

**Mr Glenfield:** You are able to come back again through the new entrant to do it, but FASEA doesn't have a power under the legislation to grant such exemption.

**Senator GALLACHER:** What does the code monitoring position mean? The government has recently announced that it will not implement the requirement that financial advisers participate in a compliance scheme that monitors their compliance with the FASEA Code of Ethics. What does all that mean?

**Mr Glenfield:** The legislation as it's written had FASEA promulgating a code of ethics that takes effect from 1 January next year, with a view that that would be monitored by code-monitoring bodies going forward. The government announced recently that they were looking to look at that in the context of the single disciplinary body. What that means, from 1 January 2020, is that the code remains law and advisers must comply with it, and licensees will have a
responsibility to oversight their advisers' compliance. And you would expect, I think, that the 
disciplinary body would have some role going forward, but that remains unclear.

**Senator GALLACHER:** Is it true that the guidelines for the FASEA Code of Ethics were 
only issued on 18 October 2019?

**Mr Glenfield:** We released a practical guide for how to interpret them on that date. We 
previously released—with the Code of Ethics itself, when it was released in February 2019—
an explanatory statement, which also included guidance and case studies on how to interpret. 
There was a desire from stakeholders to have further guidance, which we have released a 
version of on the date you said.

**Senator GALLACHER:** So I presume this FASEA Code of Ethics covers disclosure and 
acting in the best interests of the client. Is there anything—

**Mr Glenfield:** It contains five values and 12 standards.

**Senator GALLACHER:** What are the five values?

**Mr Glenfield:** The values are, off the top of my head, trustworthiness, diligence—and I 
will quote properly. Sorry, I just didn't want to quote wrongly. The five values, as I said, are 
trustworthiness, competence, honesty, fairness and diligence. So the—

**Senator GALLACHER:** I would imagine they would have been apparent in most 
financial advisers for a very long time. Is this a new code of ethics?

**Mr Glenfield:** It's a code of ethics for advisers going forward.

**Senator GALLACHER:** Is it reasonable to expect financial advisers to be in the 
compliance scheme from 1 January 2020, given the delay in publishing the guideline and 
Code of Ethics? Are you worried about that?

**Mr Glenfield:** No, the guidelines are there to help interpretation. The actual Code of 
Ethics itself, I think, stands up well on its own with its interpretation of what those values are 
and the standards to be there. It's a guide to ethical conduct of advisers.

**Senator GALLACHER:** So you don't think it's an unreasonable timetable that you've set, 
or is it—

**Mr Glenfield:** I don't consider—

**Senator GALLACHER:** contested by the industry that it's unreasonable?

**Mr Glenfield:** I don't consider it is, for ethical behaviour. And it's been consulted on, as I 
said, throughout 2018 twice. It's been well known what's in there since it was promulgated.

**Senator GALLACHER:** Do you expect there to be a dramatic improvement, given the 
decision to introduce this Code of Ethics, or do you think it's just going be business as usual 
with those who've moved early to get into the scheme?

**Mr Glenfield:** No, I think, if you look at the totality, as I said in the opening statement, of 
what FASEA is seeking to implement through the legislation, which is a lifting of standards, 
that's what the aim of the legislation is.

**Senator GALLACHER:** So, the standards you're seeking to lift, notwithstanding the 
media out at the royal commission, are you saying that the financial advisory sector was 
bereft of standards?

**Senator WHISH-WILSON:** Yes.
Senator GALLACHER: You may well say that, Senator Whish-Wilson—
Senator WHISH-WILSON: You weren't on any of the inquiries—
Senator GALLACHER: but there are plenty of people in the financial advisory sector—
CHAIR: Order! Mr Glenfield.
Mr Glenfield: Again, I come back to FASEA's role is to implement legislation that it's been given.
Senator GALLACHER: So you haven't gone and made an assessment of the need for it. You just undertake a task given to you?
Mr Glenfield: Correct.
Senator GALLACHER: Fine. Thank you.
CHAIR: Senator Whish-Wilson, you had a question?
Senator WHISH-WILSON: Yes. Are there groups out there that support an exam and the industry becoming more professional?
Mr Glenfield: There are, yes.
Senator WHISH-WILSON: My understanding is that there have been discussions for nearly 10 years now about a national exam. ASIC's been consulting on this for a number of years. There have been people knocking on our doors recently, trying to slow things up. In terms of the actual exam itself, what did you model the exam on? Did you use any international examples?
Mr Glenfield: In setting the exam, it's been based on three practical areas that you would expect an adviser to know. Those three areas are around their legal and regulatory obligations, around ethical behaviour and how you apply ethical behaviour, and around understanding your client, which are three things that we consider that a well-performing adviser would know well and be able to execute.
Senator WHISH-WILSON: How long is the exam?
Mr Glenfield: The exam is 3½ hours.
Senator WHISH-WILSON: I did my Series 7 and Series 63 in the US nearly 10 years ago. They were six-hour exams. Most people failed them two or three times before they passed. The US has had a series of exams to provide financial planners in the industry that level of professionalism for a number of years. Why has it taken so long to get a national exam in Australia for this industry, considering that some of our overseas counterparts, who we trade with regularly, have had these kinds of exams in place now for decades?
Mr Glenfield: Again, I'm not in a position to comment. That's—
Senator WHISH-WILSON: Could it be lobby groups that are still lobbying our offices right now to slow these things down?
CHAIR: I think you know that the official can't answer that.
Senator WHISH-WILSON: Okay. Could I just ask, though: in terms of your resources for the exam, have you worked with other agencies, such as the Securities Institute of Australia and other groups, to pull these things together?
Mr Glenfield: We have used an exam provider who does a number of similar exams around the country, and is very experienced in what they do.

Senator WHISH-WILSON: Okay.

CHAIR: Senator Stoker.

Senator STOKER: Good evening. The explanatory memorandum for the Corporations Amendment (Professional Standards of Financial Advisers) Bill shows that that bill contemplated that FASEA would ‘take into account diploma or degree courses, licensee training courses, or CPD’. That's a direct quote from the EM. However, FASEA hasn't taken into account diploma courses, licensee courses or CPD in the way that it has approached its task in recent times. Why not?

Mr Glenfield: I don't consider that's correct. In setting the education standards, we look at the Corporations Act requirement, which is that an adviser must reach a bachelor level or higher or equivalent. What we've said for existing advisers, in recognition of their time in the industry, is, 'Rather than doing a 24-course bachelor degree, a recognition of the work you've done is that the most you will need to do is a graduate diploma, which is eight courses.' We have then done a series of work around accreditation of pre-existing degrees that advisers have done. That's looking back over time to degrees that are applicable to the advice sector. We've sought to benchmark them against our curriculum and approve them. We've approved, all up, around 130-odd degrees to date. If you're an adviser who's done one of those approved degrees, you're only going to do a code of ethics course.

For those who don't have that, we wrote to each of the industry associations to ask what courses they run for their advisers and to benchmark those courses at bachelor level or higher. To the extent that an adviser has done one of those that passes that bachelor level or higher, they get recognition of prior. If you look at things like the FPA courses and the AFA courses, there are two credits of RPL given into the graduate diploma, so, instead of doing eight, you get two credits before you go in. We've also done reviews of advanced diplomas in the advice space and given credit. We've done reviews of old Securities Institute courses that a lot of the stockbroking department have done and given credit for that. We've recognised their continuing professional development where you can benchmark it at bachelor level or higher.

Senator STOKER: The EM discussed experience in the industry and stated that FASEA could take into account the fact that an adviser who has been in the industry for a longer period of time has completed more CPD courses in giving them recognition of prior learning. However, FASEA hasn't taken into account, as far as I can tell—correct me if I'm wrong—the number of CPD courses that have been completed by an adviser and is not recognising CPD courses as distinct from formal diplomas or degrees that have been completed by advisers when deciding how many units of a formal degree or diploma they need to complete in order to keep practising into the future. Why not?

Mr Glenfield: Again, to the extent that we have committed to do a graduate diploma, that's a move from a 24 course to an eight course, which is recognition of work they've done in the industry to get there. Again, the legislation itself talks about bachelor level or higher. The great difficulty with CPD is that it varies and there's no record for us of what's been done at bachelor level or higher. What we've said is, where we can demonstrate it, we will
recognise it—and we continue to do so—as meeting the requirement of the legislation as to the standard of that education.

Senator STOKER: How many CPD courses have you accepted as reaching that standard?

Mr Glenfield: As I said, what we've looked at to date is study for getting an industry designation or an association designation that would form part of your CPD—so, having joined the industry, you continue your professional development through doing this additional study. To the extent that people have applied to us at bachelor level and above, we have reviewed and approved where appropriate.

Senator STOKER: I don't think that answered my question. How many of those industry run CPD courses have you ticked off as counting towards these accreditations?

Mr Glenfield: I won't quote an exact number, but it is around the eight mark.

CHAIR: It is open to you to take it on notice.

Mr Glenfield: Actually I will take that on notice, to give you the proper number.

Senator STOKER: In particular, I'm interested in knowing how many of those are backward looking so that they are meaningfully giving recognition for prior CPD. If you could break it down into how many are recent and how many are backward looking, that would be something I would find useful.

Mr Glenfield: We can take it on notice, but I will confirm that most of them are backward looking, because these are for existing advisers who have already done the study.

Senator STOKER: Good. Does FASEA acknowledge the risk of losing an awful lot of experienced financial advisers for whom doing a full eight-subject graduate diploma late in their careers is just too much, too expensive and, quite frankly, too disrespectful to the role they play in the culture of the profession?

Senator WHISH-WILSON: They're the same questions as Labor. I wonder where they came from!

Senator STOKER: Could you answer the question, please?

Mr Glenfield: Again—

Senator WHISH-WILSON: It's a blatant coincidence!

Mr Glenfield: FASEA's role is implementing legislation that came from parliament. We don't—

Senator STOKER: That doesn't answer the question. Do you recognise that the impact is to push experienced financial advisers out of the profession?

Mr Glenfield: I don't have evidence that that is or isn't the case.

Senator STOKER: The number of advisers on the Financial Advisers Register has decreased from nearly 29,000 at the start of this year to around 25,500 as at the beginning of October. I would suggest this is a significant drop that we can expect to see continue to decline over the next year or so as an unreasonable approach to valuing CPD and industry experience kicks in. Tell me, is it not the case that the profession is losing around 6.4 per cent of financial advisers a quarter?

Mr Glenfield: I don't have those figures—
Senator STOKER: Take it on notice, perhaps?

Mr Glenfield: I'll take that on notice.

Senator STOKER: How many new advisers have joined the profession this year?

Mr Glenfield: Again, I don't have those figures. I'd have to take that on notice.

Senator STOKER: All right. How many new advisers sat the June 2019 exam?

Ms Constantinidis: None. No advisers.

Senator STOKER: That's correct. Zero new advisers sat the exam. I think that tells us something about what this is doing to the profession. Not only—

Senator WHISH-WILSON: The standards were too low in the first place.

Senator STOKER: This isn't your opportunity—

CHAIR: Senator Whish-Wilson, order!

Senator WHISH-WILSON: No, I'm allowed to interject from time to time.

CHAIR: No, you're not. That's disorderly.

Senator WHISH-WILSON: It's not disorderly.

Senator STOKER: The approach that has being taken by FASEA is squeezing the grey hair, for want of a better term—the people who can provide experienced, well-considered, context-driven advice to those who are young and coming through the profession—and it seems zero new ones are joining.

CHAIR: Senator Stoker, please try to stick to questions rather than commentary.

Senator STOKER: Okay, I think that's fair. No problems. Perhaps I can give you some case studies by way of example. You said that there's no prejudice to older members of the profession by the requirements FASEA's imposing. I'll give you the example of three advisers, each of which have more than 30 years of experience in the profession, who have been leading it, teaching others, mentoring others as they come through to be wise and fair and working in the interests of customers. Paul Franklin is 72 and he wants to continue to practice for another eight years. He's been told he needs to do a full eight-unit diploma to continue. James Forde is 64. He would be required to do the full eight-subject graduate diploma. And Wayne Leggett is 64, has a bachelor's degree and an eight-subject diploma of financial planning and would need to do five subjects. All have over 30 years experience in the profession. Can I suggest that the approach that is being adopted by FASEA is not sufficiently recognising the service, experience and prior learning of people who are at the upper end of the profession?

Mr Glenfield: I would only respond that the legislation requires, as part of the lifting of the standards that it was aiming to achieve, that advisers reach a bachelor or higher level of education.

Senator STOKER: Except that FASEA has declined to meaningfully value much of the way that this profession learned, practised that learning, developed that learning, for all time until recently—

Senator WHISH-WILSON: They're trying to change a culture; that's the whole point. They're trying to change the culture—
Senator STOKER: You'll have your opportunity later.

Senator WHISH-WILSON: in an industry that's been malfunctioning for some time. That's the point.

CHAIR: Order! Can we please get back to questions?

Senator STOKER: On 11 February, as you know, FASEA released the financial adviser Code of Ethics, a week after the release of the royal commission final report. In November 2018, FASEA consulted on a draft Standard 3 that provided: 'You must not advise, refer or act in any other manner if you would deprive an appropriate personal reason for doing so.' That's perfectly reasonable. I don't dispute it, of course. But the final version, which was not consulted on, included a different Standard 3 which said:

You must not advise, refer or act in any other manner where you have a conflict of interest or duty.

Mr Glenfield: Yes.

Senator STOKER: The revised guidance, released on 18 October, clarified this again to make it clear that an adviser can refer, where they may be conflicted, to an unconflicted adviser. The reference to conflicts in the context of referrals refers to payments for giving or receiving a referral, which is a significant departure, I'd suggest, from the second version. Was FASEA influenced by the royal commissioner's views on conflicted remuneration in this process?

Mr Glenfield: No.

Senator STOKER: Did FASEA consult with ASIC on standard 3 and, if so, what did they say?

Mr Glenfield: No. FASEA conducted a broad consultation on the code of ethics and received large numbers of consultation around standard 3, many of which were requesting a better clarity of the words for what was intended by standard 3, and FASEA settled on the wording as it appears in the standard now.

Senator STOKER: Can you see that the second version is completely impractical?

Mr Glenfield: It's not. We don't believe it is.

Senator STOKER: Commissions on life insurance financial advice are the internationally usual payment mechanism, and not even Commissioner Hayne made a blanket recommendation to ban life insurance commissions. But commissions of any form are generally accepted as a form of conflict of interest. The Corporations Act requires the approach to be the management of conflicts of interest and good disclosure, for instance, rather than their complete avoidance, because, let's face it, conflicts of interest exist in all parts of life—

Senator WHISH-WILSON: Have you got a question?

Senator STOKER: Yes, I do.

Senator WHISH-WILSON: Why don't you get to it, then?

CHAIR: Order.

Senator WHISH-WILSON: And stop giving us a lecture on what we've been going through for the last 10 years.

CHAIR: Senator Whish-Wilson, order!
Senator STOKER: Under the new guidance—

Senator Gallacher interjecting—

Senator WHISH-WILSON: Beg your pardon? Why don't you guys share notes?

CHAIR: Order! Let's try and get through this as quickly as we can.

Senator STOKER: You'll have your chance. Under the new guidance from 18 October, example 5 on pages 15 and 16 refers to a conflict arising from commissions from insurance products. Is this intended to be a blanket ban on an adviser acting where they receive commissions for life insurance products?

Mr Glenfield: No. If you read the preamble to standard 3, it makes it clear that FASEA is not banning any particular form of remuneration but that the remuneration must meet the provisions of the code, which would include being in the best interests of the client, representing fair value under standard 7, and in accordance with the other provisions of the code. There is no blanket ban on any particular form of remuneration.

Senator STOKER: And how do you understand the receipt of a commission by an adviser to be something in the interests of a client?

Mr Glenfield: The code applies between the adviser and the client. If you look at standard 7, in terms of your fees and costs, it's important to demonstrate that those fees and costs are fair to the client, they're reasonable for the service that is being provided—

Senator STOKER: I understand the 'fair and reasonable' part.

Mr Glenfield: So, in terms of setting your commission, does that commission fairly represent the cost of providing the service, and is the service you're providing and the advice you're giving in the best interest of the client?

Senator STOKER: So the advice needs to be in the best interest of the client—

Mr Glenfield: It needs—

Senator STOKER: but the fee just needs to be fair and reasonable?

Mr Glenfield: The code of ethics is read in totality. So you need to meet each of the provisions of the code in dealing with your client.

Senator STOKER: On what day of the week would the provision of advice that is in the best interests of the client, for a fair and reasonable sum, but that ultimately resulted in money going into the pocket of an adviser in the form of payment of a commission ever be something in the interests of the client?

Mr Glenfield: In looking at the service that you're providing, there is nothing in the code that says that you shouldn't be paid for a service that you provide, but that service that you're providing, that you're being paid for, should be fair. Now, if you've—

Senator STOKER: But that's a different test. You said three things. You said, first, 'in the interests of the client', then you said 'fair' and then you said 'reasonable'. I tick off, I accept and I agree with you entirely on 'fair' and 'reasonable'. I'm trying to understand what different thing you mean by 'in the interests of the client'?

Mr Glenfield: It's talking about the advice itself being in the interest of the client for whatever product you're recommending—

Senator STOKER: The advice has to be in the interest of the client?
Mr Glenfield: Correct.

Senator STOKER: But, in terms of the payment of the commission being in the interest of the client, are you saying the payment of the commission has to be in the interest of the client?

Mr Glenfield: What I'm saying is that the code highlights in the preamble to section 3 that if there's anything in that payment that you would reasonably say is inducing you to act in a manner that's not in the interests of the client then you have a conflict and you shouldn't act. If that commission is in a fashion that is inducing you to do something—sell a product—that is not in the interests of the client then you have a conflict and you shouldn't act.

Senator STOKER: Well, it strikes me that there is very little intellectual separation or clarity on what you mean by any of those things—

CHAIR: Senator Stoker, we really need to keep to questions.

Senator STOKER: You said FASEA's conducted a number of consultations. Was one of them with ASIC?

Mr Glenfield: ASIC made submissions on all of our standards we put out for consultation.

Senator STOKER: So that's a yes?

Mr Glenfield: Yes.

Senator STOKER: What did they say?

Mr Glenfield: I don't recall off the top of my head.

Senator STOKER: You'll take it on notice?

Mr Glenfield: I'll take it on notice.

Senator STOKER: The reason I ask is that I couldn't find that submission in any publicly available place. Am I wrong about that? Are they publicly available?

Mr Glenfield: I'll take it on notice and check.

Senator STOKER: Perhaps you can take this question—assuming I'm right, because I think I am—

Senator WHISH-WILSON: Of course you are.

Senator STOKER: If I'm wrong, they'll correct me.

CHAIR: Senator Whish-Wilson, you're not assisting.

Senator STOKER: Why hasn't FASEA released any of the submissions they received throughout their consultation exercises?

Mr Glenfield: I will take that on notice.

Senator STOKER: Thank you very much.

CHAIR: Is that it for FASEA? You go with our thanks.

Australian Prudential Regulation Authority

[20:58]

CHAIR: I welcome representatives from APRA. I understand you have an opening statement but that you are willing to table it?
Mr Byres: Yes, Chair, in the interests of time. I think we'd both like to proceed quickly, so I'm very happy to table the statement.

CHAIR: Thank you very much. We will go straight to questions. Senator McAllister?

Senator McALLISTER: I'd like to get an understanding about the process APRA went through in the lead-up to its 4 July announcement around mortgage lending standards and serviceability assessments. I'm conscious that the draft letter, or the draft approach, was put out on 20 May. What happened just prior to that? What was the work you went through to get to that point?

Mr Byres: I'll give you a bit of history, if you'd allow me. Just to be clear, we're talking about the removal of the seven per cent floor within the serviceability assessment?

Senator McALLISTER: Correct.

Mr Byres: We started that work essentially back in February.

Senator McALLISTER: February 2019?

Mr Byres: Yes, sorry, February 2019. The trigger for that work was essentially a change in outlook by the Reserve Bank on where interest rates were going. Previously the Reserve Bank had been saying that the next move in interest rates was likely to be up. At that point they changed their narrative to suggest that that was not the case any longer, and subsequently, as we know, interest rates have come down. While the next likely move in rates was up we thought the seven per cent number was sustainable, but when it was clear that that was not going to be the case and that in fact rates might fall further it was clear that it was going to become increasingly problematic to hold that position. We looked at options through the period—through February, March, April, May—we talked about options at the Council of Financial Regulators to get advice from other agencies and then we announced our proposal. Obviously we had to consult on the change. We announced the proposed change and consulted on it in May, and then subsequently we had a short consultation period. Needless to say we got support from those who made submissions, and we subsequently announced the decision in July, as you said.

Senator McALLISTER: What was the date of the meeting of Council of Financial Regulators where this was considered?

Mr Byres: I will have to take that on notice. We usually have a meeting in February or March—late February or early March—and another meeting wouldn't have been until May or June, so it would have been the February-March meeting. But I will take it on notice and give you the date. There would have been a press release at the time of the meeting, so I can check that.

Senator McALLISTER: Mr Lonsdale?

Mr Lonsdale: I was just going to add that this should be a matter of public record, because there would be a press release from the council at the time, but we can check.

Senator McALLISTER: Would the press release go to the intention to change the serviceability requirements?

Mr Byres: No, I was only making the point that the date of the meeting is on the public record and that there would be something in the press release, I'm sure, that said we discussed conditions in the housing market et cetera. But, no, it wouldn't have, because at that stage
APRA hadn't made a decision about what to do. Ultimately it's an APRA decision, and APRA has to announce it.

**Senator McALLISTER:** When you say 'ultimately it's an APRA decision'—

**Mr Byres:** It's our standard. It's our guidance. It's decided by the APRA executive.

**Senator McALLISTER:** My question is: could you be specific about the role of the Council of Financial Regulators in that context?

**Mr Byres:** Normally, when we have had issues in relation to housing and understanding the impact that they might have on housing markets and the broader macroeconomic impact that any of our measures would have, we routinely consult, use the Council of Financial Regulators as a forum to consult, share information, seek the views of the Reserve Bank, ASIC and the Treasury. We let them know what we're doing and see what thoughts they have, and we use that as input into our decision-making.

**Senator McALLISTER:** So it's fair to say we can assume that, at the meeting of the Council of Financial Regulators, they were broadly supportive of the general direction that you were heading in and that it was on that basis that you proceeded. What work was undertaken between that meeting and the notification to the market in May?

**Mr Byres:** Internal papers would have been put to our policy committee that would have looked at options. We would have considered: do we just remove the floor as we did and let banks set their own floor? Another option we looked at was whether we maintain an APRA floor but reduce it—various combinations of those. One of the problems that we had and that we were grappling with, and one of the other reasons that we made the change, was that at the time the floor was introduced there was one mortgage rate and now there are essentially four, depending on whether you're an owner-occupier; an investor; principle and interest; or interest only. A common floor becomes quite problematic when you've got four different rates because it impacts differently, so we asked the question: do we want to have four different floor rates? No, that's not what we wanted to do. In the end we settled the position that said that we expected banks to have their own floor rate and to set their own floor rate but that we were no longer going to prescribe it.

**Senator McALLISTER:** Did you at any time consult with the Treasurer about the approach prior to advising the market?

**Mr Byres:** We would have sent up a minute to say that we were going to announce it, but we were not seeking input or to have a conversation about the merits of different options. We would have informed the Treasurer's office of the decision.

**Senator McALLISTER:** I'm sorry to be perhaps pedantic about this but when you say 'we would have', it sounds theoretical. You did—

**Mr Byres:** We did send a minute to the Treasurer's office, as we would before any of those similar sorts of announcements.

**Senator McALLISTER:** What was the timing of that notification to the Treasurer's office?

**Mr Byres:** I would have to take that on notice and confirm but usually they are sent up with a few days' notice. In this case it is a bit more complicated because it was in an election period. I will take on notice and confirm the dates for you.
Senator McALLISTER: Treasury, obviously, participate in the Council of Financial Regulators. Did it provide any guidance or feedback about the timing of the proposed change?

Mr Byres: To the best of my knowledge, no.

Senator McALLISTER: What is your assessment of the impact of the change? I realise it has only been a few months, but are you in a position to provide us with any assessment of what it has meant?

Mr Byres: What has it done? To some extent, it has made credit marginally easier to get. To return to the point I made earlier, it was having an unintended consequence because the floor was most binding on those customers that naturally received the lowest rate and they were owner-occupiers paying principal interest. From our prospective, they are the safer customers—all other things being equal—rather than, say, investors paying interest only. So it was impacting to some extent the wrong customers most of all. In terms of impact, what does it do when you lower the floor, because banks still have floors? It does increase the maximum amount that a bank will offer to a customer—all else being equal—and it had the biggest positive impact for owner-occupiers paying on a principal-interest basis.

Senator McALLISTER: I note your remark 'all else being equal'.

Mr Byres: Which it rarely ever is.

Senator McALLISTER: Which it rarely is. Specifically, have the positive impacts been partially offset by a more conservative approach to lending in the wake of the royal commission?

Mr Byres: I'm not sure that the two things were happening simultaneously, in the sense that the time the floor was removed was from July onwards.

Senator McALLISTER: Those effects have already surfaced.

Mr Byres: I think issues around that have been well in the market, in practices, so I wouldn't want to suggest they're offsetting one another.

Senator McALLISTER: You mentioned the interest-only loan market. Can you just provide an update on that and any dynamics you are seeing in that market?

Mr Byres: At a high level, interest-only lending is probably still running less than 20 per cent of total lending—a little bit of a pick-up lately—and banks have certainly been competing harder for that type of business. One of the things you would have seen, if you looked at some of the bank announcements about interest rate pass throughs, is quite often they had passed more through to interest-only customers than to principal-interest customers. Those interest-only customers were paying a higher rate to start with, so they're still paying a higher rate even though they got fractionally more of the pass through. So what's my general sense? Interest-only loans are still available to those who they are appropriate for. There is a little bit more competition for them now, and the interest rate differential between interest only loans and principal-interest loans has narrowed a little bit, would be my observations.

Senator McALLISTER: You indicated in your earlier remarks that it has previously been an area of concern for APRA. Does it remain an area of concern?

Mr Byres: The two concerns we had in particular were, first of all, that it was running at a very high level. It was up around 40 per cent of lending. It is now less than 20, so I think that issue has definitely reduced considerably. The second issue was that we were observing an
increasing proportion of owner-occupiers using interest-only lending, which was potentially—and I stress ‘potentially’—a signal of people possibly over extending themselves, so not being able to afford principal-interest payments and therefore resorting just to interest payments. That portion of lending has also come down considerably as well.

Senator McALLISTER: Just moving on to the capability review and your assessment, the end point of all of this is: do you have the resources that you need to manage your current workload?

Mr Byres: We said in our response to the capability review that it set us a very ambitious agenda. We accepted the recommendations. We are happy to embrace them but it will require us to talk to the government about additional resourcing, which we are doing. So if we wish to fulfil all of the recommendations of the capability review to the extent that it has suggested that we should then it will require some additional resourcing and that is currently being discussed with the government.

Senator McALLISTER: As a percentage of your existing resource allocation, are we talking a 50 per cent increase in resource, a 10 per cent increase?

Mr Byres: We still haven't scoped it out. If I'm thinking off the top of my head, it might be somewhere 10 to 20 sort of number. Not—

Senator McALLISTER: Not a doubling in size?

Mr Byres: Not a doubling in size, no.

Senator McALLISTER: And what are the key resource priorities? If you did have more money, where would you spend it?

Mr Byres: The areas that we have called out would be more supervision effort in superannuation, more on cyber-related risks in the financial system, a broader upskilling of our staff and on the resolution piece of our work—our crisis preparedness resolution type work. They were the areas called out by the capability review, where they essentially said we should be doing more than we currently are, so that's the discussion we're having about what resources we would need to do more and do more quickly.

Senator McALLISTER: Member outcomes No. 1 legislation passed in April. I understand that Treasury are still finalising the subordinate legislation associated with that legislation. Have they provided you with an update on the benchmarks that will be used in the annual outcome assessments?

Mrs Rowell: We have been discussing the implementation steps that are needed with Treasury, obviously. We have had some discussions with them in relation to benchmarks, primarily sharing information on what we are doing in terms of defining benchmarks as part of our performance assessment and publication work.

Senator McALLISTER: You're in discussions?

Mrs Rowell: Yes.

Senator McALLISTER: What can you tell us about the finalisation of the regulations?

Mrs Rowell: That's a matter for Treasury and the government.

Senator McALLISTER: I understand that APRA is proceeding with prudential standards 515 and 516 in parallel to the development of these regulations.
Mrs Rowell: Prudential standard 515, which is the member outcomes standard, has been finalised. We are in the process of consulting on the guidance, which is 516. Those provisions and our prudential standards and the obligations on trustees can be implemented, notwithstanding that the regulations for the member outcomes bill have not been finalised.

Senator McALLISTER: Will APRA be having public consultations on the new heat map or traffic light disclosure tool?

Mrs Rowell: Not in the sense that we usually undertake formal consultation in the development of policy. We have data that is substantially already in the public domain. We are presenting that data in a different way, so we will be releasing that data. We are briefing industry bodies and the industry more broadly and other stakeholders on what we're doing ahead of the release, but we are not formally consulting.

Senator McALLISTER: Are you confident that the heat maps, which select particular data points, necessarily, will fulfil the intention of the member outcomes law? My concern is whether or not the performance metric that APRA is selecting in the heat maps or the traffic lights tool or whatever you choose to call them—what are we going to call them?

Mrs Rowell: Heat maps.

Senator McALLISTER: I'll call them that too. My concern is that you're picking particular data points to put into the heat maps, but those data points are being selected while the benchmarks that are to be contained in the regulation are yet to be finalised. Is there risk of a mismatch between those two things?

Mrs Rowell: At the end of the day the benchmarks that are specified in the legislation are a matter for Treasury and the government. One of the reasons for us liaising and discussing benchmarks with Treasury is to seek convergence and alignment where we can. Having said that, I think it is important to understand that our heat maps are deliberately presenting multiple performance measures in all of the categories that we're reporting, because, as we have said on many occasions, in assessing performance you need to look at a number of different measures over different time periods to get a complete assessment of the performance of products, funds and what trustees are delivering. In that sense, the fact that there may be a different measure prescribed in regulation, which is in addition to the measures that APRA is publishing, is not necessarily an issue from our point of view. It will just provide a different lens on performance.

Senator McALLISTER: So you don't consider that they need to map exactly. If there's a divergence between the benchmarks and what you're presenting in your heat maps, it doesn't matter?

Mrs Rowell: It's not necessarily an issue, but it's important that we understand what Treasury are doing and that they understand what we're doing so that it's coordinated to the degree that it needs to be.

Senator McALLISTER: Can you just inform the committee what the sustainability measure of the heat map will refer to?

Mrs Rowell: We are looking at a number of indicators of trend information around cashflow position, growth in assets, growth in members and other indicators that might help us understand the link between the performance measures that are being published, whether it's fees or investments, and the implications of what we're calling sustainability measures for
the future ability to deliver that performance and maintain those fees or address those fee issues. They're supplementing the picture around what the trustees are doing and what the trustees have oversight of.

**Senator McALLISTER:** The business models for the funds are quite different across the sector, as you'd observe. Why wouldn't APRA consult on that metric? It's quite possible that you'll present data that doesn't appropriately capture the actual sustainability of a business. Why wouldn't you consult on whether or not you're selecting the right metrics? Do you not run the risk that you'll present a kind of global metric of sustainability that, in fact, isn't very accurate?

**Mrs Rowell:** Again, we're not using a single measure. The heat map is not a pass or fail assessment. It presents information about a range of measures that help tell or form a starting point for assessing where the trustees are delivering good outcomes for their MySuper members, because the first heat map will be on MySuper members. The positioning and the commentary that we put around the heat map is very much along those lines, to say that you need to take those measures and ask more questions and understand a broader picture before you form a view about whether a trustee and its operations are sustainable and whether it is delivering good performance. It's an indicator. It provides clear and credible insights into the outcomes that are being delivered from a particular MySuper product. The point about consultation is exactly as I said before: this is taking data that we already have and presenting it. It is already in the public domain and other people are drawing conclusions and commentaries around it, and we are putting our lens on it, if you like.

**Senator McCARTHY:** But you will be putting a lens on it, won't you, because a heat map conventionally uses colour to describe things that are going well and things that are going badly. That's the point of a heat map.

**Mrs Rowell:** Yes.

**Senator McCARTHY:** So it is not a neutral presentation of a dataset; it's a dataset that you will use to make judgements about whether or not—in the example we're just discussing—the trustee's approach is sustainable. So my question to you is: why not consult with trustees about whether or not the data you're selecting and the judgements that you're casting on particular datasets is an accurate measure of sustainability or a reasonable one in terms of the industry?

**Mrs Rowell:** We are going to be engaging with the industry. We are open to feedback, but, at the end of the day, I think it is our call as to how we publish our data and the information that we present, and this is not a policy consultation.

**Senator McCARTHY:** Perhaps we can get this clear. You've said it is not a policy consultation. Is there any consultation at all?

**Mrs Rowell:** We are engaging with individual entities in particular. In fact, we do that all the time. A lot of this information that is going to be publicly presented is being used in our engagements with entities and the industry as part of our supervision activity already.

**Senator McCARTHY:** Yes, but you're developing a new product and, as we have agreed, it is going to apply judgements to performance of different funds on different dimensions and it will use colours and, if you're lucky, maybe even flashing lights. It's a new product and it's going to have an impact on the sector. Explain to me the extent to which participants in the
sector will have visibility on the methodology you're using to prepare these heat maps before you finalise that methodology. Just step me through it. What is the exposure?

**Mrs Rowell:** We are proposing to publish an information paper with details around the methodology a few weeks ahead of the publication of the actual heat map, with the data in it. We're providing a few weeks for industry and other stakeholders to understand the methodology and the approach before the actual data and the heat maps are in the public domain. I think it is also important to note that we have been through a fairly rigorous internal approach to develop our measures and our approach. It's gone through our internal governance processes and we'll do that before it's finally released. We've also got external advisers—experts in the field, if you like—to review and validate the approach that we've taken.

**Senator Gallacher:** Could I ask a very specific question about investment returns. Will they be measured over five years or 10 years or annually?

**Mrs Rowell:** We are going to be presenting a couple of different time periods. We are still to finalise exactly what time periods we're using, but our starting point for MySuper is the five years of data that we currently have from the commencement of MySuper.

**Senator Gallacher:** Will they have the normal caveat of 'Past performance is not an indicator of future performance'? Will that be the normal caveat on that five-year performance?

**Mrs Rowell:** There will be commentary around how to use and interpret the performance information, along those lines, and also, in the information paper explaining the approach, some of the challenges of interpreting and using the data will be made clear.

**Senator Gallacher:** Will you also explain what the difference is between top quartile performance? It could well be that the top 10 could be within one per cent of each other.

**Mrs Rowell:** That information will be obvious in the data that's presented.

**Senator Hume:** I think that this is largely about highlighting underperformance, and particularly persistent underperformance in a number of funds. I know that Labor are keen to do that as much as the government is.

**Senator Gallacher:** I'm just curious about the actual detail of it, because I do know something about some of this stuff.

**Senator McAllister:** Senator Gallacher really goes to the core of the issues I'm asking you about, because there are plenty of people who don't work at APRA who do know something about the detail that you're dealing with. You're saying you're going to publish a paper. Are you seeking any feedback on that paper at all?

**Mrs Rowell:** We're open to feedback. If people want to give us feedback, that's fine, but it's not a consultation. We are going to continue to evolve these heat maps over time, to add additional metrics and to change based on information that we get to extend it to choice et cetera. So this is not we do it once, it's set in stone and we won't ever review.

**Mr Byres:** I'll make—

**Senator McAllister:** It's an unusual approach from a government organisation to set a methodology and not consult.
CHAIR: Mr Byres wants to add something.

Mr Byres: I want to add two comments in response to your comment, Senator. Firstly, it's not as though we sat in a dark room. There's a raft of conventional metrics that are largely used in the marketplace and which people use. There are plenty of people that publish various measures of superannuation performance. So we've drawn on many areas that are quite commonly used—return metrics et cetera—that are quite conventional in the industry. Secondly, you may recall there was a Productivity Commission report which recommended how APRA should go about thinking about measuring performance relative to benchmark portfolios et cetera. We have not exactly copied that Productivity Commission recommendation, but we've taken up that Productivity Commission recommendation. So I think we are largely following, if you like, the spirit, and certainly the intent, of the Productivity Commission in what is being produced.

Senator McALLISTER: The Productivity Commission found that underperformance is more prevalent in the choice sector than in the MySuper sector. When do you expect to include the choice sector in the traffic light or the heat map system?

Mrs Rowell: We have a couple of pieces of work underway. One is to start a consultation on increasing the data we collect. We expect to do the initial consultation on that enhanced data collection, which would cover choice, in November. We're aiming for release of the first consultation paper in November around that additional data. Then, as part of that enhancement of the data collection, we propose to do a pilot data collection to validate and verify the data that we want to collect under the new proposals. Following that pilot, we may well publish. Ideally, we will publish some information on choice in 2020. I can't give you an exact timing on that.

The other thing that we are doing also is looking at other data sources that we can draw on in relation to choice and whether that would give us an avenue to use that information to perhaps publish some information around choice. It is work in progress and we hope to be able to have something out in the public domain in 2020.

Senator WHISH-WILSON: I have a couple of quick questions for Mr Byres before I go to Mr Summerhayes. Senator McAllister has covered a lot of my questions around the changes you made in July with your guidance on residential mortgage lending. I just wanted to check this very quickly. My understanding is that you announced your draft changes to mortgage serviceability guidelines on 20 May and you finalised them on 4 July. Is that correct?

Mr Byres: I think those dates are correct.

Senator WHISH-WILSON: Roughly.

Mr Byres: Yes—close enough.

Senator WHISH-WILSON: On 20 June it was reported in The Fin Review that Westpac had informed mortgage brokers it had lowered its serviceability floor from 7.25 to 6.5 per cent, which was a couple of weeks before your final decision. Have you verified that or have you taken any action on that? Are you aware of any other banks seemingly jumping the gun?

Mr Byres: I'm not aware of others jumping the gun. We did say to Westpac that they were jumping the gun, because we hadn't finalised what the position would be. As I said, we were weighing up: do you remove the floor or do you set a different floor? So we did highlight to
them that they risked doing something that we'd have to undo. I don't know what you mean by 'action'. There wasn't any penalty or anything.

Senator WHISH-WILSON: Is that because you'd been consulting with them, presumably around the changes?

Mr Byres: Yes, and I think it was pretty clear that we were going to do something. We weren't going to retain the floor where it was. It was pretty clear that we had to change and, clearly, we were going to change down. So, yes, someone in Westpac did jump the gun, but we sorted that out.

Senator WHISH-WILSON: But there was no penalty, just to be clear. After your final decision, Westpac made subsequent cuts to their serviceability floor and it's now down to 5.35 per cent. I'm wondering if you'd verified that, and what's your understanding of the serviceability floor that the major banks now have in place across the—the big four, anyway?

Mr Byres: Yes. It's in that order of magnitude across all of them now. I don't know it to the last basis point, but that sounds pretty right. And it's a competitive market, so they tend to settle in a similar kind of place.

Senator WHISH-WILSON: And you're monitoring that, very actively?

Mr Byres: We are watching it. I couldn't say it's our highest priority, just at the moment, but we're keeping an eye on it. Given where rates have come from, if you think about the time the seven per cent was brought in, the official cash rate has fallen 1½ per cent or thereabouts. So the idea that the floor might come down from seven to 5½ or that order of magnitude is not an unrealistic corresponding adjustment.

Senator WHISH-WILSON: Okay, in terms of margin. Back in 2011 you tried to contain the rise in loan-to-value ratios, the LVRs. You did a bit of work on that. Do you accept that changes to serviceability guidelines will see an increase in LVRs?

Mr Byres: It could, yes. But LVRs, on the whole, over the last few years have been coming down. Certainly the instances of very high LVR lending—LVRs at 95-plus or even 90-plus per cent—have been trending down quite consistently. So, compared to where they were a few years ago, they are much lower. I don't think alarm bells would ring if they ticked back up a bit. But, by definition, if the removal of a floor allows a maximum loan size to be a bit larger, then it wouldn't surprise if LVRs were a little bit larger, in some instances.

Senator WHISH-WILSON: But there's nothing in the macro context that's giving you more comfort with—

Mr Byres: No. My point has always been that we've been successful in getting lending standards back up to a sensible place. But we are still in an environment, as I probably said to you—I rehearsed these lines to you in 2015—of very low interest rates. House prices are still high. Household debt's still high. Household income growth is still subdued. The market's still competitive. So it's not the time to be complacent.

Senator WHISH-WILSON: No, and I absolutely accepted that. Have you looked at what changes to the serviceability guidelines are likely to have on house prices? I asked Treasury officials this morning. I think they're fairly keen for house prices to go up and stimulate the economy. Have you looked at any impacts that these changes might have on house prices?
Mr Byres: To the point before about all else being equal, I think the great challenge we have is that any analysis has to assume all else being equal, and that becomes pretty unrealistic. So we haven't attempted any assessment on what it might mean for house prices. You can do some back-of-the-envelope calculations on what it might mean for maximum loan sizes and think about how that might translate, but it's pretty rough and ready.

Senator WHISH-WILSON: Speaking in broad terms as well, do you accept that reduction in mortgage serviceability standards will increase mortgage lending as a percentage of the banks' loan books and that may have negative flow-on effects for business investment?

Mr Byres: I'm not sure that that is the case. It could, yes, if your question is, 'Could it?' Yes, it could.

Senator WHISH-WILSON: Or is it a concern or something that you would keep an eye on?

Mr Byres: Certainly, we're keeping an eye on it. We have a broader set of reforms underway, to think about the relative capital requirements, at present, between mortgages and other sorts of lending. One of the things that we have said we want to do, as part of that set of reforms, is to recognise, in the capital framework, there probably needs to be more capital in aggregate against the concentration risk that is in mortgages in the Australian banking system. So that is part of our agenda.

Senator WHISH-WILSON: The Treasurer has obviously been making noises and jawboning the banks to get them to lend more. I don't think that's a controversial statement. He has made a number of public statements over months, especially following the election. Are you concerned that there is political pressure to lower mortgage lending standards, especially after what we have been through in recent years?

Mr Byres: I don't know that there's pressure to lower standards. There's obviously concern about lowering mortgage interest rates and the ability for the banks to pass through RBA rate cuts. Credit growth in housing is at a historically low level, so, if it moved back up a bit, alarm bells won't ring. It is growing only at sub five per cent at present. It's not a particularly rapid rate of growth. If it picked up a little bit, it wouldn't be of particular concern to us, as long as standards are maintained.

Senator WHISH-WILSON: Yes. I'll put my other questions on notice. Most of them have been covered around the Council of Financial Regulators. Mr Summerhayes, you've been a leader in terms of talking about carbon risk disclosure and climate risks. I know you appeared at a Senate inquiry two or three years ago on this issue. You have given a number of speeches recently. Firstly, could you quickly tell us about the survey of 38 large banks, insurers and superannuation funds? You released a survey about their responses to climate change risk. What was the key finding from that survey?

Mr Summerhayes: Good evening, all. I'm an APRA member. I have responsibility for insurance, but the senator is always interested in my work on climate risk as well.

Senator WHISH-WILSON: Indeed, I am. It's very good work, may I say.

Mr Summerhayes: Thank you. We are interested in that particular risk because of the financial implications it has to the entities that we regulate and we felt some years ago—at the start of 2017—that the risk wasn't on people's radar. Over the last two years we have done a number of things to raise awareness within the financial sector—across the banks, insurers
and super funds—about the implications of the risk to those institutions. At the end of last year we conducted a survey of 38 of the largest banks, insurers and super funds to test their awareness of the risk. We were gratified with the results of that survey. It was a document released on 20 March this year. It was an information paper called *Climate change: awareness to action*. We saw that governance, strategy and risk management had all evolved in those larger, more sophisticated entities a fair deal over that period. The gaps were around the disclosure, modelling and metrics. That is because there are gaps around data, taxonomy, modelling techniques, stress-testing scenarios and planning, which are disciplines that are evolving given the nature of new and emerging risks.

**Senator WHISH-WILSON:** I'll ask you specifically about those gaps and the modelling framework in a second, but is it fair to say that most of those institutions reflected climate change as a serious risk?

**Mr Summerhayes:** It has been gratifying for the regulators. There has been a coordinated effort by the Council of Financial Regulators. We have a working group on the issue. You would have seen statements from ASIC and the Reserve Bank similarly with their own lens drawing attention to the risk. We have been pleased as a regulatory community with the uptake of industry around the awareness of the risk. In fact, a number of industry bodies are now leading on the issue. The regulators are looking at that with interest but letting industry take a leadership position on it.

**Senator WHISH-WILSON:** I know that ASIC has made some comments recently around the TCFD framework, and I'll be asking them about that shortly. Are you also promoting the use of that framework with the businesses? I notice that you said that you've done a deep dive with each of the 38 organisations, and there will be a thematic review to come from that. Are you talking to them about that and promoting the same framework?

**Mr Summerhayes:** Yes. The TCFD came out of the G20 and the FSB, and so it is an industry led, voluntary framework which provides what is emerging as the global standard for thinking about the risk, following a similar outline to what we in fact surveyed on, thinking about governance strategy, risk management, metrics and targets. We have certainly encouraged regulated entities to use that as a framework. ASIC has done likewise, as has the RBA, as are regulators globally.

**Senator WHISH-WILSON:** I know I've asked you this question before. It's a voluntary framework and, at some stage, hopefully, more companies will start using it. Do you think there will be any time in the future where a mandated carbon risk disclosure proposal may come forward?

**Mr Summerhayes:** Globally there are 800 large institutions, representing about $10 trillion of assets, that have taken up the framework, including a number of large institutions in Australia. As impressive as that sounds, that's a fraction of the number of companies globally, and the $10 trillion needs to be seen in the context of $88 trillion GDP. So there is still a long way to go, and there is an increasing conversation within the global regulatory community as to whether mandated disclosure under TCFD might be needed at some point in the future. APRA is certainly not suggesting that, and we are supporting and encouraging our entities to use the framework and helping that capability build, without going as far as mandating it at the moment. But the question we would ask is: if you're not disclosing under that framework,
CHAIR: Senator Whish-Wilson, is there any chance we could put the rest on notice?

Senator WHISH-WILSON: Yes. I just had one specific question about an interview Mr Summerhayes did recently, if you don't mind, and then I'll put my other questions on notice.

CHAIR: Okay.

Senator WHISH-WILSON: Mr Summerhayes, in an interview with The Australian Financial Review on 15 October—not too long ago—you mentioned that it's your view that the energy sector transition will play out more quickly than everybody thinks.

Mr Summerhayes: That wasn't an interview.

Senator WHISH-WILSON: She's taken that from a speech, has she?

Mr Summerhayes: It reported some comments on a panel.

Senator WHISH-WILSON: Investor Group on Climate Change?

Mr Summerhayes: That's correct. The context of those comments was that we were talking about adoption, and how, where you get convergence of technology—in this case, convergence of solar battery and other forms of technology—you get a rapidly reducing cost curve and you get an S-curve of adoption. In most transitions—and I gave the example of the smartphone, which went from being invented to global saturation in 10 years—often, where there's major technology convergence and rapidly reducing costs, adoption occurs much more rapidly than what people estimate. That was the context of the comments.

Senator WHISH-WILSON: I had some questions on whether you had any response to the IMF report out in the last week on TCFD.

Mr Summerhayes: I'm happy to take those on notice.

Senator WHISH-WILSON: I'll take those answers on notice. Thank you.

Senator BRAGG: I have one question.

CHAIR: Quickly, Senator Bragg.

Senator BRAGG: I just wanted to know what you're doing to facilitate competition in the banking sector, especially with reference to the start-up banks and neobanks and that sort of stuff.

Mr Byres: Just quickly, we set up a new licensing regime a couple of years ago which was designed not to lower entry standards but to make it easier for people to navigate their way through them, because we needed to make sure that any new entrants were still competing with small incumbents on a level playing field. That, I think, has been successful. There have been more new banks licensed in the last year than any year in about the last two decades. We have a number of small banks, some of whom have been licensed and are yet to start business and others who are just getting underway. There are not hundreds of them, but we've got some that have got through the process, so it shows it can be done, and we've got quite a pipeline of other candidates coming along the way.

CHAIR: Thank you for your time here this evening. You go with our thanks.
CHAIR: Welcome. Do you have an opening statement?
Mr Shipton: No, I don't have an opening statement.
CHAIR: Then we'll get straight to questions.
Senator GALLACHER: I just want to go back to a couple of historical matters. I don't think they're subject to any debate. In 2014-15, $120 million was pulled from ASIC funding and one of the indications at the time was that there was more scope for the industry to self-regulate. That's what is reported; that's not contested.
Mr Shipton: I can't really comment with great confidence, because I wasn't in the country at the time and nor was I working for ASIC. But I understand that there were comments to that tenor.
Senator GALLACHER: And in 2018-19 ASIC's funding would be cut by $26 million, and 30 staff would also be cut.
Mr Shipton: I believe that in that year that was the case, but I would supplement that by saying that there was additional special funding later in that year.
Senator GALLACHER: Then in 2019-20 you got $400 million. So, there was a big boost again. I suppose my question is, in this roller-coaster of funding, did you have a brain drain? Did talent leave you? Did you lose acumen and expertise basically because of the cuts to funding, staff and budget?
Mr Shipton: Again, I can't comment myself, personally, because I wasn't in the role or in the position. But the reality is that an agency like ours can only operate within the funding envelope that we're given, and I would let those facts on that funding envelope speak for themselves. To your last question, I just want to highlight that I believe we had special funding in August of last year to the tenor of about $72 million.
Senator GALLACHER: There is an issue involving around 100 retirees in Western Australia—a company called Sterling First. Is there anybody who's aware of that particular event?
Mr Shipton: Yes, we are. I'll ask my colleague Commissioner Price and Executive Director Warren Day, who are across this issue.
Mr Price: That's our understanding. There are a range of companies within the Sterling group, and ASIC has an ongoing investigation in relation to a number of those companies.
Senator GALLACHER: And retirees have lost significant amounts of money—up to $200,000. Is that correct?
Mr Price: Again, that's my understanding. Many retirees invested into an entity called the Sterling Income Trust, which was a registered managed investment scheme. There were also some retirees who invested in preference shares that were issued by what seems to be a related company called Silverlink Investment Company Limited.
Senator GALLACHER: A registered management investment company—that's obviously regulated by ASIC, is it?

Mr Price: That is correct.

Senator GALLACHER: So, what steps do you take to make sure that that's a proper, prudent vehicle for people to put their life savings into?

Mr Price: The regulatory requirements around managed investment schemes are that those entities are required to be licensed. So, there's a licensing process. The way that the licensing laws work is that if certain measures set out in the law are met, ASIC must grant a licence. So, it doesn't have a discretionary element. In relation to Sterling, we became concerned about the Sterling Income Trust in March 2017 when we were contacted by the Western Australian Department of Commerce. Now, the Sterling Income Trust effectively makes its money through property investments. Not all property investments are regulated by ASIC, but this was through a regulated structure. The WA Department of Commerce raised with us those concerns. They were referred to the relevant ASIC team for further investigation and surveillance. As a result of that investigation and surveillance, in August 2017 we stopped the offering documents under which offers were being made in respect of the Sterling Income Trust. That regulatory action was made public, also around August or September 2017. Eventually, because our powers really focus on disclosure issues in this regard, eventually the Sterling Income Trust recast their disclosures with more-robust risk warnings and they continued to make offers into 2018, when, following further ASIC inquiries and investigations, the operator of the Sterling Income Trust decided to put that income trust into an administration process.

Senator GALLACHER: Is there any evidence or indication that people invested after you first became aware of it?

Mr Price: Again, there were two major streams of investment. There were investments in the Sterling Income Trust. As I said, we stopped the offering documents in respect of those in August 2017. The effect of that is that no further offers should have been made, unless they were exempt by law, until disclosure was fixed. That disclosure was fixed later in 2017 and the offers restarted, and that was in accordance with legal process.

Senator GALLACHER: And that basically revolved around properly explaining the risk, in the disclosure statement?

Mr Price: Yes, there is a strong focus in these offer documents around explaining the risks. Of course, with investment structures such as this, which are particularly complex, sometimes disclosure may be a necessary but perhaps not a sufficient measure to assist consumer interest. That's something which we've brought out recently in a separate report, which we can talk about. But there was another stream of investment products that were offered by the Sterling Group—

Senator GALLACHER: Was that a licenced product?

Mr Price: Are we talking about the—

Senator GALLACHER: You mentioned two companies—

Mr Price: Yes. I'm talking now about the preference shares offered by SilverLink. That activity does not require a license. It does require regulated disclosure, unless an exemption
applies. It's no regulated disclosure was lodged with ASIC in respect of those preference share offers, and that is something that's currently the subject of ASIC investigation.

Senator GALLACHER: And these schemes were marketed with well-renowned media personalities and sportspeople. Is that a common feature? How does the public get some certainty about the product? I know you've tightened up on the disclosure.

Mr Price: It's not uncommon for celebrities or others to endorse products. I suppose the one thing I would say and suggest to investors is that someone may be a great sportsperson or they may be a great actor; what do they know about investment in the sort of asset class that's being put forward? I think it's very important to think about that question.

Senator GALLACHER: But is there any intention by ASIC on that marketing aspect—if you get the most trusted and renowned character to spruik for a product they haven't read about, is there no—

Mr Price: Yes. There's nothing illegal per se in someone making comments about an investment product, provided those comments are not misleading or deceptive. So that is—

Senator GALLACHER: They're not even required to read the product disclosure form?

Mr Price: Well, what is misleading or deceptive is a very broad-ranging test. It depends very much on the facts and circumstances, but, certainly, what you say is possible.

Senator GALLACHER: Okay. Do you have a requirement to notify investors when you're taking these sorts of actions about further disclosures in the product?

Mr Price: Typically, we do, and we did in this case.

Senator GALLACHER: You did?

Mr Price: Yes, we did; it was made public. As I said—

Senator GALLACHER: You made it public or you notified the investors?

Mr Price: Sorry, you're quite right to draw that distinction. We make it public, so we publish the regulatory activity. Notifying investors is not required and is not typical in my experience in these sorts of matters. Indeed, depending on the record keeping of the relevant company that may not even be possible.

Senator GALLACHER: Is that something that perhaps should be considered? Or is your publication of the action usually enough for people to make a decision?

Mr Price: Of course, that's a policy question for government. From a practical perspective, given my earlier comments about the limitations of disclosure, I would query whether that sort of disclosure would be a silver bullet. In addition, what you sometimes find with these sorts of investments is that there are various investments offered in a corporate group. A regulator might take action against one legal entity but there are other legal entities that are offering different products.

Senator GALLACHER: You have an ASIC Enforcement Review Taskforce.

Mr Price: That is correct. There is a task force that Mr Crennan has—

Senator GALLACHER: Is that up, running and active?

Mr Shipton: There is a distinction, Senator, if I may intervene: there's a Treasury-ASIC task force. It's a title is slightly misleading, because it's certainly about us but it's led by Treasury—I believe that Markets Group spoke about it earlier today. Then there was a
separate enforcement review which we undertook, chaired by our deputy chair, Mr Crennan, in relation to our own enforcement structures and activities.

**Senator GALLACHER:** In hindsight, was there any action you could have taken that would have helped these people and avoided the losses? Or are you satisfied you acted entirely in accordance with your—

**Mr Price:** In terms of Sterling, we are satisfied that we have fulfilled our statutory duties, certainly based on the information that I've seen. I will make a couple of general comments. The circumstances of Sterling really bring home the difficulty of where you have investment structures that are at the periphery of what we regulate. A lot of Sterling's business was around real estate investment. As I'm sure members of this committee will appreciate, direct real estate investment is not something that ASIC typically regulates. That's the first learning for me: be wary when things are at the periphery of what our regulatory remit is.

The second thing that is relevant to me I've alluded to in a couple of earlier comments, and that is around the limitations of disclosure. Disclosure is asked to do a lot of work through product disclosure statements, prospectuses and various other things. In some cases one might argue that disclosure is necessary, but perhaps not sufficient, to achieve the right outcomes for consumers, and that's been recognised through a range of inquiries. For example, recent government reforms have introduced what's called a product intervention power for ASIC, and that's a power to intervene where there is significant retail investor detriment, notwithstanding that the product is otherwise perfectly legal. Also, the government has passed laws in respect of what's called a design and distribution obligation. That will take effect, from memory, in April 2021—

**Senator GALLACHER:** Thank you, Mr Price, for being very effusive in your response, but time gets on.

**CHAIR:** I think I will raise time—I've had indications from senators around the room of about an hour's worth of questions. If we're not going to get to the Productivity Commission then I think we should formally release them. They go with our thanks and apologies, but the reality is we're not going to get to them tonight.

**Senator McALLISTER:** I will try and get through this quickly; there's a lot I want to ask.

I want to ask you about the systems and controls that ASIC has in place to govern the use of confidential or commercially sensitive information, in particular how you manage the information that is brought into the organisation by staff that come from regulated entities or taken from the organisation by staff who subsequently go and work for regulated entities. I suppose my broad question is: do you have any systems in place to protect confidential information when staff leave ASIC?

**Mr Shipton:** Yes, we do.

**Senator McALLISTER:** Perhaps you could tell me, in the briefest terms, what that is.

**Mr Shipton:** In the briefest terms—as a starting point, under both statute and contract employees are governed by strict confidentiality and secrecy laws. We also have internal codes of conduct that reinforce those obligations. Exiting members of staff, when they leave the agency, are required to sign a confirmation that they recognise the confidential and/or secret nature of the information that they obtain. That is my overarching explanation. But, of course, I'd be happy to provide more detail on notice.
Senator McALLISTER: Thanks very much, Mr Shipton. Are there any penalties for exiting staff, who are in possession of confidential information that is required to be maintained as confidential from a legislative perspective, who disclose information subsequent to exiting ASIC?

Mr Shipton: I'll take that on notice, but my understanding is that, yes, there are penalties, particularly if there's a breach of the statutory obligations.

Mr Day: If I may, Senator: section 127 of the ASIC Act prohibits the use of information that staff access through their duties in disclosing that in any way, and that's an enduring circumstance if they have that.

Senator McALLISTER: I do want to ask you about the systemic issues that have been raised by the departure of a former senior executive leader Mr Saadat. It's been reported in the media that Mr Saadat has taken a senior role at a regulated entity Afterpay. I assume you're familiar with that matter?

Mr Shipton: Yes, I am.

Senator McALLISTER: Can I ask very plainly: do you have any concerns about this situation?

Mr Shipton: What I'd like to do is take this matter on notice, if I may, given that it does involve an individual and we are still conducting inquiries into the question that you asked.

Senator McALLISTER: With respect, I don't believe that the standing orders prevent you from discussing this, and in fact I don't think that they allow you to refuse to answer questions on this matter. I have always had very good interactions with Mr Saadat, but there are some very specific things that I want to ask about in terms of the work that he was doing with you and his subsequent relationship with Afterpay because they are, to my mind, closely connected and they're connected to the work of this committee.

Mr Shipton: Senator, not for one second am I refusing to answer a question; I was requesting if we could take the matter on notice, given that it does potentially prejudice the impartial adjudication of a matter that is currently under review.

Senator McALLISTER: I see. Ordinarily, I think what you are seeking is for the committee not to insist upon an answer from you because of a process that is taking place within the organisation. It might be helpful for you to explain in the broadest terms what the process is that is taking place in the organisation so that we could consider this.

CHAIR: And I'm not trying to be disruptive at all here, Senator McAllister, but the official hasn't made a PII claim.

Senator McALLISTER: I'm trying to help him make one really.

CHAIR: He's taken the question on notice. I'm not sure there's anything we can adjudicate on.

Senator McALLISTER: I've got about 200 questions that I can read into the Hansard, but it seems an inefficient way to approach it. It would be easier if the official just told me what the basis is for him taking it on notice. I think he's trying to be reasonable, and I'm just trying to get to a point where we can accept it.
CHAIR: I'm happy for your question to be answered, and I think your question was legitimate, but it is open to an official to take a question on notice. But, please, Mr Shipton, if you want to add anything further, if you can assist the committee—

Mr Shipton: Absolutely, and for the avoidance of all doubt, we are all here—including me—to assist the committee. In answer to the senator's question, what I could say is that there is a process underway whereby we are looking into the facts and circumstances around this matter. We are reviewing engagements internally. We are also looking at expectations expressed by our rules, guidelines and legislation, and we're trying to marry up our internal guidelines and those imposed upon us by legislation with the facts as we know them. As I said, that process is still underway. We are still in the process of adjudicating and determining and, if I may, I'd like to leave it at that but, with the reassurance, Senator, because I think this is going to the heart, that the facts and the circumstances have triggered an inquiry and an inquiry is underway. We are conducting it in the appropriate manner, and it is being handled and coordinated by, amongst others, our general counsel, our people in the development team and I am also involved in it.

Senator McALLISTER: Mr Shipton, I am very grateful. I think that's an appropriate level of detail and response to the question. I have three questions, which I expect you will take on notice given the answer that you have just provided, and then we can move off this topic. Are you happy with that, Chair?

CHAIR: Absolutely.

Senator McALLISTER: Thank you. My first question goes to Mr Saadat's access to sensitive regulatory information. Mr Saadat was involved in high-level decision-making about regulatory policy, and I wish to understand the protections that were in place during his employment in relation to his obligations to keep that information confidential. I think Mr Day's answer earlier may go to that, but I would like an answer to that question. I'm happy for you to take these on notice, given the answer that you've already provided.

Mr Shipton: I will take that on notice, but I will reinforce Mr Day's earlier response in relation to the obligations more broadly.

Senator McALLISTER: My second question goes to Mr Saadat's access to commercially sensitive information. Mr Saadat was helping lead the development of the position on the buy-now pay-later sector, and there were industry consultations as part of that process. I'd like to understand whether Mr Saadat would have been given access to commercially sensitive information about buy-now pay-later sector competitors.

Finally, I wish to understand whether, at the time Mr Saadat gave evidence to this committee about the buy-now pay-later sector, he was engaged in conversations with Afterpay about employment? I am happy for all of those questions to be taken on notice.

Mr Shipton: With your indulgence, Senator, I will take you up on taking those matters on notice.

Senator McALLISTER: Thank you.

Senator BRAGG: I'd like to ask a little bit more about a matter that we canvassed at the PJC hearings. This is in relation to the disclosure to members of super funds of fines issued by the regulator. Thank you for your answer to the question on notice—and I will just remind you in case you've forgotten. The example here was a fund notice of Hostplus, which had a
$12,000 fine. In your answer to me, you said: 'None of these disclosure obligations specifically require the disclosure of a fine payable from the capital of a super fund in all circumstances.' In this circumstance, we are talking about a fine paid from a single source of money, capital, which is from the member's capital. There is some form of a requirement under some circumstances to put out a media release. Do you really think that's sufficient in terms of telling the members of a fund that this fine has been issued and paid from their money?

Ms Press: The current disclosure obligations don't require that they would put out anymore more than—


Ms Press: Actually, they don't even need to put out a press release. We would put out a press release on an infringement notice to a super fund. I think there would be an obligation if the fine was of a substantial size that it would ultimately affect members' performance and ultimately affect the fees that would need to be taken from the fund. In the case that we were talking about, it was a $12,000 infringement notice of a multibillion-dollar fund.

Senator BRAGG: If you had a material fine—because this could happen—would it be a good idea for the fund to email it to members, or something like that? Have you given that any thought?

Ms Press: We are certainly thinking, and talking with APRA, around the use of reserves and the appropriate use of those reserves, and I think that within that consultation we would be thinking about how members should be informed about any use of reserves that are significant.

Senator BRAGG: So that's work underway; you're doing that with APRA.

Ms Press: It's currently work underway, yes.

Senator BRAGG: What's your timetable on that?

Ms Press: It will be sometime next year.

Senator BRAGG: Next year?

Ms Press: Yes.

Senator BRAGG: And what is it? Is it a report, is it a paper—internal?

Ms Press: At this stage it's just consultation with APRA, and APRA will be putting out guidance on use of reserves, and I suspect that we would put out some guidance on it and disclosure of that as well.

Senator BRAGG: So you'll look at that issue?

Ms Press: We will.

Senator BRAGG: Thank you. I'll now pivot, in my limited time, to the next issue. Who do I ask about intervention powers? Who is that?

Mr Shipton: You can direct it to me, but my colleague Deputy Chair Chester can certainly also assist in supplement.

Senator BRAGG: Great. We spent some time at the PJC hearings talking about where the line is for ASIC. ASIC is a regulator, and that's great, but this intervention power potentially puts you, arguably, into the world of making policy. So I'm asking a few questions about
where that line will fall in this new world. There are a couple of examples now, through the consultation papers that you've got out, on OTC, binary options and derivatives and on add-on insurance. Could we just go to this question, before dropping into the detail, of when you as a regulator with this new power are looking at a whole set of products and you can effectively take the whole product set off the market, how do you satisfy yourselves as a commission in making a decision like that—I'm just interested in the process you'll go through.

Mr Shipton: Let me start. We have actually issued a consultation paper on exactly this question which elucidates exactly how we would tackle particular issues to use the product intervention power—and of course it is ultimately guided by the legislation—and it all comes down to whether or not there is significant detriment or the potential for significant detriment to consumers. That is the entry point. Therefore, I would say that with that entry point—added to which there is consultation, added to which there are obligations under administrative law for us to exercise that power appropriately, and then of course all of the exercise of the power is potentially subject to administrative review—there are a number of checks and balances. But the entry point is and always will remain 'significant detriment or potential detriment to consumers'. That's why we see it very much as not a policymaking power but a regulatory intervention power when there is harm, when there is detriment, taking place in the market, to consumers.

Senator BRAGG: So you're consulting on that framework whilst you're consulting on potential removals; is that right?

Ms Chester: We initiated the consultation on the product intervention powers prior to us proceeding with the first proposed use of the powers in relation to short-term credit. We as commission made a decision that we would get the consultation paper out on how we would interpret the application of those powers generically, and complete the consultation on that before we took the decision to initiate consultation on its first application. So, before we initiated the consultation on the first application to short-term credit, we had completed the consultation. The consultation paper had gone out, we'd had submissions back in, so we were going out on a relatively informed basis, in terms of any issues or concerns that might have been raised with us during those consultations, before we initiated the first one. I would have to say, though, that we did not take that decision lightly. In an ideal world, we would have completed and issued our final paper on the guidance for how we interpret the product intervention powers.

I think that if any of the committee members are familiar with the short-term credit product that we were dealing with and the vulnerable consumers with very small loan amounts of $60 to $80, and effective interest rates in the hundreds—indeed, my colleague Commissioner Hughes could provide more detail on that—then they'll understand that as a commission we made a call that we simply could not wait on any longer.

On the issue that you raise about—

Senator BRAGG: OTC?

Ms Chester: policy—

Senator BRAGG: Policy, yes.

Ms Chester: I think it's important to delineate between capital 'P' policy and what a regulator has at times, which is lowercase 'p' policy. Regulators have powers to intervene to
modify domestically here in Australia. But internationally it's also common practice for conduct regulators to have those powers. The capital 'P' policy was when this parliament decided that we would have the product intervention powers, and that followed several inquiries—the Financial System Inquiry by David Murray and two inquiries by the Productivity Commission. They thought that there was merit in having those powers for several reasons, partly—

**Senator BRAGG:** I don't think anyone is questioning the benefit. I think everyone here would support having the powers. I'm just trying to understand how it's going to work.

**Ms Chester:** I think where a small 'p' would become a capital 'P' comes back to the issue that Chairman Shipton raised. That is, if our intervention was a permanent intervention. It's not. It's an 18-month intervention and only a ministerial decision. For us, that's an important distinction to be made.

**Senator BRAGG:** Yes.

**Senator WHISH-WILSON:** Just out of interest—and I have been pushing for this for some years—look back in time and look at a product like forestry managed investment schemes, which got very big. Have you looked at any case studies or any previous products on the market that you would say would be small 'p' or capital 'P' in how you would apply them?

**Ms Chester:** We did identify a couple of case studies in the consultation power where we thought that if we had the wand and could go back in time, or the TARDIS and could go back in time—

**Senator WHISH-WILSON:** I wish we could, by the way.

**Ms Chester:** We would have considered asking and answering the sorts of questions that we would to decide whether or not to use the product intervention powers. I think that there was one particular credit card product, and some switching arrangements with the banks as well. So it's a very good question.

**Senator WHISH-WILSON:** There's nothing as big and systemic as what we saw with—

**Ms Chester:** I think it would be fair to say—if we stepped back for a moment and looked collectively across the case studies of the royal commission—that for us at ASIC we've got the bookends of the product intervention power to intervene. The other important one that Commissioner Price raised before is the design and distribution obligations. I think we could comfortably say that, in some of the instances of products that we saw in the royal commission case studies, we would have considered using product intervention powers. But I think we can universally say that if firms had been meeting designer distribution obligations prior to the royal commission then none of those case studies would have come before a royal commissioner.

**Mr Shipton:** That's a very good question and, unfortunately—like this committee tonight—we don't have much time to go into it. But in the consultation paper that the Deputy Chair mentioned, we've elucidated on how we possibly could have—I think, on at least two occasions—used the powers in retrospect. That is, hopefully, a useful case study to refer to.

**Senator WHISH-WILSON:** That would be very interesting.
Senator BRAGG: I'll put the rest of mine on notice, but I have one more follow-up on the intervention power to do with add-on insurance. Maybe I'm not reading it correctly, but I've read through the Treasury consult on this, which is a paper talking about how add-on insurance reforms could be applied. It talks about three tiers. Basically, at the same time I think ASIC is proposing to use the intervention power to remove a certain form of insurance, which could be in one of those tiers. So I was wondering if you could explain how that all hangs together, because it's a bit confusing.

Mr Hughes: I think the add-on insurance product intervention proposal—and I should emphasise, it's only a proposal; we're still consulting at the moment and no decision has been made—is a good example of the marriage between small 'p' and large 'P' policy. As you would recall, the royal commission specifically considered the issue of add-on insurance and made certain recommendations, which Treasury is advancing. There were, however, specific harms that we think ought to be addressed on an immediate basis, without waiting for the Treasury exercise to be completed, and that relates specifically to add-on insurance sold through the car dealer market, where we have already identified almost a quarter of a million customers who have received compensation of up to $130 million. So we saw that as an immediate need that could, if we make that decision, be addressed, while at the same time allowing Treasury to get on with its work in the broader policy framework.

CHAIR: Senator Patrick, you have the call.

Senator PATRICK: I did foreshadow that I was going to ask some questions. I believe, Mr Price, you drew the short straw. The parliament is looking at the Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2019, which involves the deregistration of unions. I just want to get a feel for what happens in the corporate world in respect of disqualifications, and the same for deregistration of a company. Is it automatic? What sort of things might give rise to that? I am just looking for a general description. I might just ask a couple of questions.

Mr Price: No trouble. I'll talk to the broad categories that give rise to the ability to disqualify a director. My colleague Warren Day can speak to company deregistrations. In relation to disqualifying directors, we have administrative powers to disqualify directors in certain circumstances. That is ASIC taking action to initiate a hearing to disqualify a director—if, for example, in a seven-year period the person was an officer of two or more companies where those companies were wound up with a low return to creditors, and liquidators had provided us a report about the company's inability to pay its debts. The maximum period we can disqualify a company director for using that power is five years. There is no ability to extend that. That's administrative; that's ASIC, proactively taking action if certain criteria are met.

Senator PATRICK: And that would be appealable, one presumes?

Mr Price: That is correct. That is a decision that is subject to merits review at the Administrative Appeals Tribunal. Beyond that, it may be appealed to courts. There is a second category of director disqualification, and that is automatic disqualification. If certain circumstances are met, the director is automatically disqualified, and ASIC need not take action. An example is bankruptcy. If a director is made bankrupt, they're ineligible to be a company director for a period of time. If they are convicted of various offences under the Corporations Act, the company director is unable to continue as a director for a period of

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time. If they are convicted of state or territory offences relating to dishonesty, it is the same approach. There is a third category, which is effectively around court ordered disqualifications. There are a range of triggers that would enable a court to disqualify a director. An example is: if ASIC takes what is called civil penalty action—this is quite significant civil action against a director—that will enable a court to disqualify that director for a period substantially longer than five years. So it is more open-ended.

Senator PATRICK: How long is the automatic disqualification for?

Mr Price: It varies according to the circumstance. But, for example, with insolvency it is three years, from memory. There are other things that will enliven the court's ability to disqualify directors include. For example, if someone was disqualified under a foreign law, they can be disqualified here as well. So that gives you a series of buckets or categories of how it works in—

Senator PATRICK: Are they used very often? Have you got any figures on how often directors are disqualified?

Mr Price: We do have some figures from our annual report. I might ask Mr Day to speak to those.

Mr Day: In the year just completed, 2018-19, we referred 68 briefs seeking administrative qualification, and 50 directors were disqualified. In relation to other prosecutions of directors, we can give you those figures on notice. In relation to the other areas that Commissioner Price mentioned too—

Mr Price: Automatic.

Mr Day: automatic, things like that—we couldn't give you those statistics. We can tell you how many directors have been made bankrupt. We can give you some data on that because we do have an outward compliance program where we write to directors who have been notified to us as being made bankrupt, and we can tell you how many, therefore, change their directorship so that they then remove themselves as directors. We can give you that, but I'll have to take that on notice.

Senator PATRICK: Do you know approximately how many are found bankrupt, for example?

Mr Day: I think it's in the hundreds to thousands.

Senator PATRICK: Per annum?

Mr Day: Per annum.

Senator PATRICK: Okay. What about companies being deregistered?

Mr Day: I don't have the figures to hand about how many companies become deregistered. I can take that on notice and get you those figures. We don't normally publish those, by the looks of it, in our annual report. In terms of deregistration, there are a couple of processes by which companies become deregistered. The first is voluntarily. The directors will effectively lodge a form with ASIC saying they have little assets and no debts—it's very important for an officer of the company to attest that they have no debts—and they can have the company voluntarily deregistered. The second is that liquidators who've been winding up the company, at the end of their winding-up, can apply for the company to be deregistered.
The third is that ASIC will forcibly strike off or deregister a certain number of companies each year for nonpayment of their annual renewal fee.

**Senator PATRICK:** Is there any way in which you would initiate an action for misconduct related to the directors at all?

**Mr Day:** In relation to deregistration?

**Senator PATRICK:** Yes.

**Mr Day:** If—and we are sometimes put on notice of this—we find that a director has lodged the form seeking to voluntarily deregister the company, and that document, or the information contained in that document, is false, we will prosecute under the relevant section for providing a false document to ASIC. I can take on notice the number of times we've prosecuted in that way if you like.

**Senator PATRICK:** Because the bill is getting discussed at the moment, if you're able to get that before the normal 30 days or whatever the committee has said, I'd be most grateful—

**Mr Day:** We'll work hard to get that to you as soon as we can, Senator.

**Senator PATRICK:** If that could come back.

**Mr Day:** Yes.

**Senator PATRICK:** So administrative, automatic or court-ordered disqualification. If you could get the answers to those questions on notice back to me relatively quickly, Minister, that would also help me. I'd be most grateful. That's it for me.

**CHAIR:** Senator Whish-Wilson.

**Senator WHISH-WILSON:** Thank you, Chair. Just a couple of broad questions, Mr Shipton, to start with, if you don't mind. Senator Bragg was talking a bit earlier about the PJC hearing recently, and there's another topic there that I wanted to go back to, around responsible lending laws. The Treasurer recently gave a speech at the Hilton to the AFR Property Summit. I've been asking questions about this all day. He went through some tightening of regulations around lending, and then he said:

*Notwithstanding the importance of these various initiatives, they are no substitute for strong and competitive credit markets. And central to achieving this is the appropriate application of responsible lending obligations.*

What do you understand to be 'appropriate application of responsible lending laws' under the National Consumer Credit Protection Act? Do you think you're doing that appropriately at the moment?

**Mr Shipton:** Yes, we are. Let me start by saying that Commissioner Hughes and I will answer the questions in relation to responsible lending. Right now, we have a consultation which is updating the 2014 guidance as regards the application of the responsible lending obligations. At this point, our definition or interpretation of the appropriate application of those obligations is that 2014 guidance. But that's why I do highlight that we're updating it, because it's in need of update. We have conducted a number of proceedings, public hearings and requests for information to update that guidance, and that process is underway. But I will also quickly ask—

**Senator WHISH-WILSON:** Sorry, when did that process begin—just as a matter of interest?
Mr Shipton: It started at the start of the year.

Mr Hughes: The consultation paper was issued in February. We conducted public hearings in August, assisted by Deputy Chair Chester and Commissioner Press. Next week we are embarking on a targeted range of additional round tables with specific groups.

Senator WHISH-WILSON: That probably answers my other questions. If you're going through a process of updating it and of consultation, then I'm okay with that; I'll wait and see where that goes.

Could I ask some questions of you, Mr Price. I have a lot of other questions on other subjects but I'm part of the PJCCFS and I know we're spending a lot of time with you guys very shortly, so I'll hold off on those other questions till then. I'd like to talk to you about the comments that you made recently in relation to carbon risk and climate risk. Thank you for raising this issue publicly. You have been quoted recently as saying:

Where the law requires the disclosure of climate risk ... it should be done in a way that's useful and relevant to the market.

Mr Price: Yes.

Senator WHISH-WILSON: Recently I noticed ASIC has updated its guidance on climate change-related disclosure for companies at the prospectus stage and in operation. Are you actively encouraging the use of the TCFD framework for carbon risk disclosure?

Mr Price: We think it is a useful framework against which to disclose carbon risk. I'd further remark that, it seems to me, it's fast becoming the de facto standard for disclosure in this area.

Senator WHISH-WILSON: I asked APRA the same question recently. Has ASIC provided any kind of specific guidance on the use of this framework? Or would you be planning to do that through a report or some kind of consultation process?

Mr Price: Not at this stage. The fact of the matter is that there are already very comprehensive materials out in the marketplace about the TCFD framework. Of course, it is a voluntary framework to use—

Senator WHISH-WILSON: I'll get to that in a minute.

Mr Price: Yes—and so we don't see the need at this stage.

Senator WHISH-WILSON: Are you aware of whether the Council of Financial Regulators is considering developing more specific guidance on risk disclosure or using the TCFD framework?

Mr Price: We're part of the Council of Financial Regulators—

Senator WHISH-WILSON: So has it been discussed at that level?

Mr Price: It's discussed through the working group; that's exactly right.

Senator WHISH-WILSON: Can you give me the details of those discussions?

Mr Price: I don't have the details of those discussions to hand.

Senator WHISH-WILSON: Would you be able to take that on notice, as to when that happened?

Mr Price: Yes, sure.
Senator WHISH-WILSON: ASIC's guidance has also been updated to make clear:
… the risk of directors being found liable for a misleading or deceptive forward-looking statement … is minimal, provided the statements are based on the best available evidence at the time …

Mr Price: Yes.

Senator WHISH-WILSON: Would it be a correct interpretation to say that the corollary of that is that directors could potentially be held liable if they don't disclose carbon risk in a timely fashion?

Mr Price: No, it's a slightly more nuanced legal point than that. There are particular provisions in the Corporations Act to the effect that forward-looking statements, unless they have reasonable grounds, are taken to be misleading. So, where you're making statements that are effectively predictions about the future, particularly where they go to things like revenue of the company, we say and we believe that the law requires there to be reasonable grounds that underpin those statements. That's what that particular section of our guidance was directed towards.

Senator WHISH-WILSON: You're also quoted as saying:
Where climate risk is material, we're actively encouraging directors and advisers to provide voluntary disclosure to the market.

Firstly, could you clarify the point on advisers? Is that financial advisers?

Mr Price: It may well be. If we're talking about material aspects of a company's business—

Senator WHISH-WILSON: It would be their auditors?

Mr Price: then that's going to financial reporting. It's important to note that the Australian Accounting Standards Board has recently updated some guidance on materiality, which specifically addresses various points around climate risk as well. It was sort of alluding to those developments.

Senator WHISH-WILSON: On notice, could I get the details of those updates?

Mr Price: From memory, it was the end of last year. I have it in mind that it was December of last year that that guidance was released.

Senator WHISH-WILSON: Are you satisfied with the level of carbon risk disclosure in the corporate sector in Australia at the moment, Mr Price?

Mr Price: We issued a report on climate risk disclosure by Australia's listed companies in September 2018. That did indicate that some improvement, particularly outside the ASX 200, would be desirable, and we are actually planning further surveillance activities to see whether there has been any improvement since our last report was issued in September 2018.

Senator WHISH-WILSON: So you are conducting surveillance activities on carbon risk?

Mr Price: Not at present, but it's planned.

Senator WHISH-WILSON: Okay. Have you identified any companies that are failing to disclose material carbon risks at this stage, or is it still too early?

Mr Price: It's still too early, because, as I say, the surveillance is still being planned.
Senator WHISH-WILSON: Yes—same for industry sectors. Under a voluntary scheme, how would you remedy that? You can't give them a speeding ticket, can you; you just have to remind them.

Mr Price: The TCFD is a voluntary scheme, but the disclosure obligations that we talk about are actually not voluntary. The obligations to make disclosure in a prospectus, if the matter is material, or the obligations to disclose issues that go to strategies and risks in the operating and financial review, which are required by legislation, are mandatory. Indeed, if there is impairment of assets as a result of carbon risk, that should be appearing in the financial report, as the Australian Accounting Standards Board points out. The TCFD is a voluntary framework. What I'm saying is that there are legal disclosure obligations that may pick up carbon risk, as they pick up any other sort of risk in the economy.

Senator WHISH-WILSON: You mentioned voluntary schemes. Do you have any thoughts or comments on whether a mandatory scheme may be required in the future?

Mr Price: That, I think, is a policy matter for government. I'd reiterate the point I made earlier: in my observation, the TCFD standard, legalities aside, is fast becoming the de facto standard for not just Australia—

Senator WHISH-WILSON: And you think auditors are up to standard in terms of the use of this, and that they're adequately identifying and disclosing carbon risk?

Mr Price: I think there's a heightened understanding amongst various commercial sectors, including, for example, the Australian Institute of Company Directors, that climate risks can indeed be market risks that need to be managed as part of the normal process of running a company.

Senator WHISH-WILSON: Thank you. I'll put the rest of my questions on notice.

Senator STOKER: As you know, the time share industry has been operating on a consumer protection model that's based on consumers having a seven-day cooling-off period. Could you provide clarity around where ASIC is up to with the proposal to implement a 14-day opt-in deferred sales model for this industry?

Ms Press: We have been consulting on this for a while. The policy still hasn't been set. We are considering that proposal; that's what we consulted on. We are hoping to take the position to our policy committees before the end of this calendar year, and we'll go back to market and consult again if we need to.

Senator STOKER: Who have the consultations been with to date?

Ms Press: The consultations have been going for a little over two years. We consulted the industry at the time. We then did a review of the advice provided in this sector, and we had some concerns around the quality of the advice provided. We then did a piece of consumer research around how consumers are responding to the sales of these time shares and around the environment in which they're sold, and we had some concerns around the way consumers were not objectively given time to really think about the product they were buying, which has led us to the view that they need more time to opt in.

Senator STOKER: It sounds as though you have a view that it's settled, then?

Ms Press: We consulted on that view. We haven't formed the policy position yet. It's due to go to our policy committee before the end of this calendar year.
Senator STOKER: Could I encourage the swift resolution of the issue because the uncertainty is a really difficult thing for the industry to manage.

Ms Press: Certainly. I'll take that on.

Senator STOKER: Is ASIC aware, through your work, of the fact that one timeshare company had to lay off 20 staff in Sydney only a few weeks ago because of the effect of this uncertainty?

Ms Press: I was not aware of that particular circumstance—no.

Senator STOKER: Is ASIC factoring into its decision the fact that, of the over 210,000 presentations that have been attended, only 6.1 per cent of consumers decided to buy—and that's suggesting there isn't too much pressure—and, of those people, 48 per cent effectively exercised their right to cool off. To me that suggests that the consumer protections that are currently in place are effective. Has that been considered?

Ms Press: The research that we've done with consumers will feed into our decision, which will come before the end of this calendar year.

Senator STOKER: That doesn't answer my question, though.

Ms Press: It is being considered in the mix of things we are looking at. But it's fair to say that the consumer experience in this space varies dramatically.

Senator STOKER: Thank you very much.

CHAIR: Mr Shipton, I go to water markets. Does ASIC have any role in water trading markets?

Mr Shipton: It depends on the construct of the market or the product and it comes down to a definitional one. Commissioner Price may have had experiences on this matter as well.

Mr Price: Just to endorse your point, Chairman, like many asset classes that are not financial products, we will only really have jurisdiction if they are structured in a particular way—through a registered managed investment scheme or use other financial instruments as part of their operation. So, unfortunately, there's no black-and-white answer. I would say: generally no; we're unlikely to have jurisdiction. But it will very much depend on the circumstances.

Senator GALLACHER: There was a suggestion that there was a purchase of water rights and a banking of those water rights with a view that it was an investment strategy and that they would then release them—I'm not saying it's illegal or anything—at times of higher prices. That doesn't come under your purvey?

Ms Press: The regulation of water per se obviously does not sit with ASIC. If you're in a situation where, for example, investors give up day-to-day control in respect of the management of an asset, they're led to believe they'll get an investment return as a result of giving up that control and they have no real day-to-day control over their investment, that may well be a managed investment scheme. But it actually is highly dependent on how it's structured and there is a wide range of exemptions, even once it is defined as a financial product. I'm afraid that's a long way of saying that it really does depend on the circumstances, but, based on my experience, I would say generally no.

CHAIR: There will be another example tomorrow morning on the front page of The Australian. They're talking about water prices in the north of Victoria spiking to almost
$1,000 a megalitre, I assume. I'm not sure of that. It's not clear from the graph. On a four- or five-year average, it would be around 250. Who in this regulatory space would that trigger some interest from, if anybody? Not ASIC?

Mr Day: No, it's not. The circumstances you're referring to are really just about entities or individuals who have been allocated water rights.

CHAIR: No, I'm not—

Mr Day: I'm just explaining the background. They'll effectively buy and sell those between individuals. In those circumstances where there's direct ownership, it doesn't give rise to anything for ASIC. As Commissioner Price was pointing out, however, if there's an underlying investment structure where people come together to bid for or negotiate and buy those rights, then those underlying investment structures may be caught by ASIC. Outside of that, it's really a matter for the relevant water corporation and the way they've allocated those rights.

Senator McCARTHY: Markets Group could take an interest in it because it's a market, but I've never seen any indication that they do.

Mr Day: And it's not a market that's regulated by us.

CHAIR: I just wanted to clarify that.

Senator BRAGG: Could I ask one final question on the intervention powers? The CP 322 is looking at binary options and the CFDs. I just wondered whether you could talk about that for a minute? Those are obviously two different products. Would you treat them in the same way? Would they be treated differently? I'm just interested in your thoughts on how that will work.

Mr Shipton: That consultation is underway. I understand where you're coming from with this question. Since that consultation is underway and since we're seeking feedback and since there has not been a determination one way or the other, that's probably all we can update you on at this particular point in time.

Senator BRAGG: Thank you very much.

Mr Shipton: Chair, may I ask for your indulgence for one minute of a mini closing statement between the deputy chair and I? We just wanted to thank a member of this committee for his service, with your indulgence.

CHAIR: Certainly.

Mr Shipton: Thank you, Chair. Senator Sinodinos, we wanted to thank you for your oversight, both as a responsible minister and as a member of this committee. You have made this agency a better one because of your interest, your questions and your governance. I know that Deputy Chair Chester would like to add to our thanks.

Ms Chester: Senator Sinodinos, this year is the 30th year that I have known you, since the early days of the Treasury. You are a great public policy warrior. So thank you. It's been an absolute pleasure watching you go from the corridors of the Treasury to the corridors of this parliament.

Senator SINODINOS: Thank you very much. It's much appreciated.
CHAIR: On that note, we will adjourn. I just want to thank everyone for being here today. Thank you to Broadcasting and Hansard. The committee's consideration of the 2019-20 supplementary budget estimates will resume tomorrow morning at 9.00 am, with further examination of the Treasury portfolio. I thank Minister Hume. I thank all officials who have appeared today.

Committee adjourned at 22:52