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SENATE

ECONOMICS LEGISLATION COMMITTEE

Wednesday, 20 February 2019

TREASURY PORTFOLIO

In attendance
Senator Cormann, Minister for Finance and the Public Service
Senator Seselja, Assistant Minister for Treasury and Finance

Department of Treasury
Mr Philip Gaetjens, Secretary

Macroeconomic Group
Ms Meghan Quinn, Deputy Secretary, Macroeconomic Group
Mr Ian Beckett, Division Head, Macroeconomic Modelling and Policy Division
Dr John Swieringa, Principal Adviser, Macroeconomic Modelling and Policy Division
Mr Dan Andrews, Principal Adviser, Macroeconomic Modelling and Policy Division
Ms Lisa Elliston, Division Head, International Policy and Engagement Division
Ms Christine Barron, Chief Adviser, International Policy and Engagement Division
Mr Christopher Legg, Chief Adviser, International Policy and Engagement Division
Dr Angelia Grant, Division Head, Macroeconomic Conditions Division
Ms Laura Berger-Thomson, Principal Adviser (Forecasting), Macroeconomic Conditions Division

Corporate Services and Business Strategy Group
Mr. Matt Flavel, Deputy Secretary, Corporate Services and Business Strategy Group
Mr. Robert Twomey, Chief Financial Officer / Division Head, Chief Financial Officer Division
Ms. Shannon Kenna, Division Head, Communication and Parliamentary Division
Ms. Phoebe Burgess, Division Head, people and Organisational Strategy Division
Mr. Mike Webb, Division Head, Information Services Division.

Fiscal Group
Mr Simon Atkinson, Deputy Secretary, Fiscal Group
Mr Jonathan Rollings, Division Head, Budget Policy Division, Fiscal Group
Mr Adam McKissack, Principal Adviser, Budget Policy Division, Fiscal Group
Ms Vicki Wilkinson, Division Head, Social Policy Division, Fiscal Group
Ms Philippa Brown, Principal Adviser, Social Policy Division, Fiscal Group
Ms Joanne Evans, Principal Adviser, Social Policy Division, Fiscal Group
Mr Robert Jeremenko, Division Head, Retirement Income Policy Division, Fiscal Group
Mr Darren Kennedy, Principal Adviser, Retirement Income Policy Division, Fiscal Group
Ms Michelle Dowdell, Principal Adviser, Retirement Income Policy Division, Fiscal Group
Mr Robb Preston, Principal Adviser, Retirement Income Policy Division, Fiscal Group
Ms Kate Phipps, Division Head, Commonwealth-State Policy Division, Fiscal Group
Mr Hamish McDonald, Division Head, Structural Reform Division, Fiscal Group
Mr Damien Dunn, Principal Adviser, Structural Reform Division, Fiscal Group
Mr Tom Dickson, Principal Adviser, Structural Reform Division, Fiscal Group
Ms Kirsten Baker, Principal Adviser, Structural Reform Division, Fiscal Group

**Markets Group**

Mr Paul Verschuer, Deputy Secretary, Markets Group
Ms Diane Brown, Division Head, Financial System Division
Mr James Kelly, Division Head, Financial Services Reform Implementation Taskforce
Mr Warren Tease, Chief Adviser, Financial System Division
Ms Nghi Luu, Acting Principal Adviser, Financial System Division
Ms Julie Greenall-Ota, Principal Adviser, Financial System Division
Ms Elizabeth Williamson, Division Head, Consumer and Corporations Policy Division
Ms Kate O’Rourke, Principal Adviser, Consumer and Corporations Policy Division
Ms Lucy Vincent, 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 Victoria Anderson, Chief Adviser, Foreign Investment Division
Ms Kerstin Wijeyewardene, Principal Adviser, Foreign Investment Division
Mr Tim Baird, Principal Adviser, Foreign Investment Division
Ms Lina Wong, Acting Principal Adviser, Foreign Investment Division

**Revenue Group**

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

**Australian Charities and Not-For-Profits Commission**

The Hon. Dr Gary Johns, Commissioner

**Australian Taxation Office**

Mr Chris Jordan, Commissioner of Taxation
Mr Jeremy Hirschhorn, Second Commissioner, Client Engagement Group
Mr Ramez Katf, Chief Information Officer, Enterprise Solutions and Technology
Ms Jacqui Curtis, Chief Operating Officer, Corporate and Enabling Services Group
Ms Melinda Smith, Chief Service Delivery Officer, Service Delivery Group
Mr Andrew Mills, Second Commissioner Law Design and Practice
Ms Frances Cawthra, Chief Finance Officer
Mr James O’Halloran, Deputy Commissioner, Superannuation
Mr Jonathon Todd, ATO General Counsel, ATO Corporate
Mr Robert Ravanello, Deputy Commissioner, Debt
Mr Jeremy Geale, Deputy Commissioner, Review and Dispute Resolution
Mr Brad Chapman, Deputy Commissioner, ATO People

**Australian Competition and Consumer Commission**
Mr Rod Sims, Chair
Ms Rayne de Gruchy, Chief Operating Officer
Mr Scott Gregson, Executive General Manager, Merger and Authorisation Review Division
Mr Marcus Bezzi, Executive General Manager, Specialised Enforcement and Advocacy Division
Mr Rami Greiss, Executive General Manager, Enforcement Division
Mr Tim Grimwade, Executive General Manager, Consumer, Small Business and Product Safety Division
Mr Michael Cosgrave, Executive General Manager, Infrastructure Regulation Division
Mr Peter Maybury, Chief Finance Officer

**Australian Energy Regulator**
Mr Warwick Anderson, Acting Chief Executive Officer
Mr Peter Adams, General Manager, Market Performance
Ms Angela Bourke, Acting General Manager, Consumers and Markets
Mr Mark Feather, General Manager, Policy and Performance

**Australian Prudential Regulation Authority**
Mr Wayne Byres, Chairman
Mr John Lonsdale, Deputy Chairman
Mr Adrian Rees, General Manager, Diversified Institutions Division
Ms Heidi Richards, General Manager, Policy Development
Mr Warren Scott, General Counsel

**Australian Securities and Investments Commission**
Mr James Shipton, Chair
Mr Daniel Crennan QC, Deputy Chair
Ms Karen Chester, Deputy Chair
Ms Cathie Armour, Commissioner
Mr Sean Hughes, Commissioner
Ms Danielle Press, Commissioner
Mr John Price, Commissioner
Ms Joanna Bird, Executive Director, Wealth Management
Mr Warren Day, Executive Director, Assessment and Intelligence
Ms Jane Eccleston, Senior Executive Leader, Superannuation
Mr Tim Gough, Senior Executive Leader for Credit, Retail Banking and Payments
Mr Oliver Harvey, Chief Supervisory Officer
Ms Laura Higgins, Senior Executive Leader, Financial Capability
Mr Greg Kirk, Executive Director, Strategy
Mr Tim Mullaly, Executive Director, Financial Services Enforcement
Mr Chris Savundra, General Counsel

Productivity Commission
Mr Michael Brennan, Chair
Ms Nina Davidson, Head of Office
Ms Jane Melanie, Assistant Commissioner
Mr Jack Knowles, Research Manager

Inspector-General of Taxation / Taxation Ombudsman
Mr Andrew McLoughlin, Acting Inspector-General of Taxation / Taxation Ombudsman
Mr David Pengilley, Acting Deputy Inspector-General of Taxation
Mr Duy Dam, Acting General Manager

Committee met at 09:00

CHAIR (Senator Hume): I declare open this meeting of the Senate Economics Legislation Committee. The Senate has referred to the committee the particulars of proposed expenditure for 2018-19 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 Thursday, 28 February 2019 as the date by which senators are to submit written questions on notice and has fixed Tuesday, 26 March 2019 as the date for return of answers to questions taken on notice.

Under standing order 26, the committee must take all evidence in public session, including answers to questions on notice. Officers and senators are familiar with the rules of the Senate governing estimates hearings. If you need assistance, the secretariat has a copy of those 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 and which I now incorporate in 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:

(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, information or a document that is confidential or consists of advice to government is not a statement that meets the requirements of that 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.

An officer called upon for the first time to answer a question should state their full name and position for the Hansard record and witnesses should speak clearly into the microphone. Please make sure all mobile phones are switched off or turned to silent. I remind senators and witnesses that microphones remain live, unless I instruct otherwise—for example, at suspension or at adjournment. I ask photographers and camera operators to follow the 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 the 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. Before we begin, I want to let senators know that I intend to follow the same procedures as I have done for the last few rounds of estimates. We'll have 10- minute speaking slots. I intend to give the opposition at least 50 per cent of the time, but I do intend to allow the government and crossbenches appropriate time as well.

Department of the Treasury

[09:03]

CHAIR: The committee will now begin consideration of the Treasury portfolio, and I welcome the Minister for Finance, Senator the Hon. Matthias Cormann, representing the Treasurer. I also welcome the Secretary of the Department of the Treasury, Mr Philip Gaetjens, and officers of the Treasury. Minister or Secretary, would you like to make an opening statement?

Senator Cormann: I don't, but the secretary does.

Mr Gaetjens: Thank you, Chair. Good morning, senators. Since my last appearance before you in October last year, there have been two particularly notable events involving Treasury. The Mid-Year Economic and Fiscal Outlook, or MYEFO, was released in December, and the final report of the financial services royal commission was delivered to the Governor-General on Friday, 1 February, and released publically with the government's response the following Monday. I will touch on both of those this morning, as well as provide an update on the economic outlook and some recent changes to Treasury's organisational structure.

Let me first refer to the mid-year update and data releases since then. The fiscal outlook as published in MYEFO indicated a smaller deficit in the current financial year relative what was published in the 2018 budget with a return to surplus of $4.1 billion, which is 0.2 per cent of GDP forecast for 2019-20. Looking further ahead, ongoing surpluses were projected from
2021, and the cumulative underlying cash surplus over the four years from 2018-19 was expected to be $30.4 billion, nearly double the estimate in the 2018 budget. The fiscal position has clearly benefited from solid economic growth, a strong labour market and commodity prices remaining higher for longer than was assumed in the 2018 budget. The decade taken to return to budget surpluses has been a lived experience of the long-lasting fiscal impacts of financial shocks and economic transitions that occur as an economy rebalances. But the MYEFO shows, even with those surpluses being realised, that, while accumulated debt from ongoing deficits will be reduced, gross debt will still be in the order of 14.6 per cent of GDP in 2028-29. With new downside risks emerging, it is vital that fiscal discipline be maintained to ensure Australia has budget headroom to be adequately prepared for any adverse surprises.

Reflecting further on global economic outlook, the MYEFO forecasts for global growth of 3¾ per cent in 2019 and 2020 remained unchanged from what was published in the 2018 budget, and major trading partner growth was revised down slightly to take into account the impact of trade tensions on the US and Chinese economies. Nevertheless, the MYEFO forecast for Australia's major trading partner growth of four per cent in 2019 and 2020 was stronger than the global outlook as a whole. MTP growth has more direct relevance to Australia's economic prospects. Since MYEFO was published, both the World Bank and IMF have slightly lowered their forecasts for global growth, with revisions occurring largely in economies outside of Australia's major trading partners. While the IMF is now forecasting global growth to be 3.5 per cent in 2019 and 3.6 per cent in 2020, those forecasts are still above the 10-year average global growth rate of 3.4 per cent.

Around an otherwise relatively robust global growth outlook, the downside risks appear a little more prominent than at MYEFO, and the discussion of these risks has intensified. The US and China are still negotiating to prevent new tariff measures in addition to those imposed late last year by both countries. So trade tensions remain a risk to the global outlook, noting the positive outcome from those negotiations is a potential upside risk to global growth prospects. There has also been some easing of growth momentum in Japan and Europe, and real GDP has fallen for two consecutive quarters in Italy, compounding ongoing concerns about the European banking system. Brexit negotiations are overlaying further uncertainty around the near-term outlook in Europe, particularly as the exit deadline rapidly approaches with a formal arrangement not yet in place to manage the process.

China faces mounting pressure to address its financial sector risks, while vulnerabilities associated with an increase in global indebtedness including in emerging economies also present a risk to the international outlook. Balancing those risks, more favourable macroeconomic policy settings in key economies, particularly China, could lead to growth being stronger than forecast. A bounce back in growth momentum in the US is also a possibility following the extended government shutdown earlier in the year, offsetting the temporary negative impacts from that event. The US Federal Reserve statement in January noted that it will be patient as it determines future policy adjustments, which helped stabilise financial markets and increase confidence about the outlook for the US economy.

Moving on to the domestic economy, the economic outlook in MYEFO came off the back of weaker than expected September quarter growth, and uncertainty around the impact of the drought. While a soft result, growth in the September quarter was broadly based with
consumption, dwelling investment, net exports and public final demand all contributing to growth. These were partially offset by a negative impact from inventories and a significant fall in mining investment following the near completion of the construction phase of the major resource projects, including in the LNG sector. The September quarter result contributed to a small revision down in the growth outlook in MYEFO relative to budget, with real GDP growth forecast to be 2¼ per cent 2018-19, which is around Australia's estimated potential growth rate.

The economy and domestic demand are expected to strengthen over the forecast period supported by rising mining investment, faster growth in household consumption and non-mining business investment.

Since MYEFO, there have been a number of events relevant to the economic outlook, and we continue to receive more up-to-date data on the economy, which, on balance, has been slightly more negative than expected, increasing risks to the outlook.

As all of us are aware, there have been floods recently in North Queensland where there have been reports of major stock losses in addition to the loss of many farms, houses and, unfortunately, lives too. I would like to express my sympathy to everyone who has been affected by the floods. Treasury will continue to monitor the flood situation, both for its localised impacts and for any impacts on the macroeconomic outlook.

The expected recovery from the current drought also continues to be a key uncertainty for the forecasts. The drought continues to play out across various areas of the country, particularly south-eastern Australia. As stated in the mid-year review, the decline in agricultural production in 2018-19 is expected to subtract around a quarter of a percentage point from real GDP growth. Downgrades to winter crop production are expected to be partially offset in the short term by increased livestock slaughtering.

A downward trend in building approvals over 2018 has coincided with accelerated declines in housing prices, and further falls could result in weaker than expected dwelling investment in the future. Falling housing prices could also cause consumer spending to be weaker than forecast. A general slowing in the pace of credit growth, despite monetary policy remaining accommodative, and interest rates remaining low by historical standards, is also adding to the uncertainty around consumer spending and investment. It should be noted, however, that slower credit growth has occurred alongside a range of actions take by regulators in recent years to improve lending standards. It is also important to put some longer term perspective on the recent moderation in housing prices. During the period of substantial price growth between 2012 and 2017, combined capital city housing prices rose by around 50 per cent, driven by growth in Sydney of around 75 per cent and in Melbourne of around 60 per cent. However, the recent moderation is only partly unwound this growth. Combined capital city housing prices have fallen by around eight per cent from their recent peak in September 2017, with Sydney prices down around 12 per cent from their peak in July 2017, and Melbourne prices down almost nine per cent from their peak in November 2017. Despite these declines, capital city housing prices are around 35 per cent higher than their 2012 levels.

Turning to some of the upside risks to the outlook, it is worth highlighting that commodity prices have generally remained higher than assumed at MYEFO. Iron ore prices started climbing as companies started restocking before the Chinese Lunar New Year. They have since spiked even higher as the result of the tragic tailings dam collapse in Brazil. Strength in
metallurgical coal prices has waned recently, but prices remain broadly consistent with a
MYEFO assumption of falling spot prices. Australian thermal coal prices have fallen recently,
but it is difficult to determine what is driving the change in prices, given the Chinese Lunar
New Year holidays. Given the impact that volatile commodity prices can have on the fiscal
outlook, it is important to look through short-term spikes in preparing the commodity price
assumptions that underpin those forecasts. In the lead-up to the budget, we will continue our
past practice of undertaking extensive business liaison on the outlook for commodity prices.

Labour market conditions have also remained strong. Around 270,000 jobs were created in
the past year, and the unemployment rate has fallen to five per cent, its equal lowest level
since 2011. Solid employment growth is forecast to continue over the forecast period and is
expected to ultimately support a pick-up in wage and price growth. The participation rate in
December 2018 remained elevated at 65.6 per cent. Pleasingly, in recent years, the
participation rate has been driven up by both more females and more mature-age workers
joining the workforce. Nevertheless, despite falls in the number of youth unemployed, the
youth unemployment rate remains too high at 11.2 per cent.

In summary, while the central forecasts are sound, we are preparing a budget forecast
against a backdrop of increased uncertainty and accumulating downside risks. Global growth
is still expected to occur at a pace that will support continued growth in Australia, and,
importantly for Australia, we are still expecting major trading partner growth to be better than
global growth. Domestic growth also remains close to potential, and the outlook for the
Labour market remains positive. The December quarter national accounts print next month
will be an important read on economic momentum as the forecasts are prepared for the budget
on 2 April.

I will now turn briefly to the financial services royal commission. The report delivered on 1
February laid bare the extent of misconduct in the financial services industry, which damaged
individuals and the overall reputation of the financial sector. The commissioner directed
primary responsibility for misconduct in the industry to the entities concerned and those who
managed and controlled them—boards and senior management. The commission made more
than 20 referrals of possible legal action to the regulators for further examination.
Importantly, the royal commission reaffirmed the twin peaks regulatory model and in fact,
more properly, extended its application to superannuation.

In its response, the government indicated it intends to take action on all 76
recommendations, in some cases going further than the commission's recommendation. The
government stated that its focus is to restore trust in the financial system and deliver better
consumer outcomes, while maintaining the flow of credit and continuing to promote
competition. Work has already commenced on implementing the commission's
recommendations, for example with the APRA capability review team and terms of reference
being announced. As you would be aware, Treasury made a number of submissions and
provided other background information to the royal commission. We also established a task
force to provide advice to government in preparation for the commissioner's final report.
Before that, Treasury was involved in a large number of legislative and other measures to
strengthen the financial sector and improve its performance.

Public submissions of the type made to the royal commission by Treasury are made on
relatively rare occasions. One issue in particular where Treasury did express a strong opinion
was in relation to the role of mortgage brokers in promoting competition. As governments of all persuasions have recognised, it is important that care be taken to not damage, and where possible to enhance, competition in the banking sector. I am pleased to inform the committee that the commission has supported, agreed with and recognised many of the issues raised by Treasury in its submissions to the royal commission.

This and Treasury's other work in relation to the financial sector are a tangible demonstration of Treasury's policy expertise and its ability to provide valuable advice to the government. The commissioner's remarks in his final report, in particular, are a testament to the quality of the staff in a number of divisions across all Treasury groups. The Treasury task force will now turn its attention to implementing the government's response to the royal commission report. The task force will work closely with an implementation committee that will shortly be established to guide and support implementation, which will consist of Treasury, ASIC, APRA, the OPC and other agencies as required.

Before I finish I would like to briefly outline a number of organisational changes that I have put in place and have occurred within the department. Meghan Quinn, who was formerly the deputy secretary of structural reform group, is now the deputy secretary of the macroeconomic group. This has allowed consolidation of functions previously undertaken in the structural reform group into the macroeconomic and fiscal groups. Macroeconomic group will increase its focus on productivity and understanding the structural changes occurring in our economy, and the productivity and microdata work from the former structural reform group will move into the macro group. By combining macro and micro into a single group I want to achieve a sharper alignment between whole-of-economy aggregates, forecasting analysis and policy choices about growth drivers and productivity. There will also be greater synergies in analytical and modelling expertise to support work across Treasury.

Treasury's work on industry and sectoral policy reforms will now be located in fiscal group. Having sectoral structural reforms sitting alongside the agency-facing functions within fiscal group will facilitate partnering with agencies on structural reform initiatives and also provide synergy benefits. I believe this dual focus on economy-wide productivity and sectoral structural reform will deepen Treasury's capability in this area of microeconomics, an area in which I have a deep interest and years of experience earlier in my career. It will also tangibly demonstrate that structural reform and competition are not the focus of a single group, but are enmeshed across the work of the whole department.

Finally, I would also like to welcome Paul Verschuer to the department. He started with us on Monday as the deputy secretary of markets group. Paul joins us after just over two years at the New South Wales Treasury Corporation. Prior to that he held many senior roles across the banking industry, including at Westpac and Macquarie Bank. Paul will bring deep financial market expertise to Treasury. Thank you.

CHAIR: Thank you. I might kick off the questions. You mentioned that real GDP growth in 2018-19 is expected to be around 2.75 per cent. You said that that had been downgraded by a quarter of a per cent because of the drought. What is the outlook for real GDP growth beyond the 2018-19 year and what the drivers for that will be?

Mr Gaetjens: As I mentioned in my opening comment, we are now preparing our budget forecasts and we will provide our next update to the forecasts at budget time. Since the time of the midyear review, as I think I said in the opening statement, the central forecast still
remains solid, but there is an accumulation of risks both globally and domestically. It will be interesting to see how those risks materialise or if they do. We are paying careful attention to what has happened. We have had some partial data since the midyear review which gives us a bit of an indication, but really to pre-empt what's going to be in the budget or the importance of the December quarter national accounts results, which come out early next month—I think I will follow what usually happens and we will provide forecasts at both the midyear review and at the budget time.

CHAIR: Can I ask then about the ratings agencies. Obviously S&P have reaffirmed Australia's triple-A credit rating, which is terrific, and it has also removed its negative outlook. Can you explain to the Senate what the factors are that have been driving their decisions, if you're across that, and how important it is that we maintain those triple-A credit ratings, not just from the S&P but also from Fitch and Moody's as well?

Mr Gaetjens: I regard the triple-A rating as basically a shorthand way of saying that we've got a reasonable economic outlook and good fiscal policy settings. It is shorthand for those things. Where the ratings agencies have concentrated on in the recent past is the current account deficit, the fact that we are a capital importer and people need to have confidence in the economy to keep investing in the economy. A while ago there was a bit of concern about the CAD that has stayed fairly low for quite a long time, and we have had recent trade balances and surpluses. I think their fears have been allayed over the longer time that we have kept that at a reasonable level of GDP.

There have been concerns expressed about household lending. As we have said, and as the Reserve Bank has said, household lending is high, but it is high at a time—we know from analysis that has been done—it is quite often held by high-income people. Our bank finance, a lot of our borrowing from overseas is in fact hedged, so that's a protection as well. As long as the labour force remains strong and unemployment remains close to NAIRU, there is a bit of comfort about households being able to manage that household lending. Finally, I think the ratings agencies have also been assured by the continuing anchor of surplus—firstly in 2021 and then it came forward to 2019-20—as well as the fact that over time the number of either unlegislated saves or other measures that were unlegislated or unimplemented have decreased over time as well. So I think there has been, overall, a sense of comfort with respect to the economic outlook, the mitigants to some of the risks in the economy and the progress that we have made with fiscal policy. I don't know whether Meghan or Ange would like to comment any further.

CHAIR: In a related matter, can you expand on the outlook for non-mining business investment, which is something I know has been an indicator that has concerned many governments past? Is there a sign that that outlook has been improving?

Mr Gaetjens: If I can go wider initially, it's good to see that mining investment is probably reaching its trough. It has detracted from GDP growth for a considerable time. We expect that that period of detraction is going to end pretty shortly. Last year there was a turnaround in non-mining business investment. It actually came back and was positive. I might go to Ange or Meghan to go into further detail about that.

Dr Grant: The secretary is right. It was a fairly strong growth year for non-mining business investment in 2017-18. It grew by 9.7 per cent. That followed growth of 6.9 per cent
in 2016-17. We waited a little while after the crisis for non-mining business investment to pick up. It definitely has over the last two financial years.

CHAIR: How does that relate to the capacity that businesses express to you? They have employment levels up significantly, participation levels are up—what does that say about the capacity that these firms may have, compared to recent years?

Mr Gaetjens: Businesses are employing, which is good. There has been a huge proportion of full-time jobs. Notwithstanding the results in the last couple of months, full-time jobs have been a large proportion of job growth in the year. I think it is fair to say—again I will go to Meghan and Ange for detail—but capacity utilisation in terms of the use of inventory—machines and equipment—has stayed at a very high rate, so you would keep expecting there to be investment to make sure that capacity is available. There are still some concerns about when demand will take off. While consumption has been pretty solid, it also is showing some signs of staying around a level but not growing. I think it's the case that business is getting themselves ready with people and the utilisation of the assets and machinery that they have. As other people have said, we are then waiting for the animal spirits to come out and release. I don't know if my colleagues can add to that.

Ms Quinn: One of the broader stories of the Australian economy has been the rebalancing following the increase in quantity prices and the very large increase in mining investment. It has been very welcome to see the rebalancing of the economy, with non-mining investment picking up, with consumption coming through and other parts of the economy starting to operate more as business as usual relative to our historical experience. The Australian economy is expected to grow a little above trend in 2019-20. That is being driven by solid consumption growth, solid business investment and solid public final demand.

CHAIR: Obviously productivity growth is fundamentally important to take that next big leap. The government has made record investments in infrastructure. I am wondering what the impact of that investment is on the economy in the short run and hopefully the long run too, and whether that has been factored in?

Mr Gaetjens: The government, and in fact a lot of state governments, have had a large boost in infrastructure investment over time. That will achieve benefits of reducing congestion, reducing the time it takes to get to work. It is providing capacity. I know in New South Wales there is capacity going up alongside the train lines and things like that, so people are using that. In terms of the impact on productivity, as a short-term measure its pretty hard to measure. We generally look at productivity in terms of cycles. It very much depends on where you start and where you finish to measure this variable. There has been a bit of—puzzle might be too strong a word, but there has been an issue globally that productivity has remained at levels which people probably would think are too low for quite a while. Notwithstanding what is going on in Australia, in particular, I think you would have the rebalancing—that Meghan suggested—of the economy. With all the investment that went into the mining investment boom and over time, we will certainly see output go up as a result of that investment, but it is very much a cyclical issue and one that is difficult to measure.

Senator KETTER: Thank you very much, Mr Gaetjens. Over the last few months in the Australian economy, we have seen slowing economic growth—and you referred to that in your opening statement—poor job advertisements, falling business conditions, the worst consumption growth in six years, and the RBA now downgrading the growth outlook by the
biggest amount since the GFC. Can you confirm for us that it's Treasury's view that the Australian economy is now slowing?

**Mr Gaetjens:** In the midyear review for 2018-19, we actually took growth down by a quarter point. That looked at the results of the September quarter and it also looked at the impact of drought. As I said in my opening statement, I think, in terms of the central forecasts, they remain but, as I said, the emerging risks that are coming out, both globally and domestically, point to care to be taken and whether in fact those risks will materialise. The Reserve Bank, in its *Statement on Monetary Policy*, had a higher starting position than we did in our midyear review. As new information comes out—for example, since the midyear review, the Reserve Bank's *SMP* has updated inflation data that actually takes into account falling oil prices, and there have been a few other statistics that have come out in that—we will then get the December quarter national accounts and produce our budget forecasts. So there is a little bit of leapfrogging of the timing of forecasts going on there. I think they're roughly of the same magnitude. Again, there are some individual statistics that have come out that have changed those, but I might get Meghan—

**Senator Cormann:** I might just make one quick comment here as well. We did, both in the budget and in the half-yearly budget update, point to downside risks—in particular, in the global economy—a number of which have, of course, since materialised. The point we would make, from the government's perspective, is: that is why we continue to make decisions to make the economy stronger—for example, by keeping the tax burden on the economy as low as possible, and certainly below 23.9 per cent as a share of GDP. This would be the wrong time to increase the overall tax burden on the economy by more than $200 billion over the next decade, because, compared to the status quo, given all of the other risks that we're facing, that would make the Australian economy weaker, when what we need to do is make sure that the Australian economy can be stronger in the context of global economic headwinds.

**Senator KETTER:** Ms Quinn, do you have anything to add?

**Ms Quinn:** The main characterisation that I would like to leave you with is that the Australian economy is growing around trend or a little bit above trend, is the expectation. While you mentioned that the Reserve Bank have downgraded their outlook, they've downgraded it to growing around trend.

**Senator Cormann:** That's an important point. The Reserve Bank actually were slightly more optimistic in their outlook than we were prior to MYEFO. As the secretary has indicated, in the lead-up to the budget, as we always do, we will be reviewing the economic parameters and, on advice from Treasury, we'll make relevant judgements in the context of putting updated numbers into the budget.

**Senator KETTER:** So just to confirm, Mr Gaetjens: the current position is that the economy has slowed. You said in your opening statement that, in summary, you're preparing budget forecasts against a backdrop of increased uncertainty and accumulating downside risks. That points to the fact that the economy is slowing at the moment.

**Mr Gaetjens:** I think it points to the fact that there are emerging risks. Again, for us to look at it, we are going through the process—we will review the data and the latest data to form our uptake to the forecasts in the budget—but our position at the moment is set out in the mid-year review, which was roughly two months ago.
**Senator KETTER:** Would you say that the economy just in general terms is not doing as well now as it was at the time of the budget last year?

**Mr Gaetjens:** Again, my memory from the mid-year review forecast is that they were very similar to our budget forecasts. Again, we took down ¼ per cent in 2018-19 and I think we left 2019-20 and 2020-21 at three, if my memory is correct.

**Senator Cormann:** And since the budget, the IMF have downgraded their global economic growth forecast. We have had other downside risks in the global economy that have materialised. It's a matter of public record. You have the issue of Brexit, the US-China trade relations and domestically you've had a significant drought as well as of course more recently a significant flood. These are all events that have an impact.

The question is: what decisions do you need to take to make the economy and the country stronger and what will be the effect of higher taxes in the context of the headwinds and downside risks that we're currently facing? We put to you that increasing the tax burden in the economy in the context of the challenges that we're facing would make us weaker.

The final point is that Australia, by international standards, continues to have one of the strongest growth rates in the developed world, across the OECD. If you compare us to G7 economies, our growth rate is stronger than any, other than the United States. The Australian economy continues to perform strongly, but, yes, there are downside risks externally and internally in relation to events that are well understood. The question is: what decisions do we need to continue to make to ensure that we can be as strong as possible moving forward?

**Senator KETTER:** Finally, you acknowledge falling house prices in particularly Sydney and Melbourne. Can you tell us what your concerns are there? What are the factors behind the fall in house prices?

**Mr Gaetjens:** Again I think there was a pretty good discussion about this in the Reserve Bank *Statement on monetary policy*. The primary driver I think is supply and demand. What is happening on top of that—and again I'll point to the Reserve Bank's *Statement on monetary policy*—is that credit is still there. Certainly the banks have been saying that there is more paperwork to be done to actually comply with the responsible lending standards, but loans are still being put out. They're being put out within a week. Sometimes people used to be awarded a maximum credit amount, if you like, but very few people actually went up to that maximum amount, so even if loan sizes are coming down—and I think that is a moot point because people never went up to the maximum—they're still getting roughly what they want.

In terms of supply and demand as well, I think it's fair to say that the impact of house prices themselves are actually telling investors, 'Maybe I should actually think a little bit more about investing in the housing market,' so again there is a little less demand than there was, particularly from investors rather than owner-occupiers. So I think there are quite a few interplaying factors that come into this, but, as I said in my opening remarks, we are looking at moderations both in Sydney and Melbourne that are nowhere near the size of the uptick in both of those cities. I think Perth and Darwin have had falling prices for a while. The rest of the country is in pretty much equilibrium. Again I'll go to any other comments that people want to make.

**Senator KETTER:** Senator McAllister?
CHAIR: Just before you start, Senator McAllister, there is only a minute left on the clock. Would you rather have a clear run and I'll give you an extra minute the next time around?

Senator McALLISTER: Yes.

Senator WHISH-WILSON: Could I take up on that same question? Could I ask the staff to hand these out? It's a copy of the IMF statement from November last year—19 November 2018. On the third page I've highlighted in yellow and green a couple of quotes I'd like to ask you about. I'm not sure if you've read the IMF statement, Secretary, but they've stated there in the yellow: 'The cooling of the housing market is welcome and contributes to improving housing affordability.' Does the Treasurer agree with that statement?

Mr Gaetjens: Generally, I think yes. Basically, price is down, so—

Senator WHISH-WILSON: It's interesting; we had some good philosophical discussions over the years with Mr Fraser about housing affordability and how Treasury was tackling this issue. We also saw a number of government initiatives in the 2017-18 budget around housing affordability, but we very rarely seem to talk about it in our public debate when we discuss a moderation in house prices. Do you agree that a reduction in house prices is good for the economy overall? I understand there are certainly risks associated with it, but do you feel that, if it's managed properly, it will be good for the economy overall?

CHAIR: Sorry, Mr Gaetjens, before you answer—Senator Whish-Wilson, are you intending to table this document?

Senator WHISH-WILSON: If you'd like me to, yes.

CHAIR: I think it's probably a sensible idea.

Senator WHISH-WILSON: Okay. If I could, yes.

CHAIR: I happy for you to do that, yes.

Mr Gaetjens: Senator, again, I've got to look at this about opinions versus policy and things like that, but I would certainly think that the housing market in Australia—and, again, there are several housing markets in Australia. It is not valid, I think, to talk about Australia as one housing market. All of those markets go through cycles, and I think it would be the view, in a policy sense, that, as long as those cycles do not have any sharp corrections or, in fact, the driver of a sharp correction is not a sudden rise in unemployment or a shock of some sort, then the market goes through a cycle, and I don't think, from a policy point of view, there's much concern.

Senator WHISH-WILSON: I asked the Reserve Bank governor a few years ago how he, if he were a politician, would message a fall-off in house prices, and he said: 'We'd like them to track inflation and, as long as they're not volatile, that doesn't indicate risk.' So I think that's very similar to what you are saying in terms of volatility. Mr Fraser, I think, might have got into a bit of strife in his first Senate hearings for using the B word—bubble. When we asked him a question about housing prices, he talked about there being a bubble in Australia. Reflecting on those changes in some key markets like Sydney and Melbourne, do you see the moderation in those markets as being a positive thing if its managed?

Mr Gaetjens: Again, as long as it's not a sharp correction, as I said, I don't think it's a problem. It's hard to say it's a positive thing. In a policy sense, as I've said, I think if the market goes up and it comes down—and, again, remember, in a policy sense and a regulatory
sense, the regulators made specific decisions to actually start looking at credit quality. So they were affecting, if you like, the supplier of finance and, therefore, that fed through to the demand for properties and the ability to pay for them. So we're looking at results that I think were consistent with the policy objective of those regulators, and I think, again, on top of that, we are seeing some underlying supply-and-demand issues of supply. Certainly, in Sydney it came up, and in Melbourne it certainly came up a lot. I think I saw something the other day—there's still a bit of a concern that supply in Melbourne might not keep up with future demand, given the rising population. Again, is supply going to stop short of what demand is going to predict is required over the time? So it's not—

**Senator WHISH-WILSON:** Would you say it has been orderly? Prices are up 50 per cent in key housing markets, as you mention in your statement, and the IMF note that as well. Would you say the eight per cent national drop-off has been an orderly decline over the last two years?

**Mr Gaetjens:** At the moment, I'd probably say yes.

**Senator WHISH-WILSON:** Some those key markets, like Sydney, are up 50 per cent in the five years to September 2017. You may not use the 'bubble' word, but do you agree that house prices were inflated?

**Mr Gaetjens:** No. I think that's me providing an opinion on a particular word. I think the cycle happened in those particular cities, because of what was happening again, largely in terms of supply and demand for that word. I don't know whether my colleagues want to share any opinions. I don't want to add to or detract from what's happening. I think it's gone up and it's gone down. The numbers are there. What adjective or noun people want to give to that, I think, is up to them. I don't think, in a policy sense, it's a problem.

**Senator WHISH-WILSON:** In terms of informing the public debate around house prices—and I'll ask you a direct question on this in a second—you see front-page headlines today talking about housing collapse. In the statement that you've got before you in the second paragraph the IMF said 'correction in housing prices'. I note the word they use is 'correction'. They said:

Pressures on housing affordability, which is critical for growth to remain inclusive, will be relieved in the process.

Do you think it would be more accurate and more informative for public debate to be talking about a correction in housing prices rather than a collapse in housing prices, as is the way some of the media are describing it?

**Mr Gaetjens:** Again, I don't think I'm going to get hung up on a particular word. To my mind, the pace at which the market went up obviously caused some issues, including not only with people who wish to get into the market but with the regulators in terms of the quality of credit that was providing that upswing. Particular policy measures were taken and the market is now headed down. Again, I think the pace at which the cycle went up and down, from a policy position, as far as I'm concerned, is not causing us an issue. If it accelerated or became a sharp impact, because of a particular trigger—I think we take some comfort from the fact that this up and down in the housing cycle has been quite unusual, because it has not been associated with either a large increase in unemployment or a credit cut.
Senator WHISH-WILSON: Which could mean that some of our policies are working across the broader spectrum, which hopefully I'll have time to come to in a second. In terms of the statement:

Pressures on housing affordability, which is critical for growth to remain inclusive, will be relieved in the process.

Do you agree with that statement that a reduction in house prices can help address inequality? Isn't that what the IMF is referring to in their statement?

Mr Gaetjens: I don't think it's for me to put words in the mouth of the IMF.

Senator WHISH-WILSON: Do you agree?

Mr Gaetjens: I think what they're basically saying is housing is an important part of people's lives and the fact that more people then can get into housing, knowing in Australia the housing ownership rate is one of the highest in the world, is a good thing. I think they're saying the more access that people can get into the market is a good thing for the economy overall.

Senator WHISH-WILSON: In the same regard, the IMF in that document before you also said:

… reforms will be critical to restoring housing affordability—

including tax reforms that—

… reduce structural incentives for leveraged investment by households, including in residential real estate.

Can you decode that for me? What do you think the IMF is talking about in that statement?

Mr Gaetjens: Where is that particular quote? Was that in the yellow or green one?

Senator WHISH-WILSON: If you turn onto the back page, it should be there in green.

Mr Gaetjens: It says:

These policy efforts should be complemented by broader tax reforms that also address housing and land use.

That, to me, is going to an exhortation that relates to government policy, and that is a matter for the government to comment on.

Senator WHISH-WILSON: But do you agree that they're referring directly to getting rid of negative gearing and capital tax gain concessions in terms of helping restore housing affordability? Would that be your expectation that that's what they're referring to directly there?

Mr Gaetjens: Not particularly, because there are much wider tax reforms and other issues that address housing and land use. They haven't mentioned those words. I'm not going to put words into the mouth of the IMF.

Senator WHISH-WILSON: Very briefly, what other tax reforms would you be referring to there?

Mr Gaetjens: Well, it could relate to stamp duty and land tax, for example.

Senator WHISH-WILSON: Which, by the way, I think is a great policy to change.

Mr Gaetjens: That's a matter for government.
Senator WHISH-WILSON: But are there any others that you can—
CHAIR: Thank you, Senator Whish-Wilson. That 10 minutes is up.

Senator McALLISTER: Mr Gaetjens, I also want to talk about housing policy and the remarks you made in your opening statement. You point to the fact that slower credit growth has occurred alongside a range of actions taken by the regulators. What economic modelling did Treasury do on the impacts of APRA's macroprudential measures on house prices?

Mr Gaetjens: I'm not sure that we did any. Meghan?

Ms Quinn: As part of the economic forecasts and putting together advice to government we monitor what's happening in the Australian economy, and we incorporate—

Senator McALLISTER: Sure, but the Council of Financial Regulators made a decision to make a reasonably substantial regulatory change to the lending arrangements. I'm asking what modelling Treasury did at that time.

Ms Quinn: At that time we assessed the implications as part of our responsibilities on the Council of Financial Regulators. We assessed the implications and evaluated it and incorporated that information into the forecasts.

Senator McALLISTER: Did you provide any advice to the Council for Financial Regulators about the impacts of that policy?

Ms Quinn: Certainly we had discussions with our other regulators at that time about the implications of decisions and what that might mean, as did all members of the council.

Senator McALLISTER: But you are avoiding, I think—for good reason—affirming that you did any modelling. Was any modelling undertaken?

Ms Quinn: I've had many conversations in different inquiries around the word 'modelling', and different people have different interpretations of that word. We certainly looked at the implications on the Australian economy. We looked at it quantitatively and we looked at it in terms of the assessment of what other people's thoughts were. I personally would characterise that as modelling. Other people have different interpretations of the word 'modelling'.

Senator McALLISTER: Is there a model of the housing market in Treasury?

Ms Quinn: We have various elements of assessing the housing market, yes.

Senator McALLISTER: Were those used in relation to these decisions?

Ms Quinn: We certainly looked at the implications for the housing market of the changes in macroprudential policies.

Senator McALLISTER: What did you predict at the time? Mr Gaetjens says that the results that have occurred in recent years are consistent with the objectives of the regulators. What did the regulators think would happen at the time these arrangements were introduced?

Ms Quinn: It depends on which of the macroprudential policies you're going to. The overall intention of the macroprudential policies was to improve the quality of lending and improve the oversight of the financial institutions to people's ability to repay those loans.

Senator McALLISTER: But that wasn't what you were referring to, Mr Gaetjens, when you made those remarks about results consistent with the objectives of regulators? You were answering questions from Senator Whish-Wilson about prices in the housing market, were you not?
Mr Gaetjens: No. I think I specifically mentioned credit quality.

Senator Cormann: And he explicitly mentioned credit quality, and what Ms Quinn says is of course exactly right. It was the intention of us all about improving the quality of lending. Obviously there have been flow-on impacts in the credit market as a result, but it was about improving the quality of lending. The general point I would make, though, is that in the context of a general softening in the housing market it is incumbent on everyone to reconsider whether policy levers that will have the effect of deliberately further driving down housing prices are desirable at this point in time. They would say no, because it of course would have an impact on the value of people's homes but also would have the impact of driving up rents. And when you've got roughly 70 per cent of Australians either owning their own home or paying off a mortgage on their own home and roughly 30 per cent of Australians renting, these are pretty serious implications.

Senator McALLISTER: Ms Quinn, did the modelling that was undertaken that you referred to, or the analysis, indicate house price falls of nine and 12 per cent in Melbourne as we have seen over the past 12 months?

Ms Quinn: We weren't looking specifically at house prices. The discussion was around the credit and what that would mean for affordability of households to be able to repay their loans. So the discussion was around credit growth and the implications for the financial system, for financial stability. They were the targets and the discussion of the Council of Financial Regulators.

Senator McALLISTER: I need you to clarify that evidence, because my question was: did you do modelling or analysis on the impact on the housing market?

Ms Quinn: The implications for credit have implications for housing investment, which is crucial for exploring the output for the Australian economy. So housing market encapsulates supply and demand features of the housing market. I didn't take your question to be referring to house prices.

Senator McALLISTER: I see. So was any modelling done in relation to house prices or any analysis when APRA made the changes they made in 2014?

Ms Quinn: We have a national accounts framework; that's what we forecast. As part of the national accounts framework we look at the price for dwellings, which is not the same as house price projections that you see in the financial market and on the front page of the newspaper. We certainly would have assessed the implications for the housing market and the national accounts measures of housing.

Senator McALLISTER: But not prices.

Ms Quinn: Dwelling investment prices, which is a different thing from the sale price of a house. We certainly looked at that element of the housing market.

Senator McALLISTER: The government obviously is very keen to talk about house prices. Indeed, Minister Cormann just did so. My question is: did Treasury do any work on house prices at the time that the Council of Financial Regulators were intervening in such a significant way for the housing market, in a way that Mr Gaetjens points to in describing what's going on in the economy at the moment.

Ms Quinn: Senator, I think I've already answered this question.
Senator McALLISTER: No.

Ms Quinn: At the time that the discussion was in the Council of Financial Regulators—

Senator McALLISTER: The answer is no, isn't it?

Ms Quinn: We certainly assessed the implications and our expectations of what would happen in the housing market, jointly with other members of the Council of Financial Regulators, at the time that the Council of Financial Regulators was discussing these issues.

Senator McALLISTER: Mr Gaetjens, can I turn to other questions of modelling. There are a number of circumstances, particularly through January, where Treasury modelling has been released publicly by the government. For example, on 12 January there was a story in *The Australian* utilising Treasury data on Labor's superannuation policy; on 9 January, again in *The Australian*, Treasury modelling was cited in relation to Labor's income tax policies; and in *The Advertiser* on 18 January, Treasury modelling on Labor's housing policies. Are you aware of these news articles?

Mr Gaetjens: Not specifically. I don't have them in front of me and I don't have them front of mind.

Senator McALLISTER: Did you receive the email recently from Dr Parkinson in relation to the politicisation of government agencies?

Mr Gaetjens: I received an email from Dr Parkinson including a letter from Mr Dreyfus, I think.

Senator McALLISTER: So you've read the contents of the letter from Mr Dreyfus?

Mr Gaetjens: I did.

Senator McALLISTER: And you're aware that, in his response to Mr Dreyfus, Dr Parkinson said, 'I regard acts that have the substance, or appearance, of politicising the APS as threats to the effectiveness of Australia's democracy'?

Mr Gaetjens: I saw Mr Dreyfus's letter and I saw Dr Parkinson's email. I'm not sure I saw his response.

Senator McALLISTER: Do you agree with that statement, that the substance or appearance—

Senator Cormann: I think you're asking the officer for an opinion, which—

Senator McALLISTER: He is the secretary of the Treasury—

Senator Cormann: in the opening statement—

Senator McALLISTER: and he ought to have a view about the politicisation of the public service. He's received correspondence about it, from Dr Parkinson. I am asking whether he agrees with Doctor Parkinson's comments in regard to the politicisation of the APS representing a threat to the effectiveness of Australia's democracy.

Senator Cormann: I completely reject the premise of the question. You're asserting a politicisation that I don't concede is happening. If there was a politicisation you might be able to pursue an argument, but I completely reject that proposition.

Senator McALLISTER: In administering this department, Mr Gaetjens, do you accept that you have an obligation to avoid in substance, or appearance, the politicisation of Treasury?
Mr Gaetjens: That, I think, would probably paraphrase what's in either the Public Service Act or the PGPA Act, so I don't have an issue with it. Yes, it's been a long time that the Public Service should not be politicised.

Senator McALLISTER: Thank you.

Mr Gaetjens: I have to say that, in response to the email from Dr Parkinson, I did have a discussion within the department which went straight to the point: does anyone think that what is happening now, either within Treasury or with the use of information supplied by Treasury, is any better or worse than previously? The answer was that it's probably about the same. So has there been any change in what people might call politicisation over the years? The answer I got from within Treasury is no.

Senator Cormann: The truth, of course, is that we had this conversation last time. The government of the day is, of course, entitled to seek advice on policy options. Presumably—and we had this conversation last time too—if you believe that your policies are superior, you would like them to be properly considered. In order to be able to properly consider them, you actually have to receive the necessary advice. Let me tell you: having been in this part of public policy in opposition over a number of years, I well remember the release of relevant advice and information out of Treasury and other Public Service agencies during the period when we were in opposition. I think you will find that this is part of the public conversation. As I said earlier, I completely reject the proposition there has been some sort of politicisation of the Public Service under our government.

Senator KETTER: Mr Gaetjens, surely you're aware of all of the examples where Treasury modelling has been used on the front page of The Australian or other newspapers to advance arguments that the government is posing against the opposition. Senator McAllister has talked about a couple. You've indicated you weren't aware of those articles. Are you aware of what your Treasury modelling has been used for?

Mr Gaetjens: I'm sure I would have noticed them, but I don't keep them at the front of my mind.

Senator KETTER: But surely you're aware that modelling is being used by the government and it's being used in a political fashion.

Mr Gaetjens: I would need to go back to the article itself, read it in particular and read the assertions that were in the press. Funnily enough, I don't believe everything I read in the press.

Senator SINODINOS: Just on housing for a minute, we have seen some falls in house prices. When you look at factoring in falls in house prices in terms of the wider macro economy—and I'm not looking for a rule of thumb, because you may not have one—at what stage do you start to get worried about the extent of falling house prices and its impact on the broader economy? Broadly, what sort of levels do you look at and say, 'Gee, this could start to be a problem for wealth in the economy and consumption in the economy,' and so on and so forth?

Mr Gaetjens: Again, I think it would be quite difficult to go to levels, but if I go back to Meghan's point—and I might call on her to go further—again we would look at this through the national accounts framework and basically say: 'What is happening to investment—whether it be dwelling, business or public investment—as a driver for the economy?' I think...
we would then also look at what is happening with, again, dwelling investment, credit and other things to say: 'All right, what is then going to happen? Is there going to be a wealth effect that affects consumption?' Again, I think it's telling in this particular cycle that there has not been a link, if you like, with either a domestic or a global shock that's fed through to say, 'All right, here is a sharp contraction in housing.' In terms of the framework, I think we would be looking at it from both the I side and the consumption side with respect to national accounts. I might go to Meghan and Ange for more detail on that.

**Ms Quinn:** As economists we're trained often to think about the source of the shock, the underlying force that's changing the economy, because so much of the economy is interlinked. So it would depend a bit on the actual source of the impetus in the housing market and how we would think about it. In the context of the overall economy, house prices are both a price for investment, so a dwelling investment, but are also an asset price, and asset prices have different impacts on the economy through, as you mentioned, wealth. The evidence suggests that the wealth effect is not significant in Australia, and the impact is very much driven by confidence effects. So it would depend what else is happening in the economy at the time that house prices were moving, just to see whether it added to confidence effects or not. So it's not a straightforward answer. We don't have a single rule of thumb. We don't have a single rule of thumb for anything, because the context in which things are happening and the source of the impetus in the economy are very important for understanding how to trace it through the complex interactions that we have to observe.

**Senator SINODINOS:** When you talk about confidence effects, for example, clearly there is a lot of noise around, particularly these days—a lot of talk in media; everybody forecasts this; everybody talks about that—and there's policy discussion that occurs as well. To what extent do you pick up that investors in the market look at policy discussion and seek to anticipate its effects and build that into their behaviour?

**Ms Quinn:** It depends very much on the different types of decision-makers. The housing market has got a lot of different actors. One set is the owner-occupiers, people who are buying houses to consume housing services, and their decisions are typically driven by factors that are separate from, say, housing investors—people who are buying housing as an asset, making a choice between buying shares or buying a house or buying a direct interest in a business. So there are different decisions that different people make. Owner-occupiers typically go for the long run, look through temporary fluctuations in asset prices, look for all sorts of things to do with housing services: close to schools and transport, lifestyle decisions et cetera. So they're going to be less affected by house prices than housing investors, who potentially have other options for their money.

**Senator SINODINOS:** One thing I've noticed about the housing market over a very long period of time is there seems to be quite a lag between when demand for housing goes up and you get a supply response. I don't know whether that's a particular problem in Australia, but is that an issue you pick up when you look at the housing market? Do we have issues with the supply response?

**Ms Quinn:** There certainly have been discussions around supply response in the Australian housing market over different times. It's fair to say that in recent times the supply response has sped up, mostly through actions of state government in terms of land release and other arrangements in the regulatory environment. We did see a significant increase in supply...
of houses in some of our markets. That is one of the factors that's putting downward pressure on prices now. A lot of the supply side things are around release of land, planning approval arrangements, environmental approvals and the like. It is always the case in the housing market that supply and demand tend to leapfrog each other, and that's the same in Australia as it is in other places, because we're building long-lived assets and it takes a while for houses be built, so there is a lag effect between supply and demand.

**Senator SINODINOS:** Can I turn to infrastructure. There has been quite a ramp-up in infrastructure spending at both federal and state level. How much of a contribution is that making to current rates or levels of growth?

**Mr Gaetjens:** I couldn't give you the specific—again, my colleagues might be able to—but I think what we are actually seeing is in public final demand. Public consumption—and public investment, in particular—is strong. As you say, there is a lot of infrastructure work going on, certainly across the east coast, and in Perth as well. Again, as with the growth in population, I think people have been catching up with infrastructure, particularly in terms of some provision that wasn't made before, and when I was in New South Wales, in particular—I don't know about the first time—there was a much greater focus on bringing transport and planning together. And, again, that led quite a bit to development across rail lines and then across roads as well. So there was a much greater focus on actually trying to put together the planning function and the transport function and making sure that there was a quicker process with planning on both state and federal government levels. I think there has been consideration and release of government owned land to help, if you like, supply within the urban area rather than at the edge of the urban area. In terms of absolute figures, I think public investment has been pretty strong for a while.

**Dr Grant:** That's right, Senator. All public final demand, which includes both consumption and investment, contributed 1.2 percentage points to GDP growth in 2017-18. Growth overall was 2.8 per cent, and 1.2 percentage points come from the public sector. About a third of that is coming from investment, both at the Commonwealth and state and territory level, which includes a lot of infrastructure investment going on, particularly in Sydney and Melbourne, but also elsewhere.

**Senator SINODINOS:** And there's quite a pipeline of investment to come—is that right?

**Dr Grant:** That's right. Particularly around road transport, the pipeline is quite elevated.

**Senator SINODINOS:** What about the spillover to the rest of the economy from this sort of infrastructure spending? How does that manifest itself?

**Dr Grant:** We definitely hear in the business liaison program—I think we make reference to it in MYEFO—that the private sector was reporting positive spillovers from the investment that's underway in the public sector. So they're doing work related to or involved with a lot of the public infrastructure that's underway.

**Senator SINODINOS:** Can I turn quickly to organisational issues. You talked about integrating more of your micro teams into the macro group. Is that right?

**Mr Gaetjens:** Productivity and micro reform group are at the national level into the macro group. Specific sectoral reforms and structural reforms that apply to a specific sector, and also the competition issues, are in the fiscal group with the existing agency facing functions, which looks into a lot of the budget analysis as well.
Senator SINODINOS: In terms of the aggregate economy-wide view that you're taking on micro now, is that covering things like technological change, the changing nature of work, the changing nature of the labour force, the requirements to retrain and re-equip the workforce and all that sort of thing?

Mr Gaetjens: I think we are looking across a whole range of areas that go to the different ways things are going. Meghan is in a prime position to answer that question.

Ms Quinn: There has been availability of new data sources and techniques in analysing the economy in recent years—firm level data, in particular, and employee level data. These new data sources have meant that we have built capacity in the department to look at what is happening on a micro level based on data and analysis. That has meant that we have increased our capacity to look at the dynamics in the economy—what is happening in terms of different sectors, different types of firms, different types of workers and different parts of the economy—in more detail than we have been able to do in the past. There's also the importance of joining the bottom-up microanalysis with the top-down macro analysis to have the complete story of is happening. It's always been the case that we have had a strong emphasis on the macro economy to support fiscal and monetary policy stances, and we have always had a strong focus on particular sectors for reform. To be able to join those two things together, and with the increases in capacity and capability we've had, means we can tell a richer story about what is happening. That is important for understanding what is happening in the Australian economy, as you mentioned—

Senator SINODINOS: The dynamics.

Ms Quinn: There is a lot going on in terms of technological transformation, a lot going on in terms of different cohorts of workers and the pressures on them. That's the work we need to do to advise government.

Senator SINODINOS: Very good.

Senator McALLISTER: Just a quick follow-up, Ms Quinn. Will that capacity change the way you undertake forecasting from a budget perspective? Is it intended that it alters the forecasting methodologies?

Ms Quinn: At this stage, most of the analysis is understanding what is happening currently in the economy and what's happening in different parts of the economy. To the extent that we improve our understanding of the current dynamics in the economy, that will influence our view about the future. In that sense, it will influence our understanding of how it works. In terms of the types of things we forecast and the types of outputs we produce, we are comprehensively forecasting the entire economy, so we are not missing anything. It's more about our understanding of what is happening.

Senator McALLISTER: We might come back to that later. Mr Gaetjens, we were talking about the process by which material produced by Treasury appears on the front page of The Australian, particularly material alleged to be produced by Treasury that is said to cost Labor policies. We wouldn't accept, on many of those occasions, that what's produced actually goes anywhere near assessing the impact of Labor policies, but that's by the by. What is the internal process in Treasury when a request comes in from the Treasurer's office for tax data or a costing that resembles Labor's tax policies? What are the steps you take?
Mr Gaetjens: I think you can also ask the particular areas that do costings. In a general sense, if the government makes a request of Treasury for information, we will generally seek to do what the government has asked us. I think it's fair to say that government—I might take this on notice as well, because I don't want to mislead the committee. I don't think we are asked—nor do I think we would respond—"Would you cost another party's policies?" But we can be asked to cost some things that are specified by the Treasurer or his office, and we will generally seek to do that.

Senator McALLISTER: What visibility do you or the deputy secretaries have on these sorts of requests coming in?

Mr Gaetjens: What sort of—

Senator McALLISTER: What sort of visibility do you have? Are you cc'd into the request? Are you the immediate recipient of the request, Mr Gaetjens, as the secretary? I'm asking a process question about how the request comes into the department and how the response leaves the department, and your involvement in that process.

Mr Gaetjens: Again, it might be worthwhile following up with the deputy secretaries in Fiscal and in Revenue; they're generally the people who directly deal with expense costings, which can also be done in conjunction with Finance. The Revenue Group does the revenue costings.

Senator McALLISTER: But are you cc'd in the request that comes in from the minister's office? Do you see it?

Mr Gaetjens: I will take that on notice, but my answer here would be not routinely.

Senator McALLISTER: Are you cc'd in the responses to the Treasurer's office?

Mr Gaetjens: Not cc'd, but I would generally see most of those responses before they go back up to the office.

Senator McALLISTER: I see. So you'd sign off on them?

Mr Gaetjens: No, I wouldn't sign off on them. They would be signed off on by the people who did the costings, which can be a particularly complex matter, and it would be a response to the office. I wouldn't say 'sign off'; it's to be aware of what is going up to the Treasurer's office.

Senator McALLISTER: How much time has been spent by Fiscal Group and Revenue Group completing these sorts of requests since Christmas?

Mr Gaetjens: I couldn't answer that. I'd be happy to take it on notice.

Senator McALLISTER: Do you think it's substantial?

Mr Gaetjens: I doubt it, in terms of all of the things that we do.

Senator McALLISTER: Do you assess the resource implications of completing requests of this kind, Mr Gaetjens? Time spent costing a Labor policy is obviously time that can't be spent developing actual policies for implementation by the government.

Mr Gaetjens: Let me put it this way: I have had no requests from any group for more resources to deal with that particular part of their work or other parts of their work. I'd just flip it around; I certainly don't monitor it. I rely on the group and division heads to come up through our executive committee to say what are pressures and what are requirements.
Senator McALLISTER: So your testimony to this committee is that you will be try and be helpful to meet a government request? As long as it doesn't actually say in the header, 'Please cost a Labor policy', you will do it? Even though it's very plain that the material that's been provided to you is in fact a request to cost an opposition policy, you will do it—no questions asked? You have no moderation within the department to assess whether or not that request is actually appropriate?

Mr Gaetjens: I would say that in most cases—and this would be for governments going back over decades—we would try and do what the government has asked us to do.

Senator McALLISTER: So you've got no concerns about how that's working at the moment? The government asks you to do something, it is plainly a request to cost Labor policy, and the material you then provide to the government appears on the front page of The Australian or other newspapers—on almost every second day in January, in some weeks. You've got no concerns about that?

Mr Gaetjens: If we have received a request to do something, if we have gone through the usual processes of providing factual advice and using the data that we have access to to answer a question and, again, as long as it is not a specific question—and I'd take issue with the point—I don't think it is up to us or anyone else, in fact, to interpret a request and say it is specifically X, Y or Z. We are given a set of parameters or whatever to work on, and if we can do that then we seek to, and I don't think that's changed for decades.

Senator McALLISTER: No questions asked, even if it appears to be a direct contravention of the requirement that you do not cost opposition policies?

Senator Cormann: The government of the day is able to ask for advice on policy options. It has always been thus. That was the case under your period in government; it was the case under governments of both persuasions prior to that; it's the case now. There's nothing new.

Senator McALLISTER: There were five separate occasions when Treasury analysis was released and it appeared very prominently in Australian newspapers. I think that that is unusual, and I think that it looks like a politicisation of your organisation.

Senator Cormann: I watched with great interest the interviews by Kerry O'Brien of Paul Keating. Do you know what? Paul Keating—and I think that our friend and colleague Senator Sinodinos might remember what I'm referring to—was actually bragging about the fact that he was able to use Treasury analysis in the lead-up to the 1987 election against the opposition of the day. So don't tell me that somehow there is this new universe here where the government of the day doesn't seek advice on policy options and fiscal implications of different scenarios from Treasury. Of course governments of the day seek advice on policy options and the potential fiscal implications of different policy choices.

Senator McALLISTER: Minister, this is just at new heights.

Senator Cormann: I disagree.

Senator McALLISTER: Essentially, you have a Treasurer who spends every day on Twitter attacking the shadow Treasurer. As far as I can tell, he spends almost no time on Treasury business, actually doing the business of Treasury, at all.

Senator Cormann: I completely disagree.
Senator McALLISTER: And he is directing this department, with the assistance of Mr Gaetjens, to review Labor policies. On the evidence provided this morning, your testimony is that you didn't do any specific modelling on what house price falls would occur as a result of APRA's macroprudential intervention. It's actually fair to say that you have spent more time doing analysis and modelling of Labor's reforms to negative gearing and capital gains tax than you have had done on the government policies. That is actually a fair representation of the evidence.

Senator Cormann: I completely disagree with that characterisation. I completely disagree. Obviously, right now, a very significant focus of the government is on putting our next budget together to make sure we can continue to keep the Australian economy strong and indeed help ensure that it can be stronger, and of course, as part of our work, we also focus on minimising downside risks into the future. We are concerned that some of the alternative policy proposals that are being circulated would put the Australian economy at risk, would threaten to weaken the Australian economy and would put jobs at risk. That is of course why, in the context of our responsibilities as the elected government of Australia, we assess very carefully all of the implications of the various potential policy options in front of us to make sure we make the best possible decisions in the best interests of families around Australia looking for the opportunity to get ahead.

Senator McALLISTER: And getting the most information on the front page of the paper. Mr Gaetjens, you said that you are not signing off on the briefs provided by Revenue Group and Fiscal Group in response to these requests from the Treasurer's office. Can you confirm that you will sign off on the Pre-election Economic and Fiscal Outlook?

Mr Gaetjens: I think that's a requirement of law, Senator. Yes.

Senator McALLISTER: And you'll also be signing off on Labor's Incoming Government Brief, should we win government?

Mr Gaetjens: I will sign off on both blue and red books, yes.

Senator McALLISTER: Those are all the questions that I have.

Senator STORER: Mr Gaetjens, I'd like to turn to your points about labour market conditions. You've noted that they remain strong, with job growth, and the unemployment rate has fallen to five per cent, which would be getting close to the non-accelerating inflation rate of unemployment, NAIRU, figure. I just want to understand what you think are the factors contributing to the sluggishness of wage and price growth. We've seen this continually over the last years. There's always a prediction, as you said, ultimately supporting a pick-up in wage and price growth, but it doesn't seem to be occurring in Australia. What would you say are the factors behind that?

Mr Gaetjens: It's very difficult to pinpoint anything in particular, and I think this is an issue that has been happening around the globe as well as in Australia. I would say, though, that the latest figures in Australia would indicate that the wage price index has probably troughed. The last number for that was 0.6 for the quarter, and I think that was 2.3 per cent for the year. In the Reserve Bank Statement on monetary policy, they actually do, I think, WPI plus bonuses—or is it another measure of wages plus bonuses? That is even higher, if you like. Once you include bonuses, the result is higher. I think they have also shown, just looking at some other research, that the number of employees who had had wages frozen was
decreasing and in fact—and, again, I think this is written in the Statement on monetary policy—they are seeing more people having either awards renewed or wages lifted, so I think there is some movement occurring on wages.

It is also interesting to see that, while wages have not grown very strongly, inflation has also been very low. In fact, the inflation that relates to administered prices by governments is again quite low. It would depend upon the time you measure this, but we'd be round about saying that wages are keeping up in real terms, I think. So it is happening.

Again, it's good to see, I think, in employment terms that there has been a preponderance of full-time jobs over a longer period. I think there were part-time jobs in the last couple of months, in the last two months figures. And I think it's also interesting that, in terms of the national accounts, we see wages numbers driven by, in fact, good employment growth. So, in an aggregate sense, we are getting the impact of heads in employment rather than the wages themselves. I don't know whether Meghan or Angelia want to add anything.

Ms Quinn: I just want to confirm that the wage price index did grow 2.3 per cent through the year, in the most recent figures, against inflation of 1.8, so real wages are growing in the Australian economy. We have seen a modest drift up in measures of wages in recent quarters. We have seen the unemployment rate fall to five per cent. We've also seen other measures of labour market slack tighten in terms of reductions in spare capacity in other places, so we would expect wages to respond over time. We've seen some evidence of that in terms of what's happening with enterprise bargaining and the like.

Senator STORER: I'd like to turn to another topic. I've noted that the data since MYEFO shows a slightly more negative than expected forecast to the economy of increased risks to the outlook. You state that in the background to the budget forecast there's 'increased uncertainty and accumulating downside risks'. You note, pleasingly, the smaller deficit in the current financial year and a projection of a cumulative underlying cash surplus of $30.4 billion, double the estimate in the 2018 budget, but you also note, of course, that gross debt will still be in the order of 14.6 per cent of GDP 10 years from now. With these new downside economic risks emerging, you state:

… it is vital that fiscal discipline be maintained to ensure Australia has budget headroom to be adequately prepared for any adverse surprises.

My question is: in the face of those statements, would it be your advice to the government to not move ahead with their $9 billion of decisions taken but not yet announced in terms of tax cuts prior to the election?

Mr Gaetjens: That $9 billion is already incorporated into the existing bottom line.

Senator STORER: So you would not provide further advice, given the increased uncertainty and downside risks, to the government—

Senator Cormann: What you're essentially suggesting—and it does relate to decisions taken and not yet announced—is that it would be desirable to increase the tax burden on the economy in the context of the circumstances that we're currently facing. Our argument would be that, given some of the downside risks both globally and domestically, increasing the tax burden would actually put Australia in a weaker position because it would lead to less investment, lower growth and consequently fewer jobs, which would mean a higher unemployment rate, which means more excess supply in the labour market and less
competition in the labour market. You would actually put downward pressure on wages, so that would be precisely the wrong way to go, we believe.

We believe that a policy agenda that keeps taxes below the 23.9 per cent tax-as-a-share-of-GDP cap is a pro-growth agenda which leads to more investment, stronger growth, more jobs, strong employment growth, a low unemployment rate, less excess supply in the labour market and more competition for workers. That is of course the ingredient that helps to drive wages up over time on the back of productivity improvements.

Senator STORER: Minister, the secretary has noted 'increased uncertainty and accumulating downside risks', and he specifically says that it's 'vital that fiscal discipline be maintained to ensure Australia has budget headroom to be adequately prepared for any adverse surprises'.

Senator Cormann: That's right.

Senator STORER: That's the advice, so—

Senator Cormann: But that simply means keeping your expenditure growth under control. It doesn't mean increasing the tax burden on the economy, which would then lead to lower growth and over time actually put you in a weaker position in terms of future revenue growth.

Senator STORER: But, if you have decisions that are taken but not yet announced, you can utilise those to provide more budget headroom.

Senator Cormann: Except that, if you're suggesting that we reverse decisions to lower the tax burden, what you're suggesting we should be doing is increasing the tax burden. Obviously they are decisions that are made in order to ensure we keep below the tax-as-a-share-of-GDP cap that we have imposed on ourselves. If we make decisions to increase the tax burden on the economy beyond that, that has an impact, we would argue, on our future economic growth potential.

Senator STORER: But I believe the 23.9 per cent cap is not Treasury advice; that's a government decision.

Senator Cormann: It is a government decision, indeed. It's part of our medium-term fiscal strategy. But I would say that there used to be a time when the current opposition was very strongly of the view that there should be such a cap. In fact, I would refer you to and strongly encourage you to check out the first speech to the National Press Club by the shadow Treasurer, Chris Bowen, in early December 2013, when he set a number of tests that we should be measured against.

Incidentally, one of the tests was to keep the unemployment rate below six per cent in a quarter. I'm still waiting for him to write to us to congratulate us on having achieved that. But one of the tests was that we should keep the tax-as-a-share-of-GDP ratio below 23.7 per cent. Since then, of course, Labor have blown that tax as a share of GDP completely out of the water, based on the decisions to increase tax revenue that they've since made. But we continue to believe that discipline on the revenue side in terms of how high you're prepared to let the overall tax burden on the economy go but also making sure that the tax mix is as efficient, least distorting and appropriately fair and equitable continues to be important. But that's going to be part of the competing agenda.
Senator STORER: Isn't it concerning, Minister, that in Mr Gaetjens' statements—his second one now, and in previous ones—there is never a reference to this tax share of GDP but there's always a reference to fiscal discipline? Would it not be advisable to take the department's advice with regard to that and provide more budget headroom? This is the department's advice, and it doesn't occur in 23.9.

Senator Cormann: Sorry?

Senator STORER: My question was to you. I don't see reference in these documents to the tax share of GDP but I consistently see references to more budget headroom.

Senator Cormann: We are creating more budget headroom by implementing our fiscal strategy. When we came into government we inherited an unsustainable spending growth trajectory. For example, spending as a share of GDP was headed for 26½ per cent over the medium term at the time, which was about 23-24, and rising beyond that. Now, of course, we've been able to get that back to below 25 per cent. In fact, from memory, over the forward estimates it's projected to go down to 24.6 per cent.

Because we're bringing down spending growth in real terms, and compared to the four per cent year-on-year average spending growth above inflation, we have been able to bring that down to below two per cent. That is how you create the fiscal headroom so you then give yourself the opportunity to lower the tax burden on the economy, which leads to more investment, stronger growth and more jobs.

You can see: the 2017-18 final budget outcome was a $19.3 billion budget bottom-line improvement compared to forecast at budget time. A very significant driver of that was, instead of 1½ per cent employment growth, we had 2.7 per cent employment growth. This meant that many more Australians were paying income tax and fewer Australians were relying as much or on any welfare payments. On the back of stronger growth and stronger employment growth, this meant we had an immediate positive fiscal effect both on the revenue side and on the spending side of the budget. That is what we want.

We're concerned that if we don't impose that discipline on ourselves, that if we let the spending growth just continue to ratchet up and we have to chase it with an ever-increasing tax burden on the economy, then that will actually harm our economy and cost jobs; it will lead to less employment growth, higher unemployment, less competition in the labour market and lower wages.

Senator KENEALLY: Mr Gaetjens, I assume you're aware of the government's inquiry into refundable excess franking credits?

Mr Gaetjens: Yes.

Senator KENEALLY: Have you spoken with the Treasurer about this inquiry?

Mr Gaetjens: I would take it on notice, except that the answer is no.

Senator KENEALLY: But you will take that on notice and confirm?

Mr Gaetjens: Just to double check, again, but my predisposition is no.

Senator KENEALLY: Thank you. Have you ever met with or spoken to Tim Wilson about this inquiry?

Mr Gaetjens: No.
Senator KENEALLY: Have you ever met with or spoken to Geoff Wilson of Wilson Asset Management in the last year?

Mr Gaetjens: No.

Senator KENEALLY: Has the Deputy Secretary, Revenue Group, ever met with either Tim Wilson or Geoff Wilson?

Mr Gaetjens: I couldn't answer that question. I think you will get the chance to ask her when she appears.

Senator KENEALLY: Thank you. Does Treasury play a role in drafting referrals for the Treasurer to give to the House of Representatives Economics Committee?

Mr Gaetjens: I am unaware of that. I'll take it on notice, but I'm not aware of it.

Senator KENEALLY: No?

Mr Gaetjens: Personally, I'm not aware. I will take it on notice and check.

Senator KENEALLY: Okay.

Senator KETTER: Who would normally be tasked to do such a thing, if the request were made?

Mr Gaetjens: If it's a government wanting to—again, I think in your case, it's a Senate inquiry. I don't think it's a government inquiry. But it's—

Senator KENEALLY: It's not a Senate inquiry.

Senator KETTER: It's a House committee—

Senator KENEALLY: It's a House of Representatives committee.

Mr Gaetjens: There you go. I don't know. The Treasurer could ask someone in his office or he could ask someone else. Ministers these days do not just get advice from their departments. And, again, the relevant deputy secretary, isn't here so I can't ask her. She will be here.

Senator KENEALLY: What role did Treasury played in drafting the reference letter to the Treasurer to write to the chair of the House economics committee for the franking credits inquiry. That is, the Treasurer wrote to the chair of the House economics inquiry. I'm asking: what role did Treasury play in drafting that?

Mr Gaetjens: I will take that on notice.

Senator KENEALLY: You don't have an answer or anyone here who can answer that?

Senator Cormann: He has taken it on notice.

Senator KENEALLY: Minister, I'm allowed—

Senator Cormann: He is entitled to take it on notice.

Senator McALLISTER: He is, but the question is whether he needs to.

Senator Cormann: That is his judgement. As you know he's entitled to make a judgement to take it on notice, and he has.

Senator KENEALLY: Minister, I am simply asking if any of the several officials who are here sitting behind the Treasury secretary would be able to answer that question.

Senator Cormann: And he has taken it on notice.
Senator McALLISTER: Because he doesn't want to answer it.

Senator Cormann: Don't reflect on the witness. It's been taken it on notice, as has been the practice under governments of both political persuasions. Obviously, the officer is entitled to and has taken advantage of his opportunity to take the question on notice.

Senator KENEALLY: I was simply trying to generously offer to save Mr Gaetjens some work later if he possibly had an official behind him who might be able to assist with the answer.

Mr Gaetjens: I think there's an official coming later in the Treasury hearings, that's all. I just don't think the people are here in the room today.

Senator KENEALLY: Can you give me a sense of who that might be that I should direct this question to, Mr Gaetjens.

Mr Gaetjens: It would be Revenue Group.

Senator KENEALLY: What interaction was there between yourself and/or Treasury and the Treasurer's office in commissioning this inquiry?

Mr Gaetjens: From me personally, no interaction. I will take it on notice or get other people in the department to answer that question itself.

Senator KENEALLY: Thank you Mr Gaetjens. Chair, I would like to cede the rest of my time to Senator McAllister.

Senator McALLISTER: Mr Gaetjens, do you recall receiving the letter from the big banks, calling for a banking royal commission, on the day before the government finally announced it.

Senator Cormann: Hang on, hang on. Mr Gaetjens is here as the Treasury secretary. You appear to be referring to events in 2018, at a time when Mr Gaetjens was not Treasury Secretary.

Senator McALLISTER: He was in a different role, wasn't he?

Senator Cormann: He was working in the Treasurer's office, as you well know.

Senator McALLISTER: I do know.

Senator Cormann: And, as is also established practice in the governments of both political persuasions, this is not an estimates committee for people who are staffers. This is a committee for the relevant agencies in relevant portfolios.

Senator McALLISTER: That's a very good point. It ought not be an estimates committee for people who are staffers. Mr Gaetjens, you will be aware that former Prime Minister Turnbull made a comment just after the release of the final report of the banking royal
commission, indicating that in retrospect he regretted delaying commencement of the inquiry and that the royal commission had shown itself to be useful and ought to have commenced earlier. Do you agree with that assessment?

Mr Gaetjens: I think that is asking for an opinion, Senator, and I am not obliged to give opinions at this committee hearing.

Senator McALLISTER: Has Treasury commenced any work on legislative responses to the recommendations in the advice?

Mr Gaetjens: I think that would probably be best answered by Markets Group when they come later, but we have certainly looked at and in fact introduced, I think it was two, amendments. Revenue Group will be the point to ask. I think there were two amendments that related to the royal commission included in some superannuation legislation that was passed this week. That related to hospitality, and there was one other which escapes me, so I'll take that on notice. We didn't require legislation for the APRA capability review. Again, I'll take that question on notice, but it could be directed to the Markets Group when they appear later today as well.

Senator McALLISTER: I did want to ask you about Markets Group. It's correct to say that Markets Group, over the entire period of the last five years, has been responsible for the policy settings in the banking and financial services sector. Is that correct?

Mr Gaetjens: In the Treasury department, yes.

Senator McALLISTER: Commissioner Hayne made a large number of recommendations. His report suggests that the policy settings that govern the banking sector need to be changed. It does suggest that there's been a failure in the Markets Group of the Treasury to identify the same problems and act on them, doesn't it? Why did it take a royal commission for these issues to be identified? And what was Markets Group doing in that same period?

Mr Gaetjens: Again, let me pass that question a little bit. In terms of the overall regulatory settings, Commissioner Hayne actually endorsed the twin-peaks model.

Senator McALLISTER: I'm not talking about the model; I'm talking about the policies that each of those regulators were supposed to be enforcing. They're not policy agencies; they're the doers.

Mr Gaetjens: They are independent regulators.

Senator McALLISTER: Correct, and they implement the policies of the government and the policy responsibility sits with the Treasury, does it not?

Mr Gaetjens: No. They implement the obligations under their acts. As you say, they are not policy agencies.

Senator McALLISTER: Correct.

Mr Gaetjens: They implement the undertakings and requirements under their act. And what I think he said is that, in terms of the way they undertook their duties under the act, with respect to ASIC there was a culture, if you like, of coming to a negotiated outcome rather than using the suite of powers that they had available. With respect to APRA, there was acceptance that a prudential role is somewhat different, but it again made the point that they probably could have acted, on some occasions, a bit more sharply, for want of an expression. But I
don't think that says that is then a failure of the Treasury Markets Group. Again, I think the regulators are there. They are independent. In fact, the regulators themselves provided a lot of the information to the royal commission that led to the inquiries being made in many of the case studies and many of the hearings that were there.

**Senator McALLISTER:** I'll try this again. The royal commissioner made a series of recommendations for legislative reform. My question to you is: why were those reforms not identified by Markets Group as being necessary earlier in the process?

**Mr Gaetjens:** I will take that on notice because, basically, that refers to a period when I was not there. But I don't think there was a finding or a recommendation from Commissioner Hayne that actually said that there was an issue with the policy areas, but I will take that on notice and address it.

**Senator McALLISTER:** You are correct in that regard. I am asking you whether, reflecting on the commissioner's report, you are thinking about the capabilities and tasking in the Treasury and am wondering whether there are any lessons to be learnt from the royal commission experience.

**Mr Gaetjens:** I think the lessons to be learnt are set out in the recommendations, Senator.

**Senator McALLISTER:** No organisational lessons for the Treasury at all. Nothing—

**Mr Gaetjens:** If you would let me finish: Treasury has in place a taskforce. That taskforce, in fact, helped the Treasury work with the royal commission and provide them with background papers and other material. That taskforce will now become an implementation group. As I said in my opening statement, that implementation group will also comprise APRA, ASIC and the Office of Parliamentary Counsel. That group will look at the recommendations made by the royal commission and, in accordance with the government's response, we will be taking action on all 76.

**CHAIR:** Thank you, Senator McAllister. Senator Stoker.

**Senator STOKER:** Thank you, Chair. We've had some questions already about the tax-to-GDP cap of 23.9 per cent. Can you tell me what policy approaches have been adopted historically with respect to putting a speed limit on the level of taxes that Australians bear?

**Mr Gaetjens:** My memory is—and, again, this might be worthwhile following up with Fiscal Group—there has been a tax-to-GDP cap, largely as a guidance issue, which basically says if you have an unconstrained approach to the budget then you would say that tax to GDP can go up without being controlled, so you are not looking at any feedback loops into the macro economy and, in fact, the way the economy can work. Previously, that was almost a technical setting that Treasury applied to its fiscal forecasts. I think in the budget it was actually made a specific reference within the fiscal strategy itself. In terms of the one-page fiscal strategy that appears in the budget documentation, the tax cap of 23.9 was set there as part of policy, so that turned from a technical constraint to being part of the government's fiscal strategy. But I think the way Treasury has prepared budgets for a long time on its fiscal settings—again, we have ERC. In terms of looking out to the future and just getting an ever increasing tax-to-GDP ratio, we put that technical constraint in.

A similar issue has applied, or has recently applied, to commodity prices also. Because, again, if you have a commodity price that peaks—and we've all seen what happened to iron ore; I think it got up to about $160 at some stage or other, if I'm right, or maybe $120 a
tonne—and you lock that commodity price in for a four-year period over the forward estimates, it can become a very risky part of your fiscal policy settings. There have been constraints placed on commodity prices. Most recently, in fact, after consultations with industries, we basically pitch it at a level that it's been at in a period before the budget, and to temper the risk that the prices might drop in the future, we've actually had step-downs prior to the last budget. In the last budget, we had $55 across the forward estimates for iron ore. Those iron ore prices have gone up again. As I said in the opening statement, we will be looking, as we prepare our budget and consult with industry concerned, to see about how best we can set that so that it applies a prudent approach to the fiscal outcomes from the commodity prices that we forecast.

Again, I think that is a guidance approach driven from what industry tells us is going to be the case but trying to actually keep a prudent outlook rather than one that is going to turn out to be too optimistic—then spending is set against an optimistic revenue base, which can cause a problem. I think it was the last budget where we actually incorporated the tax-to-GDP cap formally inside the fiscal strategy rather than as a technical constraint.

Senator STOKER: Minister, is there anything you're able to add to help me understand the approaches that have been adopted historically in Australia with respect to putting a speed limit on taxes? What's the rationale for the number that the government has chosen as the government's tax-to-GDP cap?

Senator Cormann: It's obviously the average between the introduction of the GST and the GFC. In the end, the reason you need to have a limit on how much tax you're prepared to take out of the economy is because that is also what drives the discipline on the spending side. If you are prepared to take more and more money out of the economy in order to fund more and more expenditure, obviously that would make your economy less competitive overall. It would make you less attractive in terms of investment into future growth, which would overall, in our judgement, make the economy weaker. There are two parts to it: what is the overall tax burden in the economy? And then: how do you raise the money that you need to raise—as much as necessary, as little as possible—in the most efficient, least distorting and appropriately fair and equitable way to fund the necessary services provided by government?

When we came into government, expenditure was growing to the extent that it was headed for 26½ per cent and rising. In fact, the Intergenerational report was showing that, in the absence of changed policy settings, it was on track to be in excess of 30 per cent as a share of GDP. It stands to reason that if you want to have a surplus then you need to raise more in revenue than you expend, and if expenditure as a share of the economy keeps growing at that level then you've got to chase it with ever-increasing levels of tax. That tax burden is carried by the real economy. It's carried by individuals and it's carried by business. Whatever way you raise it, whether it's personal income tax or company tax—or GST or all of the other different taxes that are raised out of the economy, in the end it's paid by real people and real businesses. If you increase the amount of money—that people or businesses have to hand to the government in order to fund ever-increasing expenditure, that is money that is no longer available for their consumption or for them to invest in future opportunities. Over time, that would make our economy weaker, which would lead to less employment, which would lead to higher unemployment, less competition in the
labour market and, consequently, downward pressure on wages, which we don't believe is desirable.

Senator STOKER: Thank you. Ms Quinn, you've mentioned that wages grew by 2.3 per cent and that's at a rate higher than inflation, which was at 1.8 per cent. Has there been an impact on consumer prices, following government action to address cost-of-living pressures like, for instance, the childcare subsidy?

Ms Quinn: Yes, there have been administrative prices that have put downward pressure on inflation, and the childcare subsidy is one. On the other side, there have been some administrative prices that have put upward pressure on CPI. Overall, the headline inflation rate is 1.8 per cent, which is modest by historical standards.

Senator STOKER: What impact has the decline in the terms of trade had on wages growth in Australia?

Ms Quinn: This is something that we've looked at on the way up, when commodity prices were going up, and on the way down, as commodity prices came down. We did see, in parts of the economy, upward pressure on wages when there was a very large demand for particular skill sets for the boom in construction and investment in particular parts of the economy, particularly in the mining states of Western Australia, the Northern Territory and Queensland. That upward pressure on wages has obviously dissipated during the reverse in the cycle, with commodity prices coming down and with the investment boom having flowed through the economy and resulted in increased production but less call on construction workers and the like. So we've seen downward pressure on wages, once again in the mining states but also in the broader Australian economy, because the commodity prices add income into the economy and that flows through all states. And with the slower income growth, we've also seen businesses being less able to provide wage increases. But most of that has flowed through, in our assessment. It's taken a long time because we've had very big shifts up in commodity prices and big shifts in labour movement and investment. But we expect things to return to something more like business as usual now that we don't have such large fluctuations in those forces.

Senator STOKER: A little earlier, Mr Gaetjens mentioned that wages growth has been weak across the developed world, or words to that effect—I don't want to misparaphrase him. Are there any differences between what might be driving weakness globally, or in the advanced world, versus what's going on in Australia?

Ms Quinn: The Australian economy has different characteristics to others. I note that wages are also picking up in some parts of the global economy, in the advanced economies, where we've seen unemployment rates fall to more historically low levels, such as in the United States. Globally there has been a shift, and one of the reasons for that is the technology and shifts in what's happening in particular industries. We've seen the productivity improvements in Asia, for example, reduce the price of manufacturing goods. That reduces inflation around the world, and it reduces nominal wages around the world as well. In terms of Australia, we've had the commodity cycle, which has been particular to the commodity countries, such as Australia and Canada. That's a particular segment. I'll just check if Dr Grant wants to add anything.

Dr Grant: No.
Senator KETTER: Ms Quinn, at the time of last year's budget there was talk about looking at the Treasury's forecasting and projections methodology, and I think it might have been you who made the comment that it's a well established approach but it's not without its drawbacks and that the Treasury continues to review and refine the methodology. Are you aware of any work or analysis in Treasury at the moment that sheds light on the deficiencies and/or drawbacks of the current forecasting and projections methodology?

Ms Quinn: It would have been my colleague Nigel Ray that had that conversation with you previously, and it is the case that we continue to review both the forecasting methodology and the projections methodology. We do that routinely as we do research and as we assess how it's progressing. On the forecast end, we continually update our economic models. We have been investing in capability in terms of building a macroeconometric model that at some stage we hope to use as part of our forecasting framework. We've built other forecasting methodologies, such as nowcasting and using other statistical methods. Earlier I mentioned capability in terms of firm-level microanalysis that we bring to bear as well. In terms of projections methodology, that is something that we regularly review and will continue to do so. It depends a bit on what's happening in the economy and the advances we've got, but certainly having an econometric model means that we might have some different options going forward to think about how we put together the technical aspects of the forecast. But we won't do that without proper formal peer review and discussion about the implications.

Senator KETTER: So since the last budget, you're saying there has been quite a bit of work done in this regard, in respect of both forecasting and projection?

Ms Quinn: Internal work at this stage—changes in internal abilities in the forecast, but no changes to the methodology for the projections at this stage.

Senator KETTER: I'm interested in the specific work that's been done since the last budget. Can you give me a bit more detail?

Ms Quinn: We've been building a macroeconometric model. We had a project plan. We've moved through to complete the prototype of that model and to test it alongside our existing frameworks. We need further work on that, but we've made a fair bit of progress on those aspects. As I said, I can take on notice a bit more of the individual sector econometric equations and things that we've done work on, but we certainly have made improvements there. And in terms of projections, we do assessments of how it's working and the implications. We do that regularly, not just in the last 12 months but every 12 months.

Senator KETTER: Is there an expectation that the methodology may change over the course of the next year or so?

Ms Quinn: We haven't made a decision yet or provided advice to government. It's something we're still assessing internally.

Senator KETTER: So there is a potential at the moment for that to occur?

Ms Quinn: There's always potential for us to evaluate and change the way we do things. We're continuously improving our methodology and our ability to provide advice to government.

Senator KETTER: What are the decision points around that? What will need to happen before the methodology changes.
Ms Quinn: We would have to be comfortable with our capacity and capability to make an improvement in the system—to make sure we can produce all the outputs and all the advice that we currently produced in a more efficient and effective way. We need to transition effectively. It's sometimes a little hard to change horses mid-race, so to speak, so we need to have a proper change management process. And we'd have to be clear and transparent about any implications it would have for advice to government.

Senator KETTER: Who would sign off on a change to methodology?

Ms Quinn: The technical forecast element has historically always been Treasury's internal advice and ability. So, the government hasn't had an influence on what equation we use or what parameters we use in terms of our detailed forecasting options. In terms of the projection, we do provide advice to the government.

Senator KETTER: Would it be the secretary's role to sign off on a change to methodology?

Ms Quinn: We certainly review such significant decisions at the executive committee level. The secretary is usually involved in those discussions—yes.

Mr Gaetjens: And I think it is fair to add that we also obtain peer advice, in terms of how we approach the modelling framework. It is not just, again, something that is internally inspired from Treasury that says we should do it this way. It is basically, as Meghan said, looking at how we do things—how we can do it better—given the way we can use information and the modelling techniques available. But we have quite a range of peer reviewers who actually look at this. Because these things affect a lot of Treasury, it would come up through the executive committee. I have to say that while it might actually be signed by me or by Meghan, it would have the support of the whole of the executive committee in Treasury.

Senator KETTER: Mr Gaetjens, are you considering changing methodology in terms of projections and forecasting approach? Is this on your to-do list?

Mr Gaetjens: It is on my to-do list, to the extent that the work that is going on in Treasury—and in fact preceded the time I joined there—comes up. As Meghan said, in terms of us being comfortable and having tested what is around, it would be on my to-do list, and in fact the executive committee's to-do list, at an appropriate time. It is not something that certainly I have in my mind, or in anywhere else—a particular date to do something. It will be formed, matured, tested, and then it would be done. And I am sure that at the time it was done—again, after being signed off by Treasury—there would be a process with government about how to implement it.

Senator KETTER: When you talk about peer review, how broad is that group of peers?

Ms Quinn: Some of the work we have been doing in Treasury is in response to a formal review of our forecasting performance. There has been a series of reviews over time that have talked about our internal capacity and capability and the types of things we should be looking at. Part of the work we do is in response to that. We have a formal steering committee on the macro model development process, and we have a formal expert panel review process where we have international and domestic experts in their field who provide us with their input and expertise. That includes members from New Zealand, Canada and the United States, as well as domestic academics and practitioners. So, we go as broad as we can within our resource
constraints and time constraints, and we are very keen to ensure we take on board the latest analysis and expertise.

**Senator KETTER:** Would I be correct in saying that if assumptions for economic variables like productivity and economic growth were reviewed and downgraded, this could flow on to tens of billions of dollars of impact on budget downgrades over the medium term?

**Ms Quinn:** There are a lot of parameters in putting together the budget projections. The most important are productivity, participation and population—the 3Ps that we often refer to in Treasury. They form the supply side of the economy, which underpins potential economic growth, and those projections are important as the foundation for the budget projections—both expenditure and revenue. On top of the real economy we have methodologies for prices—the inflation target regime and also views about the terms of trade. All of those assumptions do matter for the medium term. They can go up or down, depending on what is happening in the structure of the Australian economy.

**Senator KETTER:** At the moment, for example, you have the assumption for productivity being 1.6 per cent, whereas labour productivity hasn't grown at all over the last two years. Is this one of the areas that you might be looking at?

**Ms Quinn:** At the moment the technical assumption is the historical average for productivity, and that number is 1.6. That is what we use in the projection methodology. Productivity is a particularly volatile series—a lot of the economy is volatile and we need to look through that when looking at medium-term projections. So, it is unlikely that we would ever have volatile numbers in our medium-term projection, because we need to look at what is happening in the trend economy, and that provides the best platform for advice to government over the medium term. So, we would assess productivity depending on what has been happening in history. It is the same with population growth and participation and other aspects of the medium term—

**Senator KETTER:** Over what period of time do you assess that historical average.

**Ms Quinn:** A 30-year average at the moment.

**Senator KETTER:** When was the last time you reviewed that.

**Ms Quinn:** I'll just ask my colleague—we have used a 30-year assumption for a very long time, but as we move through time the actual number that results from the 30-year assumption has changed.

**Senator KETTER:** Is it a rolling 30 years?

**Ms Quinn:** Yes. We update as we move forward through time. It was reduced modestly sometime in the last two years. I can't remember exactly—I would have to take it on notice. But the 30-year average did get reduced to 1.6.

**Senator KETTER:** So, perhaps one of the issues you might be looking at is the period of time, the 30 years. Is that one of the things you might look at in terms of one of the changes that you would be considering with a methodology?

**Ms Quinn:** I will just pass to my colleague.

**Dr Grant:** It is a long-standing practice from us to use a long-term average. We are not the only fiscal institution that uses a long-term average on productivity growth. It is notoriously difficult to take a view, in a forecasting sense, on productivity. The 30-year
average is long-standing and you will find it in other institutions, particularly the CBO in the US, which also uses a long average. We just update it for whatever is the latest 30-year average.

**Ms Quinn:** One of the issues is about transitioning from the forecast period to the projection period. That is one of the areas we are reviewing.

**CHAIR:** We are due to have a break at 11:15. I know senators have additional questions for the macro group, so we might ask you to come back after the break, but the committee will suspend now.

**Senator Cormann:** So, the macro group will come back, but the secretary?

**CHAIR:** Are there more questions for the secretary specifically?

**Senator WHISH-WILSON:** I have five minutes of questions.

**Senator Cormann:** Why don't we do that now.

**Senator WHISH-WILSON:** On 19 December 2018, just prior to Christmas, APRA removed their interest-only benchmark for residential mortgage lending. Did Treasury have any consultation or were you involved in any formal or informal process in corresponding with APRA about potential changes to their prudential regulations around mortgage lending standards?

**Mr Gaetjens:** Yes, that issue was actually discussed at the Council of Financial Regulators. I think we have just started releasing either our minutes or findings. I don't know whether it would have related to that committee., but, yes, I think—

**Senator WHISH-WILSON:** When was that meeting?

**Mr Gaetjens:** It would have been before December. Can I take it on notice to get the details?

**Senator WHISH-WILSON:** Can you also take on notice if there was any other formal or informal correspondence with APRA around the changes? The supervisory benchmark was deemed by APRA to be only a temporary measure.

**Mr Gaetjens:** Yes.

**Senator WHISH-WILSON:** I note that on the following day Treasurer Frydenberg put out a statement that was picked up widely in the media. His statement was basically that banks must keep lending. In particular, I wanted to ask you about one of his quotes. Talking about the risks, which we have discussed this morning, about further tightening causing risk aversion and impacting domestic demand, he said 'To avoid these risks the banks need to balance their responsible lending obligations with the need to keep credit flowing, providing much-needed access to finance for families and business. This goes right to the heart of the critical role that banks play in the economy.' Minister, you may prefer to answer this question: is it a coincidence that APRA changed their standards before Christmas, and the following day the Treasurer was out basically saying to banks that they need to be lending?

**Senator Cormann:** APRA is an independent statutory agency which makes its judgements under its relevant legislation as it sees fit. Obviously, there is a level of interaction, as is appropriate, between the Treasurer and all of the relevant agencies and organisations that form part of his portfolio. All things in the economy that are relevant to the
good management of the economy from the government's point of view of course are coordinated as appropriate, but APRA acts entirely independently within its purview.

Senator WHISH-WILSON: In the minister's statement, 'The banks need to balance their responsible lending obligations with the need to keep credit flowing,' what does that word 'balance' mean exactly?

Senator Cormann: It means precisely what it says.

Senator WHISH-WILSON: Do you think it also suggests that banks should be flouting lending standards?

Senator Cormann: It means that we need appropriate balance.

Senator WHISH-WILSON: If you were sitting in a bank, how would you take that?

Senator Cormann: That is the judgement that they have to make every single day. If the balance is not right, there'll be a public policy response somewhere along the way. Obviously, if the balance is not right, that would have consequences that would have to be addressed in a policy sense.

Senator WHISH-WILSON: I have actually talked to an executive at a bank about this issue. Either you've got to abide by your lending standards or you don't. The banks are in a very difficult situation here.

Senator Cormann: You do have to comply with lending standards—of course you do. The banks are core facilitators in the economy and it's important that we have strong and stable banks that are also competitive and provide competitively priced services in the economy. That is always a balancing act.

Senator WHISH-WILSON: Do you think a statement by a politician is actually helping that balance?

Senator Cormann: I think it's just a reminder that balance is important.

Mr Gaetjens: I think it's also important that APRA actually took away a temporary measure that related to interest-only lending.

Senator WHISH-WILSON: That's right, yes.

Mr Gaetjens: That is only a part of credit provision.

Senator WHISH-WILSON: It's an important part, though, you'd have to admit.

Mr Gaetjens: It is, but it was in the view of the regulator itself that it got a little bit out of control, and that's why they put the temporary measure in place. If my memory is right, at that time I think there was a bit of an issue even then about what was happening in credit. It's useful to note now that ASIC, earlier this week, I think, or last week, actually put out some revised guidance on responsible lending, and it is also relevant that in fact the royal commission made it clear that the commissioner did not wish to extend the responsible lending rules to small business. So it seems to me a conjunction of one action taken by a regulator that related to a specific thing and then the treasurer coming out with a wider statement that said, 'Look at your responsible lending requirements, but still keep credit and don't necessarily operate within them.'

Senator WHISH-WILSON: You did say the minutes would be available from that council of regulators meeting, but did Treasury express to the regulators concerns around the
tightness of lending standards and the possible impacts that might be having on the economy, when you met prior to their December decision?

**Mr Gaetjens:** I think there was a bit of a general discussion. In those meetings, there is quite often a general discussion as to what's happening with credit in the markets. I'll check what's publicly available, but at most of those CFR meetings we do have a discussion that involves the perspectives, as the CFR was set up to do, of all the regulators on particular issues.

**Senator WHISH-WILSON:** But you're confident APRA make that decision off their own bat without any pressure from Treasury or the government?

**Mr Gaetjens:** Absolutely. Again, there was discussion. It's not as if it was done in one day—let me put it that way. Wayne will be appearing later on and I'm sure he will mention the same time line.

**CHAIR:** We'll let you go, Mr Gaetjens.

**Proceedings suspended from 11:19 to 11:35**

**CHAIR:** The committee will now resume with additional questions for the Macroeconomic Group.

**Senator KENEALLY:** Thank you for being here today. I would like to go to the announcement by the Prime Minister of a promise he has made to deliver 1.25 million jobs over the next five years. You're aware of this commitment made by the Prime Minister last month?

**Ms Quinn:** Yes, we are.

**Senator KENEALLY:** When were you first made aware of this commitment?

**Ms Quinn:** To my knowledge, we were aware of it when it was announced.

**Senator KENEALLY:** When it was announced?

**Ms Quinn:** Yes.

**Senator KENEALLY:** This question may seem redundant, given your answer, but allow me to ask it so we can be clear. Did Treasury do any work in relation to this commitment—to deliver 1.25 million jobs over the next five years—prior to the announcement?

**Ms Quinn:** We provide advice on the labour market all the time, including future prospects and current activities. I'm not aware of any specific requests related to that specific announcement.

**Senator Cormann:** I would make this point: we made a commitment before the 2013 election to create more than a million jobs over our first five years in government. So that was a commitment we made from opposition. The government at the time sneered at us, saying it couldn't be done, and the record now shows that the economy created more than a million jobs—in fact, more than 1.1 million jobs—over our initial five years in government. I think the Australian people know that our agenda has been successful in creating stronger growth, with more jobs, lower unemployment rates and, indeed, a budget that is now on a stronger, improving, more sustainable trajectory for the future.

**Senator KENEALLY:** Thank you for the coloured commentary there, Minister!

**Senator Cormann:** Explanation.
Senator KENEALLY: Not for any questions I asked. Now, back to my questions to the department. So we're clear, you're not aware of any work that Treasury did prior to the announcement that the Prime Minister made that the government would deliver 1.25 million jobs over the next five years?

Senator Cormann: The Australian people—

Senator KENEALLY: Minister, I'm asking—

Senator Cormann: I'm entitled to answer questions on behalf of the government.

Senator KENEALLY: Well, I'm asking Treasury just to confirm an answer they have already given.

Senator Cormann: And that's fine. And, before Treasury answers the question that you've asked, I'm going to answer on behalf of the government. The point that I would make is that the Australian people are able to look at our track record of having delivered more than 1.1 million new jobs in our first five years in government, and they know about our future agenda designed to make the Australian economy stronger, and they will be able to compare that with the alternative of higher taxes—

Senator KENEALLY: Minister, why won't you let Treasury answer this question?

Senator Cormann: which will make the Australian economy weaker.

Senator KENEALLY: Why won't you let Treasury answer the question, Minister?

Senator Cormann: I will let the Treasury answer the question, but I think it's very important to put it in context. You're trying to suggest that somehow—

Senator KENEALLY: I've simply asked a question.

Senator Cormann: the government is not in a position to make these sorts of commitments. We made that commitment out of opposition and delivered it in government—

Senator KENEALLY: Minister, you're reading that into my question. That's extraordinary. I simply asked a factual question to Treasury.

Senator Cormann: and we are making further commitments for the next five-year period. Again, the Australian people can compare and contrast our track record with your track record in government.

Senator KENEALLY: Someone seems a bit defensive!

CHAIR: Senator Keneally, if you've got a question that's fine, but I don't think it's a good idea to speak over the minister. It's confusing for the Hansard.

Senator KENEALLY: Thank you, Chair. I have tried to ask Treasury a question. I just want to be clear that they didn't do any specific work in relation to the commitment, made by the Prime Minister, of 1.25 million jobs. Ms Quinn, I understand your testimony is that you do labour market analysis quite regularly but that you first became aware of that commitment when it was announced.

Ms Quinn: We do provide briefings on the labour market regularly, both current and future expectations. We do that all the time. I'm not aware of specific requests related to a specific announcement in the speech, no.
Senator KENEALLY: Thank you. Ms Quinn, or someone else at the table: do the employment growth estimates and forecasts listed in the MYEFO get you to 1.25 million jobs over five years?

Ms Quinn: In the MYEFO we publish forecasts and employment projections out to 2021-22, which doesn't encompass the full five years of the government's commitment to 1.25 million jobs, so there's a gap. In order to achieve 1.25 million jobs, you need employment growth in the order of 1.9 per cent a year. To put that into some historical context, we've had 2.1 per cent as the average for the past five years.

Senator KENEALLY: Okay. I understand the point that you're making that the MYEFO forecast does not go across—

Ms Quinn: Forecast and projections. We forecast for two years and then give projections for the rest.

Senator Cormann: And, of course, employment grew by 3.6 per cent through the year to January 2018. Much stronger than anticipated employment growth in the 2017-18 financial year was a significant reason why we delivered a $19.3 billion improvement to the budget bottom line in the final budget outcome for 2017-18. Our agenda is designed to keep the economy strong—indeed, make it stronger—so that more jobs can be created and so that the unemployment rate can continue to be low; indeed, lower. The alternative agenda of higher taxes—an antibusiness, high-taxing agenda—would make the economy weaker, would make the country weaker and would make Australians poorer, because with lower employment growth there'll be fewer jobs and higher unemployment, and that would put downward pressure on wages.

Senator KENEALLY: Minister, in the past you've actually criticised my questions for not asking about specific policy issues. You've said I've been too political. Here I am—

Senator Cormann: I'm not criticising; I'm just answering.

Senator KENEALLY: attempting to ask Treasury officials about projections that are in the MYEFO, and I would appreciate being able to do that. MYEFO employment growth forecasts—

Senator Cormann: And I am able to answer questions that are asked. That is the normal process.

Senator KENEALLY: I am asking Ms Quinn a question please. MYEFO employment growth forecasts, as I understand it, are 1.75 per cent for this year and next year, then 1.5 per cent for years 3 and 4. So how much do we need to catch up to reach that 1.9 per cent?

Senator Cormann: Well, just to put that into context again: if you look at our budget forecast in 2017-18, the forecast for employment growth at the time the 2017-18 budget was delivered was 1.5 per cent. Actual performance—actual performance in 2017-18—was 2.7 per cent, so actual performance in 2017-18 was 1.2 per cent better than what was forecast at budget time. So the point that I would make to you is that of course we always, through our policy settings, aim to ensure that the economy is as strong as possible, that employment growth is as strong as possible and that as many jobs are created as possible. If you look back at the last two financial years for which we have final budget outcomes, actual outcomes against forecasts, you will see that we have consistently outperformed the forecast expectations at budget time.
Senator KENEALLY: Actually, Minister, that goes to the heart of the question I am asking Ms Quinn about the MYEFO projections. MYEFO employment growth forecasts are 1.75 per cent for this year and next year, and 1.5 per cent for years 3 and 4. I'm asking the Treasury how much they will need to exceed the forecast to reach 1.9 per cent. It is actually a fairly straightforward math question.

Senator Cormann: Ms Quinn has actually answered that question, because the five-year period goes beyond the current budget forward estimates.

Senator KENEALLY: No, she hasn't, I have asked a very specific question about the next four years in MYEFO.

Senator Cormann: But you are making an assumption about what may or may not happen in the period beyond the forward estimates.

Senator KENEALLY: So I take it from your argument, then, that all of the growth will happen in that year beyond the forward estimates.

Senator Cormann: No. What I am saying is that, based on our policy settings and based on our pro-growth agenda into the future, we've made a commitment to the Australian people that we will deliver 1.2 million new jobs.

Senator KENEALLY: I think it is 1.25 million.

Senator Cormann: Yes, 1.25 million new jobs over the next five-year period. The Australian people can look at our track record. When we last made a promise like this, promising more than a million new jobs over five years from 2013 onwards, we actually exceeded that target. Indeed, more than 1.1 million new jobs were created.

Senator KENEALLY: I will go back to my question, which I'm still seeking an answer to. MYEFO employment growth forecasts say that we will have 1.75 per cent growth this year and next year and 1.5 per cent in years 3 and 4. How much will we need to catch up across the MYEFO to get to 1.9 or, if we take the minister's argument, how much growth will we need to see in the fifth year in order to hit 1.9?

Ms Quinn: I just want to clarify that we have forecasts for the first two years encapsulated in the MYEFO. Then the numbers for the last two years that are published are projections, as we discussed a bit before the break, which are based on a projection methodology which has the economy growing around or just a bit above trend, depending on where we end up.

Senator Cormann: So they are technical assumptions. That is the point. They are not forecasts, these are technical assumptions.

Senator KENEALLY: Again, I am trying to get to an understanding based on the analysis that Treasury have done about the labour market which apparently they were not asked to contribute to this announcement's specific commitment. What is the growth that we will need to see in MYEFO from what is currently forecast in the technical assumptions to hit this commitment made by the Prime Minister?

Ms Quinn: In order to hit the commitment of 1.25, we need employment growth of 1.9 per cent per year on average over the next five years.

Senator KENEALLY: Is it correct to say that, for the next two years, the projections in MYEFO do not hit 1.9 per cent?

Ms Quinn: We are expecting employment to grow in the order of 1.75 per cent, yes.
Senator KENEALLY: I have one last question to wrap this up. Does that mean we will see the employment growth estimates and forecasts that are currently in MYEFO updated in the budget in order to demonstrate how the government will achieve this 1.25 million jobs figure.

Senator Cormann: Firstly, in every budget and in every budget update, all of the relevant forecasts are updated. That's always the case. It will be updated on this occasion based on the best available advice, the best available information and the relevant economic and non-economic parameters. In relation to employment growth in the future, the essence of your line of questioning is the same as Labor's was back in 2013. You are casting doubt on our ability as a government to implement an agenda that will see stronger growth for jobs.

Senator KENEALLY: So your argument is that past performance—

Senator Cormann: Back in 2013, Labor was arguing that we could not facilitate the creation of more than a million jobs. Indeed, more than 1.1 million jobs were created. In the end, we can talk about forecasts and projections, but the only thing that we know for certain is what has actually been achieved looking back. When you look back at what has actually been achieved—I will give you one example because it's in the current MYEFO title—the actual outcome for 2017-18 was 2.7 per cent employment growth instead of the forecast at the time of the budget of 1.5 per cent employment growth. So that was a 1.2 per cent improvement in just one year.

Senator KENEALLY: Have you told Minister Robert yet whether these are going to be full-time or part-time jobs?

Senator Cormann: Obviously people make choices in the Australian economy.

Senator KENEALLY: Does Minister Robert understand that yet?

Senator Cormann: Whatever.

Senator KENEALLY: So it's the vibe of the thing that's going to get us that 1.25 million?

CHAIR: Senator Keneally, I have some questions I would like to follow on with.

Senator Cormann: More than 1.1 million new jobs were created in the first five years of our period in government.

Senator KENEALLY: Are they full time or part time?

Senator Cormann: Instead of celebrating this, all you can do is sneer—

Senator KENEALLY: No, I'm trying to get information.

Senator Cormann: and be negative. Overwhelming these are, of course—

Senator KENEALLY: I'm simply trying to get information.

CHAIR: Thank you, Senator Keneally. Thank you, Minister. I have some questions about labour market developments that I'd like to follow up with on the back of Senator Keneally's questions. You've spoken about the number of jobs that have been created in the economy since the coalition was elected. However, can you speak to the rate of jobs growth compared to population growth, Ms Quinn? I think that's quite an important ratio too.

Ms Quinn: In the labour market, there are different ways of examination the data depending on what question you're asking. Employment growth certainly goes to the number
of people in jobs. And then there's the question of how many people are actually looking for
work and who's in the labour market in total.

CHAIR: So participation rates.

Ms Quinn: Participation rates. We've seen the participation rate rise to a historically high
amount. That's off the back of workers remaining in the labour force longer as they get
towards the end of their career as well as more women entering the labour force. When we
look at the labour market, there are push and pull factors. Some of those workers will have
been encouraged into the labour market off the back of the strong employment growth. Others
will have done it because we've changed some of the administrative arrangements around
retirement conditions, making it easier for people to work part time and transition into
retirement. Also, flexible work arrangements have meant that it's easier for people to juggle
family responsibilities. So there are structural and cyclical factors pushing up the participation
rate in Australia.

CHAIR: Over the last few quarters, the unemployment rate has remained at around five
per cent. I'm showing my age here, but, when I was at university, five per cent unemployment
was almost considered full employment, wasn't it? But, obviously, this is not full employment.

Ms Quinn: Once upon a time, full employment was three per cent in Australia, going
back to the middle of the last century. Five per cent is a number that people often refer to as
the non-accelerating inflation rate of unemployment.

Senator Cormann: The NAIRU.

Ms Quinn: That's the rate at which the labour market tightens what implications it has for
wages or whether wages are growing. That's a slightly different thing to full employment,
which is about utilising all the physical labour in the economy. You can obviously go below
the NAIRU because there are still people who are able to come into the labour market. Estimates
of the NAIRU have varied. Around five per cent is the number that Treasury and
the Reserve Bank have historically thought of as that non-accelerating rate. I note, though,
that the IMF has a slightly lower number, and the OECD has a slightly higher number, so it's
around five per cent. But there is still slack in the labour market. There are still people who
are looking for work, for example who are part time and may want to extend their hours. And
there would be people who are still outside the labour market who could enter over time if the
continued strong employment growth demand is there.

CHAIR: From Treasury's perspective, do you target unemployment rates and participation
rates? What do you use as Treasury targets?

Ms Quinn: In terms of the wellbeing of the Australian people, which is one of the
objectives of Treasury, we look at making sure there are maximum opportunities for people to
make the choices they want to make, so strong employment demand is what we're looking
for—that is, making sure that there's demand from businesses to employ people. We look at
the unemployment rate because that's a number that indicates those people in the labour
market who are actually getting jobs. From a participation perspective, it's important because
it means that people are getting the opportunities to come into the labour market. And then we
look at all sorts of other aspects—the distribution, what's happening in particular cohorts.
We're concerned that youth unemployment, for example, is still relatively high. It has come down over time, but it's still something that we monitor.

CHAIR: The secretary mentioned that in his opening statement, and that was going to be my next question. It's at about I think he said 11.2 per cent.

Ms Quinn: Yes.

CHAIR: Where has it come down from?

Dr Grant: It peaked at 14.4 per cent, most recently, and that was in October 2014.

CHAIR: What are the forward indicators that you'd look at for employment growth?

Ms Quinn: We typically call the labour market a lagging indicator. So we look forward to the indicators that suggest business conditions and their employment intentions. There are various surveys that we monitor. We monitor vacancy rates and the overall profitability of business. We look for the general conditions for business that drive employment growth.

CHAIR: In what industries are we seeing the strongest jobs growth?

Ms Quinn: 'Public administration and safety industry' had the largest increase over the last year. The 'other services' category, which includes lots of different things, had the weakest employment growth.

CHAIR: Do you break those categories up by the cohorts of people they employ—gender, age or whatever it might be?

Ms Quinn: There is quite a lot of information on the labour market. The ABS produce a lot of different types of statistics, and they recently started providing more information on the labour market through their quarterly experimental estimates, which provide a lot more information on the stock of jobs and what is happening.

CHAIR: Experimental estimates? It sounds like a lifestyle choice!

Ms Quinn: It is a different way of looking at it. Rather than looking at it from the employee side, it looks at it from the employer side and matches labour market data from different sources. It provides a different analysis on hours worked and those more detailed labour market estimates. We look at full time, part time and different sectors. Another area that has seen strong growth is education and training.

Senator KETTER: I'd like to move to the issue of the Beneficial Ownership Register. I note supplementary budget estimates question on notice 98 from Senator Whish-Wilson. There was a response to that which said there is no commitment to implement a register that has been made by the government. But, back in 2016, it was reported that Minister O'Dwyer gave a commitment from the government to a beneficial ownership register. Are you able to tell me what has changed?

Ms Quinn: That is a question to direct to the Markets Group colleagues, who look after that policy issue. They will be on later today.

Senator KETTER: So any questions in relation to the Beneficial Ownership Register are for Markets Group?

Ms Quinn: Correct.

Senator KETTER: I might go to the issue of the Tax Integrity information campaign. I refer to Treasury portfolio additional estimates statements, which show that $23.5 million was
set aside in 2018-19 for the Tax Integrity information campaign. Is this campaign the same as the one being run in the media right now from the bettertax.gov.au website?

Mr Flavel: That's correct, that is the campaign we're talking about.

Senator KETTER: Is spending $23.5 million on this campaign a good use of taxpayers' money?

Mr Flavel: That's clearly asking for an opinion about value for money. I can't give a response on that.

Senator KETTER: Okay. Can you give me a breakdown of that cost?

Mr Flavel: There are several components that make up these campaigns. I can refer you to the components for the contracts as they appear on Austender, if that's what you're interested in. There was a contract for market research with Pollinate Australia, and the contract value is $425,100.50. Would you like me to keep going?

Senator KETTER: Yes.

Mr Flavel: For creative work, BMF advertising, the contract value is $1,941,312.

Senator KETTER: Keep going.

Mr Flavel: There are two sets of creative agency pitch fees, for 303 MullenLowe Australia and TBWA Australia, both at $11,000 each. A contract for evaluation with Hall & Partners has a contract value $147,666.20. And, then, the contract for the master media agency under the government arrangements is with Universal McCann, and the contract value is $16,122,181.52.

Senator KETTER: What was that contract for?

Mr Flavel: That's for, essentially, purchase of the media slots and related matters.

Senator KETTER: So all those figures add up to the $23.5 million—

Mr Flavel: They're the contract values. What we don't have at the moment is the actual amount spent, because, as you're aware, under the Commonwealth procurement framework, the amounts that go onto AusTender are the amounts for contracts, but, given the campaign's life, we won't actually know total amount spent. Clearly, they can't be in excess of those amounts, but in a number of cases they'll be below the amounts actually contracted for.

Senator KETTER: How much of the cost of this campaign is for administrative purposes?

Mr Flavel: It depends. Maybe you could define what you mean by 'administrative purposes'?

Senator KETTER: Rather than just the spend for the advertising, what's the nature of the other expenditure?

Mr Flavel: Those other components I've run through—around market research, evaluation and creative— all go into part of the process for the campaign itself. If that's what you mean by 'administrative', then I've given you those values.

Senator KETTER: How much of that money is being spent overseas?

Mr Flavel: We're not aware of any money being spent overseas.

Senator KETTER: When is this funding due to be spent?

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ECONOMICS LEGISLATION COMMITTEE
Mr Flavel: In some cases, particularly for the market research and the creative, obviously, given that the ads are currently on air, those amounts have already been spent. As I identified previously, the campaign is live, so there are obviously amounts being incurred at the moment, and the campaign is due to run during the course of this current financial year, so all moneys would be expected to be spent prior to 30 June.

Senator KETTER: In fact, will all the moneys be spent before the federal election?

Mr Flavel: I think, on current planning, the campaign is still likely to run until around April or May, but I might have to take that on notice.

Senator KETTER: So that is prior to the expected date of the federal election. How much has been spent so far on the campaign?

Mr Flavel: As I said, I can't give you that figure—I can only give you the contract amounts—because the substantial component is for that contract with Universal McCann, and that is currently in process at the moment.

Senator KETTER: I understood there was $645,000 in departmental expenses linked to this measure. What's that being spent on?

Mr Flavel: Obviously, a campaign of this scale requires staff within the Treasury to oversee it, provide advice and be involved in aspects of procurement, governance and the like. The departmental funding for that covers most of those activities.

Senator KETTER: It's curious that we have a federal government website that has the use of the word 'campaign' with it. How appropriate is it for the federal government to conduct a campaign?

Mr Flavel: As you know, Senator, there are guidelines that Finance puts out in relation to all manner of government advertising campaigns. Indeed, in the recent past, Treasury, through the Treasurer, has been involved in a number of advertising campaigns on things like housing affordability, multinational tax avoidance and the like.

Senator KETTER: There are just TV advertisements on the page. The homepage is only three tabs with three dot points each, with links to the ATO website. Why don't the television ads ask people to visit the ATO website directly rather than going through this 'Building a better tax system' website?

Mr Flavel: There are a whole range of materials, including television, radio advertising and other channels, that are used on the website. The 'better tax' one that you refer to is just one part of that broader suite of materials that are used.

Senator KETTER: What's the cost of the website?

Mr Flavel: I'm advised that it's included within the creative fees which I previously gave you.

Senator KETTER: Which agency was that?

Mr Flavel: The contract that I referred to for the creative agency, which is BMF Advertising.

Senator KETTER: Given the PAYG taxpayers' new tax rates will be implemented by their employers using the tables published by the ATO, as they do normally, and the business tax changes are but a number that will require accountancy advice and are not to be
considered in a vacuum, what really is the legitimate purpose of this mass marketing information campaign?

Mr Flavel: Senator, I can direct you to the statement of compliance with the guidelines on campaigns which the department has on its website, or which is on the Finance website. That goes through the four principles which we're obliged to comply with as part of it. That makes clear that there's a case—given the wide-ranging nature of the tax cuts and their impact on individuals and right through the business community, and ongoing awareness around the importance of multinationals paying their fair share—that a broad campaign targeted at those things is effective.

Senator KETTER: There's an external advertising agency used to run this campaign, isn't there?

Mr Flavel: As I've identified, there are a range of external parties who are used for the various stages of the campaign. That's right.

Senator KETTER: Can you tell us whether there was an open tender process for the selection of the advertising agency, particularly the $16 million spend?

Mr Flavel: The contract with Universal McCann, which is for the $16 million, is a whole-of-government contract, so there was no requirement to have a separate procurement process for their use. In other words, Universal McCann is used for a range of campaigns, having prequalified through a procurement process.

Senator KETTER: What about the other external agencies?

Mr Flavel: I might take that on notice, because it varies for those other components that I've given you.

Senator KETTER: Is Universal McCann an Australian company?

Mr Flavel: I understand it is, but I would have to take on notice the formal corporate structure they use.

Senator KETTER: Do they pay tax?

Mr Flavel: Tax paid by a company is a matter between them and the tax office. I can't comment on that.

Senator KETTER: Okay. Just in terms of the specifics of the website, have you taken on notice the actual cost of the website?

Mr Flavel: No. I indicated, I think, that it was included as part of the contract with BMF Advertising.

Senator KETTER: Can you come back to me with the specifics.

Mr Flavel: Yes, sure. I'm happy to take that on notice.

Senator KETTER: What about the billboards? How much was spent on that?

Mr Flavel: Again, if it's a subcomponent of the broader contracts, I'll need to take that on notice.

Senator KETTER: And on digital advertising?

Mr Flavel: Again, for more detailed breakdowns—and bear in mind my earlier comments that we're still in the midst of a campaign—we would need to wait until the campaign's
complete in order to give you an accurate guide as to how much has actually been spent on those particular subcomponents.

Senator KETTER: In terms of the advertising, where was it targeted to?

Mr Flavel: It was targeted to a range of stakeholders. There's a number of channels, as identified through TV, media and other groups—the sorts of culturally and linguistically diverse groups—as well.

Senator KETTER: What about the billboards?

Mr Flavel: Again, they were just one part of an overall strategy.

Senator KETTER: But where were they specifically targeting?

Mr Flavel: Do you mean in terms of which—

Senator KETTER: Locations.

Mr Flavel: Locations? I'd have to take that on notice.

Senator KETTER: How much was spent on the television advertising? You'll probably take that on notice.

Mr Flavel: Again, once we have come to the completion of the campaign, we can give you a breakdown of the total amount spent.

Senator KETTER: So you're not able to tell us in the midst of the campaign how much has actually been spent so far?

Mr Flavel: No.

Senator KETTER: I'm interested also in print media advertising. Can you tell me which states these print media ads are being shown in?

Mr Flavel: I'm happy to be corrected, but it's a national campaign and my understanding is that it's broad-reaching in terms of its geographic coverage.

Senator KETTER: So all states and territories?

Mr Flavel: Yes, as far as I know.

Senator KETTER: I think you've already told me but, in relation to the campaign, do you expect it to be finalised before May?

Mr Flavel: Yes, that's my understanding. Normally campaigns run for a defined period and, at the moment—and there's obviously flexibility around that—it would be around that April-May period.

Senator KETTER: I'm also interested in the breakdown of the costs between the different states and territories.

Mr Flavel: We'll endeavour to get those to you.

Senator KETTER: Just a couple more—

CHAIR: Can I just clarify something? When you have a campaign like this, does it have to go through an independent—

Mr Flavel: Yes. It's the Independent Communications Committee, and I think I referred to that earlier. But indeed their statement of compliance against the guidelines for government campaigns is made public on the website. As part of the process of finalising a campaign, the relevant secretary—in our case, the Secretary to the Treasury—signs a statement of
compliance against those principles, and that material is available publicly on either our or the Finance website, which identifies the particular components of campaigns and how they fit within the guidelines and those principles.

Senator KETTER: I just have a couple more questions in relation to another matter. It's a MYEFO measure. It was Treasury receiving $11.4 million, of which $5.1 million was new money, apparently, to deliver competition policy and regulatory reform. Can you tell me: precisely what does it mean to 'deliver competition policy and regulatory reform'?

Ms Quinn: These are questions for the Fiscal Group, who cover this particular program now.

Senator KETTER: All right. I will wait for the Fiscal Group.

CHAIR: Are we happy to move on to Fiscal Group?

Senator KETTER: Yes, I think we are now right to go.

CHAIR: Then we will let the Macroeconomic Group and corporate group go, and we will call the Fiscal Group.

Senator KETTER: I was asking about the MYEFO measure, for which Treasury received $5.1 million in new money to deliver competition policy and regulatory reform. What precisely does it mean to deliver competition policy and regulatory reform?

Mr Atkinson: The vast majority of that money was continuation of terminating measures for parts of the department that delivered regulatory reform advice and competition policy advice.

Senator KETTER: So it wasn't new money? Is that what you're saying?

Mr Atkinson: It was continuation of a previous terminating measure.

Senator KETTER: You received $11.4 million in the MYEFO? Is that correct?

Mr Atkinson: Yes.

Senator KETTER: Can you break that down for me to tell me what it was for?

Mr McDonald: We're using the money for a variety of things that we do within the division on competition and regulatory reform policy. It helps continue our work on the Consumer Data Right, which is both a competition and a regulatory reform. It helps continue our work on small business regulatory reform with the small business regulatory reform agenda. Essentially, what was happening was that funding for the stream of work within Structural Reform Division had measures that ended, so our funding was going to fall. This has continued the funding at around the level that we're already at. In terms of ASL and staffing levels, those are staying at about the same level as they have been.

Senator KETTER: So there are no new staff arising out of this?

Mr McDonald: No.

Senator KETTER: Which particular groups within Treasury receive this funding—this $11.4 million?

Mr Atkinson: The vast majority of it comes to our group. There is a small amount that supports some microdata analysis that's in Macroeconomic Group.
Senator KETTER: What capability is not being performed by the National Competition Council, given that $2.1 million per year has been taken from it.

Mr McDonald: There was a shift in the government's regulatory reform agenda. The original agenda was going to have the National Competition Council playing a role in terms of assessing progress, and, as part of that shift into the new small business regulatory reform agenda, Fiscal Group is going to be playing that role.

Senator KETTER: I have a question in relation to the presentation of tax to GDP in the 2018-19 MYEFO. I note that in the 2018 budget there was a graph that showed the tax to GDP ratio in Budget Paper No. 1. Why isn't there a similar graph in the 2018 MYEFO?

Senator Cormann: Did you compare this to the budget?

Senator KETTER: Yes.

Senator Cormann: Obviously, you've got four sets of budget papers at budget time. MYEFO is an update and we don't replicate four budget papers at MYEFO; we just provide an update of all of the relevant and material information.

Senator KETTER: The Budget Paper No. 1 page 3-12—

Senator Cormann: The appropriate comparator would be to look at previous MYEFOs rather than to compare the MYEFO document with essentially four sets of budget papers.

Senator KETTER: Who would have made the decision to not include the presentation of tax to GDP in a similar fashion as was presented in the 2018-19?

Senator Cormann: In the 2018-19 budget you might remember that we had in there the Personal Income Tax Plan, our plan to provide income tax relief to hard-working families around Australia, and there was a graph that specifically demonstrated the impacts. Obviously, in the context of the tax to GDP ratio as it tracked over the medium term it showed how that would have tracked if we didn't provide personal income tax relief to hard-working families compared to how it was expected to track in the context of having made that decision. In MYEFO, we did not announce a new Personal Income Tax Plan, which is why an equivalent graph is not required. As you know the parliament, including the Senate, since the budget has legislated the Personal Income Tax Plan in full, so it's now the law of the land. There is no case now to demonstrate the impact of nonlegislated policy in terms of the fiscal settings. But the general point stands, at budget time you would have budget papers one to four. At MYEFO you have essentially an update in one book. And clearly you're going to concentrate on those areas that need an update. There's no need for an update in relation to something that is already legislated.

Senator KETTER: On page 34 of the MYEFO there is a graph for the projected underlying cash balance and it states that the tax to GDP cap 23.9 per cent is reached from 2025-26, a year earlier than the budget. What is driving bringing forward the tax cap?

Mr Atkinson: What's driving that is the increased revenue that you see across the forward estimates and that building into the base.

Senator Cormann: We've had this conversation in macro, but one of the things that's happened is that we've had stronger employment growth in recent times than what had been anticipated at budget forecast time. For example, in 2017-18, which the most recent year for which we have a final budget outcome, we had 2.7 per cent employment growth rather than
1.5 per cent employment growth. One of the things that means is stronger than anticipated personal income tax collections. At every budget and budget update the fiscal impact of relevant economic parameters is updated and that is reflected in that graph.

Senator KETTER: Does this mean that in 2025-26, 2026-27, 2027-28 and 2028-29 under this tax cap policy tax receipts are 23.9 per cent every year?

Senator Cormann: What it means is that in order to maintain tax as a share of GDP below the 23.9 per cent cap, future policy decisions will be required to lower the tax burden on the economy in order to remain below the 23.9 per cent cap, which is the tax speed limit the government has imposed on itself in order to keep the economy strong—indeed, help ensure it can be stronger.

Senator KETTER: The graph on page 34 of MYEFO shows the underlying cash balance under an unconstrained scenario. Is it just the increased tax receipts that are driving the difference between the unconstrained line and the main 2018-19 MYEFO line in that graph?

Senator Cormann: Yes. Essentially the settings on the spending side of the budget are reflected in the budget bottom line based on the policy settings as established. But what this shows is that in order to remain below the 23.9 per cent tax as a share of GDP cap, future policy decisions will be required to lower the tax burden in the economy to ensure that happens, and that is exclusively an impact on the tax revenue side of the budget.

Senator KETTER: Do you have the figures for the tax receipts in those years, from 2025-26 to 2028-29?

Senator Cormann: We might have to take that on notice.

Senator McALLISTER: Could you, on notice, provide the data that informs the unconstrained line in chart 3.2?

Senator Cormann: These are medium-term projections.

Senator McALLISTER: Sure. I'm asking you on notice.

Senator Cormann: We can see what we can provide on notice, but it essentially goes to projection methodology.

Senator KETTER: Coming back to that graph on page 34, can you tell us why the underlying cash balance improves under the main 2018-19 MYEFO line on the basis that there is a cap on tax receipts?

Mr Atkinson: There are three things at play that drive that. One is the increase in the revenue base from the back of the forward estimates, but there are also structural changes in expenses. As you see, there are decreased expenses across the forward estimates, which I think was discussed with Finance yesterday. And then there's the PDI effect of having lower debt.

Senator KETTER: Does this mean over the medium term that payments are decreasing?

Mr Atkinson: Payments are estimated to be lower than they were at budget.

Senator KETTER: So the medium-term formulations are based on a number of assumptions, but do you have a sense of what the large movements on the payments side are that caused the improvement over the medium term?
Mr Atkinson: Most of the medium-term movement flows on structurally from the changes that you see in payments that are describing the forward estimates. They are on pages 45 to 49. Page 49 lays out what the major moving parts are in demand driven programs, but there are also some other decreases, which came through in budget, that have structurally been built into the medium term.

Senator KETTER: What is the actual payments-to-GDP ratio over that medium term?

Mr Atkinson: Payments-to-GDP ratio? I would have to take that on notice.

Senator KETTER: Okay. Thank you.

CHAIR: I've got a couple of hobbyhorse questions here. They specifically relate to a couple of banking royal commission recommendations, but also superannuation. I assume, Mr Jeremenko, I'm directing them to you, but I might not be right, so forgive me if I'm not. One of the recommendations that came out of the banking royal commission was about APRA's ability to regulate properly the superannuation industry. I know there was a bill that was passed in the Senate last week; I think it's in the House now. Can somebody explain to the committee the impact that bill will have on APRA's ability to better regulate the industry?

Mr Jeremenko: I believe the bill you're referring to is not one that is superannuation specific.

CHAIR: It was a TLAB—sorry; I'm speaking in lingo now—a Treasury laws amendment, but it was improving accountability—

Mr Atkinson: Member outcomes?

CHAIR: Member outcomes bill—that's the one! Thank you.

Mr Jeremenko: There are a few bills, as you know, so thank you for clarifying.

CHAIR: There are!

Mr Jeremenko: That bill has in it two specific government responses to two specific royal commission recommendations. One is to ensure that civil and criminal penalties are applied to trustees of super funds as well as directors. The bill, as introduced in 2017, already had the penalties applying to directors, and the government agreed with Commissioner Hayne in his recommendation that that should be extended to the trustee as well. In addition, it has a measure addressing what the commissioner called 'no treating'—that is, ensuring that superannuation trustees cannot provide inducements in order to either maintain an existing relationship with an employer or to encourage a new relationship.

CHAIR: Can you give the committee some examples of how APRA might use those enhanced powers?

Mr Jeremenko: They're probably best directed to APRA.

CHAIR: I can ask APRA when they appear.

Mr Jeremenko: I'm just wondering whether Mr Kennedy wanted to add anything, or is APRA the best to talk to that?

Mr Kennedy: I think you could direct that question to APRA, but there also are a number of case studies that came out of the royal commission, particularly fees for no service, for example, where those sorts of penalties would be ones that could be contemplated. A number of the case studies are set out in the final report of the royal commission.
CHAIR: There is another bill at the moment, the protecting your superannuation package, which has been passed by the parliament. Can Treasury please explain the extent of the savings that are expected to flow to members from the passage of that legislation?

Mr Jeremenko: The protecting your super package, as you correctly point out, was passed earlier this week through both houses, as amended. The government this morning has introduced two significant measures that were in protecting your super that were carved out by the amendments agreed to in the Senate. So my answer will include, if I may, both of those, because they're still very relevant. The putting members' interests first bill was introduced this morning in the lower house. That contains the two insurance measures for the switching-off of default insurance for under 25-year-olds and under $6,000 balances. With that bill and the protecting your super package bill, as passed earlier this week, we expect that some five million people will save up to $3 billion in insurance premiums in terms of not needing to pay insurance that they would otherwise do under the current law. The other big part of the package was the reuniting of inactive lost super accounts. The figures there are: three million people will be reunited with around $6 billion of their super. The third part of the package is around banning exit fees and capping fees for certain accounts. We expect that 7.2 million people will save hundreds of millions of dollars just on that measure alone, in terms of the fees.

CHAIR: Is Treasury expecting a lot of switching activity within the sector in response to the abolition of exit fees?

Mr Jeremenko: Certainly the removal of the exit fees is partly designed to ensure that there isn't an additional barrier. In terms of whether there was a particular assumption in the costing, my colleagues in TAD, in Revenue Group, after us, will probably be best placed to drill into that.

CHAIR: Still on superannuation, I want to ask about one of the royal commission's recommendations, about stapling of default accounts. Can you please explain for the committee the recommendation—I think it's recommendation 3.6—that the royal commissioner referred to in relation to that stapling of default accounts?

Mr Jeremenko: The royal commissioner was very clear that there should only be one default account for people entering the super system. That was echoing what the Productivity Commission had said in its—

CHAIR: That was my next question. So that's consistent—the Productivity Commission's recommendations and the banking royal commission's recommendations?

Mr Jeremenko: It is. There was different terminology the commissioner used with the stapling concept, but it's in effect the same thing. The PC in its final report, delivered to government on 21 December last year and given to the royal commission at the same time so they could have the benefit of its contents, found exactly the same, the point being that multiple accounts—and this ties with the protecting your super package—served to erode member balances over time.

CHAIR: I remember the Productivity Commission attaching a dollar figure to changing that. I'm not sure whether Commissioner Hayne did or could do the same.

Mr Jeremenko: I don't believe he did. The Productivity Commission had, as you'd expect with the PC, a lot of figures in its report. It drew a comparator between someone in a lower
quartile performing fund versus a higher. With those assumptions, it could equate to something like $500,000—if they were in the lower fund—less at retirement that they would receive. That goes to making sure that, when people are defaulted into what should be a single account as a result of those two recommendations, they are defaulted into an account that is on the upper side of performing rather than potentially a random allocation, depending on the employer.

CHAIR: That sounds like, I would have thought, a no-brainer to legislate for, if you can potentially save somebody that much in the way of their retirement income. What is the impact, though, of that change potentially on the funds as opposed to the members? How would you implement such a recommendation? I suppose that's another way of looking at it.

Mr Jeremenko: With the related recommendations of the Productivity Commission—and just so that everyone is clear: the government in its response to the royal commission is obviously responding to all of those recommendations—a number of them touched on, as we've talked about already, the default once recommendations of the PC report. There are a number of recommendations in the PC report that overlap with the royal commission, which the government has responded to; however, there are a number remaining of the PC report. Those include recommendations that are related to the default once recommendation. The Productivity Commission, as it has outlined in the report, has a concept of a best-in-show model and a way of choosing a panel to select such a best in show. So they are integral parts of considering how a default once might occur.

CHAIR: Aside from the royal commission recommendations and the Productivity Commission report, my last question specifically on superannuation is about unpaid superannuation guarantee. I understand that there are a package of measures that are out there, that have now passed the parliament, about unpaid superannuation guarantee, yet I saw on television not long ago, a couple of days ago, something that was quite confronting about this particular issue. Perhaps you could speak to the committee about that package of measures that has passed the parliament and what the implications will be of those reforms for employers who don't pay the superannuation guarantee that employees are entitled to.

Mr Jeremenko: Certainly. You're correct. Last week the parliament passed a bill that contains the super guarantee integrity package, if I can call it that, from last year, and that package has been very much designed with the super guarantee gap in mind. The government estimates of the gap are $2.79 billion. There are varying estimates from industry. Obviously, the government will stick with its estimate; but, regardless, $2.79 billion is too much. So this package includes more frequent event based reporting to the tax office through the single-touch payroll arrangements and, importantly, extending that from 1 July this year to small businesses with 19 or fewer employees. That is one of the big areas in the bill that the government believes will very much go to a addressing that gap. I am not sure what ads you saw, but I imagine it was potentially a campaign by one of the super organisation's representative bodies to raise awareness of the gap. The government is certainly aware of it, and this bill aims to reduce that considerably.

CHAIR: The ad that I saw looked like it was taking aim at the government as opposed to the employers, which I thought was extraordinary, particularly because my understanding of these reforms is they actually provide quite significant penalties for employers that don't pay the superannuation guarantee that employees are owed.
Mr Jeremenko: That is right. Mr Preston, who has joined us at the table, is best to talk to about the detail.

Mr Preston: You're right, Senator, the bill introduces a penalty of up to one year of potential jail term for employers who have been found not to pay superannuation guarantee in extreme cases.

CHAIR: So jail time for employers. This is the first time that jail time has been an option, a penalty, for employers that have not paid their superannuation guarantee.

Mr Preston: That is correct.

CHAIR: So why is this ad out there essentially wagging fingers at government, if this is the first time that those sorts of penalties have been put in place?

Mr Preston: I don't think we can speculate on why industry groups put ads into the public arena.

CHAIR: My concern, and I know this came up during the committee process, was about the superannuation guarantee amnesty period. Perhaps you could explain to the committee why that amnesty period is so important?

Mr Preston: The amnesty was a policy that was announced in the budget last year. Taking the points that Mr Jeremenko made about the super guarantee integrity package, one of the key approaches there was to improve visibility to ensure that the ATO had the tools to identify noncompliance quickly and act on it. Those tools go into place and operate going forward. The limited visibility that the ATO had prior to the commencement of that law meant that an additional tool was needed, so it was in that context that the amnesty was developed. It provides an incentive for employers to come forward and declare noncompliance, recognising the fact that prior to the integrity package passing it was difficult for the ATO to identify noncompliance.

CHAIR: So the amnesty in itself shouldn't make any difference whatsoever to the amount that employees receive?

Mr Preston: That's right. There are a number of penalties and payments associated with the superannuation guarantee. The penalties that were turned off through the amnesty were payments that went to the government, so that is the $20 administration charge. The other incentive that was part of the amnesty was also the non-deductibility of late superannuation contributions. If a business pays their superannuation guarantee on time that is a deductible expense, but if it is late it is not a deductible expense, so the amnesty enabled those late payments to become deductible to encourage them to report previous noncompliance. But again that doesn't reduce any moneys that go to employees. The interest payments as part of the superannuation guarantee charge framework weren't changed by the amnesty.

CHAIR: So it doesn't matter whether employees receive their money because the ATO is chasing employers or they receive their money because there was an amnesty, the employees get the same amount of money?

Mr Preston: That is correct.

CHAIR: How long does the amnesty last?

Mr Preston: The date of introduction was 24 May 2018. I think the last date is 23 May this year.
Senator KETTER: The fact that there was a tax write-off available for unscrupulous employers might have had some contributing factors, but I won't pursue that issue. I want to go back to the issue of the surplus in the next budget. We hear a lot from the government about the fact that they're going to deliver a surplus budget this year. In fact, what will that budget show? Are there any actual figures that will be available for any year of the budget and forward estimates?

Mr Atkinson: Senator, are you asking if there will be an underlying cash balance for the budget and forward estimates in the budget?

Senator KETTER: No, I'm asking if the figures in the budget will be actual figures.

Mr Atkinson: The budget estimates will be estimates. Actuals are in the final budget outcome.

Senator KETTER: So isn't it more correct to say that, if there is a surplus budget in 2019, that surplus is not an actual surplus but an estimate?

Mr Atkinson: Historically, the underlying cash balance is said to be the budget figure for that year.

Senator KETTER: But is not an actual figure until, as you say, the final budget outcome is released, which would be in September 2020.

Mr Atkinson: Yes, technically actuals are final budget outcomes.

Senator KETTER: So it's an estimate rather than an actual surplus?

Mr Atkinson: It will be an estimate rather than an actual, yes.

Senator KETTER: Just on the issue of the superannuation objective, can you tell us where that legislation is up to?

Mr Jeremenko: Certainly, so the objective for the superannuation bill—that's my paraphrase of the title—is before the Senate.

Senator KETTER: And apparently there were reports on the weekend from the Treasurer saying that the government continues to work with all parties to secure its passage through the Senate. So, perhaps you could tell us, Mr Jeremenko, what consultation is happening at the moment—is there any consultation happening with the Labor Party?

Mr Jeremenko: The bill was introduced in 2016 and it was passed through the lower house. I believe this committee, or the references committee, examined it—I presume it was this committee—and recommended it pass in early 2017. I must say this was before my time in this role. As part of the introduction and the Senate committee process, I'll have to take on notice the exact answer, but I would've been surprised if there wasn't extensive consultation on the actual bill.

Senator KETTER: But I'm talking about what's currently going on because the latest media reports suggest the government is continuing to work with parties. I'm interested in what consultation's happening right now with the opposition, the Greens, Centre Alliance, One Nation—can you tell us what's happening there.

Mr Jeremenko: No, I wouldn't be privy to that in the normal course of events in any case, but—

Senator KETTER: Is there anybody here today that's involved in that?
Mr Jeremenko: No. In terms of discussions with various parties, that's not something that as a matter of course the department is involved in. Occasionally, we are asked to accompany and brief various MPs and senators.

Senator McALLISTER: Did that happen on this occasion, Mr Jeremenko?

Mr Jeremenko: It certainly—sorry, I shouldn't say certainly; this was before my time. I would be very surprised if, before the bill was introduced and during the period it was being examined by the committee, there wasn't extensive consultation. But some of my colleagues may have been around the department in that period.

Senator KETTER: I'm more interested in what's happening right now—I'm going back to this report from the weekend.

Mr Jeremenko: I'm not sure about the report, Senator, but the bill before parliament is before parliament, so it's a matter for government as to when they bring it on for debate, but it was debated and passed the lower house in 2016.

Senator McALLISTER: Mr Jeremenko—if you don't mind, Senator Ketter—has Treasury been asked to brief crossbench senators at all since October last year? Have any briefings being provided by Treasury to those senators?

Mr Jeremenko: On this particular matter?

Senator McALLISTER: On this particular matter.

Mr Jeremenko: I would have to take that on notice.

Senator KETTER: But would you normally be involved in those briefings, Mr Jeremenko?

Mr Jeremenko: No.

Senator KETTER: Which officers of the department would be involved?

Mr Jeremenko: As I was saying, there are occasions where, and it's not a regular occasion, departmental officials are asked to accompany either the minister or ministerial advisers in discussions with opposition and minor party senators and MPs but, I must say, I haven't been to many of those when they have asked—I'm just talking about any issue.

Senator KETTER: Minister, are you aware of any consultation that is happening at the moment? I'm referring to—

Senator Cormann: Sorry, I can't hear you. You've got to speak up.

Senator KETTER: My questions go to the reports over the weekend where the Treasurer said that the government continues to work with all parties to secure the passage of the Superannuation (Objective) Bill through the Senate. I'm asking what consultation, what meetings are happening with the opposition—

Senator Cormann: I think the Treasurer's statement is self-explanatory. Obviously, there was passage of an amended bill last week and, as the government indicated in the Senate chamber at the time, we remain committed to the overall policy objective as contained in the original bill and we will continue to work to secure the passage of the reforms in full. As I said, on behalf of the government, in the chamber at the time, we are a pragmatic government. Obviously, when there is an opportunity to lock in a significant proportion of the reforms we
would like to see—although not all—then we will do that when we can and then pursue the remainder at the earliest opportunity.

**Senator KETTER:** But what discussions are happening at the moment?

**Senator Cormann:** In terms of specific discussions with the Treasurer, obviously, I would have to take that on notice. I'll have to consult with him.

**Senator KETTER:** Mr Jeremenko, you're familiar with the draft bill and what the actual objective for superannuation is in the draft bill?

**Mr Jeremenko:** Yes.

**Senator KETTER:** And that that is to provide income in retirement to substitute or supplement the age pension?

**Mr Jeremenko:** That's correct.

**Senator KETTER:** Isn't it the case that that objective is contrary to the government's First Home Super Saver Scheme?

**Mr Jeremenko:** No. The First Home Super Saver Scheme was consciously developed, firstly, to provide a way to increase the ability for people to save a deposit for their first home faster. But, in doing that, the development of that policy and legislation was very cognisant of the Superannuation (Objective) Bill, and we don't believe it is inconsistent.

**Senator KETTER:** But how does it go to the objective of providing income in retirement to substitute or supplement the age pension? It's quite contrary to that.

**Mr Jeremenko:** Mr Preston worked on the First Home Super Saver policy and legislation, so I might just ask him.

**Mr Preston:** One thing to be clear with the First Home Super Saver Scheme is that it enables people to boost their deposit for their home by making voluntary contributions to super, so no compulsory superannuation contributions are releasable under the scheme. It's only additional superannuation savings that are available. So, in that sense, it is not inconsistent with the objective of super. And, if we think about what a retirement income objective is, access to housing in retirement is of critical assistance to people, to, for example, not have to pay rent. So it's not inconsistent to be supporting that objective. Another observation would be that, when we think of who is generally going to be using the First Home Super Saver, it has to be a first home buyer, and generally we imagine them to be younger people. There have generally been low levels of engagement by younger people in superannuation. So, to the extent that they're using the superannuation system to help boost their deposit, the measure may help to increase engagement from that cohort.

**Senator KETTER:** But, if the objective of this First Home Super Saver Scheme is for people to be able to use super for things other than retirement income, what's the point of the superannuation objective?

**Mr Preston:** In terms of the broader point to the superannuation objective, I might turn to my colleague Michelle Dowdell. One of the key challenges for entry into the market is saving a deposit, and that's why the policy was targeted at that point. A policy that again enables voluntary savings to enable that objective, recognising that the people in retirement who own their own home will generally be in a much stronger financial position, doesn't appear to be at odds with having the objective of supporting retirement incomes.
Senator McALLISTER: Is a home a source of income if one lives in it?

Mr Preston: An owner-occupied home generally would not be. But people who tend not to live in homes generally have to get access to accommodation in some way, such as renting in the private rental market.

CHAIR: Mr Preston, can I just clarify: is the money from the First Home Super Saver Scheme money that wouldn't normally be invested in superannuation anyway? It's deposit money for a home; it's just that it's in a superannuation vehicle. Is that correct? I didn't explain that very well.

Mr Preston: I think that's about right. It's for voluntary savings that were contributed into superannuation after 1 July 2017, releaseable under the scheme starting 1 July 2018. So no compulsory contributions were released under the scheme.

Senator KETTER: I notice you are very careful with your language, Mr Preston. You said that the two are not inconsistent. My question to you was: how is it consistent? I note the care you've taken with your language.

CHAIR: Senator Ketter, we've got five minutes until lunchbreak. If you would like to continue your questions, we will come back to Fiscal Group after the lunch break.

Senator KETTER: I might then just go to Drought Finance Taskforce—just a fairly straightforward one.

Mr Atkinson: The Drought Finance Taskforce is in Markets Group.

Senator KETTER: All right. I have just a couple of questions about Structural Reform Group, as it used to be known.

Mr Atkinson: Yes, I can talk about that.

Senator KETTER: Tell us when the Structural Reform Group was dissolved and placed into the Fiscal Group.

Mr Atkinson: The organisational change, as outlined by the secretary in his opening statement, occurred at the start of February this year. It was embedding structural reform across the organisation, and I think the secretary went into the detail of its characterisation quite well in his opening statement. Effectively, elements of structural reform that partner and leverage with other agencies to achieve structural reform have joined in with Fiscal Group who work across government as part of their ordinary day job. The productivity and microdata parts of what was previously structural reform are embedded in macroeconomics. There's micro- and macro-economic reform, driving the productivity agenda across Treasury and government.

Senator KETTER: The decision to dissolve the Structural Reform Group—was that the secretary's decision?

Mr Atkinson: Yes, organisational structural choices are the secretary's.

CHAIR: We might break, unless Senator Sinodinos has a question?

Senator SINODINOS: Just to take us through to lunchtime: how would the superannuation reforms, this issue of the default-once measure that we are talking about—this
may not be your area, because I think this is more a whole-of-government issue—impact on the industrial relations system?

Mr Atkinson: So, it is a matter for government decision, Senator. With the remaining Productivity Commission recs that are related, particularly ones that are related to that rec, the government is yet to respond but is planning to do so. The manner in which some of those other recommendations are responded to will provide some insights into your question. The current system is obviously one where default accounts are inextricably linked with employers and the system of defaulting individuals. The vast majority of individuals who don't exercise their choice, or in some cases can't exercise their choice of super fund, means that the industrial relations system and the employer play a huge role. The related recommendations of the Productivity Commission around this default-once rec very much go to breaking the nexus of the employer and default super choice model.

Senator SINODINOS: Is that what Hayne envisages, then? If you're a worker who decides to move industries and you are covered by different industrial agreements and different occupational categories or whatever, in that sort of situation, Hayne envisages you'd stay in your original super fund—is that right?

Mr Jeremenko: Correct. The concept of stapling was referred to in the hearings.

Senator SINODINOS: In that sort of case, is that even legal at the moment—to stay with your existing fund if you going to a new area covered by a different—

Mr Jeremenko: In many cases, the agreement struck between the employer and the super fund will mean that if an employee moves industries, they will need to have another super account, so it creates that multiple account problem.

Senator SINODINOS: So to do this we would have to pass legislation. Is that right?

Mr Jeremenko: This would something requiring legislation. That's correct.

Senator SINODINOS: That legislation would cover the Fair Work Commission or the Fair Work Act?

Mr Jeremenko: That's going to matters the government hasn't made a decision on yet.

Senator SINODINOS: All right.

CHAIR: Thank you, Senator Sinodinos. We might break for lunch now. I am sorry to do this to the fiscal group, but there are just two more round of questions that we want to ask you. I'm going to ask you to stay over lunch. We will break now.

Proceedings suspended from 13:00 to 14:00

CHAIR: The committee will now resume with the Treasury Fiscal Group. Senator Leyonhjelm, you have some questions?

Senator LEYONHJELM: Thank you, Chair. After last estimates, I put in a question on notice to Treasury asking about how much more GST Western Australia generates compared to their equal per capita share. The response I got was that Treasury doesn't know; it doesn't calculate that. I have a related question. By looking at measures of economic activity in WA compared to the rest of Australia, can the Treasury provide an approximation in dollars of how much more GST WA generates compared to their equal per capita share, and compared to the actual GST payments WA receives?
Mr Atkinson: Senator, we'd have to take that on notice. Obviously there's quite a bit of
calculation in that. It's probably our Revenue Group. We don't have that to hand. It's a little bit
difficult because the CGC actually calculates the fiscal capacity.

Senator LEYONHJELM: The CGC?
Mr Atkinson: The Commonwealth Grants Commission.

Senator LEYONHJELM: I see. Okay.

Mr Atkinson: We could take that on notice and see what we could do for you.

Senator LEYONHJELM: All right. I'll leave that on notice, thank you. That's me done,
Chair.

CHAIR: That's you, Senator Leyonhjelm?

Senator LEYONHJELM: That's it. We waited for all that for one question they took on
notice.

CHAIR: These poor people waited for that. I had a question for you all about some
blockchain stuff, but I took it offline. I think I'll give you those questions on notice, with a
little bit more detail for you. I'm sorry to have kept you waiting over lunchtime. Thank you
very much for joining the committee today. We'll let you go.

Mr Atkinson: Thank you, Senator.

Proceedings suspended from 14:03 to 14:32

Department of the Treasury
Australian Taxation Office

Australian Charities and Not-for-Profits Commission

CHAIR: The committee will now resume with consideration of the Treasury portfolio,
specifically the Revenue Group and the ATO and also the ACNC. Commissioner Jordan, do
you have an opening statement?

Mr Jordan: No, I do not.

CHAIR: I think this is the first estimates session where you don't have an opening
statement for us.

Mr Jordan: I'm happy to go straight to questions, subject to whether my Treasury
colleagues have an opening statement.

CHAIR: Does anyone else have an opening statement? No? We might start with
questions.

Senator McALLISTER: This is for Revenue Group: can you confirm there is a net
production totalling $8.8 billion over the forward estimates as listed in the revenue measures
table in the MYEFO?

Mr Brine: Yes, that's correct.

Senator McALLISTER: Can you advise whether the $750 million for the instant asset
write off expansion is included in that $8.8 billion figure?

Mr Brine: I think that will be made clear in the budget. I can't confirm that at the moment.

Senator McALLISTER: So even though the $750 million has been made public, you
can't confirm?
Mr Brine: I don't have that information with me, sorry.

Senator KETTER: Does somebody else in the room have access to that information?

Senator McALLISTER: They are two different answers. Are you saying you are not allowed to tell me because it is going to be in the budget or are you saying—

Mr Brine: I am not saying that. When the government announced the policy, they would have made clear whether that was a decision that was included as a decision taken but not yet announced in the budget. I just don't know the answer to that.

Senator McALLISTER: They did or they would have?

What I'm trying to understand is whether the $750 million for the expansion of the instant asset write-off scheme is included in the $8.8 billion figure.

Senator Cormann: As we've discussed at many estimates, and as would have been explained to the then opposition when you were last in government, the definition of decisions taken but yet not announced, is that they are decisions that are taken but are yet to be announced. When we are in a position to announce them, we will be announcing any decisions. The comfort that I can give you is that, because of the rules under the charter of budget honesty, anything left in this category of decisions taken but not yet announced by the time of the pre-election economic and fiscal outlook will have to be reported. So between pre-election economic and fiscal outlooks there are a range of reasons why items are provisioned for this category, and the announcements are made when the government is in a position to make them.

Senator McALLISTER: Is the $8.8 billion the largest amount of revenue reductions in decisions-taken-but-yet-not-announced line in a MYEFO ever? Is it a record?

Senator Cormann: We might have to take that on notice.

Senator McALLISTER: This morning, I think, the secretary indicated that the costings that were being requested by ministers' officers were largely being undertaken by Revenue Group and that, whilst he was cc'd into the responses, he was not signing off on them. I just wanted to ask you a bit about this. When Treasury receives a request to cost a policy which is not a policy of government and resembles a Labor policy who specifically makes that request?

Senator Cormann: Before the official answers that question, I have to make this point again. Governments never, ever just cost or assess items that are or become government policy. The government invariably considers a range of options, costs a range of options and considers the relative merits of various options before finally, having carefully considered the upsides and downsides of various potential ways forward, making a decision on the best way forward. The proposition that somehow the government would only seek advice in relation to matters that either have already or definitely will be a government policy position is not right. What is right to say is that as a government that always wants to make the best possible decisions, we believe it's important to consider a whole variety of different potential options to ensure that we choose the best option for Australia moving forward.

Senator KETTER: So does that mean the government was considering a policy of denying refundability of excess franking credits?

Senator Cormann: That's not what I'm suggesting.
Senator KETTER: That's the natural extension.

Senator Cormann: What I'm suggesting to you—the corporate position that Senator McAllister made is the government would only ever ask for costings information for something that is government policy, and that is not right.

Senator McALLISTER: What I'm really exploring is the process—and I made it very clear this morning. There are a series of examples where policies which purport to be Labor policies, costed by Treasury, appear on the front pages of major newspapers repeatedly, week after week after week. I am asking Treasury how these documents come to be produced.

Senator Cormann: In the same way that these documents came to be produced when we were in opposition. They might have been reported in different newspapers at the time. My experience when I was in opposition, was that whatever position we were proposing to pursue was critically analysed and reported that way, on the basis of advice from within government. I did refer you back earlier to a very famous historical precedent, when the then Treasurer, Paul Keating, was quite proud of himself when he waved Treasury analysis around to go after John Howard, who was the opposition leader at the time.

Senator McALLISTER: Who made the costing request for the Treasury modelling on denying refunds on franking credits, negative gearing and halving capital gains? Which office made those requests?

Ms Mrakovcic: Costings and analysis is prepared by Revenue Group and costings and distribution analysis is specifically provided by Tax Analysis Division in response to requests by the Treasury ministers.

Senator McALLISTER: Which Treasury minister requested modelling of the denying refunds on franking credits policy?

Mr Brine: That would be the Treasurer's office.

Senator McALLISTER: Which Treasurer was that?

Mr Brine: That would have been—

Senator McALLISTER: Mr Morrison or Mr Frydenberg?

Mr Brine: That would have been in May, so it would have been Mr Morrison.

Senator McALLISTER: What about the Treasury modelling of negative gearing and halving the capital gains tax?

Mr Brine: That would be Mr Morrison.

Senator McALLISTER: Also Mr Morrison. And, when you receive a request of this kind, is there a pro forma template that sets out the assumptions or the specifications to ask Treasury to base their modelling on?

Mr Brine: There's no pro forma template that we request, but we do follow up with a range of detailed questions, as required.

Senator McALLISTER: So you produce a bespoke response that seeks the assumptions that they would like used in the modelling—is that correct?

Mr Brine: That's correct.
Senator McALLISTER: The FOI that we obtained of the Treasury's costing of denying refunds of franking credits is titled 'Treasury costing Labor's retiree tax'. Did the Treasury give the costing that title?

Mr Brine: No, Treasury would not give a costing that title.

Senator McALLISTER: Do you know who did?

Mr Brine: I don't know who did.

Senator McALLISTER: Does the Treasury believe that it has costed Labor's policy?

Ms Mrakovcic: Senator, I believe we've had these questions before and what I've always stated is that we cost what the government asks us to cost on government specifications. We recognise that, in undertaking a costing, we need to have a lot of material and assumptions around specific parameters. We seek clarity on those from the government.

Senator McALLISTER: So you couldn't cost a Labor policy?

Ms Mrakovcic: I'm not going to make a call on what kind of policy it is. I simply go back to what I've always said in this situation, which is that we receive a request to cost something by the government and we seek clarity from the government on the specifications of that.

Senator McALLISTER: So the Treasury is not in any position—

Senator Cormann: Which is the same process—

Senator McALLISTER: May I ask—

Senator Cormann: If I may finish—which is precisely the same process that was followed under the previous government. It's always incumbent on the government of the day to seek advice from relevant agencies in relation to matters of public interest.

Senator McALLISTER: Thanks for answering, Ms Mrakovcic. It goes to a quite important point. You're not in any position to assess whether it's a Labor's policy, because you're not in contact with, in this instance, the Labor shadow Treasurer, are you Ms Mrakovcic?

Senator Cormann: That is not the Treasury's job. The Treasury does not cost Labor's policy; the Treasury costs policy scenarios and policy parameters that are put forward to the Treasury for costing, and then of course it's a matter of public debate to assess the merits or otherwise of different scenarios and the implications they have on people's quality of life and our fiscal settings.

Senator McALLISTER: It's an interesting answer, Minister, because you just said the Treasury does not cost Labor policies—and I hope that would be true—but the document obtained through FOI is titled, 'Treasury costing Labor's retiree tax'. Do you know how that title came to be on that document?

Senator Cormann: No, I don't.

Senator McALLISTER: Does it seem correct to you that that would be on the document? Is it accurate?

Senator Cormann: Treasury is asked, from time to time, and other agencies are asked from time to time, by the government, as the elected government of the day, to provide costings in relation to policy options. Presumably the policy options that you have put forward as the alternative government are policy options that you would like to see
implemented, so I don't think there is anything surprising in the fact that the government would assess what the implications are for people or for the budget of some of the policy options that are put forward by the alternative government.

**Senator McALLISTER:** I think it is surprising, Minister, because, as you well know, the assumptions going into these costings are extremely important. You make no effort, when you purport to produce Labor costings—

**Senator Cormann:** These are precisely the same policies—

**Senator McALLISTER:** That's why we have a PBO. What you are doing is fundamentally dishonest.

**Senator Cormann:** The PBO works with non-government parties. Obviously we, as the government, work with government agencies.

**Senator WILLIAMS:** I have a quick question in relation to the Australian Charities and Not-for-profits Commission. I will quote the following from your website in relation to the registration of charities. It says:

The Governance Standards are a set of core, minimum standards that deal with how charities are run (including their processes, activities and relationships) … The Standards require charities to remain charitable, operate lawfully, and be run in an accountable and responsible way.

Dr Johns, you would be aware of the condemnation of the registered charity Aussie Farms for releasing publicly a map that virtually invites activists to trespass and intrude on the lives of farmers. Aussie Farms admits on its web page that the map shows factory farms, slaughterhouses and other animal exportation facilities. Based on your required standards of lawful activity, accountability and responsibility, I put it to you that Aussie Farms does not fit any of your criteria and should therefore be deregistered immediately. Would you like to add to that?

**Dr Johns:** I appreciate your putting it to me. As you know, I can't comment because of the secrecy provisions, but rest assured that I take note of any information in a public place. We do think about these things, but I cannot literally share with you that we are or are not undertaking an inquiry. Rest assured that, we do apply those principles to any charity whose activities are brought to our attention.

**Senator WILLIAMS:** Will you investigate that group I just mentioned?

**Dr Johns:** I can take note of your information, which is familiar to me, and you can rest assured that I do take into account all of the information available to me before I decide whether or not to undertake an inquiry.

**Senator KETTER:** Minister, the FOI that Senator McAllister was referring to earlier, with the heading 'Treasury costing Labor's retiree tax'—this related to the denial of refunds of franking credits—do you agree that that's a retiree tax?

**Senator Cormann:** I haven't seen what you're referring to. I'll take on notice and see what I can add for you on notice. It's not a matter for me to agree or disagree with the headline in relation to an FOI log. Is that what you're saying it is—is this in an FOI log?

**Senator KETTER:** It's an FOI.

**Senator Cormann:** Is it a headline in an FOI log?

**Senator KETTER:** Yes.
Senator Cormann: I would have to find out who is responsible for the description on the log and what the rationale is for that description. I will take that on notice and we will see what we can do to assist.

Senator McALLISTER: I want to ask a further question about some of these FOIs that we have received. Some of these Treasury documents, including question time briefs, have a section titled 'Labor policy'. And the FOI documents released have comments on each of these sections stating things like the 'Treasury has not fact-checked ... this content was not Treasury drafted or checked', or variations to that effect. Why are those comments there? What are the process issues that lead to that set of comments being in a question time brief?

Ms Mrakovcic: I might start and then call on my colleagues who are more intimately involved in the development or interaction with question time briefings. Question time briefings may have been created in the office and then they may be sent to us for fact-checking. We will go through a process of checking facts where that is possible, but we may also make comments around where we have not been able to fact-check or we do not believe that the checking of facts is relevant to that point. It is essentially designed to help assist in terms of where we have been able to fact-check and where perhaps we haven't. Ms Purvis-Smith, would you like to add anything to that?

Ms Purvis-Smith: The process that Ms Mrakovcic has outlined is correct. Making a question time brief is often an iterative process. It is a document that the government uses in parliament. It is not just a Treasury created document. It often goes through quite a lot of iterations. In fact-checking material that goes through those iterations, there are some things in there that we can't and don't fact check. Those comments would go alerting to that.

Senator McALLISTER: Some of the costings we have received are very explicit in referring to taxable income. In developing the costings for denying franking credits and changes to negative gearing, was Treasury specifically asked to use taxable income rather than total income or measures of wealth? Is that one of the requests in the specification, Mr Brine?

Mr Brine: That's right. We would have asked for those details to be provided to us and then provided that advice accordingly.

Senator McALLISTER: When you say you 'would have', it suggests a hypothetical. Do you mean you did ask?

Ms Mrakovcic: I think we will have to take this specific question on notice. I think Mr Brine is indicating that that sounds like the type of question that we would generally seek clarity on, but if you're asking specifically for a definitive answer to that, we would have to take it on notice.

Senator McALLISTER: Does Treasury think that taxable income is an accurate reflection of the income of those affected by policies such as franking credits or negative gearing?

Ms Mrakovcic: I think that goes to policy advice.

Senator McALLISTER: It doesn't really, does it? If we're talking about superannuation—

Senator Cormann: It goes to policy advice. You're asking for an opinion.
Senator McALLISTER: Is the household income of a retiree likely to be the same as their taxable income?

Ms Mrakovcic: I will take that on notice. We would have to take on notice to give you a definitive answer.

Senator KETTER: Coming back to the discussion earlier about the expansion of the instant asset write-off, is it true that the instant asset write-off expansion doesn't appear in any budget paper and was announced after MYEFO?

Mr Brine: Yes, that is correct.

Senator KETTER: We know that there is legislation before the parliament now which has a cost of about $750 million.

Senator Cormann: Which one are you talking about?

Senator KETTER: The instant asset write-off.

Senator Cormann: Is this the same question that we went through before—whether it is part of the decisions taken but not yet announced? We have gone through all of these questions.

Senator KETTER: It is an announcement you have announced.

Senator Cormann: The question was asked whether this was part of the decisions taken but not yet announced. We don't comment on what is inside decisions taken but not yet announced. Decisions that are taken that are announced are decisions taken that are announced.

Senator KETTER: And you have now announced the expansion of the instant asset write-off.

Senator Cormann: Everything will be reconciled in the context of the budget, and ultimately everything will be reconciled in the Pre-election Economic and Fiscal Outlook.

Senator McALLISTER: Why is there the sensitivity about this? You have announced the policy.

Senator KETTER: We know that there is a $750 million cost. We just want to know whether that is included in the $8.8 billion.

Senator Cormann: Budget numbers will be updated at budget time on 2 April, and ultimately in the Pre-election Economic and Fiscal Outlook.

Senator KETTER: That's just extraordinary.

Senator Cormann: The budget numbers will be updated independently by the secretaries of Treasury and Finance without any decisions taken but not yet announced at all.

Senator KETTER: I want to go back to the MYEFO. Firstly, looking specifically at pages 42 to 47, in relation to superannuation fund taxes on page 43, they were revised down 23.9 per cent for the 2019-20 year. Can you tell us the reason for that?

Mr Brine: The superannuation fund taxes reflect taxes earned on contributions when they go into the fund and their earnings in the fund. Against those taxes the funds can claim imputation credits, so that would be the deduction after we work out the amount of taxes paid. Over the second half of 2019 we observed a slightly higher than expected amount of market buybacks. That was expected to result in a higher amount of imputation credits being claimed,
particularly by SMSFs and APRA-regulated funds in 2019-20, which has led to a one-off reduction in expected revenue for that year.

Senator KETTER: What do you put this higher market buybacks by SMSFs down to?

Mr Brine: I understand from the commentary that both BHP and Rio had large asset sales and significant cash to redistribute to their shareholders. I don't know the exact motivation for why they thought that was in the best interests of shareholders.

Senator KETTER: Dividends were revised up 22.1 per cent for the 2019-20 year. Can you tell us the reason behind that?

Mr Brine: I think that's a Finance line. That is not tax revenue; that is dividends to the Commonwealth, so that would be a non-tax revenue, which the Finance Department is responsible for.

Senator KETTER: GST receipts were revised down $5.8 billion over the forward estimates, and in MYEFO it states that it's because of weaker than expected collections since the budget and lower forecasts for growth of consumption subject to GST and dwelling investment. Can you tell us how much of the $5.8 billion relates to consumption and to dwelling investment?

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

Senator KETTER: This presumably relates to the $5.9 billion write-down to GST payments?

Mr Brine: In addition to the collections, that's correct.

Senator KETTER: Moving on to the House economics committee inquiry into franking credits, has Treasury been asked to provide any assistance or information to government members of the House economics committee inquiry that is looking into Labor's policy in relation to dividend imputation?

Ms Mrakovcic: I don't believe so.

Mr McCullough: Not to my knowledge.

Senator KETTER: If there was such a request, would it come to you, Mr McCullough?

Mr McCullough: I think I would be aware of it.

Ms Mrakovcic: It would come either through the Secretary, myself or Mr McCulloch.

Senator KETTER: Could you take that on notice?

Ms Mrakovcic: I think we can answer it. The answer is no.

Senator KETTER: I'd like to return to questions I asked last time regarding the Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures No. 2) Bill. This is to do with capital tax arrangements on family homes of expatriates. I wanted to go through it
again. As I understand it, the capital gains tax is currently calculated from the point at which a family home ceases to be the main residence for Australian tax residents. Is that correct?

Mr McCullough: I'm sorry, Senator. I just can't recall that detail. One of my colleagues in the ATO, who might know more about the actual assessment under the current rules, might be able to assist.

Senator LEYONHJELM: I'm fairly sure there is an interval between when it ceases to be a primary residence and when the capital gains tax kicks in. I think it's two years, from memory. I would have thought somebody might know that.

Senator Cormann: It sounds to me like a tax office question.

Mr McCullough: Yes.

Senator STORER: Under the changes proposed by the government, expats being classed as foreign tax residents will be charged capital gains tax from the date they purchased their home rather than the date they rented it out. Is that correct?

Mr McCullough: Now you're talking about the proposal that's before parliament at the moment.

Senator STORER: Correct. I'll give you an example. If an expatriate—someone who is not a tax resident but an expatriate Australian—purchased a family home in 1990 and they rented it out when they moved overseas in 2010, capital gains tax would be calculated from 1990, not from 2010, under the bill. Is that correct?

Ms Mrakovcic: As far as I know.

Mr McCullough: The renting out really is a bit of a red herring. The question is whether you are a resident for tax purposes at the time of the disposal.

Senator STORER: Yes.

Mr McCullough: If you're a nonresident at the time of disposal, under the government's bill before parliament, you'd pay tax on the capital gain, which would be the difference between the sale price and the purchase price.

Senator STORER: Yes. Could you remind me again of the justification for the differential treatment between these two sets of Australians, simply because one has moved overseas and is working overseas.

Mr McCullough: Okay. I think we touched on this last time. Tax really doesn't relate to citizenship. It is determined as a tax matter by the question of whether a person is a resident for tax purposes. If you go overseas and give up your tax residence then, as happens with many other jurisdictions around the world, Australia continues to exert its taxing right over real property that you hold in our jurisdiction, and the other jurisdiction, of whom you are a tax resident now, often exerts its taxing right over your global income. That's the general standard. That's the sort of thing that happens in most countries with whom we have a treaty, for example.

Ms Mrakovcic: The important thing to note here is that other countries may very well be exerting their taxing right on the disposal of that property at the moment. If you are a nonresident of Australia but a resident of another country that is exerting its taxing rights on global income then, if you sell the property, the fact that Australia does not does not mean that the other country in which you are living is not itself choosing to tax you on the capital
gain from that transaction. That will depend on the system of taxation in that other country, but you should note that there are other countries that are exerting their taxing rights in this space as well.

**Mr McCullough:** For example, the US, the UK and Canada only provide a main residence exemption for their own tax residents. Taxing their foreign residents, which is the proposal with the bill before parliament, is consistent with what those countries do.

**Senator STORER:** Given the Senate is yet to consider these changes in the bill, the timing of implementation has now become an issue. The department’s website still advises that the changes will likely take effect from 1 July 2019. Is that a realistic time line given that we are in February now?

**Mr McCullough:** Ordinarily, our websites would reflect the statement of government policy. If something happens to change that, then the website would be changed.

**Senator STORER:** Okay. I think last October the Treasurer flagged a targeted rethink on changes to this policy. Do you know if there were changes made to the policy?

**Mr McCullough:** There has been nothing announced yet. I understand that the Treasurer did have some discussions about questions of what might happen in certain specific cases where non-residents may have become ill or died while overseas and that sort of thing. There has been no announcement about any change at this stage.

**Senator STORER:** Yes, no announcement on those situations where, as you pointed out, someone dies or becomes ill overseas. Minister, does the government plan to put this bill to the Senate in the next sitting period?

**Senator Cormann:** Clearly, we are yet to finalise the program for the remaining two days before what is likely to be the next general election. On the Thursday of the sitting week, you would know that we'll have the pleasure of meeting back here for Senate estimates, so we'll have Tuesday and Wednesday. Tuesday is budget day, and, of course, on those two sitting days, we'll also have to deal with the appropriation bills and likely supply bills. So, in the context of all the priorities, we'll be considering the appropriate prioritisation of all the remaining legislation that's on our agenda. But these decisions are yet to be made, and the program for those two days of the next sitting week will be circulated in the usual way, in the week prior to the sitting week.

**Senator STORER:** Given there was announcement by the Treasurer flagging a targeted rethink on changes last October, and this policy is to be implemented on 1 July, do you think it is realistic that this—

**Senator Cormann:** We will deal with it as soon as we can, but the specific program for that final sitting week is yet to be finalised. Obviously, we will try to do as much as we can in those two sitting days.

**Senator STORER:** Okay. Does the department have any information on how many people this bill will impact in terms of the stated requirement to provide more housing affordability through this measure? Is there any information? Are you aware of the quantum of people?

**Mr McCullough:** I think we'd have to take on notice the question of how many might potentially be affected.
Senator STORER: An issue that's also been raised with me is about Australian residents who obtain the ownership interest of their former partner under a Family Court order. This is the case where, in a Family Court order, you obtain the ownership interest of a home, but, because your former partner is possibly a non-resident, then the exemption would not be placed on that home. Are you aware of this situation? It's been raised with me.

Mr McCullough: No.

Senator STORER: I will explain it. This article says:

Australians going through divorce proceedings in the Family Court could also be affected, with anyone receiving property in a settlement facing being required to determine the tax residency of their former partner when selling the marital home.

Have you considered this situation in the bill's implementation?

Mr McCullough: So we're talking about a home that is owned by one partner, rather than jointly?

Senator STORER: Yes, in divorce proceedings—anyone receiving property in a settlement facing being required to determine the tax residency of their former partner when selling the marital home.

Mr McCullough: I'd have to take it on notice. It's something I'd have to think through.

Ms Mrakovcic: We will take it on notice, but my recollection is that those circumstances which Mr McCullough referred to earlier around sickness and death may have included divorce and other aspects as well. So, if it goes to those kinds of special circumstances, I think that we just have to take the whole question on notice.

Senator STORER: I don't necessarily believe so, because it's been raised in the last weeks when that issue of death was raised, and was stated by the Treasurer to be dealt with, possibly, last October. So it's a new situation. Minister, given that these sorts of situations are relative non-clarities, would the government consider delaying the implementation date of this policy from 1 July 2019?

Senator Cormann: You're asking me to get ahead of ourselves. We'll make decisions in an orderly fashion. Obviously, we always make decisions about adjustments that need to be made in the context of changing circumstances. But at this stage, I'm not in a position to make any such judgements.

Senator KETTER: I have some questions for the ATO, firstly, in relation to the First Home Super Saver Scheme. Can you tell us when the First Home Super Saver Scheme started operation?

Mr O'Halloran: Please just bear with me, Senator. It came into operation and effect in this financial year; I will just see if it was 1 July as quickly as I can. But from the ATO's perspective that's when it came into operation, as opposed to announcement.

Senator KETTER: So 1 July last year?

Mr O'Halloran: Yes, that's correct.

Senator KETTER: How many people are participating in the scheme?

Mr O'Halloran: We've issued 5,102 determinations. Those are in relation to where people inquire, in effect, as to what their interest is in the First Home Super Saver Scheme. We have received, as follow-on, 2,374 release requests to the value of $28.4 million. And I think that
there was some interest in the scheme, perhaps in terms of a couple of things—if this is useful. I need to assure the data, but it certainly does seem from some information I have that, whilst I'm not focused on age, relatively young people—perhaps under 40 or 30—seem to be representative of the sorts of applicants. But I would need to assure that data.

Senator KETTER: How does this compare to what was expected and budgeted for?

Mr O'Halloran: I can't recall the modelling figures, quite honestly. Certainly, I can only report back on the participation, as I've indicated.

Senator KETTER: Is anyone here able to provide information with respect to modelling and what was expected to be the take-up?

Mr O'Halloran: The ATO probably wasn't involved in that element—the modelling and the projections.

Senator KETTER: Who would have done that?

Mr O'Halloran: With respect, I would assume it would be worked through Treasury.

Senator KETTER: Which part of Treasury would have done that? Ms Mrakovcic?

Mr O'Halloran: Perhaps it would be the retirement division, if I could assist my colleagues—or perhaps the relevant costing area that the retirement division uses, under Mr Jeremenko.

Ms Mrakovcic: Sorry, Senator, can you clarify exactly what you're wanting?

Senator KETTER: I was asking about whether or not the take-up for the scheme was in line with expectations, or what was budgeted. Mr O'Halloran has indicated he is not aware of that and hasn't done work in relation to modelling on this. Can you tell us where that work would have been done?

Ms Mrakovcic: I think it would have been done in Tax Analysis Division.

Mr Brine: That's correct—

Ms Mrakovcic: Together with the superannuation retirement area, which is in Fiscal Group. It's probably best for us to take the question on notice and get back to you with an answer on that between ourselves and Fiscal Group.

Senator KETTER: Okay.

Mr Brine: Can I just add one issue? We would need to get the returns in for the year after the activity occurred, so I'm expecting we wouldn't have the tax returns to conduct a detailed assessment at this point in time.

Senator KETTER: Okay.

Mr Brine: But we'll take it on notice and come back if that's correct.

Senator KETTER: Okay. In terms of how much has been contributed into the scheme, is that the $28.4 million that you've—

Mr O'Halloran: That's correct. That's as of 31 January.

Senator KETTER: And, again, you're not familiar with how much was expected to have been contributed by that period of time?

Mr O'Halloran: That's the amount of money that was released in the process into the superannuation system by individuals, the $28.4 million.
**Senator KETTER:** When it comes to your assessment of how the program is tracking—

**Mr O'Halloran:** Sorry, could I reframe that, to be totally clear: we have received 2,374 release requests, to the value of $28.4 million, and as of 31 January we have released to 1,879 individuals the value of $23.3 million.

**Senator KETTER:** Presumably you have some KPIs to monitor whether you're on track and doing everything that you need to do to meet the expectations of the scheme. How do you monitor these schemes?

**Mr O'Halloran:** There are probably two main areas. One is the service standard for turnaround of either the determinations or the applications. When we initially started—and probably still, formally—our service standard was in the order of 25 days. The reason for that was, to be candid, to get a bit of rhythm for some of the checks and balances that need to be in place for that. At the moment we are tracking at an average of 19 days. Probably closer to 15 days is the turnaround time for what I'd call routine applications. There are some cases where there is in fact an offset—in other words, there might be some other existing debt to the Commonwealth. That can take a few days longer, but at the moment even that process, which is relatively small, is taking about 23 days. That is because it requires contact with other agencies for confirming the offset or, conversely, the appropriateness of offsetting, which might involve areas like DHS.

**Senator KETTER:** Is what you call turnaround time the equivalent of the wait time for the money to be released out of the first home super scheme?

**Mr O'Halloran:** Yes. There are some up-front issues with the funds themselves, but that is the measurement we are taking. We know that there has been virtually no hold-up, particularly in the last four months, from the funds' end. As soon as they received our clearance, it is within those time frames.

**Senator KETTER:** There have been some reports in the media that some buyers have missed out on homes due to the length of time it takes to withdraw funds. Have you received any complaints?

**Mr O'Halloran:** There are two issues. Under the current legal arrangements for the scheme there is a requirement—whilst there has been some parliamentary discussion at the moment, I can't recall whether it has passed with royal assent—that people are not supposed to enter into a contract until they have received confirmation of eligibility for the release of money—the $15,000, or $30,000 over two years for a couple. That was portrayed as a matter of concern, but that is a matter of current law design. I think some work on that has gone through the parliament. When we initially started, 25 days was probably in that first month or two until we systematised some of the process a bit better, but now it's down to the figures I have quoted. An issue of concern that has been raised in the media, which you have mentioned, perhaps with the broader design, is the fact that in some instances people want to go into a contract—or, conversely, are waiting for us to clear—and 20 or 15 days can sometimes be seen to be unreasonable, but it is current law that you are not allowed to enter into a contract until you have confirmation of eligibility of the first home saver scheme as a participant.

**Senator KETTER:** Are you able to give us any further information about the 879 individuals who have accessed the scheme and have had that $23.3 million released?
Mr O'Halloran: The only figure I have here is the average release amount, which is around $12,000.

Senator KETTER: And the location of these people?

Mr O'Halloran: I would have to take the location on notice. I don't have that available.

Senator KETTER: You gave us some information about the age demographic.

Mr O'Halloran: I would need to confirm that. On some work we did recently, it seems to be that way, but as a matter of course we don't collect date of birth. Through TFN-matching and the like to assure the process, that seems to be the illustration. I am happy to take that on notice, subject to that caveat. I should probably confirm that we don't have a view in any gender element or age balance as to who should or shouldn't get it; it purely comes out as a consequence of assurance of the eligibility and the subsequent payment or release.

Senator LEYONHJELM: On exactly the same lines that Senator Ketter was referring to, do you have information on those who have sought release of their superannuation under this first home owner scheme, whether they were first home owners or first home buyers, or whether a hardship clause was invoked?

Mr O'Halloran: The only advice I can give at the moment is that as of 31 January we had received 80 request for hardship determinations. Of these, 55 were approved, seven were not approved and 18 are still in progress or perhaps even in validation. That is the best information I have at the table.

Senator LEYONHJELM: I am returning to a subject that I raised at last estimates. Subsequent to last estimates I put in a question on notice. The response I got was that the ATO will generally not enforce payment of a disputed debt while it is the subject of a review. To confirm that this is indeed the general position, can the ATO advise what proportion of disputed debts and debtors are subject to ATO recovery action prior to the finalisation of a review? Mr Ravanello, you answered my question last time.

Mr Ravanello: In relation to disputed debt, as we advised previously, in most cases we don't undertake recovery action while a dispute is underway. The latest figures we have are at 31 October 2018, when there were 5,965 cases on hand where there was a portion of tax debt under dispute. It can be a portion of a tax debt rather than the whole amount. Of those, 94 per cent, 5,611 cases, were not subject to any recovery action; 193 cases, 3.2 per cent, were in the process of negotiating with the taxpayer a fifty-fifty arrangement, settlement or compromise; and the last element is 2.7 per cent, 161 cases, out of those 5,965, where there is some recovery action underway.

Senator LEYONHJELM: I am assuming these 94 per cent which were not subject to recovery were not cases where a fifty-fifty agreement had been reached with the taxpayer. Would that be correct?

Mr Ravanello: Happy to take that away but I can't verify that here. We would not normally undertake any recovery action. Fifty-fifty is where we believe it is either a large debt or that the taxpayer may have difficulty in paying once it is finalised.

Senator LEYONHJELM: My question last time was under the scenario where there was no fifty-fifty agreement and whether or not the ATO was inclined to commence recovery
action, notwithstanding the fact that the taxpayer had sought a review of the assessment. You're saying 94 per cent?

Mr Ravanello: 94 per cent there is no action taken.

Senator LEYONHJELM: And no agreement on fifty-fifty either?

Mr Ravanello: That is how my briefing is written. It says 94 per cent are not subject to debt recovery action; three per cent are subject to fifty-fifty, settlement or compromise.

Senator LEYONHJELM: I am wondering if you have encountered an article in yesterday's *Australian*, written by Robert Gottliebsen, about the ATO and this subject. Do I quote from it or assume you have seen it?

Mr Ravanello: I recall reading a Gottliebsen article, but perhaps you could quote it to me.

Senator LEYONHJELM: What the article is asserting is that the ATO's auditors who deal with large company assessments—I am trying to find the words here—do their job well. 'Usually brilliant' is the term—I thought it was something like that. He says:

But what we have seen in personal and small business tax affairs is that the ATO's auditors all too often do not do the detailed work and come up with a theoretical liability that is not right. They then negotiate, using their ability to bankrupt the victim with a huge but false tax assessment that the business cannot pay as a weapon.

It goes on to say that we saw this in relation to 'those receiving government research grants and in the gold industry'. How do you respond to that?

Mr Hirschhorn: I certainly agree very much with that first statement, that my large business auditors are brilliant! Maybe I can give some context, because I think we would have a different perspective on Mr Gottliebsen's other comments. To give a sense of size of activity in small business, which I think is Mr Gottliebsen's particular focus: each year we do about 130,000 reviews of small businesses. This may not just be their business income; it could also be their bank interest or it could be their salary income from their other job—there are a range of things. From those 130,000, we come down to about 68,000 cases a year where we issue an amended assessment—so we change somebody's liability. Of those, 64,000 are undisputed; the taxpayer does not dispute the debt or does not lodge an objection.

Of the remaining 4,000 cases, which go to our independent review area: in about 1,000 cases, our independent review area as our safeguard finds that the auditors were not correct and overturns the decision in full—so that's about 1½ per cent. In another 2,000 cases, the objection team finds that some of the objection is allowed; it might be the penalties or interest or it could be some or all of the primary tax. In another 1,000 cases, the independent review function says, 'No, the original assessment stands.' We're not talking about huge numbers. Of course, any case matters for that individual—absolutely.

I would say those numbers are inconsistent with us issuing assessments willy-nilly because the audit team is found to be incorrect in only 1½ per cent of cases. Often, that's on the basis that the taxpayer subsequently provides information which they had not provided at the audit phase. So this is one of the challenges we find: somebody is in discussion with an audit team, but it's only upon receipt of an amended assessment that they suddenly go, 'Actually, this is serious; we need to provide some information.'
I would say—I may be intruding a little bit onto my colleagues' domain around debt—that there are a couple of things about debt for the tax office. One is that the tax office does not have priority over other creditors except in very limited circumstances; for example, around pay-as-you-go withholding—

Mr Ravanello: No, super guarantee.

Mr Hirschhorn: Sorry, super guarantee—because it's not our money.

Mr Jordan: I think that might have been the article where Mr Gottliebsen infers we have priority above banks and other creditors, whereas that is not the case. We rank as an unsecured creditor at the bottom of the so-called pool of creditors. He's made that assertion a number of times. I thought we had pointed out to him that that's not correct. The other thing on that article, before I let Mr Hirschhorn finish, is that, clearly, there is some impression that we just create this debt. He says we create an enforceable debt called an assessment. You can't just run around creating amounts. He says we create an amount that's enough that we can then bankrupt them, and then walk away because we have destroyed them.

Senator LEYONHJELM: That's pretty much the assertion, yes.

Mr Jordan: That's the one. You sort of go, for a start: 'Really? Why would you do that?'

There are a lot of checks and balances and oversight that, clearly, would prevent that from happening. I just want to point out that we do not have that priority. We don't make up debts to enable us to bankrupt people and to destroy them. We actually initiate very few bankruptcies in terms of total—is it four per cent?

Mr Ravanello: Four per cent.

Mr Jordan: Four per cent of all bankruptcies are the ones that we do. There are a lot of others out there that someone else commences. I think this is important to understand. I just thought it was worth noting that we don't have that priority. We don't make up debts, and we don't seek to destroy people. Why would we? It logically doesn't—I don't get it.

Mr Hirschhorn: In addition to that: when a debt has the potential of putting somebody in a position where they cannot dispute the debt—so the potential to put them in bankruptcy or insolvency—we do not enforce the debt. We must leave them the resources to dispute the debt.

Senator LEYONHJELM: I wasn't aware of that.

Mr Jordan: By the way, it's the court that does the bankruptcy, not us.

Senator LEYONHJELM: I understand that. Is there a provision in your legislation that allows you to take recovery action prior to the finalisation of a review?

Mr Ravanello: Our policy statement is quite clear that we expect taxpayers to still meet their payment obligations, even though the debt is under dispute.

Senator LEYONHJELM: That's your policy. Is there a legislative backing for that?

Mr Hirschhorn: I would say that our power to enforce is in the law. Our administrative practice, as we discussed, is quite different.

Senator LEYONHJELM: I've got one follow-up question, and then I'm finished. The Gottliebsen article refers to the proposal to establish the small business tax tribunal. The article asserts that there have been efforts—he doesn't nominate the ATO; I don't know who
he's referring to here—to render it 'useless'; that's the word he uses. He gives some reasons why he makes that case. I'm just wondering if you can give your view of that?

**Mr Jordan:** Just before I do: Mr Hirschhorn got through a certain stage of the numbers in terms of the disputes. On small business hearings at the Administrative Appeals Tribunal for 2018, there were 24 cases that actually went to a hearing and we won 23 of those—the tribunal agreed with us. Those were just the small business ones. The notion of this small business division in the AAT—in that same year, 2018, there were 143 appeals lodged with the AAT and 24 went to a hearing. The rest were resolved through a process of mediation by the tribunal, us and the taxpayer. Either the taxpayer produced further information—sometimes it's only at that stage where they might get professional assistance, like a representative—and we accepted it, because they had given us what we needed, or the member had effectively told them: 'You don't have a very strong case. Do you really want to carry this on?' So 143 cases were referred; 24 went to a hearing; the tribunal agreed with our position in 23 of them; and the rest were sorted out in a process that's meant to do that. To the extent that there is a small business official division of AAT, we would presume that that sort of process would continue and maybe, because it's getting a bit more publicity, you might get a few more cases coming through. The costs are a bit lower. We would welcome that because there is that independent person there making the decisions. That, we see, as a positive. There is a particular aspect of it that he said—I don't recall that part—

**Mr Geale:** The article actually refers to regulation. Of course, the ATO do have a responsibility for drafting that regulation. In terms of the policy announcement, we already, in the majority of cases, self-represent in the tribunal when we are against small business and that will continue under the announced policy. We would self-represent, and it would only be in exceptional cases where, say, the facts and circumstances were complex, there was an issue of precedence or significant legal issue in place that we would engage outside external counsel. In those circumstances, the policy is clear: we will be providing funding to the taxpayers where they are not legally represented.

**Senator LEYONHJELM:** I see.

**CHAIR:** Senator Leyonhjelm, we've got 15 minutes now.

**Senator LEYONHJELM:** I wasn't aware that you actually were prevented from rendering a taxpayer unable to defend their case. I didn't realise that that existed, because it is commonly said that that's not true. Thank you for that.

**CHAIR:** Thank you, Senator Leyonhjelm. Senator Ketter, I will give you 15 minutes considering we ran over time.

**Senator KETTER:** Thank you very much. I'd like to ask some questions about the appointment to the Tax Practitioners Board, and I understand that the Treasurer has appointed Ian Klug as chairman of the Tax Practitioners Board. My question is: when was that decision made?

**Ms Purvis-Smith:** Could you repeat the question.

**Senator KETTER:** I'm inquiring about the appointment of Mr Ian Klug as chairman of the Tax Practitioners Board and when that decision was made.

**Ms Purvis-Smith:** I'll take that on notice for you, Senator—I'll get back to you; I don't have that with me.
Senator KETTER: Alright. Did the Treasurer consult the opposition about the appointment, noting how close to the election this is?

Ms Mrakovcic: That would be a matter for government.

Ms Purvis-Smith: I think that would be a question to ask the Treasurer—I’m not aware.

Senator KETTER: Minister, perhaps you might be aware: did the Treasurer consult the opposition about the appointment of Mr Ian Klug?

Senator Cormann: The appointment, like any such appointment, is conducted in the usual way, in the same way as similar appointments—or perhaps even the same appointments—would have been conducted by the previous government.

Senator KETTER: Are you aware of when the decision was made?

Senator Cormann: I’m personally not aware, but I’m happy to take it on notice.

Senator KETTER: Minister, do you know how well the Treasurer knows Mr Klug personally?

Senator Cormann: I’m not aware. Again, if you want to me to ascertain any information that I might be able to provide to the committee on notice, I’m happy to do so.

Senator KETTER: The Courier Mail describes Ian Klug as a ‘Queensland LNP powerbroker and a member of the Lord Mayor’s—

Senator Cormann: What’s his name?

Senator KETTER: Mr Ian Klug.

Senator Cormann: I am unaware whether that is his background.

Senator KETTER: Minister, is it appropriate to appoint somebody so clearly politically aligned?

Senator Cormann: You’re asking me for an opinion in relation to something that I’m not aware of. I’ve already taken on notice whether there is anything we can add in terms of the level of personal knowledge that the Treasurer has in relation to the person you are referencing, and I’ll see what we can provide to be helpful.

Senator KETTER: I’d be interested in whether this is another jobs-for-mates situation. But I appreciate you’re taking that on notice. I’d like to ask about the instant asset write off. How many small businesses have taken the instant asset write off since it was first started in 2015? Is anyone able to help with that?

Mr Hirschhorn: I may not be able to answer the exact question, but I can give you some statistics which might be helpful.

Senator KETTER: Yes.

Mr Hirschhorn: In 2016-17, there were about 360,000 claimants, and that was about a 10 per cent increase over the previous year. For the first six months of the 2017-18 year lodgement period, it seems to be tracking along a similar trajectory.

CHAIR: Can I just clarify that that’s 360,000 separate businesses? Is that correct?

Mr Hirschhorn: Indeed.

CHAIR: Can I also clarify that they don’t all claim the full $20,000?
Mr Hirschhorn: No, Senator. The limit on any individual item of plant is the $20,000. The average claim is around $11,000, and that's an in-total claim.

Senator KETTER: Can you tell me how these numbers compare to what was expected or budgeted?

Mr Hirschhorn: In a sense, we administer the program as is. We don't routinely check against the original projections.

Ms Mrakovcic: We'll take it on notice.

Senator KETTER: Can you tell me how many small businesses have taken this up, or will you not be aware of that until tax time?

Mr Hirschhorn: That's correct. The information we get is at the time of lodgement of tax returns.

Senator KETTER: Are you able to tell us how many enquiries you've received about the measure?

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

Senator KETTER: Did the Department of Jobs and Small Business play any part in any development or announcement of the expanded instant asset write off?

Ms Purvis-Smith: I would have to take that on notice. I can get back to you on that.

Senator KETTER: I have some questions in relation to the ATO office in Gosford, New South Wales. Can you tell me how many jobs have been created at the ATO in Gosford?

Ms Curtis: Yes. To date, since we officially opened in April 2018, 530 jobs have been created at the site: 486 ATO jobs and 44 NDIA jobs.

Senator KETTER: How many ATO jobs?

Ms Curtis: There are 486 ATO jobs.

Senator KETTER: How many of these are transfers and where did they transfer from?

Ms Curtis: Eighty per cent of the jobs that have been created in that site were actually filled by new staff from the Central Coast region. There were a number of transfers, but I will have to ask my colleague, Mr Chapman, to answer that for you; he has the detail.

Mr Chapman: We did run an expression of interest in the lead-up to our opening of the Gosford office to identify a skeleton of staff who may be able to go and help establish the site. There were 70 staff members who were found suitable in the process, but only 51 actually moved to the site to help us open it. I think there have been a further three staff transferred on compassionate grounds since.

Mr Jordan: Some of them were obviously living in that area and travelling down to Parramatta, Penrith or the CBD in their existing jobs. If they were suitable, it makes sense to allow them to do that. In one case, I think the site leader said that it was—what—three hours—

Mr Chapman: Two and a half to three hours per day.

Mr Jordan: Yes, three hours per day travelling time that he had there and back. It was something like three hours and 23 minutes. So, that made sense: site leader—you need a site
leader up there, so that was a bit of a no-brainer, allowing that to happen. Some in fact in the Central Coast were going up to the Newcastle office. So, there was a bit of a look at—a skeleton staff, because you can't just fill it up with everyone that is new, clearly. So, that was thought to be about the number that we needed with experience to allow that to start in a pretty efficient way. And it's been really well-received in the local community, and we've had our first graduate intake. For 2019 we took on 220 new graduates around Australia. Gosford, which has an office now, participated in that graduate program to bring graduates in, rotate them through different areas and that sort of thing. So, it was really good to see that.

**Senator KETTER:** Just to clarify: how many local jobs have been created by the Gosford office?

**Mr Jordan:** I think 400—

**Mr Chapman:** Of the 375 officers who joined the ATO who were not previously already employed by the ATO, 80 per cent came from the Central Coast region, 15 per cent came from either Newcastle or Sydney and five per cent came from the broader New South Wales or interstate areas. In terms of recruitment, it is important to note that under the Public Service Act we must run a merit based process, so we do have to open it up for anybody from the community to apply for those roles as well.

**Senator KETTER:** Those 375 roles: are these jobs casual, full-time or part-time?

**Mr Chapman:** Currently there are 409 ATO staff in the building, in addition to the NDIA staff members. Of those 409, a total of 307 are ongoing staff members, 38 are non-ongoing and 64 are casuals.

**Senator KETTER:** So, the ongoing and non-ongoing staff are full-time equivalent? Or would they be part-time as well?

**Mr Chapman:** Full-time or part-time. We do promote part-time work as well, and flexible working arrangements, to help us to ensure that we can attract the best talent.

**Senator KETTER:** Did the casual employees get laid off over the Christmas holiday period?

**Mr Chapman:** Not laid off. The tax office certainly has a shutdown period over the Christmas period, where our office is not open. Our casual workforce, in line with that, were not working, and our non-ongoing and ongoing workforce as well. Our use of casuals fluctuates subject to demand. We do engage our casual workforce to help ensure that we can meet peaks and troughs in our workloads, and they've been used in Gosford consistently with other parts of the country, subject to the workloads that we have.

**Senator KETTER:** Does the Gosford ATO use labour hire employees?

**Mr Chapman:** There is a small contingent of labour hire. I think we have had nine labour hires commence with us in the last month. But the numbers of labour hire are very limited at our Gosford site.

**Senator KETTER:** Why do you use labour hire?

**Mr Chapman:** In terms of the particular function that those labour hire staff are undertaking, I'd have to take that on notice. But certainly our general use of labour hire is, again, to assist in work that needs to be undertaken during peaks in our workloads, generally for a specified time.
Senator KETTER: Would there be a reason you can't use casual employees for that, or part-timers—to flex up the number of hours?

Mr Chapman: Our labour hire workforce tend to work full-time hours; our casual workforce tend to have more varying shifts.

Mr Jordan: And remember that a number of people want the casual hours, too. It suits them.

Senator KETTER: Do the labour hire employees perform a particular type of task?

Mr Chapman: Those particular nine, I think, are all working on the same type of task, but I'll have to take on notice what that task is.

Senator KETTER: Does the ATO have a focus on creating regional permanent positions for the people at Gosford and surrounding areas, and what strategies do you employ?

Mr Chapman: Yes, Senator. Certainly, as you can see from those numbers, the bulk of the workforce in the site is full-time ongoing workforce. We have got a range of development programs that we have made use of in our Gosford site, including our entry-level graduate program. We also have our university partnership program, where we have brought in university students from local universities to devote a day a week or perhaps two days a week during their university semester, and increased hours over their breaks. As part of that, our Gosford site was recently awarded the 'most valued partner' award in the University of New South Wales student engagement awards because of the support that we provide to the local university.

Senator KETTER: What sort of selection criteria do you use at the Gosford office? Is it different to other offices?

Mr Chapman: No. We look at different selection criteria on the basis of the particular roles we are seeking to fill. But we are certainly, across the organisation, looking at how we can ensure we're attracting candidates and selecting candidates who have the sort of cultural traits that we're seeking to have in the ATO to ensure that we're offering the best client service we can.

Senator KETTER: And is the level of permanent employment at Gosford comparable to offices of a similar size in other regional areas?

Mr Chapman: We do see quite a bit of fluctuation across our sites, so I'd have to take that on notice.

Senator KETTER: Thank you.

CHAIR: In the last 10 minutes I might ask a couple of questions about the Tax Avoidance Taskforce. I think at my first Senate estimates, which was about 2½ years ago, we spoke about that almost endlessly. I want to clarify a couple of things. First of all, I think it was back then, or maybe a little bit before then, that you got funding for four years for that program; is that correct?

Mr Hirschhorn: That is correct.

CHAIR: We are now 2½ years, nearly three years, into the four-year funding?

Mr Hirschhorn: That is correct.
CHAIR: Can I ask about the success of the program—what it's raised in terms of tax liabilities but also what it's collected since 1 July 2016.

Mr Hirschhorn: I would say that the Tax Avoidance Taskforce has been extraordinarily successful. That success is not just in terms of the liabilities raised and cash collections but also in terms of changing the behaviour, improving the behaviour, of the large corporate environment in Australia. But maybe first I will talk about some of the liabilities and collections. It's important that the task force had elements which were for the very large public groups and internationals and also covered private groups and high net wealth individuals. As a general rule of thumb, it matched our pre-existing funding. So about half the funding supporting public groups and international, and our private groups and high net wealth individuals, came from the task force funding. Across those two lines, since July 2016—and this is up to November 2018—we've raised liabilities of about $7.7 billion against foreign-owned multinationals and public groups, raised liabilities of $4.7 billion against wealthy individuals and associated groups, and collected, of that, about $7 billion.

CHAIR: That's from both groups?

Mr Hirschhorn: From the combined groups. So that's a fairly significant amount. The amount we attribute directly to the task force—it's about half our funding—is about half, but it's a combined effort. The task force has fundamentally underpinned those results over the last 2½ years.

If we look at the cash alone, at its rawest, there is $7-odd billion. Let's add half of that, about $3.3 billion, that we attribute to the task force. Even excluding wider revenue effects, which is the effect of changes in behaviour, that already achieves—in fact, I think it exceeds—the four-year program expectation in terms of revenue effects.

CHAIR: So there has been a notable response from taxpayers in regard to enhanced compliance activities?

Mr Hirschhorn: Absolutely. Let's look at a couple of case studies of things which are in the public domain. We had a very large dispute with Chevron around their pricing of related party debt. The numbers, in terms of the direct compliance activity with Chevron, are included in these numbers. But what is not included is the fact that their ongoing interest rate, going forward, is below three per cent when, at the start, it was at nine per cent.

CHAIR: To what extent is it an enforcement issue as opposed to a legislative issue? Obviously the task force relates directly to the multinational anti-avoidance legislation, but to what extent does it require a change of behaviour and focus from the ATO as opposed to a change in legislation?

Mr Hirschhorn: It is hard to uncouple the two. As the package of the tax avoidance task force, we have been given world-leading legislative tools. We have had an upgraded general anti-avoidance rule. We have the multinational anti-avoidance law, the MAAL, which is designed to affect businesses which sold things from here but billed them from overseas. We have had the diverted profits tax, which is aimed at manipulated transactions. We have had upgrading of our transfer pricing laws—or, maybe more technically, our anti-transfer mispricing rules have been upgraded to OECD best practice—and a range of other things like country-by-country reporting. So there has been a huge legislative suite at the same time as an investment in the task force which has allowed us to boost our capability and boost our
activity. So there is a huge combination. The multinational anti-avoidance law was highly effective in bringing the big inbound e-commerce companies to the table and resolving their legacy issues, as well as changing the business model going forward. So 44 large international groups have fundamentally changed their business model to recognise a taxable presence in Australia, and there are many household names as part of that.

Mr Jordan: And about $7 billion from those 44 companies has now returned to sales in Australia. That is gross, obviously, but at least we have now got the income reported here; we can have an argument about the expenses, but we have got the income of $7 billion from those 44 companies. What was not mentioned with respect to the knock-on effects of Chevron—subject to correction here—is that there is about $430 billion in foreign party related debt coming into Australia. Chevron was one large example—three per cent when it was charging nine per cent. As a result of the Chevron case and us putting out guidance, about $100 billion of that debt has been restructured to go into our green zone. Companies have self-assessed, we have had discussions with them, and they have brought their debt—$100 billion. Not all of the $430 billion was a problem, so some of it will be unaffected. But that is a significant knock-on effect when you are looking at $100 billion going from nine per cent to three. That is a real lot of tax deductions that won't be claimed as a result of that decision—and those figures are not, obviously, in that task force.

Mr Hirschhorn: In many ways, that is our greatest success in the task force. We have exceeded all the revenue projections. Our greatest success has been the forward resolution of matters so we never have to audit them. On the matters that Chris referred to, our estimate is that, over the next decade, there is $25 billion in interest deductions that will never be claimed. Another matter that is in the public domain is the BHP marketing hub issue. They announced in their settlement that not only did they resolve their prior years for $529 million but, going forward, their hub profits will be fully taxable in Australia. Again, there will never be the dispute; in a sense, we have locked in the future compliance. That is the true greatest success of the task force.

CHAIR: You said you now have world-leading legislative tools to deal with large-scale and multinational tax avoidance. What else do you need in the toolbox that we haven't been able to deliver you yet?

Mr Hirschhorn: That is a policy question which, as the bricklayer, I will have to defer on.

Senator Cormann: Here are the policy people over here!

CHAIR: Is there something else that we need to put into the toolbox to help our friends at the ATO deliver what they have been required to deliver?

Ms Mrakovcic: I think that is an ongoing question for us to consider.

CHAIR: I gave it a good go!

Mr Hirschhorn: I would say that we have recently released our tax gap analysis. So we estimate the tax performance of multinationals and public groups in Australia. There is always a lag in calculating it. We think we now have over 95 per cent performance by large corporates, so we are collecting a bit over 95 per cent of the tax that the law requires them to pay. That is already world-leading but our strategies are designed to move that up to 98 per cent performance, which would be beyond anywhere else in the world.

Proceedings suspended from 16:01 to 16:16
CHAIR: The committee will now resume and continue its consideration of the Treasury portfolio, with particular reference to the Revenue Group, the Australian Taxation Office and the ACNC.

Senator WHISH-WILSON: We've asked lots of questions over the years about tax transparency data, and of course we've had some legislation. My question is about the annual tax transparency data that's released by the ATO which shows the tax paid against revenue by big private and public companies. From your observation, has it changed reporting behaviour over the last four years? Has it been a useful legislative tool?

Mr Jordan: I'll have Mr Hirschhorn speak in more detail, but I think, in short, yes, it has contributed to the overall debate on transparency for tax matters. It has caused companies to reflect on how they need to tell a story themselves around their tax position. Also, you've got the board of tax voluntary tax disclosure regime that more and more companies are signing up to, particularly Australian listed companies. You've got the larger ones like BHP and Rio Tinto doing quite significant and detailed tax transparency reports. So I think the debate, the focus and some of these requirements have caused companies to reflect that they need to tell why they are in a certain position. If they've got revenue and profit but no tax, why is that? I think the debate is getting a bit more maturity around it, and people are realising more so that you don't pay tax on the gross, on the total income; it's on the net income. It might be useful one day to perhaps have net profit there against taxable income—because that's more of a like-and-like concept—rather than the total income. The difference between net income and taxable income is what is of more interest to us: what are you doing to reduce your tax down so that your taxable income varies significantly from net income? Some people also maybe, where there is a zero, because there's no tax payable, put losses in. We can't, because the legislation directs us to do certain things and we do that. I think there's an increased awareness of transparency and some requests to maybe clarify those figures.

Senator WHISH-WILSON: Just before you go to Jeremy or whoever else, has it encouraged some firms to go into voluntary schemes because they can then provide additional data voluntarily to clear up any potential perceptions?

Mr Jordan: Sorry, what was the first part of the question? Does it encourage firms to—

Senator WHISH-WILSON: You mentioned voluntary tax disclosure schemes and that there was a bigger pick up. For example, you said there are some limitations to the reporting requirements. Has it provided an incentive for firms to use more detailed voluntary reporting?

Mr Jordan: In the short, the answer is yes. I think it has, certainly. They have to put information on their websites. They have to, in some respects, in their actual annual reports; they are starting to put their story right there so that people can see it rather than having to go to their website to find it.

Mr Hirschhorn: Just quickly adding to the commissioner's comments, over the last four years—I remember sitting in the first hearing of the corporate tax avoidance inquiry; it seems like a long time ago. I think Senator Ketter might be the only senator who remains from that original hearing.

Senator KETTER: Time flies when you're having fun, doesn't it?

Mr Hirschhorn: I would say we have seen a significant shift in the behaviour of large taxpayers. We have seen that the discussion around large corporate tax and the reality of
where it is has significantly matured. There are three elements of transparency that I would
draw out that have changed a lot over that time. There is more information about the affairs of
individual taxpayers, a lot of it voluntary. But there are two other sorts of transparency. There
is the transparency of information to the revenue authority. Australia has always been in a
good position there, but it has been strengthened by things like the country-by-country
reporting, which give us more information than ever before. There is also a third element of
transparency, which is often forgotten, which is information from the revenue authority to
parliament and to the people of Australia about what's really going on. We have done a lot of
work around that, which has also helped to change behaviour. But there can be a better
discussion of what's going on.

Mr Jordan: In that corporate tax avoidance inquiry and here, I hope there is a recognition
that we try to be ourselves and speak as much as we can without giving away protected
information, to go to that last point about increasing transparency overall.

Senator WHISH-WILSON: I understand that there is a fine line between the need to
protect information and also the need to be transparent in public. I understand that. You
mentioned one problem with the legislation, but another one is that there is—you would have
to agree—a gap in the system that doesn't cover the reporting of partnerships. I was
particularly interested in the big four accounting consultancy firms, who are in a sense
architects of tax minimisation schemes in this country by the definition of some of the
services that they employ. Do you oversee these big, powerful partnerships and audit their
activities?

Mr Hirschhorn: I might take that. I would first say that, with the big four accounting
firms, the vast bulk of the partners in those firms are actually very important to the health of
the system. We have a complex tax law; business is complex. In many ways, many of those
partners are almost like the frontline auditors. But I won't step away from the fact that there
are some partners in those firms who we would consider as disrupting the system. We
certainly look very closely at their activities and how we c

In terms of the firms themselves, you made a comment that really goes to policy question
around whether partnerships should be included in this sort of transparency. Obviously, I am
not going to comment on the policy element, but I do note that there are sometimes challenges
with partnerships because they are administered under state law and not federal law. In terms
of the actual tax of the partnerships' income, they themselves are primarily flow-through
vehicles. They will generally be a mix of a partnership and a trust, although maybe there are
different vehicles within them. Generally not much tax will be paid at the business level, but
tax will be paid at the partner level or at the partners' entities level. I can assure you they are
part of our compliance programs as much as any other large organisation.

Senator WHISH-WILSON: You have information at your disposal to enquire into those
arrangements?

Mr Hirschhorn: If I look at the corporate tax transparency release, of course, that's all
information we already have that we are passing on and we are required to publish. We have
that information and more, of course, in relation to those partnerships.

Senator WHISH-WILSON: Obviously, they play a central role, as you've acknowledged,
in determining the taxes received by governments. They are recipients of nearly $2 billion in
government contracts as well, so it is a significant matter of public interest. Are you able to provide the aggregated 2016-17 revenue and taxes paid by the partners of each of the big four firms?

Mr Hirschhorn: Firstly, I do not have it to hand; but, secondly, we would not be able to provide it as it would be disclosing the tax information of individuals. I would note that the partnerships—

Mr Jordan: Are you saying that it would be aggregated, so for all partners of all of the firms?

Senator WHISH-WILSON: I am after the aggregated figure for—

Mr Jordan: Some of the firms—in the UK, particularly—disclose their taxable income at the partnership level, and I think that might be voluntary over there. It would probably be a pretty big exercise, because we would have to literally get all of the different partners and whether we could totally assure ourselves that that covered the field—

Senator WHISH-WILSON: But it wouldn't disclose the individual tax identities or arrangements.

Mr Jordan: Not if we gave the aggregated figure. I suppose if we gave the aggregated figure for the big four, though, that would then just be split up between however many partners. You could look at their websites and see how many partners there were. But there are only four firms in the cohort, so that's where it gets a bit difficult. That's because if you only have four and you give an aggregate, well—it's like in the mining area. With the big banks, they are so few that it's difficult to give you those aggregated figures.

We do do assurance work over the partnerships themselves to make sure they are not shifting too much income to their service trusts so that they can distribute that to entities, associates or partners and that they are claiming the right sort of deductions and those sorts of things. Once they get to the taxable income figure, clearly that is then distributed and taxes are paid by partners. But, over the decades, there has been a fairly settled process of how a partnership of that size does that—and the law firms, as well as the engineers and the architects. It's not always just the accountants and the professional advisory firms. That's as to what is an appropriate structure that we will accept to allow them to utilise that.

Senator WHISH-WILSON: I just have a couple of things from that, Mr Jordan. Firstly, you said that you think it's in the UK. Perhaps you could take it on notice, if you want to check that.

Mr Jordan: As to whether it is compulsory or voluntary?

Senator WHISH-WILSON: Yes, or whether they voluntarily disclose that.

Mr Jordan: I will take that on notice.

Senator WHISH-WILSON: My understanding is that they don't.

Mr Jordan: That's something that they have done, I think, voluntarily.

Senator WHISH-WILSON: My understanding is that that voluntarily doesn't happen here in Australia.

Mr Jordan: No, it doesn't.
Mr Hirschhorn: My understanding is that firms in Australia report their gross income publicly, voluntarily, but do not report their net income.

Mr Jordan: Which is what's distributed to the partners.

Senator WHISH-WILSON: Fair point that it might be difficult to actually do that, but are you ruling out that you can do that and you can provide that to the Senate?

Mr Hirschhorn: At a theoretical level, we could, in a sense, add up the distributable income of the partnerships and trusts that make up the big four firms. We should be able to do that, logistically, fairly readily. The thing that I would have to take on notice and consider is whether disclosing an aggregate for the four firms would be, in a sense, implicitly disclosing—

Senator WHISH-WILSON: A breach of confidentiality?

Mr Jordan: We would have to get advice from maybe the Attorney-General and all of that sort of stuff.

Senator WHISH-WILSON: If you could.

Mr Jordan: We tend to use our general counsel and—

Senator WHISH-WILSON: I ask that you do that, because I have sought advice from the Clerk of the Senate on this issue for today's question.

Mr Jordan: Have you got it yet?

Senator WHISH-WILSON: My understanding is, Commissioner, you could provide it confidentially to the committee according to the advice of the Clerk.

Mr Jordan: What assurances do we get that it's confidential?

Senator WHISH-WILSON: We would provide that assurance to you. Even if we didn't, even if it was to be released, you would be covered by parliamentary privilege on the release of that information. The other thing was to disclose what was the basis for public interest immunity or not. But we can perhaps take that to the next stage.

Mr Hirschhorn: I think we would need to. If we took the position that the information would, in a sense, allow the reverse engineering of too much information, we would then seek—maybe this is a question for another day—to ask the committee to apply the convention that that information is not asked for, and then we would probably seek an immunity claim and see where it goes.

Senator WHISH-WILSON: Thank you. Just very quickly, as I don't have much time—

CHAIR: No. You have negative time.

Senator WHISH-WILSON: On the petroleum resource rent tax—apologies if any of these questions have already been asked—could I get an update on what the value of outstanding tax credits is currently?

Mr Hirschhorn: As at the most recent statistics, which has the 2016-17 carry-forward balance, the carry forward expenditure is approximately $279 billion.

Senator WHISH-WILSON: How much was collected last financial year? I understand the amount was down because of oil price drops.
Mr Hirschhorn: Yes. In the 2016-17 year—I'm not sure I have the 2017-18—we collected $946 million, just under a billion. Actually, in 2017-18, it went up a little bit. It was 1.12 billion. That's cash receipts rather than taxable year.

Senator WHISH-WILSON: I haven't had a chance to read in detail the legislation that was lodged in the House this week about changes. Have you modelled the implications for revenue on changing uplift rates to the government?

Mr Hirschhorn: That's probably a matter for Treasury.

CHAIR: Thank you Senator Whish-Wilson. I think Senator Stoker and Senator Patrick have some questions for the ATO. Then we're going to move to the ACNC. I understand that Labor has questions for the ACNC.

Senator STOKER: If a company collects money now for services not yet rendered, should GST be paid on that immediately?

Mr Hirschhorn: My understanding is yes. GST is paid on an invoice.

Mr Jordan: We have a semi GST expert here—well, a good GST expert—who is doing different roles. He is heading up dispute resolution.

Senator STOKER: It might be handy to have him close by then. What are the GST obligations of a political campaigning entity which is not a political party?

Mr Jordan: Can I clarify? Was what the Jeremy on the left said correct about the invoice?

Mr Geale: Sure. Going back to the first question in terms of when someone would have to account for GST, there are two ways in which GST can be accounted for. There is a cash basis and an accruals basis. If an entity was counting for GST on an accruals basis, they would be required to account the GST in the quarter or the month in which they raised the invoice.

Mr Jordan: Most larger companies do accruals, I think.

Mr Geale: That's correct. If it was for GST on a cash basis, which is most small businesses, then they would account for the GST in the month or quarter in which they received payment of the invoice.

Senator STOKER: What are the GST obligations of a political campaigning entity which is not a political party?

Mr Geale: That is a question I would have to take on notice. I have not ever had to consider—

Mr Hirschhorn: And, Senator, in relation to what particular things that they're invoicing or that they're charging for, I suppose is the question.

Mr Jordan: Is it going to make a supply of something to have a GST liability—

Senator STOKER: If they're supplying services associated with the conduct of campaigns, for instance—professional services.

Mr Jordan: A consultancy or something.

Mr Hirschhorn: So, just to clarify the question on notice: you're interested in a situation where an organisation charges another organisation for providing some sort of services around—
Mr Jordan: A consultancy firm charging a political party; is that—
Mr Hirschhorn: campaigning systems or whatnot?
Senator STOKER: Yes.
Mr Hirschhorn: I think that would inherently be subject to GST.
Mr Jordan: Yes, I would thought we can answer that now.
Senator STOKER: What tax obligations are associated with the crowdsourcing of goods and services by, for instance, a political campaigning kind of entity?
Mr Geale: I can answer generally in terms of crowdsourcing, as opposed to its respective specific political entity. Generally, in terms of crowdsourcing, the rules are the same as would apply to any supply of goods or services. So, GST would apply if the entity running the crowdsourcing is registered for GST, and they would either account for the GST on the cash amount that they receive or what they receive in kind. So, if there is a substitution that is being provided—something in a non-monetary form—then it would be on the value of that non-monetary consideration.
Senator STOKER: Let me use an example. If there was a political organisation that wasn't a political party but just a campaigning type organisation that didn't have charity or DGR status, and it crowdfunds to run a campaign on a topic like wealth inequality, for instance, are there any tax obligations associated with the funds they raise in that campaign?
Mr Geale: It would depend on how they raise those funds, but if the funds are given to them or donated, so they're not in return for any particular service or good, then no GST would apply. With goods and services tax, the fundamental is that GST applies to the supply of goods and services, whereas if the money is donated or gifted, then no GST would apply.
Senator STOKER: I think you've come some of the way to answering this: what is the difference between an organisation such as GetUp! and a lobbying company with respect to the tax obligations that they face?
Mr Geale: I can't answer your question in respect to a specific entity, but the first thing would be whether the entity is registered or required to register, which will depend upon their turnover and what they're receiving for goods and services. But, if they are receiving over $75,000 or $150,000, depending on the entity's features, they'd be required to be registered for GST, and otherwise there would be no difference generally to those entities.
Senator STOKER: So it all really turns on whether or not they're registered for GST?
Mr Geale: That's correct.
Mr Hirschhorn: And, Senator, I think you talk about tax with a focus on GST. Of course, there's income tax. I think you said it's not a charity, so then it would be taxable on its profit. So a lobbying company would be taxed on its profit; a normal company, which does not have a charity type exemption, would also be subject to tax if it made a profit.
Senator STOKER: Just to finish that off, if you've got an organisation like that, without charity or DGR status, and they have supporters who regularly pay subscription fees to be a part of that organisation, and the payment of that money entitles them to certain privileges or services, do those subscription fees attract GST?
**Mr Geale:** If an entity is registered, or required to be registered, for GST and they're receiving moneys for services provided, then they would be liable for GST in respect of those moneys received and the services which they provide.

**Mr Hirschhorn:** Senator, just to clarify, there's one hypothetical you put to us, and, of course, these are all hypothetical. We're not making rulings on the run.

**Senator STOKER:** I understand.

**Mr Hirschhorn:** There's a subtle but important difference between a donation and a subscription, because a subscription may inherently be for services of some sort.

**Mr Jordan:** Like receipt of a report or a regular newsletter or something like that: that's a service.

**Senator STOKER:** To attend particular activities or things like that?

**Mr Hirschhorn:** And it's also important, not just potentially for GST but also income tax, because we have a concept for clubs of what's called mutuality where people pool money together as members of a club. That's not really seen as income of the club; it's seen as a pooling of money by club members.

**Senator McALLISTER:** Mutuality used to be a conservative value actually—outside the state, people getting together to do things collectively within civil society. It used to be a core value and I'm interested that you pursue things in this way.

**Senator STOKER:** Thank you, Senator. If an organisation without charity or DGR status gets commissions for certain activities—say, commissions that they get from other commercial entities—what sort of tax is payable on the commissions they receive?

**Mr Geale:** Again, if they're registered for GST and the commission is being provided as consideration for the supply of a service, then it would be liable for GST. There are some types of services which are not subject to GST, such as financial services, so there are exceptions to that. But, as a general proposition, it would attract GST.

**Senator STOKER:** Can I ask you to consider this scenario. There is a company limited by guarantee, without charity or DGR status. It's had income totalling $66 million over a 13-year period, with virtually no losses year to year. It paid less than 0.2 per cent of its revenue in company tax or income tax over that period. Would there be any factors that are relevant to the ATO making a decision about whether or not to take a closer look at the operations of that company?

**Mr Hirschhorn:** Again, if we can abstract a little bit, we have a range of compliance approaches. Our first umbrella is that we split the market—this great group of taxpayers—into different groups of clients because, in a sense, that's the best way to judge risk. We have public groups and international, as we spoke about before. We have private groups, high net worth individuals and small-business individuals. So we split the market. In each of those markets, we have particular strategies for best addressing tax risk in that market. In the larger markets, as you can imagine, where they are fewer but bigger, we have much more one-on-one interaction. And, at the top end of the market, with the very largest companies, they have the privilege of seeing us every year before they lodge their tax return.

**Senator STOKER:** Lucky them.
Mr Hirschhorn: They perhaps don't always see it as a privilege, but, in the larger markets, when you're dealing with millions, you have to rely on sophisticated risk models and risk engines to determine who we look at. So what I would say is that, whenever an entity looks strange, based on those risk algorithms, we will have a closer look.

Senator STOKER: Thank you.

Senator PATRICK: I want to go to some of the information you provided to the committee after an order for production. I'm not going to name names of companies, but I just want to talk about some of the details that were revealed in the data that was made available to the committee. Because I named the company Goldman Sachs in a question, I just want to put on the record that they are not on the list, just to tidy that up. There were a number of companies on that list that, for a number of years in a row, didn't provide a tax return within the six months. I think we came to an agreement that people can be late but within six months of lodging a return. I note that the occurrence of this has dropped off dramatically. How do you check that and how do you deal with a company that is repeatedly not lodging tax returns?

Mr Hirschhorn: Yes, again, we are talking in a slightly abstract way. I would note at the start that, as you point out, since 2014—so, from the 2014 to 2016 years—we only had one late return from that group of companies. So the behaviour is very different from the earlier period—the 2001 to 2004 years in particular, where there were more companies who were late.

Senator PATRICK: Is that because of systems you've put in place?

Mr Hirschhorn: There are a few elements. If I go back to those early years, tax consolidation was just coming in, so groups had to have lodged tax returns from multiple entities. Also, I think there was perhaps a laxer attitude towards particularly when you had a company which was in tax losses. Generally, there was a laxer attitude towards lodging on time because the penalties were based on the tax outstanding, which of course was nothing if you're in loss, so there was little consequence for being late putting in your tax returns in those early years.

In terms of our current processes, we know who the big companies are, and it would be very obvious to us immediately if they lodged a tax return late. In one way, the problem has been solved to the extent that I would have to take on notice the exact processes that we use to track late returns because it just doesn't come up as a risk, because they're lodged. And, of course, most recently the penalties for large companies for lodging late have gone up to a potential maximum of $525,000 per late lodgement.

Senator PATRICK: That generally focuses company directors.

Mr Hirschhorn: It does focus the minds of even the largest companies. You can imagine a head of tax, whose salary is likely to be less than $525,000 going to his or her boss and saying, 'Sorry, I lodged late. Here's a $525,000 bill.' That head of tax may no longer be the head of tax.

Senator PATRICK: I'm satisfied with that answer, thank you very much. I will describe a circumstance that I've had recently in Whyalla, to give you a context. We had a company that was paying late. I engaged the Small Business Commissioner, and the Small Business Commissioner has started looking at things from a payment terms perspective, and has been
very helpful. But I also talked to ASIC about it, because there were multiple companies that weren't being paid on time. ASIC then basically wrote to me and indicated that that company had not completed financial reporting across the group. I'll be asking ASIC how people can examine a company that they may choose to be working with, but it made me wonder whether or not there is a mechanism for a small business to work out risk associated with contracting with some of the larger entities. From a tax office perspective, is there some way for a small business to see whether or not a company has been compliant in their tax returns, without going into the details of what is in their tax returns?

**Mr Hirschhorn:** Senator, at the moment, there is no mechanism. We cannot produce that data because it would breach taxpayer secrecy. Indeed, this is a contentious area. I think there is a proposal—and I'm not sure where it's at—around potentially publishing whether companies have outstanding debts due to the tax office. There is a proposal somewhere in the process, and I'm going to confess that I'm not sure exactly where it is in the process. That is, in a sense, an element of making it obvious to people if they're dealing with a company which has a lot of outstanding, overdue tax debts, that maybe that's a risk in dealing with them. But, can I say I'm glad to be relieved by my colleague to give you more detail.

**Mr Ravanello:** The government announced, in MYEFO 2016, a transparency business tax measure. There was consultation in 2017 and 2018, and, as part of MYEFO 2018, the government announced that measure with a different threshold of $100,000. At this stage, my understanding is it's yet to be introduced.

**Senator PATRICK:** So eventually it will be a website people can go to to say, 'How is this company stacking up from a corporate tax point of view?'

**Mr Ravanello:** The current proposed parameters for the legislation are that it would be companies—not individuals, partnerships or trusts—with debts greater than $100,000 outstanding for more than 90 days that are not in dispute and not under—

**Mr Jordan:** I think the question is: how would you find the information?

**Mr Ravanello:** Through credit reference bureaus.

**Mr Jordan:** We'd provide it to credit reference agencies, wouldn't we?

**Mr Ravanello:** We'd report them to credit reference bureaus.

**Mr Jordan:** The normal credit check currently does not have any tax debts. It would then include a tax debt if it's over $100,000, if it's undisputed and if it's a company.

**Mr Ravanello:** And not under a payment arrangement.

**Senator PATRICK:** Is the credit check an easy and relatively inexpensive service to access?

**Mr Jordan:** I don't know.

**Mr Ravanello:** I believe you can access individual records for a small fee, and larger companies can subscribe.

**Mr Jordan:** There is an annual subscription. I don't know what the one-off charge is.

**Senator PATRICK:** I'm just wondering, if you're supplying this information to credit reference agencies, whether it can't simply be on the web.
Mr Jordan: I think that, if people are trying to work out whether to deal with a company, they want a holistic view of their debt. We generally used to be put at the bottom of the pile. Some of the small businesses that lose money said, 'Well, if we knew that, we wouldn't tell them.' We said, 'We're not allowed to tell you.' So that's why. It's this level playing field argument that's very valid, where we say: 'Well, of course they don't have to disclose their debt to anyone. They've got to pay the bank; otherwise they might withdraw the credit facility. They've got to pay their wages; otherwise people won't turn up. But they don't have to pay the tax.' Some people say, 'You can't tell anyone I'm not paying you.'

Senator PATRICK: Some people would say giving money to government means it just gets wasted anyway. I'll move on. Thank you very much for that. So it looks like that is in hand. I asked a question of Defence, and they said, 'You should ask the tax office this,' so I'm going to have to ask this question.

Mr Jordan: I'll thank them.

Senator PATRICK: It was related to the larger companies they deal with. I asked—and I'll just use this as one example—whether Raytheon is a signatory to the government's tax transparency code. The bottom line is that I have a list of defence companies here, and I'll just read them out. But they said that they can't answer that and that's for you to answer.

Mr Hirschhorn: The list of companies who have signed up to the tax transparency code is available on our website, so it is publicly available. It shows those who have signed up and those who have produced, so there's a lag. I don't have that list with me, but it is accessible on the website.

Senator PATRICK: That's fine if it's on the website. Maybe you can give me a link on notice. That would be useful. Finally, I have taken an interest in cotton lately. Back in 2016-17 the industry was worth $2 billion, and in 2017-18 it was worth $3 billion due to good seasons and high prices. I don't want to pry into any individual companies' details here, but, in aggregate, what sort of information could you provide to me as to the amount of tax paid across, perhaps, some of the bigger players or the industry? Is that hard to get access to? Is it possible to give an indication without revealing what would be considered personal information?

Mr Hirschhorn: I'd have to look into what data we'd have. So, if it's all right, I could take that on notice and work out what sort of information we have.

Senator PATRICK: Yes. We could even liaise on what is the best way to do that. As I said, I'm not trying to identify any companies. There are a lot of really big cotton companies, but they're not above a $100 million turnover. It might just be the 10 largest or something that I might be interested in. So we could have a conversation.

Mr Hirschhorn: We'll have a look into it. When people lodge their tax returns, our way of working out what business they're in is the industry code. I'm not sure offhand whether we have a cotton-farming industry code, so my first step will be to look to see if we do collect the data that way.

Senator PATRICK: It might be that I would provide you with a list of all the largest companies, because there is data available on that, and then you would provide a total sum of tax paid or something.

Mr Hirschhorn: Yes, we're very happy to work with you and see what we can provide.
Senator PATRICK: Thank you very much.

CHAIR: We have some questions now for the ACNC, and there are a series of senators who have some questions for Dr Johns.

Mr Jordan: Would you like us to go?

CHAIR: No, I think that there might be a couple more for the ATO and the Revenue Group as well.

Senator Cormann: Can we do the ATO first?

Senator WHISH-WILSON: I have a series of questions to ask the ATO, on an ABC report in December last year regarding the ATO's use of a company called Stellar. I'll put the questions on notice, but I was just wondering if ATO had conducted any probity checks around that particular contractor. I understand the Tax Justice Network, which you'd be quite familiar with, will be releasing a report on that particular company and a number of their overseas activities. They are a contractor that's been used by the ATO.

Mr Jordan: Is this the one up on the Sunshine Coast?

Senator WHISH-WILSON: The call centre. Yes, that's correct. I'll put up most of the questions on notice. I just wanted to ask if you had actually conducted probity checks since that news report.

Ms Cawthra: When we go to procure anything, of course, we go to an open market tender. We follow the Commonwealth Procurement Rules, and for large contracts we usually have a probity adviser around that. We also are held to international agreements, so we can't discriminate against companies when we go to procurement based on their ownership or where they're located or their structures. In general, we do quite detailed checks, and for very complex and high-value procurements we also get an independent to do in-depth financial accessibility tests. I do not want to speak specifically about that one, but we have a great deal of—

Senator WHISH-WILSON: Would $150 million of contracted services to the ATO classify it as a substantial contract or a small one?

Ms Cawthra: That would be a substantial contract for us, and we would undertake additional checks. We have no indications that our checks aren't bringing forward the kinds of things that we would expect to see.

Mr Hirschhorn: I might add the other side to that, which is that secrecy rules in relation to taxpayers apply to me in giving advice to government departments who are entering into contracts, and that includes our procurement group. They have to go through the standard government procurement process. It would be a breach of secrecy if, in a sense, my group as tax administrator gave taxpayer-specific information to us as an agency.

Mr Jordan: Are you saying you can't tell Frances—

Mr Hirschhorn: I can't tell Frances what activity we are undertaking in relation to people or organisations.

Mr Jordan: You can see the secrecy rules are very firm.

Mr Hirschhorn: I would point out that, under the black economy measures, there's a very important measure coming in with effect from 1 July 2019, which is that any organisation
which has more than $4 million in a contract from the government has to apply for a tax performance certificate which says whether they are up to date on their lodgements and their debts and what not. That is then provided, in a sense, by my part of the tax office to the company, who then has to provide it to the procurement officer, wherever they are across government.

Ms Cawthra: Could I add to that that inside our contracts we have warranties that include that they must at all times meet all of their tax obligations for the length and term of the contract. Then the second piece is that we also have a legal requirement that they are compliant with all Australian laws, including work health and safety and any kind of work-related laws, as well as tax laws.

Senator WHISH-WILSON: I understand that the ABC got a comment from the company that they were compliant with all Australian laws. But, if they're consolidated as part of an international group that is being investigated for tax dodging and the use of tax havens and that kind of thing, does that go beyond your jurisdiction or the procurement assessment jurisdictions?

Ms Cawthra: In our warranties around being up to date with all of their tax for the entirety of the time that they're with us, if we were to see anything come into the public domain, then we would raise questions with them regarding that. I'm sure my colleague on the other side of the fence—although we sit very closely—would also take into account any code of public comment.

Senator WHISH-WILSON: Can you tell us today whether you have raised questions with the company since this report was published?

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

Senator WHISH-WILSON: If you could, that'd be great.

Mr McCullough: Before we move on, could I add a bit of information to the questions about the PRRT asked by Senator Whish-Wilson. I think, Senator, you were asking for the expected effect of the changes with respect to PRRT that the government introduced in the bill of 13 February 2019. My brief actually says that it's $6 billion over the medium term, which is 10 years to 2028-29.

Senator WHISH-WILSON: Is that net of tax credits?

Mr McCullough: Yes. That's additional revenue.

Senator WHISH-WILSON: That's gross revenue then.

Unidentified speaker: And that's for the total package.

Senator WHISH-WILSON: What percentage of that is the tax credits? Do you know or can you take it on notice?

Mr McCullough: That's a net figure, so there's a revenue raised figure—

Senator WHISH-WILSON: The $6 billion is a net figure. Okay. Can you tell us what the gross figure is or take that on notice?

Mr McCullough: I'm not sure that would be possible. I'll have to take that on notice.

Senator WHISH-WILSON: Great, thank you.
CHAIR: Thank you very much to commissioner. We'll let the ATO go, and Dr Johns is coming to the table. I welcome to the committee Senator the Hon. Zed Seselja, Assistant Minister for Treasury and Finance.

Senator Seselja: Hello, Chair.

CHAIR: Do you have an opening statement, Dr Johns?

Dr Johns: No, I'm fine.

Senator McALLISTER: Dr Johns, the last time you appeared before this committee, we had a conversation about acknowledgement of country. Subsequent to the exchange that we had, I understand that the Minister for Indigenous Affairs wrote to you and reassured you directly, saying: 'I do not believe that such an inference could be drawn from such references in the signature blocks of ACNC officers.' It must have been something of a relief to realise that you can acknowledge country without creating a perception of bias. Have you responded to Senator Scullion?

Dr Johns: Yes, and I made it clear that the decision of the bias is mine. The question is whether I consider it an issue on my signature block in my commission, so the senator's view does not carry any weight in my decision—sorry, it might be a useful piece of information, but it's not determinative of my view.

Senator McALLISTER: So your evidence to this committee is that the Minister for Indigenous Affairs's view carries no weight with you?

Dr Johns: It's not determinative. It's my view that carries the issue of whether I consider a particular form of acknowledgement to carry with it the risk of perceived bias.

Senator McALLISTER: Senator Scullion must have been delighted to receive your letter. What date did you write to him?

Dr Johns: I'll have to take that on notice; I can't recall that.

Senator McALLISTER: Can you provide the committee with a copy of that letter?

Dr Johns: Yes, sure.

Senator McALLISTER: Can you provide it now?

Dr Johns: No.

Senator McALLISTER: Have you had any correspondence or conversations with ACNC staff about acknowledgements of country since he wrote to you?

Dr Johns: Yes. I've spoken to a union official and the delegate from the commission.

Senator McALLISTER: What was the nature of that conversation?

Dr Johns: They wanted to talk to me about my decision that those who wished to use the acknowledgement should use the personal pronoun—that is, they would say, 'I acknowledge'. I'm very thankful for the discussion, which was, I don't know, half an hour or 40 minutes or so. They were very pleased for the opportunity to discuss the matter and for my explanation.

Senator McALLISTER: Were they? Have you had any cause to reconsider your advice to this committee last time, which seems rather contradictory, that your publicly expressed opinions, which are unreservedly hostile to a range of organisations and groups in the community, don't represent a conflict of interest, or present a perception of bias, but your use
of an acknowledgement of country would. Have you considered any further the disjuncture between those two ideas?

**Dr Johns:** There's no disjunction. I am the regulator. I apply the rules. Anyone who says they represent this sector is fooling themselves. There are 56,000 charities on my register. They represent almost, I guess, the entire range of views, so it would be impossible to indicate that anyone were or were not aligning themselves with the sector.

**Senator McALLISTER:** Do you still believe that beyondblue's efforts to address the negative effects of discrimination on LGBTI individuals is not remotely the work of a charity?

**Dr Johns:** I just apply the law of charities. I don't discuss the policy, if you like, surrounding the act. I apply the act and various standards of governance which are in my act.

**Senator McALLISTER:** Do you still believe the High Court was wrong to find that advocacy is a charitable purpose?

**Dr Johns:** They stated the law. I follow the law.

**Senator McALLISTER:** So you have changed your mind on that question, or at least in terms of the things that you're willing to publicly express to this view as a public official.

**Dr Johns:** I speak as the commissioner, a regulator of the sector, so I am bound by the laws and the ACNC Act and the Charities Act. That's it.

**Senator McALLISTER:** Is there presently a law that requires a person receiving a public benefit, say from the Department of Social Services, to use contraception? There's no such law at the moment, is there, Dr Johns?

**Dr Johns:** No, I wouldn't think so.

**Senator McALLISTER:** Do you still believe that, 'If a person’s sole source of income is the taxpayer, the person, as a condition of benefit, must have contraception'?

**Dr Johns:** These views are not relevant to my role as commissioner.

**Senator McALLISTER:** Even though many of the organisations that you regulate advocate strongly for people who do receive government benefits?

**Dr Johns:** Charities are allowed to advocate. It's a charitable purpose.

**Senator McALLISTER:** So you've disavowed that part of your beliefs. All right, I can see we're getting nowhere with this, Dr Johns, but I will put to you that I think that your position is ludicrous and inconsistent. Chair, that's all I have for Dr Johns. Senator Keneally had some more questions.

**CHAIR:** Senator Keneally, do you want to continue with the commission? You only have about a minute.

**Senator KENEALLY:** I'm happy to cede. I have a few questions but I think it would be more appropriate to start up again after someone else has had a go.

**Senator STOKER:** Dr Johns, what is the most common structure adopted by charities that you regulate?

**Dr Johns:** Incorporated associations would be the most common, I would think, and then corporations.
Senator STOKER: Does the ACNC have a working definition of political communication or political activities?

Dr Johns: No, we don't have any definition. We put out advice that talks about political activities. I don't think we go into any great detail—but I might be wrong, if I think about it.

Senator STOKER: And what's the nature of that advice that you provide?

Dr Johns: We provided advice just before the last election, and then more recently—I think in the middle of 2018—which was to say to charities that they can undertake political activity as long as it's not construed as a political purpose. And there's no hard line between the two; it really is a measure of how much activity you undertake, how pointed it is, the time at which you undertake it, whether there's a pattern of such activity and whether it's consistently for one party or not. There is a range of issues which you'd have to consider.

Senator STOKER: I appreciate that there are some different rules in relation to environmental groups, but, other than environmental organisations, do you have many registered charities or not-for-profits which are purely for the purpose of political campaigning—focused just on law reform and government policy?

Dr Johns: No. You'll find that many charities undertake advocacy as part of their role, and they're entitled to do so. There are some who, if you were to look at it, don't deliver a service, for instance. They just provide position papers, which you could take to be advocacy. But I don't have a breakdown, for instance, of how many are in that camp as to those which provide some sort of service.

Senator STOKER: Okay. If a purely political-campaigning organisation were to apply for charitable status, what would be their likelihood of success in that application?

Dr Johns: When you say 'purely political campaigning', they must have a charitable purpose. That's one of the bottom lines. And there are about a dozen charitable purposes. Now, any advocacy activity that they undertake has to be in pursuit one of those other charitable purposes. So if they don't have a charitable purpose—you know, the amelioration of poverty or looking after the environment—then they can't be a charity.

Senator STOKER: Are you able—and, obviously don't do anything that you're not allowed to do!—to inform us of whether the organisation called GetUp!, or its representatives, have ever applied for registration as a charity, or have contacted the ACNC about their eligibility to register as a charity?

Dr Johns: Certainly not to my knowledge, no.

Senator STOKER: If a registered charity were to spend 93 per cent of its money on internal activities, rather than external, would you be concerned that there may be negligible charitable benefit?

Dr Johns: Always, you ask, 'Is the charity pursuing its charitable purpose?' They might argue—this theoretical case—that they are pursuing it in a particular way. They may spend a lot of time contemplating these measures before they speak or act. Obviously, numbers, figures and proportions draw your attention to possibilities, but you really do have to look at it case-by-case.
Senator WHISH-WILSON: It also depends on what is meant by 'internal'. I would have thought that if you spend all your money on getting your internal stuff right so you can do your external stuff properly then that makes a lot of sense.

Senator STOKER: Sure, but if those internal activities consist of employee pay and benefits for one staffer and the travel of staff, and that's 100 per cent of what makes up that 93 per cent, does that affect your view?

Senator WHISH-WILSON: They're doing their job.

Dr Johns: A charity may well argue, let's say, that one employee is a brilliant advocate for the relief of poverty, and you could conclude that they are getting on with the job. But you might take a look at it. You might say: are they pursuing the purpose? That may be an indicator but it's not determinative.

CHAIR: Are there any further questions for the ACNC?

Senator KENEALLY: Thank you very much for being here today. Mr Johns, you were recently acknowledged at the start of a Centre for Independent Studies report about addressing homelessness in Australia. It was called Dying with their rights on. Are you aware of that report?

Dr Johns: Yes. I'm not sure of the title, but, yes. Sorry, was it about homelessness?

Senator KENEALLY: Yes. The Centre for Independent Studies report about addressing homelessness.

Dr Johns: Yes.

Senator KENEALLY: You were acknowledged at the start of that study. They acknowledged a contribution from you in some form. I guess I'm asking: what was your role, and were you consulted in the preparation of that report?

Dr Johns: I wrote a paper on the measurement or the estimation of homelessness in Australia in, I think, 2012. So, in the preparation of this CIS paper, the author had the good grace to ring me to say that he would be quoting from me and so on, and they invited me along, which I thought was very nice of them.

Senator KENEALLY: They invited you along?

Dr Johns: They invited me.

Senator KENEALLY: They invited you?

Dr Johns: Yes.

Senator KENEALLY: To what?

Dr Johns: I don't know whether it was a launch or a discussion of the first presentation of this paper.

Senator KENEALLY: Okay. So that was when the paper was completed.

Dr Johns: Yes.

Senator KENEALLY: Did you have any role in the formulation of that paper, or did they simply rely on your 2012 or whatever it was paper?
Dr Johns: No. The gentleman, the author, telephoned me and said: 'I've just come across your paper of 2012. I'm going to cite it.' That was about it. And then they invited me along, I think, some months later.

Senator KENEALLY: Did you get to read the paper before it was printed, before it was released?

Dr Johns: Yes, I think he sent me a draft.

Senator KENEALLY: Did you make any comments or contribute to the iterative process for that?

Dr Johns: Not particularly, because I'm a bit busy—but not for any other reason. I like to engage in discussion on academic matters, but it's not usually possible now.

Senator KENEALLY: Are there other types of reports from think tanks or centres that you can think of that you've participated in in a similar way?

Dr Johns: No. This, I guess, occurred because of this publication of mine in 2012, which was in a journal published at the Australian National University.

Senator KENEALLY: You have been very rigorous about avoiding a perception of bias in your role as a commissioner. How did you reassure yourself that the association with this particular report, which does imply that homelessness services are not placing their clients' best interests first, won't make it difficult for the homelessness sector to have confidence in you as their regulator?

Dr Johns: This was an academic, I presume, in the sense of writing for the CIS, coming to me as a former academic to say that he was going to reference, cite, my paper. It was really at that level where you are looking at. The fact that he's developing an argument, and the argument is his and his alone.

Senator KENEALLY: I understand that the report actually doesn't cite specifically your paper; it just acknowledges you. Was that your request? Are you aware of why they chose to proceed in that way?

Dr Johns: Are you saying he didn't cite me?

Senator KENEALLY: No.

Dr Johns: I'm appalled!

Senator KENEALLY: That's why I'm confused a bit. My recollection—and I've asked my office to go and have a look—is to go and have a look is that it wasn't a citation of a work that you had done; it was actually just an acknowledgement of your participation, which is why I'm asking these questions. I'm just trying to get to a better understanding of your role.

Dr Johns: As commissioner.

Senator KENEALLY: Yes. And your role with the paper and understand how you were thinking about—

Dr Johns: I'm not the author. The gentleman rang. He said he had read my paper. I'm pretty sure he did cite my paper in the copy he sent. I'm pretty sure he did.

Senator KENEALLY: We'll go back and look at this. I'm mindful of the time, and I'm sure the chair is about to tell me my time is up.

CHAIR: You're fine. Sorry, that was a mistake.
Senator KENEALLY: That was a mistake. Thank you. Has this paper influenced any of your thinking about the policies or practices or homelessness services that you regulate, or has it changed any of your views as the regulator of these charities?

Dr Johns: No. And it wouldn't matter what the paper said in terms of policy. What's important here is: does a charity on my register pursue its charitable purpose? So keep in mind we are all free to have a view about how one participates, advocates or the position one takes. My role as commissioner is to say, 'Okay, is it pursuing its purpose?'—of course, any charity can argue its case—and 'Are there any governance problems in this second tranche of tools that I use?' So, no, it doesn't have any effect.

Senator KENEALLY: Do you think there is a risk that charities that you do regulate might get a perception that this report reflects your point of view about them?

Dr Johns: No. It's simply citing my earlier work. It's on the record.

Senator KENEALLY: I might put some more questions to you on notice about that one, and we'll go back and have a look at the actual report again. Maybe you and I have a difference here. I might ask you a few other questions about a staff survey. A few weeks ago, the UK Charity Commission celebrated high staff satisfaction levels by publishing results from their Civil Service people survey. If the ACNC staff census showed similar good news, would you publicly share it in the same vein?

Dr Johns: I hate to brag, but our staff satisfaction levels were quite significantly above those of the UK—not that I think that determines a great deal. We have published some of the data. The issue at a previous hearing here was about comments, which are private, of course.

Senator KENEALLY: I'm sorry, could you repeat that. I had trouble hearing the last bit of your answer there?

Dr Johns: We've published some of the data, but the issue last time was about comments that had been made by public servants about those, if you like, in charge of the commission, and those are not to be shared. They are private, and that's part of the rationale of running the census, which is run right across the Public Service.

Senator KENEALLY: Which of the data have you published?

Dr Johns: I'll have to take that on notice. I can show you. I can do that.

Senator KENEALLY: So you can take that question on notice?

Dr Johns: Yes.

Senator KENEALLY: Do you at least agree with the principle that taxpayers deserve to know when their taxes are producing good work, that the morale of the organisation is good, that it's got good people and that there's high satisfaction levels among the ACNC staff? Is it something that, in a general principle, is information that should or shouldn't be in the public realm?

Dr Johns: It's actually material that managers use. What you want to do is run a commission as best you can for taxpayer value. There's no direct relationship between morale and taxpayer value, but any good manager would say, 'I would like my people to enjoy coming to work—I think they do—and that assists me in delivering good value.'

Senator KENEALLY: Let me ask this then: how did the most recent staff satisfaction level compare to the final year under the previous commissioner?
Dr Johns: One or two of the measures were down. Most across the organisation were quite steady. But don't ask me to recall them. I'll have to send those to you. They've previously been published.

Senator KENEALLY: Okay, thank you.

Dr Johns: And I might say, we just signed off, I think this afternoon, on the fact that there'll be a new survey coming later in the year, and we're looking at a fairly fulsome census, as they're called, again of staff views.

Senator KENEALLY: Did you say you are looking for a rather complete—

Dr Johns: It's called a census, so there is quite an extensive set of questions asked.

Senator KENEALLY: Lastly, Mr Johns—and I appreciate you may need to take that on notice—would you able to provide the committee with the table setting out the dates and locations of your official travel as commissioner?

Dr Johns: Yes.

Senator KENEALLY: And could you include in that the travel legs and the class of the ticket?

Dr Johns: Yes.

Senator KENEALLY: Thank you. That's fine, Chair.

CHAIR: Thank you, Dr Johns, we'll let you go. Thank you very much to Revenue Group; we'll let you go too.

Department of the Treasury

[17:27]

CHAIR: I now welcome Markets Group. I'm not entirely sure who is the right person at the table to ask about the Banking Executive Accountability Regime, the BEAR, that we implemented last year.

Mr Verschuer: Sorry, Chair, just before you do—

CHAIR: An opening statement? Forgive me. And you're new—I should have mentioned. Welcome.

Mr Verschuer: I'm extremely honoured to have been entrusted with such an important role in an agency which I've long admired, Treasury. You should know that this is day three for me. Not only am I new to Treasury; I am new to the federal government. My expertise lies in financial markets and my career has predominantly been in the private sector with a number of financial service entities, which include Macquarie and Westpac. My most recent role was in government with the New South Wales government Treasury Corporation. The Treasury Corporation of New South Wales provides advice and management solutions across a broad range of financial markets and balance sheet risks of the New South Wales government. This included managing the investments of the New South Wales government, which are currently around $100 billion, and the debt of the New South Wales government, which is currently around $65 billion. I was a member of their state government's Asset and Liability Committee, the vehicle through which the secretary of the Treasury in New South Wales oversaw the risk and activity on the whole-of-state balance sheet.

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ECONOMICS LEGISLATION COMMITTEE
I am very pleased to attend this committee for the first time today. It's a critical part of the democratic process. I do hope you will excuse me, for the reasons outlined, if I defer your questions to Ms Brown, who was acting deputy secretary for the Markets Group for the previous six months.

CHAIR: Thank you very much, Mr Verschuer. I would imagine that it won't take very long before you're not quite so glowing about how wonderful it is to attend estimates. But, in the meantime, I will direct my questions to the appropriate officer at the table. Can I ask about the Banking Executive Accountability Regime. Obviously it was implemented last year and it was a bit of a first. Ms Brown, was the BEAR mentioned specifically as part of the banking royal commission recommendations or findings?

Ms D Brown: BEAR was mentioned in the royal commission. It was also the subject matter of a number of recommendations recommending it be extended. I can ask Mr Kelly to talk more about the royal commission if that's where the interest is.

Mr Kelly: I am head of the Financial Services Reform Implementation Taskforce, which has had a recent change of name following the final report of the royal commission. One place perhaps to start is that there were a number of discussions around the BEAR in the policy hearings, in particular, ahead of the final report, and a current number of those have since made positive comments from the banking side about how useful the BEAR had been, or had been of assistance to them as well as to the regulators.

In the final report there are actually quite a series of recommendations that concern the BEAR. The general direction of those recommendations is to extend the BEAR to other prudentially regulated entities. So, at the moment, it applies simply to banks. The recommendations would extend it into superannuation and into insurance. There were also recommendations effectively directed at giving it a more direct and greater role in respect of conduct issues. At the moment, the BEAR has a prudential focus; conduct can affect the prudential standing of an organisation, but it doesn't necessarily cover the full scope of conduct. That's the royal commission report.

In its response the government said that it would go further. It wanted to make sure that it covered the full field of conduct issues, and in that sense it gave it to ASIC, and it sets its own separate regime that covered conduct. So one difference that makes is that not only the prudentially regulated entities would be subject to this new accountability regime but that it would extend into areas such as management, which otherwise may not be captured.

CHAIR: Mr Kelly, you have to forgive me; my eyesight is terrible, and you mentioned the title of your division, but it is quite a long title. Could you just repeat it for us?

Mr Kelly: The Financial Services Reform Implementation Taskforce.

CHAIR: And that was established to prepare to respond to the banking royal commission?

Mr Kelly: There was a Treasury royal commission task force established ahead of the final report, effectively in October last year. We prepared submissions to the royal commission. We started providing a briefing to government ahead of the receipt of the final report and took a lead role, along with many other divisions, in turning around the government's response. With the government's response now we've shifted into the implementation side of the agenda, hence why we got an even lengthier name.
CHAIR: You said that the government's response included not just the Hayne recommendations on the BEAR, but extending it even further?

Mr Kelly: Yes. The two key extensions from what Commissioner Hayne recommended was, firstly, to make sure that it fully captures all conduct related issues within an accountability framework.

CHAIR: And that would be ASIC monitored?

Mr Kelly: ASIC would have the primary responsibility there. The second one was to move beyond the prudentially regulated entities. Prudentially regulated entities are ADIs or banks, insurers and superannuation. What's not necessarily picked up in that space is wealth management firms and other financial institutions.

CHAIR: Can I first ask whether your division has done analysis of the impact that the application of the BEAR has had on the culture in the big banks.

Mr Kelly: Generally—and Ms Brown might want to add to this—at one level it is still early days for the major banks, for whom it only came into effect on 1 July last year, and for the other banks from 1 July this year. So at that level it's early days. The thing I referred to previously was that, even from the industry itself, the major banks that have been subject to the regime, there have been comments that they have found it useful. Mapping responsibilities and being clear who is held accountable are things you would have thought they would have already had knowledge of or clarity about within their organisations, but the imposition of the BEAR has helped them understand those things.

CHAIR: What do you think the impact of the BEAR regime will be on superannuation and the insurance industry when it is extended there? Will it ultimately benefit superannuation members and insurance consumers?

Mr Kelly: That's the intention. It does it through, in some ways, an indirect mechanism, improving executive accountability and the governance of these organisations.

CHAIR: I suppose we've got to tackle the big issues! Can we call it a 'BEAR' if we're applying it to other industries? But, anyway, that's an issue for another day.

Mr Kelly: There will be a new name, I'm sure.

CHAIR: You said that was part of the government's response. Is it your understanding that the government response to extend the BEAR to those other industries and to strengthen ASIC's oversight capacities there has bipartisan support?

Mr Kelly: I think that's a question you would need to ask some of your colleagues at the table.

CHAIR: I'm asking whether you know what the government's response is but haven't heard whether there would be bipartisan support for that same response? Was it in-principle support?

Mr Kelly: I can take that as bipartisan, but it is probably not really my place to make that comment.

CHAIR: Thank you.

Senator KETTER: I'm told that questions in relation to the beneficial ownership register should be directed to the Markets Group; is that right?
Ms D Brown: That's right.

Senator KETTER: There was a question on notice from Senator Whish-Wilson, No. 98, from the supplementary budget estimates. The response to that question was that no commitment to implement a register has been made by government. But, back in 2016, The Guardian reported that then Minister O'Dwyer committed the government to a beneficial ownership register. I'm just interested in what has changed, if anything.

Ms Williamson: With regard to the story you referred to, I'm afraid we're not in a position to comment on a media article. I'm certainly in a position to point to the government's commitments that are on the record about beneficial ownership, but I'm afraid I'm not in a position to comment on a media article.

Senator KETTER: The response was, 'There is no commitment.' Can you confirm that there has never been a government policy to implement a beneficial ownership register?

Ms Williamson: The first national action plan of the government under the open government partnership which was outlined by the government in December of 2016 committed that:

Australia will improve transparency of information on beneficial ownership and control of companies available to relevant authorities.

It went on to say that:

As part of this, we will consult with the corporate sector, non-government organisations and the public on the details, scope and implementation of a beneficial ownership register for companies, as well as other options to improve beneficial ownership transparency.

That's the government's stated policy position.

Senator KETTER: So there was a commitment to—

Ms Williamson: To consult on the implementation and scope of a register and other options that might be available to improve transparency.

Senator KETTER: So what's happened? We've got to the situation now where there is no commitment to implement a register. Why is that?

Ms Williamson: From our prospective, there has been no change at all in the government's policy position. In the answer to the question on notice, it was just making the point that that is the nature of the commitment—to consult on the detail, scope and implementation, which is the process we have been undertaking. Obviously it is then a matter for government as to how they take that advice and where they go from there to consider the options available to them.

Senator KETTER: So I take it that the conclusion of that consultation process was to not go ahead with—

Ms Williamson: Sorry, but that goes to our advice to government, which I'm not in a position to outline. But we provided advice to the government on the consultation process we ran, which included a register of beneficial owners of companies and another option which basically involves a requirement for companies themselves to start collecting beneficial ownership information which then relevant authorities could, in essence, tap into. That was the alternative that we consulted on.

Senator KETTER: When did that consultation period end?

ECONOMICS LEGISLATION COMMITTEE
Ms Williamson: It ended in March of 2017.

Senator KETTER: At that point, when was the decision made to not take it any further, or was there a non-decision about that?

Ms Williamson: We provided advice to the government subsequent to that consultation process and it is with government for consideration.

Senator WHISH-WILSON: So, in early 2017?

Ms Williamson: Yes.

Senator KETTER: It was sometime after March, was it?

Ms Williamson: Correct.

Senator KETTER: Can you tell us when that was?

Ms Williamson: I don't have the date on me. Can I take on notice to provide the date that we first provided advice to the government on the outcome of the consultation process?

Senator KETTER: Thanks. The global Financial Action Task Force has found that Australia is partially compliant or completely noncompliant in the case of trusts, with regard to beneficial ownership. Do you agree with that assessment?

Ms Williamson: We will have to take the issue on notice, because I'm afraid beneficial ownership issues with regard to trusts are managed Revenue Group, which just appeared before the committee. We're happy to take that on notice and come back to you.

Senator KETTER: Which law enforcement agencies have argued in favour of a beneficial ownership register?

Ms O'Rourke: We have got all of the submissions available, but we might take on notice exactly which agencies are the ones that have supported the different options that Ms Williamson described.

Senator KETTER: The ATO, for example?

Ms O'Rourke: Again, I'd like to take the question on notice to make sure I properly describe their position.

Senator WHISH-WILSON: Are those submissions publicly available?

Ms O'Rourke: Yes, they are publicly available.

Ms Williamson: There are 23 submissions on the website that are available.

Senator KETTER: How would a beneficial ownership register be of use? How would it help to tackle tax avoidance or money laundering?

Ms O'Rourke: In the consultation paper we did describe the advantages of the different options that can enhance access to information about beneficial ownership. That includes understanding who sits behind particular companies. That may have information that's valuable for authorities, whether they be tax or otherwise. There are a number of agencies that could find increased information about beneficial ownership useful.

Senator KETTER: We've already discussed the consultation period. Did that consultation go to the potential design of a beneficial ownership register?
Ms O'Rourke: There were discussions around options and they have design aspects to them. Some of them were around implementation as well. It was quite a detailed consultation process. You could say some of those were relevant to design.

Senator KETTER: That ended in March 2017?

Ms O'Rourke: That's right.

Senator KETTER: Following that consultation period—you're taking on notice when the advice to the minister was given—can you tell me which minister the advice was given to?

Ms Williamson: Yes. That was the Minister for Revenue and Financial Services at the time.

Senator WHISH-WILSON: Minister O'Dwyer?

Ms Williamson: Yes—correct.

Senator KETTER: Did you receive instructions not to proceed further with the beneficial ownership register?

Ms Williamson: Sorry, Senator, our advice to government is with the government for consideration.

Senator KETTER: So, you haven't received any advice. It is still a matter—

Ms Williamson: It is still being considered.

Senator KETTER: And you have never received any response at all in relation to that advice to the minister?

Ms Williamson: The advice is with the government for consideration on a policy position.

Senator KETTER: Can you tell me which stakeholders argued against a beneficial ownership register?

Ms O'Rourke: If you don't mind, I'd like to take that on notice to give you a complete list?

Senator KETTER: Okay. I'd like to move to the issue of divestment powers and firstly ask: has Treasury provided analysis of the impact on prices and investment due to the effect of the Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2018?

Ms D Brown: That's not a bill administered by the markets group. I understand that the appropriate group for that question to be directed to would be the fiscal group.

Senator KETTER: Okay. So, a question about policy being developed is all fiscal group, is it?

Ms D Brown: That's right.

Senator KETTER: I might turn to the issue of the Australian Business Securitisation Fund. Firstly, can you explain how the fund works?

Ms D Brown: The fund will work in one of two ways. It could either support the financing of warehouses, which is a short-term facility whereby banks—not the major banks—can seek finance to support lending. The second way it would work is through the securitisation of securities. Once there's a sufficient number of loans accumulated in the warehouse they can be separated into what's called tranches and then securitised, with each
tranche having a slightly different characteristic which allows different investors to take different pieces, depending on their preferences.

**Senator KETTER:** Why is the $2 billion that makes up the fund classified as an asset for the purposes of the Commonwealth balance sheet?

**Ms D Brown:** Because the government will be acquiring an asset in the form of investment in the fund or holding the securities as a result of the securitisation.

**Senator KETTER:** I've got a lot more questions on this, Chair.

**CHAIR:** We'll come back to you after Senator Whish-Wilson.

**Senator WHISH-WILSON:** I think Senator Ketter's covered most of my questions about the beneficial ownership register, but perhaps a question to you, Minister: Senator Ketter's quoted the media article from April 2016 when Minister O'Dwyer at the time said, 'We agree there needs to be a registry of beneficial ownership in our country.' The Guardian also contacted Minister Stuart Robert in December, and he said that they remained committed and were considering options. That was only a couple of months ago. Can you tell us today what the status is on any potential implementation of policy on this?

**Senator Seselja:** I can't really add much to what Minister Robert had to say. As has been pointed out by officials, this is a matter that's with government for consideration. Minister Robert obviously has put forward where the government's thinking was in December, but fundamentally it will be a matter for the government—above me.

**Senator WHISH-WILSON:** So, it's still under consideration actively now? It hasn't been ruled out?

**Senator Seselja:** As I said, I can't add anything to what Minister Robert has said.

**Senator WHISH-WILSON:** Is he still the minister, though? I'd just better check; I'm not sure whether he still is.

**Senator Seselja:** Yes.

**Senator WHISH-WILSON:** He is. Thank you.

**Senator KETTER:** You've told me, Ms Brown, that the fund is considered as an asset for the purpose of the balance sheet. How does this impact on the fiscal balance or underlying cash balance?

**Ms D Brown:** Sorry, Senator—could you repeat that question, please?

**Senator KETTER:** How does the $2 billion, which you've told me is an asset, impact on the fiscal balance or underlying cash balance?

**Ms D Brown:** To the extent that it's an asset, there's no impact on the underlying cash balance. But if there's a difference between what the fund earns and what it costs to raise funds to fund that investment, that could have an impact on the underlying cash balance. Similarly, there could be an impact due to just the costs of running the fund.

**Senator KETTER:** Why has the fund been designed so that there are several injections of funds to get to the $2 billion over the five years?

**Ms D Brown:** The fund is to help develop the market for securitisation for small to medium enterprise loans. That market is still very small and needs to grow in a way that is
sustainable. The flow of injections just reflects a potential path for growth in the fund, reflecting that the market still needs to develop.

Senator KETTER: Between the time when the fund was announced on 14 November last year and the time when the official public consultation on the fund was announced on 21 December last year, what consultation was undertaken by Treasury with stakeholders?

Ms D Brown: There was considerable consultation. If you want the particular parties, I'll have to take that on notice and get the names, but there was consultation across the industry and with small business industry bodies as well.

Senator KETTER: What was the nature of the consultation?

Ms D Brown: To get a better understanding of the market so that it would inform the development of the consultation paper.

Senator KETTER: Was this in the form of meetings with particular stakeholders.

Ms D Brown: Meetings, yes.

Senator KETTER: Can you explain why there was this time between the announcement and the opening of the formal consultation?

Ms D Brown: It was just time to prepare the necessary documents.

Senator KETTER: I note on your website for consultation, there are ten submissions posted. Were there any more submissions?

Ms D Brown: I'd have to take that on notice. It is a practice not to publish submissions which are requested to be kept confidential. But I'm not aware if there were any in this case.

Senator KETTER: Are you able to tell me how many face-to-face meetings with stakeholders were held in relation to the consultations on this fund?

Ms D Brown: I would have it take that on notice.

Senator KETTER: What involvement did Markets Group have in the development of the Business Securitisation Fund?

Ms D Brown: Financial System Division was involved in the development of the policy proposition and then the development of the corresponding documents to implement that fund, and we did that work in conjunction with the Australian Office of Financial Management, as they would be the ones administering the fund.

Senator KETTER: Was this an idea that was originally floated by Treasury?

Ms D Brown: I would have to take that on notice. We were asked to look at ways to improve access for small business, and we did put forward a range of proposals. It is a proposal that operates overseas. A number of overseas jurisdictions have a similar fund, so it could well have been proposed by Treasury, given that background.

Senator KETTER: If this is the case, was this put forward together with a range of options to the Treasurer's office and or the Treasurer?

Ms D Brown: I'm just conscious of getting close to not giving advice, but, as we said, we were asked to provide advice on how you could help small business access finance, and it was one of a range of options.
Senator KETTER: Is it unusual to announce a fund without any detail as to how it would work?

Ms D Brown: I don't know if I'm able to answer that question. There has always been a range of circumstances. Government made a commitment knowing what it was and then provided subsequent detail later.

Senator KETTER: Yes, the Treasurer put out a press release, but there was no detail on the fund at the time.

Ms D Brown: The content of a press release is a matter for the Treasurer.

Senator KETTER: What are the risks associated with a fund like this?

Ms D Brown: The explanatory memorandum to the bill expresses some of those risks that had to be considered as part of the development of the proposal. Similarly, they were considered as part of development of the regulatory impact statement, which is included with the explanatory memorandum. Some of those risks would go just to the credit risk that the government is taking on. Some of the risks go to how effective it is as a policy, given that it is an embryonic market and we'll have to learn more about how that market operates. But those risks largely have been described in the explanatory memorandum or the regulatory impact statement.

Senator KETTER: How would government funds protect it, if they're loaned out from the fund?

Ms D Brown: With the loans, there would be an investment mandate that the AOFM will administer the fund in accordance with, and that will set out issues such as the credit rating for the securities that are invested in, as a way of managing, as an example, the credit risk.

Senator KETTER: What is the constitutional head of power for recouping funds if they're loaned out to private businesses?

Ms D Brown: There are about nine of the constitutional powers, and they've all been expressed in the legislation. I'd have to—

Senator KETTER: I'm sorry, could you repeat that?

Ms D Brown: There are a number of heads of powers that have been relied on in drafting legislation, and they're specified in the legislation, but I'd have to take that on notice to make sure I don't get those heads wrong.

Senator KETTER: So that's spelled out in—

Ms D Brown: Yes, it is; it's contained within the legislation.

Senator KETTER: Presumably Treasury would advise the government if there were constitutional head of power issues associated with a particular policy?

Ms D Brown: Yes, it is a practice for all cabinet submissions to have advice on constitutional risks.

Senator KETTER: Right, this issue has been sorted. There is no question about the constitutionality of—

Ms D Brown: No, the constitutional risk has been considered, yes.

Senator KETTER: The risk has been considered, and what's the assessment of the risk?
Ms D Brown: I'm afraid that that's going to legal advice and advice to the government. It was a matter that was considered by government.

Senator KETTER: Senator Seselja, in the Treasurer's announcement about the fund there was no detail provided as to how it would work. Is that an unusual situation, in your experience?

Senator Seselja: Sorry, I'm not quite sure what you mean.

Senator KETTER: There was a media release put out—I haven't got the date of that, but that would be on the record somewhere—and the fund was announced, but there was no detail as to how it would operate.

Senator Seselja: Sorry, was that a question?

Senator KETTER: Yes. I'm asking: is it unusual?

Senator Seselja: One, I don't accept the premise, but, in terms of making announcements and putting out details subsequently, I don't think that's particularly unusual.

Senator STOKER: I have some questions about the mortgage broking industry. Can you briefly outline what Commissioner Hayne's recommendations were in relation to mortgage broking.

Mr Kelly: Perhaps you can break it into three parts. One part was for best interest duty to apply to mortgage brokers, akin to the sort of duty that applies in other contexts, such as to financial advisers. There is a second part, which is to make other parts of the regulation of mortgage brokers akin, again, to financial advisers. So, with issues around where you have a kind of broker who's displayed poor conduct, that's reported, the clients are advised, the regulator knows and steps are taken to deal with that broker and keep them out of the industry and stop them moving around. And the third—the one that's attracted the most attention—goes to the commission structures that relate to mortgage broking. The two central features of commission structures are the payment by the lender to the aggregator, and then from the aggregator to the broker, of an up-front commission. Then, over time, there is a trail commission while that loan continues to exist. The recommendation from Commissioner Hayne was that the trail commission be abolished first, within a 12- to 18-month period, and that within another 12- to 18-month period the upfront commissions also be abolished. At that point, you would be, effectively, moving to a model in which the broker would be charging the customer rather than the lender for the service they provide.

Commissioner Hayne also referenced the possibility of thinking about not only requiring the broker in effect to charge the customer for the service provided but actually requiring bank branches, when they're arranging loans on behalf of people who walk in the door, to also charge a fee that recovers costs and so on. But that was flagged more as a possibility.

Senator STOKER: Is that last point you make what's been described as the Netherlands model?

Mr Kelly: Take that altogether, and that's part of what the Netherlands model is, yes.

Senator STOKER: What did the Productivity Commission have to say about mortgage brokers in the context of competition?

Mr Kelly: This is perhaps testing my memory more. That was a report last year. Essentially I think you could say that it made clear that there is an important role for mortgage
brokers in competition in the mortgage market, but it pointed to aspects, for instance, where the edge of competition they provided dulled, and it recommended that, to improve competition arising from mortgage brokers, the trail commissions be removed but up-front commissions be retained. It also made some other recommendations regarding clawbacks. Clawback is different from trail. With trail commission, while the loan still exists the mortgage broker gets a payment, say every year. With a clawback arrangement, if the loan ends early, the lender might go to the broker and try and claw back the amount they've paid, say on the up-front commission. So the Productivity Commission made recommendations to limit the period over which clawback could operate and also to ensure that, where a broker has their commission clawed back, they then don't go to their client and try and get their client to reimburse them.

Senator STOKER: Are there any other recent reports that have looked at this issue, and, if so, what have they said about whether or not up-front commissions should be banned?

Mr Kelly: I can't remember how specifically the Financial System Inquiry, led by David Murray, looked at this issue, but it certainly didn't make any recommendations to change fundamentally the commission structures in this area. The ASIC report came out in 2016. It did a major study of mortgage broking with a heavy focus on the remuneration aspects. It identified a number of what it saw as issues in the industry and particularly flagged the importance of changes to certain aspects of the commission structures. They weren't necessarily about trail or up-front per se but about other forms of commission that arise. Volume commission is when, if you hit a certain total level of lending in a period, you get some additional top-up. Or, with a campaign that runs for a certain period of time, over that time you get a higher level of commission for the loans that you arrange. It also raised issues around soft-dollar benefits.

One consequence of the ASIC inquiry, and partly at the behest of the then minister for financial services, was that the industry set up a combined industry forum. That has, in a sense, been progressing industry efforts to address those aspects of the commission structures that ASIC had expressed the most concern about. At one level that has largely happened, but it's not fixed, and you can't ever say that they won't come back. So the government's response to the royal commission is that the government will legislate to also ensure that those sorts of commission arrangements are banned.

Senator STOKER: We've mentioned the Netherlands model briefly. When considering its appropriateness, are there any differences in the way the Netherlands deals with home ownership as compared to Australia?

Mr Kelly: That's probably to some extent going to areas outside my expertise and, I expect, that of most of the people sitting at the table. There are two that I would be aware of. As I understand it, brokers in the Netherlands provide something more akin to financial advice when they're dealing with the client. They consider other products and cover a broader range of circumstances, so that makes them a bit different. You can think about a mortgage broker as being in a sense a financial adviser but on a very select range of financial issues. They're not trying to do the kind of full financial plan.

I think the other one that's commonly referenced, but I haven't myself directly sought to check, is the tax treatment in the Netherlands; I understand it allows the deduction for the fees paid by clients to brokers, both in respect of owner-occupied homes and investment
properties. My memory is that that, in a sense, reflects a general difference in the tax treatment of housing by the Netherlands. It wouldn't be something I'd describe as the treatment of mortgage brokers; it's, in a sense, just part of their general tax system.

Senator STOKER: How many mortgage brokers are there in Australia?

Mr Kelly: I think I've seen different counts. Around 20,000 is the number in my head.

Senator STOKER: Do you know the percentage of mortgages that originate through broker channels—specifically, for financial institutions that are smaller?

Mr Kelly: I think that, for the last set of industry statistics that I saw, which came from one of the broker associations, it was close to 59 per cent in aggregate. I don't have a number for those for the small institutions, and often people reference rural and regional areas. I would expect, for many, it would be larger, but that's not always going to be the case; it's going to be institution-specific.

Senator STOKER: What do you expect would be the impact on the mortgage-broking industry of removing up-front commissions? I should clarify: removing them on the current basis?

Mr Kelly: I think part of the government's response to the royal commission was that, in three years, it would ask the Council of Financial Regulators—that's Treasury, APRA, ASIC and the Reserve Bank—to consider the issue of whether up-front commissions should be removed, so, ahead of that consideration by the council, I don't think it's appropriate to give an answer to that.

Senator STOKER: What would be the effect on competition if the number of mortgage brokers in the market were significantly decreased?

Mr Kelly: The number doesn't necessarily always provide, of itself, an indicator of the effect on competition, but I think there would be a general consensus that any kind of major disruption to the mortgage-broker market and its ability to service clients would have, potentially, a negative effect on competition.

Senator STOKER: Who would be the big winners of a dramatic decrease in the size of the mortgage-broking industry?

Mr Kelly: The answer that people would commonly give is that those lenders with established branch networks, who, in a sense, don't need to rely on mortgage brokers, would benefit from the lessening of competition. At the same time, all those major lenders, I should note, use mortgage brokers, and some of them own aggregators as well, so they have a range of interests.

Senator STOKER: Does that mean, in essence, the bigger banks would be the beneficiaries?

Mr Kelly: That's a commonly-held view.

Senator STOKER: Would that have an impact on the cost of a mortgage?

Mr Kelly: Potentially, any lessening of competition in the market may affect it, yes. It's likely to, in a sense, result in an increase in margins on loans, and, to that extent, increase the price of mortgages.
Senator KETTER: I have some questions about the Consumer Data Right. Firstly, in relation to the privacy impact assessment, can you tell me when the draft PIA was released or sent to stakeholders?

Ms D Brown: The comprehensive data right bill is a bill that's got an interest of both Markets Group and what is now Fiscal Group. Markets Group did a lot of the work around the open banking review by Scott Farrell. Since the development of the consumer data right legislation itself would've done the work around the privacy questions that you've asked, they're questions better directed towards Fiscal Group rather than Markets Group.

Senator KETTER: So you haven't done any work in relation to the privacy impact assessment?

Ms D Brown: There has been work done. But to give you a better answer—it's actually a question—the work would have been done by what is now the Fiscal Group, previously Structural Reform Group. I'm happy take that on notice, but they are the more appropriate group to answer that question.

Senator KETTER: So in terms of, say, the consultation process, the timing of the various actions that were done there, was that Fiscal Group?

Ms D Brown: That's right.

Senator KETTER: I don't have any further questions.

CHAIR: We have no further questions for Markets Group. Thank you very much to Treasury and to Markets Group for appearing before the committee today.

Proceedings suspended from 18:10 to 19:10

Inspector-General of Taxation

CHAIR: I welcome representatives from the Office of the Inspector-General of Taxation. Have you got an opening statement for us?

Mr McLoughlin: We do indeed. Thank you for the opportunity to appear before the committee. As you would no doubt be aware, since our office last appeared, the term of the former inspector-general came to an end on 5 November last year, and I've been appointed by the government to act in this role until 5 May or such time as a permanent appointment is made.

Our office continues to press ahead. Our taxpayer complaints service continues to receive increased demand, which we are meeting. Our review function also continues to deliver important reporting with analysis and recommendations for improvement. Our office has also taken the opportunity during this period to achieve enduring service delivery improvements or, to use a Stephen Covey expression, to ‘sharpen the saw’ in optimising our systems and processes in response to feedback which had been delayed previously due to competing objectives. Of central importance amongst the feedback is that our dedicated team specialist services that we provide to taxpayer complainants are strongly valued by all. The wrinkle in the feedback is that they want greater public awareness or projection of our office so that other citizens know about it and can benefit from it.

Our first step, late last year, was to include the 'Taxation Ombudsman' moniker within our Inspector-General of Taxation title. The existing title is well appreciated amongst tax professionals and government but not so well known in the broader community. The
ombudsman concept is more accessible and reflective of the free service we provide to taxpayers, including the more vulnerable people such as unrepresented individuals and small businesses.

Our next step was to increase public awareness of our office and the specialist Taxation Ombudsman services we deliver in line with community feedback, including that received from members of parliament. Our range of social media channels was expanded to include Facebook on initial set-up, as well as LinkedIn more recently. Given the challenges associated with delivering services nationally from a single office based in Sydney, these are important additions. We also continue to ensure that channels for culturally and linguistically diverse individuals, along with the hearing or speech impaired, are appropriately supported.

It's pleasing that our program to increase public awareness through our office's new social media platform is already helping more taxpayers through increased complaint service access and positive feedback. Overall, complaints to our office have increased by 28.1 per cent in the financial year to date, totalling 1,815. We continue to serve a range of complainants, including individual taxpayers, small businesses and tax practitioners, across a wide range of matters, including ATO debt collection, superannuation and lodgement issues amongst others. Small business complaints have also increased to 28 per cent of total complaints. This is very encouraging, but it also represents something of a challenge for our office, given its size and resources, in managing increased complaint and review work.

Our review work also continues. Our investigation into the ATO's use of garnishee notices, undertaken in response to allegations reported in the joint ABC Four Corners investigation, is well progressed. It examines the allegations of inappropriate use of ATO powers to issue garnishee notices and extract payments, particularly from small business taxpayers. This review is expected to be completed in the coming months.

The review of the future of the tax profession has been finalised and is awaiting release from the minister. The review examined the impact that technological, social, policy and regulatory changes have on the tax profession. It also aims to canvass the challenges ahead and realise potential benefits for tax practitioners, the ATO and the Tax Practitioners Board, as well as the broader community.

Of course, the services provided by our office would not be possible without the commitment and care that our dedicated team of taxation specialists provide, and I would like to express my personal thanks to them for their continued and tireless work. Thanks very much.

CHAIR: Thank you very much, Mr McLoughlin. Are there any further comments from any of the other officers at the table? No. How long have you been in the acting IGT role now?

Mr McLoughlin: Since the former inspector completed his term on 5 November. I've been acting since then.

CHAIR: Since 5 November.

Mr McLoughlin: Technically from the 6th, yes.

CHAIR: Yes, fair enough. I was interested when you said that the number of complaints has gone up so significantly. How many FTEs do you have—sorry, full-time equivalents?
Mr McLoughlin: How many do we have now?

CHAIR: Yes.

Mr McLoughlin: We currently have 30 staff, but it's always a challenge to get to our full level of full-time equivalents at 35. But that's where we are at present.

CHAIR: Okay. Has that grown in the last year, two years?

Mr McLoughlin: No, that's the same number of ASL that we had when we first opened the agency for complaint-handling. Obviously, we had a history well before that, with the review work that we have undertaken.

CHAIR: Okay. And you said that you are taking in complaints from individuals, small businesses and tax practitioners. I'm interested in the tax practitioners. What sorts of complaints do you receive from tax practitioners?

Mr McLoughlin: Tax practitioners can raise issues on a range of matters. They could be representing taxpayers who are individuals or small business when they come to us. The nature of the dispute work, in a sense, that we look at is what I would describe as pre-assessment work. We do get a lot of practitioners who are aware of the office and know how to access our services whereby they are trying to clarify facts or issues before assessments so that we can iron out wrinkles before people get to more serious disputes. We sometimes find that there are just a range of different kinds of misunderstandings between taxpayer and tax office. Because our team has direct access to the ATO systems independently, they're able to investigate and to provide assurance and comfort about whether or not things that the ATO are saying are correct, or where they might be misunderstanding what the ATO is trying to communicate. In other circumstances, there can be just gaps between what information is required and what's expected in order to be able to determine assessments appropriately.

CHAIR: Right.

Mr Pengilley: If I could add to that, Chair. For tax practitioners who are able to sort out some problems directly with the ATO, there are some other issues too that they come to us for assistance with in terms of processes that aren't operating as they would expect or the like which impact on how they perform their role and their services to their clients.

CHAIR: Okay, interesting. Senator Ketter?

Senator KETTER: I think you might have confirmed this first question, but the date of Mr Nooroozi's departure was 6 November?

Mr McLoughlin: The 5th was his last day; the 6th is when my appointment commenced in November.

Senator KETTER: The 5th, right. There has been a process underway for selecting a replacement for him, I take it. There is a process?

Mr McLoughlin: The process is managed by government.

Senator KETTER: Okay. Can you tell me when that process began?

Mr McLoughlin: The question is probably best directed to the government or to the Department of Treasury. I'm aware the position was advertised some time ago.

Senator KETTER: Which part of Treasury would that be?

Mr McLoughlin: I believe it's one of the senior deputy secretaries who is looking after it.
Senator KETTER: So you’re not in a position to tell me how many—have you interviewed for the position, Mr McLoughlin?

Mr McLoughlin: I was not asked to interview.

Senator KETTER: Right. Have you discussed the role of the IGT with the tax commissioner?

Mr McLoughlin: The role of the IGT?

Senator KETTER: Yes.

Mr McLoughlin: Certainly, we have periodic discussions with the commissioner to talk about issues that might be of interest or might be an opportunity to improve the system. We certainly look to try and make sure that dialogue is effective to ensure that both of our agencies operate independently. We are also looking to make sure that taxpayers are getting the best support that they can get where complaints are arising so that we can resolve those cheaply and efficiently and, more importantly, caringly and in a time-sensitive manner.

Senator KETTER: I understand what you’ve said. Is it appropriate for the two roles, which many would perceive as adversarial—the IGT and the commissioner—by design? Are there concerns about having discussions about how you might undertake the role of acting IGT?

Mr McLoughlin: In relation to the agency and making sure that the agency is doing its job appropriately, there is a protocol that is in existence that was set by the commissioners and by a previous IGT some time ago. We generally have operated to that protocol, which involves ensuring that we do communicate between our offices.

Mr Pengilley: If I could just add to that, the protocol that was in place has been in place since the IGT was created. I suppose the former inspector of the former inspector signed it with the commissioner, I think, two commissioners ago. It has a lot of procedural detail in there which no longer reflects the current practice, and it doesn't even refer to complaints handling, so there is a need to update it. The question is, at the agency head level moving forward, in terms of the arrangements between the agencies with the protocol, whether it is something we keep as a historical document, and how to provide clarity for staff of both agencies in how we conduct the complaints handling and our review work. So there is a need for discussion at senior levels to move that forward. That's something that's been discussed even with the former inspector and commissioner, and it's been moving through for some time. So that's coming to fruition.

Senator KETTER: My next question is to the minister. In terms of the interviews for the replacement for Mr Noroozi, are you able to tell us—whatever did conduct those interviews; perhaps there was a panel of some sort—whether there has been a recommendation to the Treasurer?

Senator Seselja: I'll have to take that on notice.

Senator KETTER: Are you able to tell me whether there was a tax lawyer at a Sydney law firm recommended to the Treasurer?

Senator Seselja: I'll take that on notice.

Senator KETTER: I would also like to know why the Treasurer has not signed off on the recommended candidate for the role.
Senator Seselja: Again, I'll take that on notice.

Senator KETTER: If that is going to be the case, I have a number of questions that perhaps I will follow up with. I'll put these on notice, based on that. My question would be: does the Treasurer have a preferred candidate that is different to the panel's recommendation?

Senator Seselja: If you want to list a bunch of them, I'm happy to take them on notice.

Senator KETTER: Okay. When is a new IGT expected to be announced? Will the government consult with the opposition about any appointment close to an election? I'm interested, given that the government's moved fairly quickly on other appointments recently, why this particular appointment has taken so long. Is the government working with the IGT on a restructure or modification of the IGT's remit? Mr McLoughlin, you might be able to answer that question. Are you working with the government on a restructure or modification of the remit of the IGT?

Mr McLoughlin: It's a matter for government, but I'm certainly not involved in anything of that nature.

Senator KETTER: Back to you, Minister. Have any government announcements about changes to the IGT, including its name, delayed the appointment of an IGT? Those are the questions. Are you happy to take all those on notice?

Senator Seselja: Yes.

Senator KETTER: Thank you. Mr McLoughlin, just quickly, do you support the former IGT's recommendation that a new position of a second commissioner of appeals be created in the ATO to ensure independent appeals for taxpayers?

Mr McLoughlin: I think the notion of what was outlined in relation to that report was actually a broad range of changes that were anticipated. There have been a number of other changes that have occurred and certain other recommendations regarding boards and things of that nature that the office has also made in the past. I do appreciate that the sensitivities around some of the small-business concerns that have been raised in the media and elsewhere are part of the underlying desire to try and achieve better outcomes for taxpayers, outcomes that are more caring and considerate in approach. I think there is a range of options that are available. From our office's perspective, the integrity of our review approach is to look at all the facts and assess what the best arrangements may be.

The government has some policy approaches that it has adopted to try and help small business. I think it's good that everyone's looking to try and assist small business in that manner. As to the precise manner in which that should be done—that report was in 2015. We would ordinarily look to review that situation again in the totality of the circumstances in which we find ourselves now. For our office to project a particular policy position without having done a review more currently is something that I wouldn't recommend, just from an integrity perspective. This is something that I think is worthy of consideration in the context of a review that seeks to look at all the things that have changed since then, the things that have been adopted from that original report and some of the other considerations that have been brought in more recently that haven't yet been tested. It's difficult to know whether or not the nature of the underlying problem would be addressed by the policy changes that the government has also brought in more recently.
Senator KETTER: And yet Mr Noroozi was prepared to recommend the creation of this new position. You don't agree with that?

Mr McLoughlin: I'm not saying that. Mr Noroozi, in his valedictory speech, expressed a range of sentiments and ideas and notions that were personally reflected by him as he was leaving the office. There were obviously comments that were of his own making, but there were quite a number of things that he raised about the nature of the office, the future of the office and the sorts of things that should be considered going forward. And I think they're appropriately personal comments that were made by him at that point in time.

Mr Pengilley: If I could also add: in relation to the recommendation about the second commissioner in that 2015 report, we did also say that there were a range of options and that it was an option that was halfway. The reason for that—I would have to point you to the particular paragraph—was to make an incremental change and see how that flowed through the system before taking the next step.

Senator KETTER: I take it, Mr McLoughlin, you'd like to see more work done to examine that option?

Mr McLoughlin: To be fair to everyone, in the current circumstance—obviously the nature of the small-business concerns and the relationship with the tax office have been in the media for quite some time. I think it would be terrific if we had the opportunity to look at that in a review context where we're able to consider the full range of initiatives that both sides of parliament have been looking at, looking at it with a proper policy mandate to be able to consider that more holistically. I'm not saying that the attempts that the government and the opposition are looking at are not worthy of consideration. I just think it's best to look at the range of changes that have already been brought in, as well as other changes that have occurred, in order to understand the nature of what we think is the best way forward into the future. That's why I think the integrity of our office does have such a strong brand, because we do take—and are usually afforded—that time out to make sure that we are putting forward what we think is in the best interests of the tax system and ensuring its confidence overall.

Senator KETTER: I certainly agree with you on that point.

Australian Securities and Investments Commission

Chair: I now call officers of ASIC to join us. Good evening to you all. Have you got an opening statement?

Mr Shipton: Yes, I have a short one. On behalf of my colleagues, thank you for the opportunity to appear before this committee. Since our last appearance, we have gained some new members at the commission. In late January Karen Chester joined ASIC as Deputy Chair. Ms Chester is well known to this committee, having been Deputy Chair of the Productivity Commission as well as having extensive experience in other parts of government and with industry. Also, Sean Hughes rejoined ASIC as a commissioner last December. Mr Hughes was the former chief executive of ASIC’s peer regulator in New Zealand, the Financial Markets Authority. He too has a long experience in banking and superannuation in addition to his two previous stints at ASIC. Along with Commissioners Chester and Hughes, joining me today are Deputy Chair Daniel Crennan QC and Commissioners Cathie Armour, Danielle Press and John Price. We also have Executive Directors Chris Savundra, Joanna Bird, Greg
Kirk, Tim Mullaly and Warren Day, along with Chief Supervisory Officer Oliver Harvey and Senior Executive Leaders Jane Eccleston, Tim Gough and Laura Higgins.

Since we last appeared in this place, the government has released the final report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. Yesterday ASIC released an update on its planned actions responding to the royal commission's final report. This update is a crucial document for ASIC as it highlights our important work to date of putting ASIC on a more effective strategic footing. The royal commission's recommendations reinforce, and will inform part of the implementation of, steps ASIC has been taking as part of a strategic program of change that commenced in 2018 to strengthen our governance and our culture and to realign our enforcement and regulatory priorities. The royal commission's recommendations directed at ASIC are one of the key parts of this update. Along with ASIC's extended remit and strengthened powers and penalties, it also deals with referrals from the royal commission and mentions the establishment of an office of enforcement and a why-not-litigate posture. It also touches upon our broader strategic change program and the policy and regulatory reforms advocated by ASIC over the years.

Following the completion of an internal enforcement review, led by deputy chair, Daniel Crennan QC, the commission has very recently adopted a resolution to establish a separate Office of Enforcement within ASIC. The office will be responsible and accountable to the commission. The office will investigate and take enforcement action where there are contraventions of the law we regulate. It will centralise enforcement decision-making processes and adopt a why-not-litigate enforcement stance. It will functionally separate enforcement teams as much as possible from non-enforcement-related contact with regulated entities.

The impact of these changes, changes that were also identified as needed by the royal commission, will only become fully visible over time. However, as an early indication, since 1 February 2018 there has been a 15 per cent increase in the number of ASIC enforcement investigations on foot and a 50 per cent increase in the number of ASIC enforcement investigations of misconduct by large financial institutions, or their employees or subsidiary companies.

It would also be remiss of me not to mention passage this week of crucial legislation that will boost significantly ASIC's ability to do its job. The Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Bill 2018 will increase maximum prison penalties for the most serious offences, and increase civil penalties for companies now capped at $525 million. Significantly, the bill introduces a civil penalty for breach of the cornerstone obligation of section 912A of the Corporations Act—that is, the efficiently, honestly and fairly obligation on licensees. I should also acknowledge that yesterday the parliament passed a bill that significantly improves protections for whistleblowers who report misconduct about companies. ASIC will be responsible for enforcing this corporate whistleblower protection regime.

In closing, I would like to underscore one broad point: ASIC is very focused on enforcement and litigation. Corporate Australia should know that ASIC has the very clear will to take wrongdoers to court. As the royal commission found, this is what Australians expect
of their regulator and this is what we will deliver. My colleagues and I are now ready to take your questions.

**CHAIR:** Thank you very much. I assume you would like to table your opening statement?

**Mr Shipton:** With permission, Chair.

**CHAIR:** I might kick off the questions—and I know that there are lots of questions this evening for ASIC. First of all, can I just say that when I was a young I used to watch *Justice League*. There was Superman with Batman, Aquaman and Wonder Woman—all these sorts of things. I swear to you that when I look out at the ASIC commissioner and deputy commissioners—all these wonderful people—I am actually so impressed with the calibre of people who you have recruited to ASIC, Mr Shipton. I think I've just called you Superman, which is probably inappropriate!

**Senator WILLIAMS:** It's Superperson these days!

**CHAIR:** Superperson, that's exactly right. On behalf of the committee here, welcome to those of you who are new to ASIC. I know that some of you are not new to estimates. Thank you very much to those of you who are still returning, and welcome back to the recidivists!

Mr Shipton, I'll start by asking you about the banking royal commission. Obviously, Commissioner Hayne has handed down both his interim and his final reports now. I would be interested to know your observations on the comments that Commissioner Hayne has made about ASIC's performance in both the interim and final reports.

**Mr Shipton:** Thank you for the question. They were, both in the interim and final reports, incredibly important comments by the royal commissioner, and I wanted to particularly highlight his focus on the regulatory and enforcement culture inside ASIC. Any organisation, financial institution or government body needs to be cognisant of its culture and what it is projecting itself to be. This has been an area of focus for my fellow commissioners and me for as long as I have been at the agency to improve, sharpen and make more efficient our regulatory and enforcement culture. What the royal commissioner has clearly done is give us, I believe, encouragement and a very strong steer that we should never be reticent or reluctant about using the most powerful and important regulatory tool that we have, which is enforcement. In fact, I would go as far as to say that, without the enforcement tool and the efficient and effective use of the enforcement tool, all of our important other regulatory tools lack the credibility and can't be backed up. To me, that is the great takeaway from the royal commission.

There are a number of other important takeaways which, I think, I should highlight, including the fact that the royal commission has reinforced the utility and the importance of the twin peak structure, at the same time suggesting ways to improve the operational efficiency of that. One of the areas that I believe is important to highlight is the direction to better coordinate, collaborate and cooperate with APRA. I'm very pleased to be able to say that this has been a part of our agenda for quite some time. So there are a number of important takeaways from the final and interim reports. Above all, I will highlight that, in both the interim report and the final report, the root cause of the problem—where the challenge emanated from—is in the financial sector itself. I know the question is about what ASIC needs to take away from the royal Commission. It is an understanding of the enormity of the challenge, the root cause of that challenge, which is a failure of professionalism and a failure
of culture inside financial institutions and the sector itself, and the enormity of the task ahead of us, because the important work of the royal commission is now over and we are the agency, along with other agencies like APRA, that is left on the field, and we take that responsibility incredibly seriously. We have the will and the dedication to do it, and we want to deliver better outcomes for Australians in a financial system that they deserve.

CHAIR: Let me split this question into two. Do you believe that, in the past, ASIC has been too soft on enforcement, and do you think that ASIC is now entirely aware of the urgency that is required to implement the changes that you spoke of in your opening statement?

Mr Shipton: Let me take the urgency point first up. Absolutely, yes; there is an urgent imperative to act as quickly as we possibly can, in terms of the cultural mindset, which we are embracing because the fine men and women in our organisation want a better, fairer, more efficient, stronger financial system. We are resolved, as a collection of individuals and a collection of professionals, in an urgent way to react and respond and to use all our regulatory tools—enforcement primarily but other ones as well—to ensure that we get a better financial system. As regards the reflections on time gone by, I will refer back to the royal commission. The royal commission has essentially pointed out to us that we need to use our tools more effectively and sharply, particularly when it comes to larger financial institutions. I think that's an important takeaway; I think that's an important lesson to be learned. There is a number of submissions that we made, which have been pick up in the final report, about the enforcement pyramid, the regulatory pyramid. Essentially, what the royal commission enhanced and reinforced is that we as an organisation should never be reticent or afraid of going up towards the top of that pyramid, which is the use of enforcement tools—litigation tools—to ensure that we appropriately deter and denunciate harmful, illegal and wrong activity.

So, yes, without a shadow of a doubt, there are lessons to be learned, but we have, as an organisation, embraced those lessons. I would point to the fact that, in our response to the interim report of the royal commission, we acknowledged the need to sharpen our usage of enforcement tools. Again, what we have done in response to and in the lead-up to the final report is to invest time, energy and effort, by the creation of the Office of Enforcement, to ensure that that urgency and need that you talk about is institutionalised and operationalised in our organisation.

CHAIR: The Office of Enforcement is the outcome of Mr Crennan's enforcement review. It's great to have an Office of Enforcement, but what are the next steps? What does the Office of Enforcement actually do that will make the difference?

Mr Shipton: I will start, and then I'll ask Deputy Chair Crennan to pick up. Essentially, I believe that the importance of the Office of Enforcement is to make better decisions in and around our important enforcement activities. It is also about ensuring that we can more appropriately apply the use of our enforcement tool. There are a number of important principles, which perhaps Mr Crennan can elaborate on, underpinning the creation of the Office of Enforcement. One of them that I want to highlight, because I believe very strongly in this as a regulatory tool moving forward, is personal and individual accountability. With that, I'll hand over to Deputy Chair Crennan.
Mr Crennan: The Office of Enforcement has a number of characteristics. Some of them have been agreed by the commission on recommendation in my report with my fellow authors. They have been, as I said, recently approved by way of resolution, and they set out the guiding principles of the Office of Enforcement and some aspects of it. I might just take you to some of them.

The Office of Enforcement will include almost all enforcement activities that take place within ASIC. That might be markets or financial services and so on. The royal commission obviously had the remit of financial services, and that's obviously not the totality of the enforcement matters that occur within ASIC. The features of the Office of Enforcement are, firstly, a focus on litigation as the primary regulatory tool that we have at our disposal. This is partly informed by the royal commission and partly informed by our recognition internally that litigation is our primary tool for the purposes of deterrence, public denunciation and punishment. There's obviously the protective element of litigation. You're protecting people in the future and you're punishing the person who has misbehaved in the past.

One of the features is that the Office of Enforcement will take matters through the enforcement process more quickly. Once the thresholds are met, the matter will go into enforcement. In the past, enforcement matters have taken place throughout the organisation, so this is a concentration of the decision-making and processes that relate to enforcement matters. It's not one physical office, obviously; it's throughout Australia in various different offices. It will be hierarchical, in the sense that there will be a subcommittee of the commission who sit at the top of the Office of Enforcement, and they will effectively be supervising the activities and ensuring that the operational guidelines and the guiding principles are strictly adhered to. So there will be uniform operational guidelines. Obviously, there are some distinctions, for example, between markets and financial services. A market matter might not have a victim, in a sense, because the victim will be the efficiency of the market. So it would need to be sufficiently flexible to account for the various aspects of the Australian economy and commerce that we regulate. So one of the primary features is that matters will go to enforcement more quickly. We will set KPIs that we'll test ourselves against, which will include timing KPIs. One of the criticisms that have been made of ASIC in the past is lack of timeliness for all sorts of reasons.

The other aspect is that there will be a very strong focus on litigation, and a negotiated outcome must be something that's only considered when you've looked at the enforcement, looked at an investigation and you're sufficiently capable of deciding whether a negotiated outcome such as an enforceable undertaking—for, I would think, quite a limited range of enforcement matters—would be an appropriate outcome.

There will be a very strong focus on both corporate accountability and individual accountability. At the moment—and I don't want to take up too much time—the Corporations Act accounts for individual responsibility in some areas but not so much in others. For example, in some criminal matters, such as 912D—that's the reporting obligation—in order to pursue an individual for the criminal sanction which is available you have to go through the Criminal Code. So there are some aspects of legislative reform that we, as an organisation, perceive to be necessary, particularly for the individual responsibility aspects. That is certainly one of our focuses, but we need the government and parliament to come with us and provide us with further tools. Obviously, the penalty bill is excellent news for us because it
gives us a wider range of penalties attached to 912A, which we haven't had. As I've said recently, publicly and in this place, when you can only seek a declaration and it's an expensive exercise to get there against a very well funded defendant—being a bank, for example—one has to imagine being creative about what else you could do with that misconduct when you don't have a proper outcome. Now we do. Now we have astronomical fines. They're crippling fines—sorry, crippling civil penalties. We also have fines and we have very long periods of custodial sentences available for us to pursue via the CDPP and via the courts. As I've said before, if a criminal jurisdiction is added into the Federal Court then that would also be helpful for us, because we're dealing with a uniform court and uniformity is really a very powerful tool for us as a regulator. That's something we're very conscious of, and we're certainly trying to do it internally.

I won't take up too much more time. One of the other aspects we've agreed to is to have a very strong enforcement communication strategy so that when we have our outcomes, good or bad, we're able to go out there and explain to the community what's happened in language that they will comprehend and appreciate. We've always done that to the extent that we could, but we're very conscious that that is part of it. I must say that when I discussed this with Professor Ian Ramsay one of his strong points was: you need a strong enforcement regime and culture within ASIC, but you need to be in a position to readily communicate it to the outside world and to the government. One thing that will help us there is a very strong focus on measurement. We're going to carefully measure why we don't do things, if we don't do them; how many things we do; and how much time it takes us to do things. We will take the lead, to some extent, from the SEC. We looked at how they have improved their enforcement office—'division', I think they call it—recently, and one of their key features is very careful measurement of their enforcement activities. So that's another key feature. In doing so, we will improve our data and our analysis and therefore be able to report to you more readily, report to the public more readily, and measure ourselves and improve ourselves in the process.

**Mr Shipton:** Could I supplement that very quickly. Through the prism of the royal commission, they put down three challenges for us. The first was to improve our enforcement culture. This is aimed at improving our enforcement culture. They put down a challenge that we needed to start with, as a premise, 'Why not litigate?' This is about how we can start with that premise of 'Why not litigate?' And then, finally, the royal commission said to us that we needed to think carefully about the functional separation of our enforcement activities. Again, the Office of Enforcement is aimed at doing that.

**CHAIR:** Thank you very much. I have so many more questions but I know other senators do too. Senator Ketter.

**Senator KETTER:** Mr Price, last time you were good enough to give us an update on investigations in relation to Mr Palmer and Queensland Nickel, particularly in relation to allegations of shadow directorships. Can you give us an update as to where those investigations are up to?

**Mr Price:** I can. I have mentioned in this place before that our inquiries in relation to Mr Palmer are well progressed. That remains the case. We are in discussion at the moment with certain other government agencies just to advise ourselves on how best we might go forward in relation to what the best case to make is in relation to these matters.
Senator KETTER: I take it you're not able to tell us which other agencies you're talking about?

Mr Price: No. I have been on the record previously saying that all options are on the table in respect of this matter. That potentially includes criminal.

Senator KETTER: Can you update us on the court case regarding criminal charges against Mr Palmer for allegedly aiding and abetting, counselling or procuring the commission of an offence by other person in relation to his Coolum resort?

Mr Price: Yes, I can. There have been a number of preliminary decisions—I suppose that would be the layman's term—made in respect of that. They are various matters as to jurisdiction, as to whether or not the claim should be struck out and so forth. It now looks as if we are in a position to hear the substantive matter, but we won't know that until the next hearing date in the relevant court in Queensland, which is not too far away.

Senator KETTER: Can you tell me the date for that?

Mr Price: It is due for a mention in the Brisbane Magistrates Court on 22 February.

Senator KETTER: Are there any newer allegations that you've started following up on, and if so are you able to tell us what they are?

Mr Price: At this stage our inquiries are focused around the Hyatt Coolum matter and Queensland Nickel and associated Palmer companies. There are no additional matters that I can notify you of at this stage.

Senator KETTER: Can you tell us whether ASIC has spoken to Mr Palmer himself or Mr Mensink as part of your investigation?

Mr Price: I would really prefer not to go into that level of detail.

Senator KETTER: That's fair enough. Last time, Mr Price, you said you were considering a range of possible offences that Mr Mensink may have committed. Is there any update you can give us about that?

Mr Price: Again, I would prefer not to go into that space at the moment. I should say that that is one of the areas we are speaking with other government agencies about.

Senator KETTER: Do they involve possible criminal offences?

Mr Price: All options are on the table at this stage.

Senator KETTER: Is there any update around attempts to extradite Mr Mensink from Bulgaria?

Mr Price: I'd prefer not to go into that particular point.

Senator KETTER: Whilst Mr Palmer has previously indicated to the courts that he didn't know how to contact Mr Mensink, he told media that he speaks with him every day and appointed him to head up a company in London. If Mr Mensink did move to London, would that make extradition an easier proposition?

Mr Price: Extradition is always challenging. There are various things that you need to think about for each particular jurisdiction. I would need to take that question on notice to provide a fulsome answer.

Senator KETTER: I'd like to turn to the issue of royal commission referrals. There was a report in Fairfax yesterday which indicates that ASIC has undertaken 41 separate
investigations out of revelations from the banking royal commission. This article said that the royal commission made 11 specific referrals to ASIC relating to eight separate entities and, in addition, there were two referrals made during the commission's hearings. Firstly, I'm asking you to verify whether that's correct?

Mr Crennan: I might answer that by going through the referrals and the case studies and telling you the numbers. There were two referrals during the course of the commission after the interim report, and there were 11 referrals in the final report. They do relate to eight entities. We are progressing the assessment of nine referrals of those 11, and two are currently the subject of investigation. I should say that of those nine referral some are 912A cases and some are section 13 of the Insurance Contracts Act cases or referrals. As I alluded to earlier, those sections, at the time which this conduct took place, didn't have any civil penalties attaching to them. I should say also that there were a very large number of case studies in the royal commission that are not subject to referrals. Some of them were being investigated prior to the royal commission. At the moment we have 14 investigations relating to case studies that were not subject to referral. We are also progressing the assessment of a further 16 case studies as to whether investigation ought to be commenced. We've also obtained outcomes in relation to nine case studies. I'm not sure off the top of my head whether that adds up to 41, but it's well over 40 matters that we are either investigating or assessing or we actually have in court, such as Nulis and the Dover matter, or we have run the case to trial.

Senator KETTER: Going specifically back the referrals from the royal commission, there are 13 of those. Have you taken up all of those referrals?

Mr Crennan: All of those referrals are either being investigated or assessed.

Senator KETTER: How many staff have been assigned to these specific referrals arising out of the royal commission?

Mr Crennan: Can I get back to you on that question?

Senator KETTER: I want to go to the fact that the article talks about your enforcement teams starting investigations into another 12 matters, which you have just alluded to, and started two proceedings relating to NAB entities Nulis and MLC, as well as Dover Financial Advisers and Mr McMaster. Is that all correct?

Mr Crennan: Yes.

Senator KETTER: Can you tell us what stage each of those matters is up to?

Mr Crennan: Those two matters are in court, so proceedings have been issued last year, and they are going through interlocutory phases. And are you asking about the matters that are otherwise going to be investigated?

Senator KETTER: Yes.

Mr Crennan: As I said earlier, of the 11 referrals, two are in formal investigation stage and nine are being assessed for investigation.

Senator KETTER: So you have got the referrals from the royal commission and you've got other investigations that you're doing?

Mr Crennan: That relate to case studies.

Senator KETTER: Can you tell me how many staff are assigned to these matters. I'm interested if you could distinguish between the staff working on these matters—you call them...
arising out of the case studies—in comparison to the 11 referral matters that we talked about earlier. Are the staff working across both categories of matters?

**Mr Mullaly:** We have within my area around 125 staff, which is about a 15 per cent increase over the last year, and we are continuing to increase. All of those staff are available to look at the referrals of case studies arising from the royal commission. We have a particular team that started off as our wealth management project, looking at a range of issues, some of which were case studies in the royal commission and some of which have arisen subsequently. There are approximately 50 FTEs working on that project, both in enforcement and within other teams. It's very difficult to say precisely this many are looking at this many, because we need to be pretty flexible in the approach that we're taking. Where we can we are utilising external legal firms to assist us to get through the work that we've got on. Of course we use barristers and others to assist as well.

**Senator KETTER:** So there's a pool of 50 staff that are working across case study investigations, as well as referrals?

**Mr Mullaly:** Case studies, matters that we've picked up. There's a lot of work, say, in relation to financial advisers that have been reported through to us out of the work that's been done by our financial advisers team. Apart from the case studies, there's been a fairly significant rise in breach reporting by financial institutions, and a number of those matters are also part of the work that we are doing here. There's somewhere in the vicinity of 100 individual matters that that project is looking at. As I say, there are people dedicated and there are people who are working across those matters and other matters within financial service enforcement.

**Senator KETTER:** ASIC is quoted as saying: Aside from the Royal Commission case studies, ASIC's enforcement teams are undertaking a large volume of work on a range of misconduct relating to major financial institutions and their representatives. ASIC expects these investigations to result in a number of referrals to the Commonwealth Director of Public Prosecutions for assessment for criminal prosecution.

Mr Crennan, you might have touched on this earlier, but can you outline the extent of the volume of this work and how many cases you're looking at in this area?

**Mr Crennan:** Cases that go beyond the royal commission?

**Senator KETTER:** Yes. These are cases outside of the royal commission case studies. You've got enforcement teams looking at major financial institutions and their representatives and a range of misconduct there.

**Mr Crennan:** Yes. As Mr Mullaly said, in the expanded wealth management project where a number of these cases reside, for example, against banks and other large financial service licensees, I understand there are 107 individual matters that are in that expanded wealth management project. That's a very large part of the enforcement matters that relate to large entities in the financial services space. Some of them are criminal investigations or investigations moving towards preparation of a brief for the CDPP.

**Senator KETTER:** They're the ones I would like you to focus on: the ones where we're heading towards referrals to the CDPP for assessment?

**Mr Crennan:** Are you asking me how many of those matters are there?

**Senator KETTER:** Yes.
Mr Mullaly: We'd probably have to take that on notice to get the—

Mr Crennan: Exact number.

Mr Mullaly: Yes. I know there are 11 matters under investigation at the moment of case studies from the royal commission where there is potential for a referral to the CDPP. However, as Mr Crennan indicated, matters are still under assessment and those may end up also being matters that potentially could be referred to the CDPP as well. Within that group of 107, I think there's potentially seven individual financial adviser matters where we may get referrals to the CDPP. I just don't want to say that that's the complete sort of scope of those—

Senator KETTER: I'm interested in how many referrals you are expecting to go to the CDPP. Maybe a ballpark figure?

Mr Mullaly: Out of a royal commission on wealth management? I'm reluctant to give a number without having that information with me. I'd prefer to take it on notice, if I could.

CHAIR: Senator Ketter, can I pass on to another senator and then come back to you?

Senator KETTER: Sure.


Senator WHISH-WILSON: Mr Shipton, there have been a number of stories in recent years about ANZ and their ownership of AmBank and their joint venture with AmBank and the 1MDB scandal. Recently, a Malaysian politician was threatening to sue them for $900 million. Goldman Sachs Group is facing criminal charges. I think they've apologised to the Malaysian government. This has all mostly broken in recent weeks. I'd like to ask you some questions about ASIC, how they might not be pursuing ANZ and what jurisdiction you have, but, before we do that, I'd like to take the opportunity to ask you about your time at Goldman Sachs in Hong Kong and what your position was. Would you like to say something about the 1MDB scandal?

Mr Shipton: Is it an open question?

Senator WHISH-WILSON: You could perhaps start by saying what your position was at Goldman Sachs?

Mr Shipton: My last position at Goldman Sachs, which ended in very early 2013, was managing director in the executive office. I had responsibility for being head of government and regulatory affairs for Asia-Pacific in the executive office.

Senator WHISH-WILSON: Did you have active scrutiny or jurisdiction over Goldman Sachs' strategy towards Malaysia?

Mr Shipton: No.

Senator WHISH-WILSON: No? I understand they had a policy called 'monetising the state', to go after especially sovereign wealth funds and make a lot of money out of those kinds of structures and deals. So you had no oversight or jurisdiction over what was going on in Malaysia?

Mr Shipton: No oversight over Malaysia as regards business, and I was not involved in the strategy development of the nature that you mentioned. The extent of my role as government and regulatory affairs head in Asia-Pacific was essentially policy. I was working...
with governments, regulators, as well as industry bodies about essentially post-financial crisis reform and regulation of the financial system.

Senator WHISH-WILSON: Obviously, if there is any uncertainty about this at all, it's a good opportunity tonight to clear this up. Have you been in any contact with the Malaysian royal commission into 1MDB, or do you expect to be contacted by them in any way, shape or form?

Mr Shipton: Me personally, no. I've had no contact with any agency in relation to 1MDB, nor has anyone representing it been in contact in relation to those matters.

Mr Price: Senator, were you asking whether ASIC has any contact?

Senator WHISH-WILSON: I'll get to that in a second. I'm interested in what your jurisdictional relationships are around this. Would you like to answer that, Mr Price? Are you working with them in relation to ANZ or any other matters?

Ms Armour: We've had what we would describe as the type of routine inquiries that we would have with a foreign regulator when an Australian entity is involved in a matter, so we've had discussions.

Senator WHISH-WILSON: Including inquiries in relation to the royal commission?

Ms Armour: Our inquiries have been with our Malaysian regulatory counterparts.

Senator WHISH-WILSON: But right at the moment, though, Ms Armour, or previous to?

Ms Armour: Reasonably current.

Senator WHISH-WILSON: I understand that ANZ was notified internally through AmBank in 2014 that there were irregular transactions. Did they notify you at the same time in 2014 that they, through their own internal structures, were aware of irregular transactions?

Ms Armour: That is something that I don't have the answer to, so I would have to take that on notice.

Senator WHISH-WILSON: If you could, because that's quite important in relation to some of the questions I would like to ask you, if I get a chance a little bit later. Mr Shipton, there were three large bond issuances to 1MDB. The first one, Project Magnolia, was in 2012, while you were in Hong Kong. Were you sitting on any of Goldman's five internal committees that assessed deals of this nature, or were you providing any guidance on regulations or government relations?

Mr Shipton: No, I wasn't.

Senator WHISH-WILSON: None?

Mr Shipton: None.

Senator WHISH-WILSON: It has been reported quite widely in media here that Alex Turnbull was at Goldman Sachs in Hong Kong at the time. Did you know him?

Mr Shipton: No. I didn't know Mr Turnbull, but I actually believe he was based in Singapore— but I could be wrong. I never got to meet Mr Turnbull.

Senator WHISH-WILSON: It's reported that he sent an email to colleagues expressing concern about the initial 1MDB issuance at Project Magnolia. I'm just wondering if you got that email or if were aware of that internal email?
Mr Shipton: No, I wasn't aware of that internal email. It's probably worth pointing out that, even though a part of my responsibilities was regulatory affairs, I wasn't responsible or involved in regulatory compliance and, therefore, I wasn't involved in that particular transaction or transactions of those natures.

Senator WHISH-WILSON: Were you aware that Goldman Sachs were making a lot of money at the time from these bond issuances—$116 million was, I think, the fee they got from the first one. It must have flowed through to the bonus pool across the Asian division at the time. Were you aware of that?

Mr Shipton: I was not aware of the revenue stream from that particular transaction—no, not at that particular point in time. I have subsequently learnt about those revenue streams in newspaper reporting. I see that you have a book in front of you—

Senator WHISH-WILSON: It's quite a read!

Mr Shipton: which I've also read and found, I'll be honest, very confronting for everybody involved in that sordid, horrible story.

Senator WHISH-WILSON: That was going to be my next question, because I notice you did leave in 2013. I was just going to ask you what your reasons were for leaving. I understand there were other people in Goldman at the time who were very concerned about the lack of transparency and the obscene amount of money that was being made on these bond issuances. Did you leave because of concerns about these issues, or was it for another reason?

Mr Shipton: Again, I was not involved in any way with this transaction or transactions of that nature, but you are right to say that I left the financial services sector at that particular point in time. The reason why I left finance at that particular point in time was that I believed that finance generally had lost its way. I believed that it was not serving the communities and the people that it should have, and I said to myself, 'Well, you have to do something about that.' It was for the very reason of coming to the conclusion, the very sad and sorry conclusion, that there was not enough professionalism in finance, that it had lost its way and that I needed to do something about it. So, my next job immediately after leaving a financial services firm, was to become a regulator, because I wanted to do something about it. I wanted finance to find its way back to serving communities, to serving the economy and, of course, without a shadow of a doubt, ensure that the reprehensible behaviour that you see in this 1MDB tragedy never happens at all. So these stories actually motivate me to be a regulator and inspire me, and I hope inspire others, to contribute to finance by serving in a great institution and great agency like ASIC. I also will say that I was very proud to serve at the Hong Kong SFC during my term there.

Senator WHISH-WILSON: Just as a matter of interest, given you've left Goldman now and, of course, you are under parliamentary privilege, do you think Goldman Sachs is going to learn from this criminal prosecution and the massive fines that are being levied on them at the moment for this kind of behaviour?

Mr Shipton: Senator, I hope so. But, more broadly, I hope that all of finance learn from this. In fact, only this morning, I was doing staff training and I took in my copy of that book and I encouraged my colleagues at this staff training to read that book—*Billion dollar whale*, I believe it's called—because I think it's very important that we as regulators understand the extent of wrongdoing that can happen. I'm happy to pass on to you, and I'm certainly going to
pass on to my colleagues, a long list of sordid stories which have been published and, unfortunately, probably will be published into the future. May I just close by saying: I see my job is to limit the future publications of those books, not because of censure but because we don't want these stories to happen, and we most definitely don't want these stories to happen in Australia.

Senator WHISH-WILSON: Could I ask in relation to ANZ, given your experience, you were in a senior position and you weren't aware of what was going on in the Asian division: do you believe that ANZ's response so far to the media that they also weren't aware, although they had directors and senior executives at AmBank at the time, that this dodgy transaction was occurring, that they wouldn't have been aware of what was going on within, I suppose, their joint venture with a Malaysian organisation?

Mr Shipton: I can't comment on the escalation facts in that particular case. May I just sort of step out of the question and make an observation that we have already found in our close and continuous monitoring program that there is insufficient escalation inside financial institutions of important matters, whether they be breaches or potential breaches. So, generally—and, again, I emphasise, I'm talking about a general observation—financial institutions need to do a much better job of identifying malfeasance or incidents of concern and escalating them to the right people so that they're aware of them and can do something about them before they fester and cause more harm to real people.

CHAIR: Senator Whish-Wilson, your time is up. I might turn back to Senator McAllister and then I'll come back to you later on.

Senator McALLISTER: I want to ask some questions about the continuous disclosure obligations of listed companies under the Corporations Act. What obligations do listed companies have to keep the ASX informed about developments or events that could affect the value of their shares?

Mr Shipton: I'll ask Ms Armour to explain.

Ms Armour: The obligation is to keep the ASX, on behalf of the market, informed of changes which would have an impact on trading of the securities, broadly speaking—that's not a verbatim reproduction of the listing rules. There are some exceptions to the sort of information that needs to be made public. Broadly speaking, if there is a proposal that isn't complete and is confidential, there isn't an obligation to make that sort of announcement.

Senator McALLISTER: Is there a specific requirement for companies to be honest in the statements that they provide to the market?

Ms Armour: There is a law we administer that actually does require that—so we could bring action if there is a misleading statement made to the ASX.

Senator McALLISTER: And it would be ASIC's responsibility to take that action?

Ms Armour: Yes.

Senator McALLISTER: What's the penalty range, roughly; financial penalties?

Ms Armour: There is a criminal provision, but I would have to come back to you with the range of penalties.

Senator McALLISTER: So both civil and criminal penalties are available, depending on the severity of the offence?
Ms Armour: Yes.

Senator McALLISTER: Are you aware, Ms Armour, of media reports that Mr Hockey used his position as Australia's ambassador to the US to help Mr Andrew Burnes lobby for a government travel contract?

Ms Armour: I have read some of those reports.

Senator McALLISTER: Yes, it's been a big story. Andrew Burnes is the CEO of this travel company, Helloworld Ltd, and is also the Treasurer of the federal Liberal Party, and he's a very close friend of many Liberal politicians. Helloworld has issued a statement about these media reports to the ASX. I don't have a copy of that here, but the substance of the media report that it was responding to—it came out this morning—was essentially: that Andrew Burns contacted Joe Hockey; that Joe Hockey subsequently directed staff at the US embassy in Washington DC to meet with representatives of a Helloworld subsidiary, QBT, to discuss the embassy's travel arrangements; and that at least one DFAT official raised concerns about conflicts of interests arising from the meeting, because they didn't learn that Mr Hockey was a substantial shareholder in Helloworld until after this meeting had occurred. The government has denied that any meeting to discuss the embassy's travel arrangements took place. If we go back to Helloworld's statement to the ASX, it also denies the claims made in the media reports.

This afternoon, David Crowe, a journalist with Fairfax, put up a story at around half past five. In that story, he says that there is an email from a DFAT official, dated 24 April 2017, that reads:

'Ambassador Hockey has asked that I set up a meeting while you are in Washington on Wednesday. Would you be available at 10:30am, hopefully the ambassador can join the meeting but the Minister Counsellor Justin McPhillips who is in charge of administration at the embassy will definitely meet with you.'

There's information in the public domain that contradicts that denial. I guess this raises a serious question about whether the statement that Helloworld has filed with the ASX is in fact true or dishonest.

Ms Armour: The normal process—and I'm not commenting on this particular instance because I haven't read the material—

Senator McALLISTER: Of course.

Ms Armour: that you've referred to—is that the exchange would ask questions of a listed company if it had some concern that the information that had been provided to the exchange was incorrect.

Senator McALLISTER: I'd like to actually table the statement that Helloworld has circulated, if that's acceptable?

CHAIR: Yes.

Senator McALLISTER: I also have a copy—although, I admit, not a particularly great copy—of the email that is referred to in Mr Crowe's article.

Ms Armour: And you'd like a legal opinion from ASIC on this?
Senator McALLISTER: I suppose my question is: do these apparent contradictions between the stories about Helloworld's situation concern you, given the obligation that Helloworld does have to honestly communicate with the market?

Ms Armour: I think the questions are: is it relevant to trading in the stock of the listed company, and is this a material matter? They're questions of judgement. Obviously the exchange will have a look at it and ask for clarification if they are concerned. We, in the normal course, would have a look as well and decide whether or not we think there's a need for any clarification. But it's a little bit—

Senator McALLISTER: Can I ask you then, Ms Armour—it is quite confusing. You've got a different story coming from Helloworld, and it's different, again, to the story provided by the government and different, again, to the reports in the media—

Ms Armour: I just note that you've provided me with a short email. It's not clear what sort of meeting's being discussed—a personal meeting or an official meeting. There's no context to it. If the journalist involved would like to provide material to the exchange or to ASIC which would give it more context, that would be very helpful.

Senator McALLISTER: Can I ask you to examine these matters? I think they are serious and I think that they deserve examination, because there are just so many different stories about Helloworld's position. I understand that you have got a range of factors to consider, but will you take a look at that, please, Ms Armour?

Ms Armour: We'll follow up.

Senator McALLISTER: Thank you very much.

CHAIR: I should just confirm that ASIC is an independent body and doesn't take directions from this committee.

Ms Armour: Exactly.

Senator SINODINOS: That would be politicising it.

CHAIR: That would be highly inappropriate.

Ms Armour: That's why I used the words 'follow up'. Whether or not we make formal inquiries is a question of judgement that we would apply.

CHAIR: Thank you, Ms Armour.

Senator McALLISTER: I'd simply make the point that Helloworld have issued a statement to the market. They obviously think the incident is a material matter. Investors may be making trading decisions on it—in fact, I think there have been movements in the stock price of the company over the last 24 hours—and I think that, in that context, it is actually quite important that the statements that are being made in the market are accurate.

Ms Armour: We agree. We think it's very important that people are making decisions about trading based on appropriate information—we absolutely agree with that. I don't want to make any suggestion in relation to this matter, but, generally speaking, it's not always the case that, if something is reported in the press that's contrary to something a company has said then it is necessarily misleading.
Senator McALLISTER: Of course. What is required is an independent person to get to the bottom of the facts, and I am asking ASIC, as an independent body, to take that task on. I don't think you or I can make any assumptions about what's accurate or not.

Ms Armour: No, but the actual degree with which we pursue a task is a question of judgement. We take into account all the range of facts. We've heard your interest, and we'll take that into account.

Senator McALLISTER: Thank you.

CHAIR: Before I throw to Senator Williams, I just want to follow up on a similar but unrelated matter. Last night, at about 7.30 or so, this committee's secretariat circulated a draft of the chair's report from an inquiry into the credit and financial services targeted at Australians at risk of financial hardship. This has been colloquially termed the Afterpay inquiry. This morning, at around 11.15 am—sometime between 11.15 and 11.40—Afterpay shares dropped in value by around 12 per cent or so, from a high of $19.14 to a low of $16.19. They did rebound slightly and closed at around $17.44, but they were down nearly eight per cent, which is a quite a lot. Afterpay has made no market sensitive announcements since the middle of January, and the ASX200 closed only slightly down today, less than 0.2 of a per cent. Afterpay's historical beater is around 1.61 per cent, so that wouldn't appear to explain such a drastic drop in its share price. Can I ask, ASIC, have you undertaken any preliminary examinations of today's trading of Afterpay shares?

Ms Armour: We agree, there was a price drop in the nature you mentioned. Yes, that has come to our attention. There was a similar drop this another listed company.

CHAIR: Zip Co and Flexigroup.

Ms Armour: In accordance with our normal processes, those sorts of drops come to our attention and we are looking at those.

CHAIR: Have you noticed suspicious trading patterns in relation to Afterpay and Zip Co shares?

Ms Armour: The volatility at the particular time was of concern to us, so we will be following that up.

CHAIR: So there are further investigations underway?

Ms Armour: Yes.

Senator WHISH-WILSON: Was there much liquidity?

Ms Armour: It appears there was. That is another reason why we thought we should follow that up.

CHAIR: How long does it typically take for ASIC to come to a final decision as to whether you conduct a further investigation?

Ms Armour: Typically what we will do is look and see what trading did occur and who were the accounts that traded, and then follow through those accounts to see who the owners of the accounts were and if there are any explanations. You're right; as far as we aware, there wasn't a general announcement preceding the drops. That would have potentially been an explanation. We do need to follow up and look through and see which were the accounts to get some idea about whether there is something more suspicious.
CHAIR: Thank you. We'll follow up on that one.

Senator WILLIAMS: Mr Shipton, in 2009 we had a Senate inquiry into liquidators. We recommended that ASIC be stripped of the control of the insolvency practitioners industry. In 2014 we had an inquiry into ASIC and we described you as a timid and shy regulator, or words to that effect. Now Commissioner Hayne is being very critical of the job of ASIC. My question is simple: has ASIC got the message that the expectations of the Australian people are that you are to lift your game?

Mr Shipton: Loud and clear, Senator. Loud and clear.

Senator WILLIAMS: Thank you. Next question. To lift your game there's more activity, and you already highlighted to the committee the extra activity you've carried out in the last 12 months. I want to understand, Mr Shipton: are you resourced well enough with both money and labour?

Mr Shipton: Like any agency, we would always like to have more resources. I will say we are in very positive and productive conversations with the government on resourcing. They are at a positive stage in the inquiry and they are very advanced. Of course, I can't go further than that, except to say that I am a pleased with the state of the conversations and the recognition of the underlying importance to staff and resource regulatory agencies.

Senator WILLIAMS: Good, because if you get extra work—and no doubt you and your team are going to have extra work, Mr Shipton, because of the royal commission—you need the resources. Let's hope that is forthcoming and it all works well. There are several things with the royal commission on which I disagree with Commissioner Hayne. I think he's done a good job and the legal team are brilliant. Rowena Orr QC has become a household name. One thing I'm very concerned about is the point of sale finance for car dealers, machinery dealers et cetera.

Just recently, my wife and I bought a new John Deere Gator. It was $24,000. We put down $12,000 and we financed the other $12,000 with John Deere at zero per cent interest, which is about as good an interest as you're ever going to get when you borrow money—zero. Commissioner Hayne has suggested that the availability of this point-of-sale finance to customers be done away with. ASIC has looked at this point-of-sale finance, is that correct?

Mr Shipton: Yes.

Senator WILLIAMS: Did you have any problem with it?

Mr Shipton: We have a number of concerns. I believe that we mentioned it at the time—and I'd have to defer to my colleagues who were involved in that particular inquiry and report. We'd be happy to provide further and better particulars.

Senator WILLIAMS: I'll take it up with the ACCC tomorrow, because if they're taken out of the competition world of finance and it's left to the banks or other institutions then competition will be reduced. I thought that what ASIC had done as far as looking at point-of-sale finance was that you didn't really see a major problem. For example, Toyota might have their own finance section, and if the Toyota dealer issues trader finance in competition with the banks and other financial organisations then surely the competition is good. But you're not the ACCC boss, so I'll put that to them tomorrow.
Criminal charges in relation to superannuation trustees: Mr Crennan, there are no criminal charges in relation to trustees for superannuation funds. Is that correct?

**Mr Crennan:** Yes.

**Senator WILLIAMS:** I believe it came to the Senate in September 2017, and the opposition and the crossbenchers did not support the changes. Am I seeing a situation where if a trustee of a superannuation fund slices or siphons off money, steals money—call it what you like—then they can't face criminal charges?

**Mr Crennan:** Under ordinary criminal law, a theft is a theft.

**Senator WILLIAMS:** Yes.

**Mr Crennan:** A trustee is in a not dissimilar position to a director. Under the Corporations Act, a director can face criminal charges for acting dishonestly. So there is no logical reason that the trustee shouldn't be under like obligations and face like criminal sanctions in circumstances where the conduct is the same or sufficiently similar.

**Senator WILLIAMS:** Yes, right. Mr Shipton, a headline in *The Australian*, on Tuesday 22 January was, 'Bans—but no fine—for adviser who fleeced clients of $4.7 million.' His name was Graeme Walter Miller. Who is familiar with the case?

**Mr Shipton:** I would say one of my colleagues is, Mr Mullaly. I believe he's coming to the table.

**Senator WILLIAMS:** I will just repeat this for you, Mr Mullaly: 'Bans—but no fine—for adviser who fleeced clients of $4.7 million.' How can you fleece $4.7 million and not get fined? Can you explain that to the committee and to me please?

**Mr Mullaly:** The matter is still under investigation, Senator Williams. We took particular action to stop conduct. We might bring injunctive action—

**Senator WILLIAMS:** You banned him from managing corporations for three years for running the scam through these companies: CFS Private Wealth, BDM Asia Pacific and Combined Financial Solutions. Is that correct?

**Mr Mullaly:** That's right.

**Senator WILLIAMS:** So it's still under investigation?

**Mr Mullaly:** That's right.

**Senator WILLIAMS:** We'll leave it for that. Thanks, Chair, and good luck, everyone!

**CHAIR:** Thank you, Senator Williams.

**Senator McALLISTER:** I have the additional estimates budget papers for ASIC. At page 103, there's a table that outlines the budget expenses for outcome 1. Right at the bottom, there are the total program expenses. This is the bulk of ASIC's work, is that right? Outcome 1? That describes what you do?

**Mr Shipton:** We don't have those numbers in front of us.

**Senator McALLISTER:** Okay. It is the additional round of budget estimates. Occasionally, we do ask about the budget!

**Mr Shipton:** Could you take me to the page, Senator?

**Senator McALLISTER:** Yes. It's page 103.
Mr Shipton: And the line item you're asking about?

Senator McALLISTER: I'm just looking at the total expenses for program 1.

Mr Shipton: Yes.

Senator McALLISTER: This is the bulk of ASIC's work. This is your resourcing, essentially.

Mr Shipton: Yes, I believe so.

Senator McALLISTER: So the revised estimate for 2018-19 is $498 million or thereabouts.

Mr Shipton: Yes.

Senator McALLISTER: But then that drops to $474 million next year, $424 million in the 2020-21 year and then $423 million in the 2021-22 year. Is that correct?

Mr Shipton: Yes, that's correct.

Senator McALLISTER: So, if you tally all that up, it appears that ASIC will receive just over $174 million less in funding over the next four years than it would if today's funding level were maintained over the forward estimates. You might have to trust me on the maths, but that's right, isn't it? There is a substantial drop-off.

Mr Shipton: On the numbers before me, yes, that would appear to be so.

Senator McALLISTER: How are you planning to deal with the reduction in funding?

Mr Shipton: Again, as I responded to Senator Williams, we are in very active and positive discussions with the government right now on our funding and our forward funding for the periods into the future that you mention, so I would caveat any conclusions reached on the basis of these figures with discussions that are taking place now.

Senator McALLISTER: If you have a look at page 106 in the same document, the top line in the expenses goes to employee benefits. That essentially goes to your staff, doesn't it?

Mr Shipton: Yes, that would be FTE, full-time employment.

Senator McALLISTER: In a related way, you see that falling from $222 million this year to $213 million the following year and $189 million. When you add all that up, similarly, it looks like ASIC will receive $71 million less in funding for employee benefits over the next four years than it would if today's level were maintained over the forward estimates. In the absence of a funding boost, you're going to have to lose staff, are you not?

Mr Shipton: In the absence of an increase in funding, yes, there will be constraints and we would be asked—we would be compelled—to look at constraining our expenditure. But, again, I would highlight that I've been actively engaged for quite some time, along with my colleagues, in very productive discussions of this nature, highlighting the fact that resourcing appropriate staff levels, including investments in technology, are an important imperative.

Senator McALLISTER: So, from your prospective, the resource ask doesn't just go to staff; it actually goes to a range of other capabilities.

Mr Shipton: Correct. Staff, of course, is the backbone, and I will take this opportunity to say that the fine men and women in ASIC are the core of what we do. But, of course, yes, we have desires in relation to the development of regulatory technology and the use of data analytics. We have a regulatory transformation program which is very technology driven. So,
yes, there's a range of asks, and, of course, I would also like to take the opportunity to say that some of the expectations on us moving forward in relation to enforcement are going to require expenditure. We'd also like to expand the regulatory tools that we're applying, like close and continuous monitoring. So, yes, there's a range of different factors, and, again, I'd stress that we are in very positive constructive dialogue with the government, who are aware of what we want.

Senator Seselja: I can add to that. You'd be aware, Senator, that the government announced in August the injection of $70 million over two years, and this brought funding in 2018-19 to $374 million and estimated staffing levels to 1,853, which is around the highest it has ever been. But, in addition to that, there was always the prospect of and we always flagged the fact that we would be looking at the resourcing of ASIC going forward. In our response to the royal commission we stated:

While the Government has also provided significant funding to the regulators, the findings and recommendations from the Royal Commission, along with more than 20 referrals will require the regulators to take on new responsibilities and, in many cases, simply do more. The Government will work with the regulators to ensure that they remain appropriately resourced and will consider what additional funding is required in the 2019-20 Budget context.

So we've put the funding injection there, which brings it up to $374 million in 2018-19, but we acknowledge and we understand that, as part of this budget process, we'll be looking at what additional resources are needed.

Senator McALLISTER: In retrospect, do you think the cuts in the last few years were a mistake?

Senator Seselja: Do you want me to go back to the 2014 budget?

Senator McALLISTER: Yes. Do you think the cuts to ASIC were a mistake, given that you both are now saying that ASIC is in negotiations with the government about increased funding. You've made a temporary increase, which is now reflected, I think, in the MYEFO. Do you think it was a mistake to cut it in the first place?

Senator Seselja: It's a pretty significant boost, which you're—

Senator McALLISTER: That's not really the answer to my question.

Senator Seselja: Maybe you're skating over that part and you're skating over the fact that we've brought it to $374 million in the 2018-19 year, which is a substantial amount of funding—significantly more than what we inherited. But you could go back to a budget from five years ago and look at savings when we inherited a $50 billion deficit. But what we've been doing is putting in significant additional resource, responding to the needs of ASIC.

Senator McALLISTER: So no regrets about 2014?

Senator Seselja: We look at the record in terms of what we're investing and what we will. And we're able to do that, of course, because we're bringing the budget back into surplus. And that is because we've delivered a strong economy. That's something that Labor could only have dreamt of.

Senator McALLISTER: So no regrets.

CHAIR: I think that we might break at that point in time. The committee will resume at 9 o'clock.
Proceedings suspended from 20:46 to 20:59

CHAIR: The committee will now resume. Mr Shipton, I understand that you have a correction for the record before we begin?

Mr Crennan: It's actually mine.

CHAIR: I'm sorry, Mr Crennan.

Mr Crennan: It's not a correction. I just would like to reflect on Senator Williams's question about trustees, and I may provide a supplementary answer in writing.

CHAIR: Yes. All right. That should be fine. Thank you, Mr Crennan.

Senator WHISH-WILSON: I've got quite a few questions and probably limited time, so I'd just ask for fairly direct answers, if that's possible. A last question on 1MDB, Ms Armour, and ANZ: You have taken on notice whether they informed ASIC when they were aware in 2014.

Ms Armour: Yes.

Senator WHISH-WILSON: Could you just briefly say whether, under the Corporations Act 2001, Australian directors working at a company like AmBank in Malaysia would still be covered under Australian law?

Ms Armour: I think we have to—

Mr Price: know the context

Ms Armour: Know the context. Whether or not it's an Australian incorporated company would be pretty critical, but there'll be other factors as well. So it probably needs the context.

Senator WHISH-WILSON: Do you want me to put those factors to you on notice?

Ms Armour: That would be helpful.

Senator WHISH-WILSON: But it probably goes to my next question: has ASIC, in any way, looked at the joint venture that ANZ had with AmBank and asked for any details around responsibilities of Australian directors? I understand they were in senior positions at AmBank at the time.

Ms Armour: I probably should just say, if you don't mind, that we're liaising with our regulatory counterparts, so it's probably enough for us just to do that for the time being. I hear the sorts of issues you're asking us about—

Senator WHISH-WILSON: It has been raised in the public domain quite a few times now, and, of course, people will say: 'What is ASIC going to look into? Do they have jurisdiction?' So I'll put some questions to you on notice, if that would—

Ms Armour: That would be good. To the extent that they may be difficult for us to answer, we will try and explain why that might be.

Senator WHISH-WILSON: Okay. That would be great. In relation to mortgage brokers: my understanding is that Commissioner Hayne wrote to ASIC in November 2018—so, last year—and made a number of referrals to you for companies that may have breached 1041G. Are you able to tell us which companies the commissioner referred to in his referral to ASIC?

Mr Crennan: I might take that. They're matters that are currently under investigation, and so we won't be able to name the companies.
Senator WHISH-WILSON: Any idea how long that investigation will take?

Mr Crennan: I can tell you that the investigations are on foot.

Senator WHISH-WILSON: So it's underway now?

Mr Crennan: 'Investigations'.

Senator WHISH-WILSON: 'Investigations', with an 's'? Okay, thank you. Is ASIC able to provide a view on the whole concept of trailing commissions and conflicted remuneration within the mortgage-broking sector? Do you have a view on whether they should be removed or not? That is one of Commissioner Hayne's recommendations.

Mr Hughes: I will answer that question, if I may. The position that ASIC took in relation to its report was that, in its earlier report, it hadn't found evidence that they lead to adverse consumer outcomes. We have, obviously, read the report from the Productivity Commission and from the royal commission itself. The position in relation to trailing commissions is as was outlined in that report, and we'll be following the government's response to that report.

In terms of broader industry improvements to the position of conflicted remuneration, we understand that the consumer bodies have left the CIF. So we are watching with interest those developments at the moment, and will, obviously, work with the government to support its response to the royal commission.

Senator WHISH-WILSON: I know Senator Williams asked you quite broad questions about whether you need more funding, and—as you said, Mr Shipton—if you ask any agency that, of course they'll say yes.

Obviously, your remit has grown significantly, especially in the last 10 years. But it's been expanded by 11 royal commission recommendations. For example, earlier you talked about following up. A few years ago you only had six staff working on superannuation. With a lot of issues coming up now, has ASIC attempted to quantify the quantum of funding that you're seeking from the government, and can you tell us what that is?

Mr Shipton: We are working from the ground up, as it were, trying to quantify and determine what appropriate funding is. It would be inappropriate and premature for me to mention those estimates and calculations, except to say that we're still working on them. It's a complex matter—it's an extremely complex matter—and, again, we have constructed positive engagements which are at an advanced stage.

I do think it's worth mentioning, given that this is an estimates committee, and to highlight, that we now have the industry funding model for our agency and our work. That is an important factor in the budgetary considerations of our agency.

Ms Chester: I might just say that you mentioned the 11 recommendations, which do expand our remit by giving us more areas, including in superannuation, but which also strengthen our powers. There are another 23 recommendations that actually impose more restraints and obligations on our regulated entities.

Senator WHISH-WILSON: Yes.

Ms Chester: And so those 23 recommendations also increase our remit, more than materially.

Senator WHISH-WILSON: Yes, so, basically, you're going to need a lot of money.
Ms Chester: Your words, Senator.

Senator WHISH-WILSON: Okay, thank you. I have a couple of quick questions on your audit inspection program. When I first met you, Mr Shipton, in Sydney, we had a special hearing on this. My understanding is that Ernst & Young, as an example, one of our big four, now earns 21 per cent of its revenue from auditing work. That's down from about 28 per cent five years ago. KPMG earns 20 per cent from auditing work, down from 24 per cent five years ago; PwC is 17 per cent, down from 22 per cent; and Deloitte only earns 14 per cent from auditing, down from 19 per cent. Is ASIC concerned that the level of non-audit work being done by our auditors, in particular, the big four, might be compromising the quality of their audit work?

Mr Shipton: I'm going to ask Commissioner Price to respond, and I'll introduce the fact that we are watching very carefully the quality of audits in Australia. We believe—and Commissioner Price can elaborate on this—that there is more work to be done in relation to improving the quality of our audits to protect the integrity of our markets.

Mr Price: There is certainly more work to be done in terms of improving quality. The question of whether or not the provision of non-audit services is a detriment to audit quality—

Senator WHISH-WILSON: Compromises the quality of their audit work.

Mr Price: or enhancement towards quality is actually one that's quite topical at the moment. In the UK at the moment, some of these questions are being ventilated as we speak.

I think it's quite important to remember that in Australia the types of non-audit work that can be provided by these firms is actually quite restricted by law. For example, the sort of work that would put an auditor into a management-type role within a company is not work that can be done if that firm is also doing the audit of the company. I would like to point out that on some matters, such as firms developing specialist expertise in areas like taxation or valuation, having those specialist areas of expertise can actually be very helpful. The people doing that work understand what sort of rigour is required when an audit is required.

I say that because, in the UK at the moment, there is a proposition that, effectively, the largest audit firms should split their work—

Senator WHISH-WILSON: Structural separation?

Mr Price: Structural separation. I really did want the committee to understand that there are some potential downsides to audit quality in that approach.

Senator WHISH-WILSON: Okay.

Mr Price: Obviously, some conflict issues, or perceptions of conflict, may be reduced, but there are some real questions as to whether it will improve the quality or not. It's actually quite a complex policy issue.

Senator WHISH-WILSON: More generally then, in terms of whether we might go down that road or even look at those kinds of things in the future, are you satisfied with the quality of auditors in corporate Australia? Is a rate of misstatement of 20 per cent, or one in five, acceptable to ASIC? Do you think we're at a point where we need to look at these kinds of potential solutions?

Mr Price: With our audit surveillance program, we adopt a risk targeted approach looking at a limited number of files, and I think our risk targeting is quite good. If you look at the
number of key audit matters—where we had concerns in relation to the largest audit firms—in our latest report, in 20 per cent of the key audit areas we reviewed for the largest six firms we had concerns about whether the right amount of work had been done. That 20 per cent figure is down from 23 per cent in the preceding period. But I would argue—and the profession, I think, would agree—that the number is still too high even for a risk targeted approach. So there's certainly more work to be done in this area.

Senator WHISH-WILSON: Very quickly on that point, Mr Price, could you give us a very quick outline of the kinds of things we could do to improve the state of auditing?

Mr Price: Yes. The key issue that we highlighted in our most recent report was making sure that within the largest firms there's the appropriate focus on culture and a cultural emphasis on audit quality. As you'll appreciate, changing the culture in firms can be challenging. There should be clear mechanisms to hold partners and staff accountable for failures in audit quality, going back to remuneration-type issues. So there's culture and remuneration. And there should be very consistent messages right through the firms that these sorts of issues are non-negotiable.

Senator WHISH-WILSON: Like a BEAR kind of structure that we're seeing for the banks at the moment?

Mr Price: Yes, that's right. So that goes to the people-behaviour side. Thinking about the more technical issues, where we have the most findings in our auditor inspection results is still around things like asset values and revenue, and so the technical approaches that firms take in relation to those matters are areas that need close attention. We provide ongoing things that the firms should be focusing on. We don't do these reports as just a one-off. We're in regular dialogue with the firms about how to improve these things. In fact, for the largest firms in Australia we sit down with them. They prepare an action plan on how they might improve audit quality. We sit down with those action plans and then we review them periodically. Where there seem to be particular elements of an action plan that work at a particular firm, we look at trying to get that adopted by the profession more broadly. So I think there is actually a commitment amongst the firms to improve audit quality. There's a recognition that it needs to improve. We certainly think it needs to improve. The critical question, of course, is how to do it. My message would be: be careful about policy solutions that offer a silver bullet on this issue, because, based on my experience, I'm not convinced that there is a silver bullet, like mandatory firm rotation or structural separation of the audit side from the consulting side. It is actually quite a complex question that requires an ongoing and adaptive series of things to bring it to the standard where it needs to be.

Senator KETTER: Mr Shipton, just to finish up on our discussion in relation to funding matters, you've told us that you've had discussions, and at this stage you seem to have a favourable impression about a potential outcome there. Can you tell me who you're meeting with? Are you meeting with the Treasurer to discuss this?

Mr Shipton: Yes, I and my colleagues have met with a range of officials from the Treasury, including the Treasurer.

Senator KETTER: Have you met with the Prime Minister?

Mr Shipton: No, I haven't met with the Prime Minister.
Senator KETTER: Can you tell us how many times you've met with the Treasurer since the release of the royal commission report?

Mr Shipton: I've spoken to the Treasurer, I think by phone, on one or two occasions and I've spoken to senior officials from the Treasury in person on the phone on a range of occasions.

Senator KETTER: Have you discussed with the Treasurer additional funding to address this increase in workload that we've talked about?

Mr Shipton: Most definitely, yes.

Senator KETTER: I just want to step through a number of areas where ASIC has expressed some concern, and I'll just try to get through these as quickly as possible, so I would appreciate it if we could just look at these questions as quickly as possible. Firstly, on grandfathered commissions, do you have any estimate of the extent of grandfathered commissions for conflicted remuneration out there at the moment? This is bearing in mind that the royal commission recommended that these grandfathering provisions be repealed as soon as reasonably practicable.

Mr Shipton: I'm going to ask Joanna Bird, our executive director in this space, to respond.

Ms Bird: We don't have reliable estimates of the extent of grandfathered commissions. We know that they're reducing. We know that a number of institutions have unilaterally announced that they're turning them off. We've done our own research on a small sample, which would indicate that the amount of grandfathered commissions is now quite small. But the sample we had was 20 licensees across various sectors, so I can't give you an absolute percentage figure.

Senator KETTER: But you're about to start monitoring the extent to which product issuers are going to end these grandfathered commission arrangements.

Ms Bird: Yes. We'll be asked to monitor how a sample of them are turning those commissions off and what steps they're going through to ensure that the benefit is passed on to their customers.

Senator KETTER: From what you've said, I take it you don't have any estimates about the amount of money that's tied up in grandfathered conflicted remuneration.

Ms Bird: No.

Senator PATRICK: [inaudible]

Ms Bird: In super, yes.

Senator PATRICK: I've got a nod from Senator Whish-Wilson.

Senator KETTER: Ms Chester is nodding, so that means—

Ms Bird: Yes, in the super sector.

Ms Chester: And the Productivity Commission is next cab off the rank next, so I'm sure you can ask them for those numbers then.

Senator PATRICK: Okay. I was just trying to be helpful.

Senator KETTER: Have you tracked this in the past—the extent of money that's tied up in grandfathered conflicted remunerations?
Ms Bird: No.

Senator KETTER: That's one area that I think you identify as a priority, Mr Shipton.

Mr Shipton: Yes, it's a work stream.

Senator KETTER: Secondly, on the issue of insurance claims handling, why did ASIC ask for the power to regulate insurance claims handling?

Mr Shipton: Firstly, I'm going to hand over to Commissioner Hughes. But let me start by saying that we identified, through a body of work, concerns in the handling of insurance claims. There were a number of case studies, which have been raised in forums in this place and other places, which highlighted harms being done to the consumer which, in effect, related to the handling of claims. Our jurisdiction was highly limited; hence, that we didn't have jurisdiction was, we believed, a harm that we wanted to address. But I will ask Commissioner Hughes to supplement.

Mr Hughes: Thank you, Chairman. It's a significant piece of work, as you rightly call out. I have some statistics. The number of general insurance claims in the fiscal year 2017 was in excess of 4.6 million, with around 85 per cent relating to retail clients, so it is an important part of our work. It was an unregulated aspect of our mandate, and it's obviously extremely important to consumers, particularly consumers facing difficult situations such as floods and other natural disasters.

Senator KETTER: You say that these harms to consumers could be mitigated or prevented if ASIC had the power to regulate claims handling.

Mr Hughes: Yes.

Senator KETTER: A practical example might be people in North Queensland affected by floods. Would they be likely to receive better service from their insurance if ASIC had the ability to oversee claims handling?

Mr Hughes: The theory that underpins our submission is that this is something that should be within our regulatory mandate.

Senator KETTER: Could ASIC work to ensure that insurers have fair claims handling systems and processes, if it had the ability to regulate this area?

Mr Hughes: That would fall within a number of the general licensee requirements, in addition to the work that we do with insurers on codes of practice.

Senator KETTER: And funeral expenses products, Mr Shipton—that's another area where action is needed?

Mr Shipton: Absolutely, yes.

Senator KETTER: So why did ASIC ask for the exemption for funeral expense products to be removed from the corporation's regulations?

Mr Price: We may have done so. Can we take that on notice, please?

Senator KETTER: Okay. I think it's because of that—I don't want to put words in your mouth, but I understand that it's because that exemption is in place that consumers are exposed to harm?

Mr Price: Yes.

Senator KETTER: So you agree with that?
Ms Armour: Yes.

Senator KETTER: Are there any particular groups of consumers who are particularly at risk of harm whilst this exemption remains in place?

Mr Price: Funeral products are often directed towards Indigenous communities, and there have been problems in the past in respect of those communities. I should say, in general though, it's quite important to think about how previously unregulated activities become regulated. For example, using your claims handling case study, just removing an exemption may not necessarily clearly bring the activity under the financial services licencing provisions, because it may not be completely clear as to whether the activity involves dealing or advice. What I'm saying is that it's actually quite important to think about how these amendments are structured to make sure there are no unintended loopholes.

Senator KETTER: So it's not as simple as just removing that exemption. What else would you say is—

Mr Price: If you were thinking about regulating claims handling, you may wish to specify it as a type of financial service, which would then bring in various licencing obligations like the obligation to have adequate technological, human and other resources, the need to have appropriate financial requirements, and so on and so forth.

Senator KETTER: In the case of funeral expenses products, is it more about the exemption, though, that goes a long way to addressing that?

Mr Price: For funeral expenses, I'd like to think about that further. One thing that may be relevant is whether or not a transitional-type arrangement is needed. If you just switch it off straightaway, what happens to all the existing policies? Do they all get shut down? I just think, with these things, you need to carefully work them through.

Mr Shipton: I'm also going to ask executive director Greg Kirk to intervene, because he's also been on point in some of the policy reform areas on this question.

Mr Kirk: Just to clarify in relation to your earlier question: we have taken the position that a funeral expenses policy should be a financial product under the Corporations Act. That is a firm position we have taken.

Senator KETTER: Could you tell me: how serious is the financial harm caused to vulnerable consumers that are targeted by these products?

Mr Price: It can be very serious. There were some very troubling case studies that were talked about at the royal commission hearings.

Mr Kirk: The key problem being that funeral expenses policies are policies, like insurance, that only stay on foot whilst you continue to pay a premium. The older you get, the premium increases. If people buy them at a very young age, they've paid an enormous amount of money. If the cost continues to go up, they may have to stop paying because they can't afford it anymore, and then that money has just gone down the drain.

Senator KETTER: Can it have an impact on their standard of living and financial wellbeing?

Mr Kirk: Certainly, that can have an impact. They don't have that money to spend on other things.
Senator KETTER: On the point-of-sale exemption: you support the royal commission recommendation to remove the point-of-sale exemption?

Mr Kirk: Yes, we do support that.

Senator KETTER: Does this point-of-sale exemption currently lead to poor consumer outcomes?

Mr Kirk: There, the situation is slightly different. The point-of-sale exemption means the person who's arranging the credit, who is at the point of sale—so they may be in a car dealership, a retail store, electronics, goods and the like—doesn't have to be, under that exemption, either licensed themselves or an authorised representative of a licensee. So that requirement is removed. Nevertheless, the provision of the credit is still regulated. So the lender is regulated—it's subject to responsible lending still—and that lender is responsible for things done at the point of sale by the person who is exempt. Unlike the other situation, where the exemption is meeting something that's not regulated, this activity is still regulated and there are still significant consumer protections there. That said, there could be benefits in terms of having the people at the point of sale directly subject to regulation themselves.

Senator KETTER: Isn't it likely that the removal of that exemption would protect some consumers from misconduct by retail salespeople who are incentivised, as the royal commissioner noted, to portray the loan applicant's financial situation in a way that would warrant loan approval?

Mr Kirk: It certainly would add to the protections for consumers in that position. As I said, it's not that there's a complete absence of regulation of the transaction environment.

Senator KETTER: But taking away the point-of-sale exemption won't actually stop stores from offering credit or referring customers to credit providers, will it?

Mr Kirk: No. It would only mean that the people working in the store, who are assisting people to fill in the forms and make their application for credit, would have to separately either be an authorised representative of a licensee—that's probably the most likely path they would take—or themselves licensed, or part of a licensed business.

Senator KETTER: Do you agree with the commissioner's observation that dealers do not always record the true position of loan applicants because they are incentivised to push loans through in order to make sales?

Mr Kirk: We have certainly seen situations where the application, admittedly, is the consumer's application, but the application where someone in the dealership is assisting them to make it doesn't accurately reflect the consumer's position.

Senator KETTER: Does this lead to people getting loans they can't afford?

Mr Kirk: That certainly can happen, though there is an obligation on the credit provider to verify the information they have got.

Senator KETTER: Mr Shipton, does ASIC want this exemption removed as soon as possible to prevent people from being stuck in unaffordable loans and credit products?

Mr Shipton: Mr Kirk has made the point. We have identified where we believe there could be concerns. As regards the timing, that is something that we'll have to ultimately defer to the government.

Senator KETTER: Thank you.
CHAIR: Senator Patrick has some questions.

Senator PATRICK: I'll go, firstly, to some assistance that ASIC has been providing me in relation to circumstances in Whyalla where a large company hasn't been paying subcontractors. I sought and got an indication from ASIC to make sure there were no insolvency issues—I'll state up-front that ASIC came back and said that that wasn't the case. But it indicated that the company hadn't filed some of its financial reports that it is required to file by law. That, in some sense, draws a question as to how many other companies around Australia are not meeting their filing obligations?

Mr Price: I can kick off on your particular question. The first thing I'd note is that ASIC has an active prosecution program, in terms of companies that don't lodge financial reports. But the thing that I really want to draw out is: it can actually be quite a challenge for us to identify those companies, because the need for companies to lodge financial reports, for example, depends on a number of objective criteria—if you're talking about whether it's a small or large proprietary company—that we won't necessarily know. When we run our prosecution programs, we need to get information from wherever we can and risk-target the companies where we think there is a problem. We then write to them and ask them to justify their own circumstances and why they haven't lodged, and we'll prosecute on that basis. That's a very longwinded way to answer your first question—how many companies should've lodged but haven't lodged?—for me to say: actually we don't know for sure, because it very much depends on those objective circumstances where we don't necessarily have the data.

Senator PATRICK: How many companies are you currently writing to and dealing with that you've identified or you presume haven't met their obligations?

Mr Price: At this very point in time? I'll need to take that question on notice, but I'm very happy to provide you with detail about our—

Mr Day: If I can assist: in 2016-17 we issued 2,472 warning letters. In 2017-18 we issued approximately 1,400 warning letters. For 2017-18 we issued notices seeking compliance in 487 cases, and there were 222 matters that we then moved on for prosecution.

Senator PATRICK: For which year?

Mr Day: That's for 2017-18.

Senator PATRICK: If I'm a small business trying to deal with a large business and I'm trying to do a bit of due diligence on it—and I've talked to the tax commissioner about how I tell if they've lodged their tax returns—is it possible for me as a small-business operator to look up a large company and see whether or not they're meeting their reporting obligations?

Mr Price: The first thing I'd say is: not all companies need to lodge financial reports. Where companies are part of a group, there may be consolidated financial reports. So that's a challenge. But, thinking more broadly about your question, we do have various pieces of guidance on our website about, for example, how businesses can protect themselves from phoenix activity and other things. So there are some checks that businesses can do, but I take your point—it can be difficult for a small business to easily ascertain the financial standing of a counter party that they're dealing with.

Senator PATRICK: Having talked to Kate Carnell—Ms Carnell is the Small Business and Family Enterprise Ombudsman—she's talking about the government moving to a policy of 20-day payment terms and a policy whereby anyone who gets a government contract will
need to have 30-day payment terms. I just wonder whether, in that regime of making companies behave properly, proper reporting could be tied to companies meeting their financial reporting obligations. I think the tax commissioner today indicated to me that, for larger contracts, we're likely to go down a pathway where companies must get a certificate from the tax office before they can tender for or be awarded a contract for government work. Is that something that is being considered by ASIC? Is it being thrown around the traps?

Mr Price: Anything is possible in terms of financial reporting, but what I would say is: those sort of changes that you're mentioning would require changes to legislation. There are policy debates from time to time about whether financial reporting thresholds are too low—so they catch too many people, for example—or too high. More generally, I did want to say that ASIC certainly supports the initiative of paying small businesses on time, and we're happy to work with the Department of Jobs and Small Business in any way we can around that. In some ways I also think it's important, if you're going to have rules or norms around payment times, to think about extending it beyond just big business. In my experience a lot of small businesses have cash flow problems because other small businesses—

Senator PATRICK: Sure. There is a supply chain.

Mr Price: You're exactly right.

Senator PATRICK: I think the government is starting at the top, which seems like a sensible starting position. It's one of those things where you're specialists in the domain and you understand the complexities. If it's a tool that adds value—it's hard for me to make an assessment about that—then it's something that maybe you could drive or provide information and then I can drive.

Mr Price: I certainly think it is of great value for small businesses to check our websites as to whether there are any insolvency proceedings or wind-up proceedings that have been lodged against a particular company in the past. That may be a big warning factor.

Senator PATRICK: Can I get that on the ASIC website?

Mr Price: You can get it on the insolvency notices website. But in terms of financial reporting, a lot of the information is quite complex, and I do wonder whether someone who is not trained in financial reporting matters would be able to make a lot from the information.

Senator PATRICK: I just think it could be a flag. I'll move on. I will direct this to Mr Shipton. There was something in the letter that was sent to me by ASIC—I will say that ASIC were very helpful—I was raising the question of insolvency. You have multiple companies making claims about late payments. That gave rise to a concern with me, is someone trading insolvent? The response I got is, 'It's important to note that the concerns raised about unreasonable payment terms are outside ASIC's jurisdiction, as they do not relate to financial products.' I would like to think—and I say this in the context of the banking scenarios that we've had in the past where you have a bunch of people who go to ASIC and say, 'I've got this problem,' and ASIC says, 'Not a systemic problem.' Hopefully that's a thing of the past. Mr Day, you'll note that whistleblower legislation passed through the House yesterday, having come from the Senate, so we're getting some good stuff happening there.

I just wonder, in the context of our experience with the banks—this is a big issue for small companies and they often get caught out. I wonder whether ASIC should be taking a more active role in that when you get a complaint about payments across three or four different
players that could give rise to an action. You would obviously have to have the power, but it seems to me that you're the obvious place to go to, noting that you are, I presume, the guardians of the Corporations Act

Mr Price: Our jurisdiction in respect of unfair contract terms—

Senator PATRICK: I'm referring to insolvency. I think insolvency comes under your bailiwick.

Mr Price: It does. Remember that once a company is bordering on insolvency, the appropriate thing for the directors to do is not incur any more payments. Stop all payments. No more future work. Appoint administrators. Then, obviously, payments to the people who are owed money at the time will be as they will be following that insolvency process.

Senator PATRICK: I'm trying to work out how you protect the creditors if there are signals, as occurred in Whyalla. I'm not suggesting that the company is insolvent, but it clearly had a cash flow problem. In my case, I was dealing with ten companies. I'm just wondering whether, in those circumstances, ASIC has a role to play in saying, 'You know what—there could be a problem here. We need to take some form of action.'

Mr Price: Perhaps one thought is that there is unfair contracts legislation in place. That goes to standard form contracts and what might be onerous terms in those. Our jurisdiction in relation to that only extends to financial products or financial services, but the ACCC has a broader remit in respect of that.

Senator PATRICK: I'm talking about insolvency, not payment terms.

Mr Day: In the circumstances where, to speak in hypotheticals, we had a number of creditors come to us—there is not a magic number about that; it could even be two or three—and said, 'This company, or these companies that are related to each other, are blowing out their payment times; it's unfair; things aren't working well'—that is an indicator that things might not be well in terms of the solvency of the company. When we receive those, what we call reports of alleged misconduct, we will look at those and ask, are there other indicators accompanying that that are visible to us but which might not be visible to the creditor, and consider whether or not we might need to consider a review or potentially an intervention about that.

However, what we need to put in prospective is that there are 2.7 million companies in Australia. There are thousands of companies that go into external administration of one form or another each year. If we were to get involved every time those things occur—like someone complaining that there were bad payment terms or lengthy periods of time for payment to be received—you potentially could exhaust all the resources of ASIC in looking at those types of matters. So we have to look at them in relation to the range of factors and the range of criteria, not just payment terms.

Senator PATRICK: You say that if a number of companies come to you, you would act?

Mr Day: No. I'm saying we would—well, yes. By act, we mean we would consider it and see, as we do for everything that comes to us of that nature or any nature. If a person says there is a problem, we will look at all of them. Does that mean we will break out lawyers, guns and money and start an investigation? The answer is probably no. But will we look at it and consider whether there is the existence of those other indicators? Yes, we will, and we will assess that to see if there are other things we should do.
Senator PATRICK: And then you engage with the company?

Mr Day: That's one of the things we can do and have done, yes.

Mr Price: It depends on the circumstances. I think the nub of the issue here is that slow payment times in themselves might be something that raises a question, but of itself it is very far from indicating insolvency, particularly for a larger organisation. If they retain the support of their financiers and so have a ready supply of money that's available, on any analysis of the law it would be very difficult to establish insolvency.

Mr Day: There are historical examples over the last 20 years of certain large companies having a dedicated approach to blowing out their payment terms. They were completely solvent, and in fact they would wait for nearly every one of their suppliers to try and sue them for recovery of their money, to make sure they got their money, and that was the way of dealing with it. Mind you, they were dealing with a money market that was like 16 or 17 per cent. I'm not saying it's right to do that, but that didn't necessarily mean that that company was insolvent. These people were just being nasty in the way that they were dealing with their commercial terms of payment.

Mr Price: Mr Day raises a very good point. It may be legal, but it's certainly not business practice that should be encouraged. We fully support the work that is being done around reducing payment times to small business. We think that's very worthy.

Mr Day: To take up your suggestion before, the government has a great role in terms of the terms and conditions that it puts around the people who want to do business with the government about payment terms and those types of things. It doesn't need a law change. The government changing its policy in terms of procurement has this knock-on effect through the economy, as you mentioned just. Payment terms is one of those things that doesn't need a change of law. It just needs a change of approach and to see that then flow through the economy that way. There are other ways to deal with things like that.

Senator PATRICK: On whistleblowers, how long is it going to take to get us into a situation where we can react to the changes in the laws that have been made?

Mr Day: My understanding, as you acknowledged earlier, is that, with the passing of the laws this week by the lower house and therefore through the parliament, the laws come into effect from 1 July. I think it's the first day of next full quarter. All the day-to-day provisions, if I can call them that, in terms of protections, access to compensation vehicles and those types of things, all come into effect from 1 July. There is one thing that does not come into effect until 1 January, in the way I understand the operation of the act, and that is that the requirement for large proprietary limited companies and above to have whistleblower policies does not come into effect until 1 January next year.

Mr Price: To clarify that, public companies will need to have a compliant whistleblower policy in place by 1 January 2020, while large proprietary companies will generally be required to have a compliant whistleblower policy by 1 January 2021.

Senator McALLISTER: I have a couple of follow-up questions around the discussion that took place earlier around point-of-sale exemption. Was that you, Mr Price?

Mr Price: No, it was Mr Kirk.
Senator McALLISTER: The first thing I want to try to understand is that I think you said that the remedy for the problem identified by Commissioner Hayne is merely that the point-of-sale person becomes either a credit licensee themselves or an authorised representative.

Mr Kirk: That's right.

Senator McALLISTER: I want to talk a little bit about what it means to be a credit representative and the process by which someone becomes authorised. Can you explain it in the briefest possible terms?

Mr Kirk: They can be authorised by a licensee. That's really the licensee saying, 'These people are authorised to represent us and we take responsibility for their conduct.'

Senator McALLISTER: How does the licensee make that authorisation practically, from your prospective as the regulator?

Mr Kirk: That's just a contractual arrangement between them.

Senator McALLISTER: Do they notify you?

Mr Kirk: I don't think they do. I don't think we—

Senator McALLISTER: You don't need to know. There just needs to be an arrangement between these two parties?

Mr Kirk: Yes.

Senator McALLISTER: And it must meet certain tests. I imagine that to authorise someone you have to meet a certain number of tests?

Mr Kirk: Yes, but it's more that they are proactively taking responsibility for them, saying, 'They now represent us. It's on our licence, whatever their conduct is.'

Senator McALLISTER: So it wouldn't take very long to do that?

Mr Kirk: No, that shouldn't take a significant amount of time.

Senator McALLISTER: So if somebody is presently working in a white goods store, issuing credit of some kind in association with retail sales of white goods, and at the moment they're doing it in the context of an exemption, if that exemption were removed then that person would be required to either become a licensee themselves or become a credit representative of the body that's providing the finance right at the moment?

Mr Kirk: They could be a credit representative directly of the lender, or they could be a representative of a credit assistance provider—one who's licensed to provide credit assistance to be an intermediary. Either could happen. Historically, the reason why they got the exemption was an argument, particularly in some of those stores, that their staff is relatively fluid. People come and go. It would be administratively difficult to make sure that at any time all the people in the store who could help people fill in their credit application were formally authorised. That was the argument originally. There are reasons why you might say, 'Well, there are policy reasons that would override that administrative difficulty in favour of having them within the system.' But historically, that was the concern.

Senator McALLISTER: The references committee has been doing some work on small-amount credit provisions and consumer leasing. Most of the people at this table have heard some very direct evidence about some of the harms, in addition to the advice that's been provided by Commissioner Hayne. I just want to clarify the legal circumstances for a
customer at the moment. At the moment you've got a credit provider operating at arm's length through an intermediary that themselves is not licensed and doesn't have any obligations except for their contractual ones to this provider. Plainly there is a problem where a person making a sale is incentivised to also push the credit through quickly because their salary is potentially incentivised around that sale. There is quite a lot of evidence about people in that context failing to undertake their necessary due diligence for responsible lending, and that's the underlying reason for Hayne's recommendation. Under the present circumstances, though, who is accountable if the responsible lending guidelines are breached? Does the consumer or the customer have any recourse at all if they obtain finance under those circumstances?

Mr Kirk: Yes, against the lender. The lender is still obliged to take reasonable steps to find out about the consumer's financial circumstances, to take reasonable steps to verify that position and to ensure that they don't lend if it's going to cause undue hardship.

Senator McAllister: But Hayne is looking for a kind of belt-and-braces approach that actually places that obligation on the intermediary as well as on the lender.

Mr Kirk: Yes, as it is with lending in other forums, for example where the mortgage broker is caught separately and subject to responsible lending requirements separately to those that fall on the lender.

Senator McAllister: Basically because it's not working at the moment and things are slipping through the cracks. It's a diffuse system, there are all these agents moving around and there are problems in the way it's working at the moment.

Mr Kirk: Certainly we've seen instances of problems, and I think Mr Mullaly has—

Mr Mullaly: Certainly we've taken action in relation to that sort of conduct against Esanda. Esanda was the lender in circumstances where we were concerned that those at the car yards were not getting the proper information, but, more importantly, we believe Esanda was on notice of that but didn't take the appropriate steps. We took court action against them and we got a civil penalty outcome against them of $5 million. So we're alive to the issue and we're alive to the fact that we need to take action against the lender in those circumstances so that they're incentivised to take the appropriate steps. That said, there still remain concerns that Commissioner Hayne had around whether or not point-of-sale exemptions should exist.

Mr Kirk: Senator, could I circle back to one of your earlier questions, about the notification to ASIC of the appointment of credit representatives. It is the case that the licensee is required to notify of us of the appointment, the date of the appointment and various other details, one of which reminds me of another obligation, which is the details of the EDR scheme that the credit representative is a member of. In terms of timing and the time this will take, possibly the more significant step is to make sure all of the relevant credit representatives are part of an EDR scheme.

Senator McAllister: Commercially, could that not be obtained by the principal and their membership of such a scheme extending their membership to all of those people who are themselves representatives?

Mr Kirk: Yes, certainly that's possible.

Senator McAllister: That is a mechanism that could be utilised?

Mr Kirk: Yes.
Senator McALLISTER: Thank you for the clarification.

Senator SINODINOS: In your statement, Chairman, you talked about the Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Bill 2018, which will increase the maximum prison penalties for most serious offences and increase civil penalties for companies and individuals. The government's made a number of announcements in this area; I just wanted to see your reaction to these. These laws make more breaches of the law criminal. What impact do you think that will have on the culture of the sector?

Mr Shipton: I think it will have a significant impact, because we firmly adhere to the fact that the deterrent effect of the highest order of enforcement litigation action being a criminal sanction is one that should certainly send a strong message through the entire sector. Criminal sanctions and criminal denunciation are sort of the sternest tools that we have in the toolkit. To increase the penalties, to increase the number of criminal offences and to now have meaningful penalties in and around some of the obligations—maybe you will come to them in a minute, but particularly the 912A obligation—is absolutely crucial to enable us to do our job effectively and to have a really meaningful deterrent impact and denunciation impact.

Senator SINODINOS: Also, the government's setting up a new criminal jurisdiction in the Federal Court. Will that impact on your ability to bring people to heel?

Mr Shipton: Yes. I'm going to ask my colleague Deputy Chair Crennan to supplement, but we certainly believe that the greater jurisdiction there will have a positive impact for this work.

Mr Crennan: It's the commission's view that the introduction of the criminal jurisdiction into the Federal Court will significantly enhance our ability to pursue wrongdoers who are subject to criminal proceedings. We still use CDPP, and we must use CDPP for these proceedings, but there are a number of aspects of going through the state system which we've identified as problematic, and one of them is, for example, the discoordinate committal processes. New South Wales and Western Australia have quite similar processes and they're very different from, for example, Victoria, where I'm from, where you have an evaluative exercise. So we would like to see streamlining of committal processes. There are some views that committal processes are not apposite to white-collar crime at all. That may not, for example, apply to insider trading, where you might have a witness against a witness. Nevertheless, we would like to see that introduction. We at the commission believe that it would significantly enhance the prospects of expedition of criminal proceedings, uniformity of the court rules and uniformity of approach, whether by committal or by trial. I understand that the Attorney-General's Department are currently looking at the introduction and that it's broadly supported.

Senator SINODINOS: And there will be more resources for the DPP as well, I gather, specifically for your sort of remit—is that right?

Mr Crennan: Yes. That has taken place already. I was involved in that also and we're very happy to see more resources for the CDPP, because, if we're well resourced and efficient and litigation focused and it's a criminal proceeding, that's all very well—

Senator SINODINOS: Yes, you don't want a bottleneck.

Mr Crennan: but we want to avoid the situation where we give the brief to the CDPP and it stops because they haven't got sufficient funding and/or resources.
Mr Shipton: May I take this opportunity to say how pleased we are to be working even closer with the Commonwealth Director of Public Prosecutions. She and her staff are going to be important collaborators for us in this endeavour moving forward.

Senator SINODINOS: And disgorgement powers? We were talking about this earlier.

Mr Shipton: Again, I'll ask Deputy Chair Crennan to comment.

Mr Crennan: The multiplicity of financial penalties that can be met on wrongdoers does include disgorgement. Disgorgement is significant because it will stand alone from the civil penalties or the 'three times the benefit gained' penalty and it will punish the wrongdoer for the actual money that they managed to extract wrongfully.

Senator SINODINOS: What does that mean in practice?

Mr Crennan: That means that you will seek an order from the court which will involve, obviously, the identification of the quantum of the amount to be disgorged, but in practice, as I understand, that means that will be an extra penalty that is designed to identify and take back the amount that was gained. So it sits complementary to the civil penalty rate.

Senator SINODINOS: It's almost like trying to make something whole again.

Mr Crennan: Yes. It's not remediation; it is disgorgement. However, it should be a disincentive to the wrongdoer because they will go through the humiliating process of identifying what they have gained from their wrongdoing and have to hand it back, and, on top of that, have to pay civil penalties.

CHAIR: The Parliamentary Joint Committee on Corporations and Financial Services asked ASIC recently about the close and continuous monitoring program. You couldn't really tell us at that stage or give us an update, because you really had only just begun it. Perhaps you can give us a very, very brief description of where you are in that process?

Mr Shipton: Thanks very much, Senator. We have commenced a close and continuous monitoring program. I think for the period from which it started, we have been on site in these financial institutions, the five financial institutions that we have targeted, for 40 of the 45 working days. We've had more than 100 interviews and meetings with a range of different officials and business leaders from those institutions, including the CEOs and senior business leaders. Already we are providing significantly important feedback directly to the CEOs and other business leaders as to concerns that we're finding in their management systems, their reporting systems, their control systems, so this work is off to an early but extremely strong start. We actually have one of our chief supervisory officers here. If time permits, I'd ask Mr Harvey to supplement—but only if time permits.

CHAIR: I would love that, but we might have to wait until budget estimates as opposed to now just purely because we're running out of time this evening. But I think that would be terrific. Maybe you could take it on notice to give us an update on that program, because I think it's really important.

Mr Shipton: Yes, Senator.

CHAIR: I know it is something you've been talking about since you started as the chair, Mr Shipton. Obviously there are a lot of familiar faces at the desk. We've known Mr Price and Ms Armour for a long time, we know what Mr Crennan is doing, but you do have some new faces. Ms Press, I understand, is responsible for superannuation, but I'm not entirely sure
about the remit of Mr Hughes or Ms Chester. Can I ask—and then we really will let you go—
do you think you could explain to the committee everybody's particular roles?

Mr Shipton: Yes. And if you can indulge me, maybe I can ask Deputy Chair Chester for
her quick observations. We have now a model at ASIC whereby the commissioners are doing
more of a sponsorship, an oversight role when it comes to our functions. You would have
heard me say at the commencement of today's hearing that we have an executive director
representation. This is a new rank. The executive directors today—Mr Day, Mr Kirk, Ms Bird
and a few others who have spoken to you—essentially represent the day-to-day executive
responsibility. What we are now doing at the commission level is having a strategic oversight
level in role and responsibility, which I'm happy to brief you on perhaps in the next hearing,
in the next panel.

You are absolutely right that Commissioner Press has responsibility over financial advice
and superannuation. Commissioner Hughes has oversight, in a sponsorship sense, for
financial services. And the new deputy chair, Ms Chester, is assisting us with broad oversight
as to all aspects of the commission as a deputy chair.

CHAIR: All right. Thank you, Mr Shipton. If there are no further questions from senators,
I think we'll let you go. Thank you very much for staying late this evening.

Mr Shipton: Thank you, senators, for your questions. We will follow up on the various
matters which have been put on notice.

CHAIR: Thank you. I feel like you should stay, Ms Chester, considering we—

Ms Chester: I was watching Senator Patrick going through the Productivity Commission
report, so I might put him out of his misery. It's $400 million in 2017; it's only 11 retail funds.
I should have actually said the number, because it is relevant to Senator Ketter's question. It is
a large task ahead of ASIC, looking at the grandfathered commissions and trailing
commissions.

CHAIR: Thank you.

Senator PATRICK: I was looking at that before on my iPad. This one's the Murray-
Darling, actually.

Ms Chester: They're all classics, Senator!

CHAIR: Thank you all very much.

Productivity Commission

[22:05]

CHAIR: Welcome, Mr Brennan and officers of the Productivity Commission. Do you
have an opening statement for the committee?

Mr Brennan: I don't. In the interests of time, why don't we just forge ahead?

CHAIR: Thank you. All right, let's kick off.

Senator KETTER: On the issue of life insurance and superannuation, I firstly want to
look in a bit more detail at recommendation No. 18 from your report. Recommendation 18
was:
The Australian Government should commission an independent public inquiry into insurance in
superannuation.
So just take me through some of the thinking that led to you coming out with that recommendation.

Mr Brennan: I'll answer in a high-level sense, and then I will pass over to Ms Melanie to provide more detail. The first thing to be said about that recommendation is that it should be read with the other, more concrete recommendations which we made about insurance through superannuation, including recommendations in relation to inactive accounts, low balances and the like. I think the general sense here was to note that, in addition to the issue of duplicate insurance and insurance policies via group insurance policies that members may have wittingly or otherwise, there is the broader issue of what the policy role of insurance through superannuation is and how it best fits with other forms of insurance and insurance-like cover—including workers compensation, for example—what the intersection between these things is, how that safety net effectively operates and whether it could operate more effectively. But I might pass to Ms Melanie to provide a bit more detail on that.

Ms Melanie: What we said in our final report is that group insurance in super provides value for money for a lot of members, particularly for high-risk members who would otherwise have to pay a very high premium and, in some cases, not even get access to insurance. So definitely there are some positives there for some members, but what we also see is that there are a lot of members who don't get value for money out of insurance in super, and these tend to be the younger members, those with a low income, and those with a number of jobs and a number of accounts, because they're basically paying several fees and insurance premiums, which has a significant impact on their balance at retirement. So we basically saw both sides of this equation, but we thought there was probably merit in having a more holistic view of whether providing insurance through super was the best way to provide insurance to Australians.

Senator KETTER: The reason I'm asking this question is that the recommendation that you came out with is for another inquiry into the issue. The terms of reference for stage 3 of the inquiry—and this is not a criticism; I'm just interested in your thinking processes—go to a range of factors: the impact of insurance premiums on retirement incomes, the extent to which policy settings offset cost to government in the form of reduced social security payments, and issues like value for money and the erosion of retirement savings. There are a range of different points covered in the terms of reference. Do you believe that you've covered those points sufficiently?

Mr Brennan: I think we have, Senator. I take the point that you raise. It's always of note when you get to the end of a long inquiry and you say there should be further work, and we've done that in a couple of targeted incidences. Going back over those original terms of reference, though, the thing I would note is that, for the most part, they are crafted in terms of looking at the insurance and super issue through the lens of retirement incomes—that is, what are the policy settings which maximise or optimise retirement incomes for Australians? As Ms Melanie pointed out, there are some broader questions, including: what is the nature of the safety net that's provided via life insurance and via group life insurance, through super, and how does it fit with other forms of the safety net that we have, such as through workers compensation in relation to catastrophic injury, where you may get some income replacement, for example? Is that duplicated if you have similar income replacement policies via life
insurance and the like? And what is the role of the life insurance through super in that broader safety net?

Senator KETTER: Okay; I understand that. Can you tell me who you think should conduct the review that you refer to in recommendation 10?

Mr Brennan: We don't have a clear view. We don't make a recommendation as to who specifically ought to undertake it. That's not unusual for us. We've often recommended reviews, as we have elsewhere in this report, without a specific recommendation as to who would be best to undertake it.

CHAIR: APRA?

Mr Brennan: I suspect it involves broader policy considerations. We wouldn't be so presumptuous as to say us. We could do it, but it would be open to government to think through a range of options. It's the sort of thing that governments in the past have sent to either us or an eminent figure who might, supported by a secretariat from within government, look at the issue with a fresh perspective.

Senator KETTER: So you're leaning towards a government agency or agencies rather than an independent external—

Mr Brennan: Not necessarily—no. Our recommendation is just that the issue should be looked into.

Senator KETTER: Do you have a view as to when it should start and finish?

Mr Brennan: No, I don't think we expressed a view on that.

Ms Melanie: I think we did say 'within four years' of the policy measures going through. As you would be aware, there are lots of policy initiatives being progressed in terms of insurance, including a lot of work that has to be done on the code. So, the idea was to give enough time for these policies to work their way through so we've got enough information and evidence to be able to make an informed assessment as to the effectiveness of these policies and whether there needs to be further changes. We thought four years was about the right time.

Mr Brennan: It does say four years, in black and white. I think you mentioned recommendation 10. I think it's recommendation 18 in the final—

Senator KETTER: I beg your pardon—yes, that's right. Do you have a view as to what might be the terms of reference for such an inquiry?

Mr Brennan: That will be worked out closer to the date. And you would consult, I think, reasonably broadly on the terms of reference prior to finalising them.

Senator KETTER: I'm just interested in the kinds of outcomes you might be trying to achieve with such an inquiry.

Ms Melanie: We have some high-level principles in recommendation 18 about the broad parameters that would be considered in doing this inquiry. It would be aimed at the effectiveness of insurance in super, given the initiatives that are currently underway. One of the issues that would be part of the terms of reference is whether we should be retaining the arrangements as they are—that is, on an opt-out basis as opposed to making them on an opt-in basis. That would be one thing that we would expect the inquiry to cover.
Senator KETTER: Finally on this particular issue: are there any concerns or issues that you found in looking at insurance in super as part of your inquiry that weren't included in the final report—issues about which you maybe didn't arrive at a firm conclusion at the time of publication?

Ms Melanie: Not that I can think of. No.

Senator KETTER: I just want to move on to the subject of retirement income.

Mr Brennan: This could be recommendation 10.

Senator KETTER: Yes, I think that's where I got confused. I'm just interested if you could take us through finding 4.4 in plain terms for people listening. Maybe you could talk about the fact that a proposed retirement income covenant may nudge people into products ill-suited to their long-term needs, and also recommendation 10 in conjunction with that. Just very briefly.

Ms Melanie: Our thinking on this is that the retirement phase is a particularly complex phase. It's one that involves a complex decision for people who're reaching that stage. They need to take into account a range of factors not just what their retirement balance is but their personal circumstances and things like what assets they've got outside of super. The point that we were trying to make here is that there was a need for a very informed decision by our retirees in terms of what product would suit them best. There is some concern that, having a product that nudges retirees to go there without full information of their circumstances might actually lead them into something that's not in their best interests.

Senator KETTER: Is it fair to say that Treasury have been working on these comprehensive income products for retirement for quite a long time?

Mr Brennan: I think that is a reasonable statement.

Senator KETTER: And yet, in your report, you obviously hold substantial fundamental concerns about the current desired approach in this area?

Mr Brennan: I would characterise our approach as recommending that government hasten slowly. We made a recommendation in the draft report, from memory, about some postponement of the date for the retirement income covenant. The government has subsequently made an adjustment to the timing of that. It's fair to say that what is under consideration here is a very significant potential change to the landscape in terms of retirement products. We've had a system which, in fairness, has been very focused on the accumulation phase and has probably had less focus on the retirement phase and the breadth and diversity of the products that might be available to retirees and what might optimally suit their individual circumstances. Perhaps a consequence of which is that a very, very high proportion of retirees go into an account based pension as their vehicle to provide them with their retirement income. The fundamental insight of the Murray inquiry in particular was that some portion of an account based pension with an annuity, a deferred life annuity or group self-annuitised product—so a pooled product—might be appropriate. Significant work has been advanced, I would hasten to add, in relation to these products, because there has been, for example, work on what the taxation treatment ought to be. There's now a social security means test treatment in respect of deferred life annuities and group self-annuitised products, which there wasn't before. There was for lifetime annuities but not for these newer products. So there is still a bit of progress in relation to the development of new products.
CHAIR: This is the CIPRs?

Mr Brennan: Yes, correct. This recommendation really goes to the imposition of a retirement income covenant, which was a requirement on funds and trustees to potentially nudge members into particular CIPRs, which might well be a blended mix of an account based pension and some other lifetime income product. It's a very complex area. It's something where there is some downside risk of people winding up in inappropriate and irreversible products.

CHAIR: Costly too, from my understanding.

Senator KETTER: And I think you've expressed particular concerns about outcomes for those people with low superannuation balances and particularly if people have lower levels of financial literacy. Is that correct?

Mr Brennan: I think that's fair. Opinions are divided. I think there is a view in the broader community that, for people with relatively low balances, a lifetime product is likely to be less suitable. I think there are others who've got a contrary view to that, but it seems intuitively plausible that, for somebody with a relatively low balance at retirement, they're probably better off having money in an account based pension rather than trying to convert it into a lifetime product, because the income that they would gain from that would represent a relatively small increment to their age pension, for example.

Senator PATRICK: I have some questions on the Murray-Darling report. Who is the best person to talk to on that?

Mr Brennan: Ms Knowles, at the end of the table.

Senator PATRICK: Your report is very thorough and makes a number of recommendations. It does talk about the need to look at updating modelling and so forth. There have been two reports in and around the release of your report, so there's been the Murray-Darling Basin Royal Commission in South Australia, and the Academy of Science have just released their analysis of the fish kills. Both of those reports made it very clear that there's an overallocation. Your report doesn't say that. Is that because you are simply constrained in your ability to look beyond the current plan, or the plan as it is?

Ms Knowles: For this assessment, the commission looked at how the actions of governments required to implement the plan were tracking against the set time frames and the extent to which arrangements delivered on the objectives and enabled its impacts to be evaluated in time, and whether those are effective and efficient. The commission took the view that the task didn't extend to examining the processes for setting the sustainable balance, so the sustainable diversion limit. What we did do is assess the preparedness of governments to do that work in the future. In that regard, we found a number of shortcomings—that the Basin Plan evaluation framework, for example, was particularly unclear and there was no cohesive strategy for governments to collect the information to be able to do that job in the future. We made specific recommendations that the MDBA revise this framework and that basin governments agree collectively a strategy for collecting that information. And, importantly, we identified that, for the review of the plan to be done effectively in 2026, there was significant preparatory work that needed to be done and that little attention had been paid to that. So we made a specific recommendation about the MDBA preparing now to be able to
establish the scope in its approach to that review in 2026, when key issues like the sustainable balance would need to be reconsidered by governments.

Senator PATRICK: Thank you for that. In relation to the supply measures, the 605, you used language such as, I think, 'highly ambitious'; I seem to recall those were the words that were used. I'm just trying to understand, in your word library, is that like the top-risk category, or is there some higher—

Mr Brennan: Is this in respect of the timetable specifically?

Senator PATRICK: No, this is the 605—with the water resourcing plans. You were very worried about whether they would be complete in the required time frame. But, in relation to the supply measures, the risk to meet this objective was high and you used the words 'highly ambitious'.

Mr Brennan: I think it is also about timing. So you're right with the water resource plans, because they're quite immediate and running a bit behind schedule. But I think the ambition that attaches to the supply measures is partly about the ability to get those supply measures agreed and approved prior to the deadline.

Ms Knowles: That's correct. Also, they're ambitious in a number of respects. The time frame for implementing them is already constrained. There were delays in the notification period, government still haven't resolved a lot of key matters in terms of risk sharing and funding these projects, so the time frame for implementing them is constrained and they need to be able to be fully implemented by 2024 to meet the requirements of the plan. So the time frames are ambitious. The other thing that we explored in our report was that some key projects are at very early stages of development, and a number of risks have been identified.

Senator PATRICK: Menindee Lakes, for example.

Ms Knowles: Menindee Lakes, the hydro-cues project in the River Murray and the constraints projects were the six key projects that we identified. There's a lot of work to go through to get those projects to being shovel-ready, and that's another risk—their ability to be delivered on time.

Senator PATRICK: I'll go back to my original question: 'highly ambitious'. Where does that sit in the lexicon list? Is that the highest you would ever give a description of a project?

Mr Brennan: We don't have a specific thesaurus with red, orange and yellow and the like, but—

Senator PATRICK: Well, you kind of do.

Mr Brennan: But it's an indication of where we think this sits. The broad contextual issue here is that we think the supply measures are extremely important, because they really go to the fundamental integrity of meeting the intent of the original 2,000 and 750 gigalitre SDL. And, to the extent that there is a dogmatic adherence to the time frame which is currently enshrined, there's a risk of making bad decisions or ruling out, potentially, projects which actually would have benefit and utility for the environment.

Ms Knowles: Based on the information that we had available to us, the supply measure projects are potentially more cost effective than recovering the equivalent amount, which is why the commission took the view that it's important that governments give good projects and worthwhile projects time to be able to be implemented properly. But also we made specific
recommendations about the Department of Agriculture and Water Resources gateway project, so that's a thorough and independent process to be able to reassess projects as they get to shovel-ready point, to assess their costs and benefits and make a decision at that point whether they're worthwhile to proceed with.

**Senator PATRICK:** I seem to recall somewhere in my reading—and I've read lots of Murray Darling Basin reports in the last few weeks—that you talked about efficiency measures and it not representing value for money.

**Ms Knowles:** The commission found that the upwater—the 450 gigalitres of efficiency measures, at its current point in time—may not achieve the enhanced environmental outcomes that were anticipated for it. But there are a number of reasons for that. The first is that the modelling that underpinned the development of that program suggested that, without using constraints, additional environmental outcomes were unlikely and that achieving those outcomes was dependent on easing constraints at particular levels to enable high flow rates. The projects to ease constraints that have been nominated by governments have, in some cases, substantially lower flow rates in them than that which was modelled. That change in that key assumption led to our finding and our recommendation that the MDBA really needs to remodel that program to be able to understand what the achievable environmental outcomes were with the constraints projects that were actually on the table.

**Senator PATRICK:** I have a project management background, and the thing that unravels all projects is risk. If I look at this from an accumulation perspective, you've got water resource plans that are late, so you're under pressure to complete those, which in itself adds a risk. You've got the supply measures that are highly ambitious; you've got upwater of 450, which is classified, I think, as high risk and low value for money. If you're inside a company with this $13 billion program, you'd be calling the board to get together. You have attacked this problem, broken it, and stovepiped it down to the elements of the plan. There's no criticism that you have done a good job in that, but in terms of the accumulation of risk, have you seen other projects that would cause alarm bells to ring like they might ring here?

**Mr Brennan:** In one sense, there's nothing comparable in the complexity of the governance and the scale of the ambition in relation to this project. I will ask Ms Knowles to go into some of the specifics, but the point we would make is that, in relation to each of those issues—the WRPs, the supply measures, the 450 gigalitres—each one is a little bit different in its own way. On the water resource plans I think there is widespread agreement. They are running a little bit behind schedule, so there should be some extension of time allowed with respect to it. In each case, we've got something that we regard as a fit-for-purpose recommendation that goes to the risk associated with it. I don't disagree with your assessment that there's a bit of cumulative risk across the whole picture. To be clear on the efficiency measures, though—the 450 gigalitres—we don't really come to the conclusion that they represent low value for money, because we're not as definitive as that. The point we are making is that circumstances have changed—

**Senator PATRICK:** It might have been the royal commissioner who said that.

**Mr Brennan:** Yes, circumstances have changed and what we want to ensure is that the authorities are in a position to make an assessment about whether the environmental benefit can be achieved for the additional 450 gigalitres when it's time to deliver, rather than saying, at this point, definitively, that it is necessarily low value for money.
Senator PATRICK: If this were an airplane you were building, you're saying the engine is unlikely to work, what you're trying to do with the wings is highly ambitious, the governance structure around the safety aspects of the aircraft have some big holes, and there are scheduling issues all the way through it. You probably wouldn't fly on this plane.

Ms Knowles: We found that there was uncertainty about who was actually responsible for leading the implementation of the plan and managing the risk.

Senator PATRICK: It's always good when you do that—'It's your fault.'

Ms Knowles: Specifically, our recommendation around governance and recommendation 14.1 is that basin governments have that responsibility and not the MDBA.

Senator PATRICK: I have been confronted by people—Cotton Australia, the National Farmers' Federation, irrigators, Minister Littleproud, Minister Blair in New South Wales—all saying, 'Nothing to see here. Just stick with the plan,' and yet that seems completely inconsistent with the picture you're presenting. It is almost like they didn't read the report.

Mr Brennan: I think it's fair to say we've tried to present a balanced view. We've said at the outset that—

Senator PATRICK: I'm not critical, in any way, of your report. I'm just wondering if I misread it somehow.

Mr Brennan: No. The nature of the task that we were given, which is essentially to provide a stocktake of progress and recommendations on where the processes could be improved, probably lends itself exactly to the perception that you've got—that there is a series of things where there's a bit of risk, something that could go wrong, and there's an amelioration that we have recommended. On the positive front, there's 2,000 gigalitres of water that's been recovered via this process and through the combination of buybacks and efficiency measures or infrastructure works and the like. So, we do try and present a balanced view about what has been achieved.

Senator PATRICK: I'm not sure the fish at Menindee would agree.

Mr Brennan: Maybe not, but it's relative to the scale of the ambition at the outset when the agreement was originally struck. As I said, Ms Knowles can probably go to some of the specifics in relation to each individual instance. There's slippage, potentially, in timescale for the water resource plans, the 602-gigalitre equivalent in supply measures, and the 450. In each case, we've endeavoured to find a fit-for-purpose mitigation for that risk and each one is a little bit different.

Ms Knowles: And then the recommendations that go to changes in the leadership and governance at the implementation of the plan are about providing a cohesive mechanism for all of those risks to be managed effectively, because they are interrelated.

Senator PATRICK: I'm mindful of the chair. I will just ask one question, and you don't have to answer it. If the Murray-Darling Basin Plan was a company, would you be buying shares in it?

Mr Brennan: I'll let that go.

Senator PATRICK: We've got a bit of head shaking there.

Senator STOKER: Good evening. I noticed that the Productivity Commission has undertaken a large piece of research on the question of whether there is inequality in Australia
in light of the fact that we've had an unprecedented 27-year-period of uninterrupted economic growth. What have been the outcomes of that research in terms of our understanding of the effect of economic growth on the wages of low- and medium-income households over the last 30 years?

Mr Brennan: You're absolutely right: the commission undertook a self-initiated piece of research in relation to inequality. It predated my commencement at the commission. It was largely done by my predecessor and Commissioner Jonathan Coppel, but I will have a go at the salient findings in relation to that research. The first thing is that there are multiple lenses through which you can look at the inequality issue. You can look at income inequality, wealth inequality and consumption inequality. I think it is also fair to say that, within each of those three, you can look at it via a static view, like what the level of distribution of income is across the scale at any one point in time, and you can also look at it over time; that is, what's the level of mobility either within the life course or even intergenerationally? To the extent that there is significant mobility, that might mitigate the concern that you have about inequality.

Broadly speaking, the conclusions that we came to were that inequality had risen slightly over a 30-year-period, but in more recent time it probably moderated—certainly in the period since the global financial crisis—on most of the accepted measures, whether it be the Gini coefficient, which is a particular accepted measure of inequality, but also the ratios of the 90th percentile to the 50th percentile and the 50th percentile to the 10th percentile. You had seen some moderation in measured inequality on those measures. Wealth inequality has risen a bit. Australia has relatively low wealth inequality. That may surprise people a bit, but by virtue of the relatively broad base of home ownership and superannuation, Australia has less wealth inequality than OECD peers as a general rule. So, although it has risen, it is still relatively low by OECD standards.

There is an interesting picture in respect of the intersection between wealth inequality and income inequality. There is some correlation of people who have high wealth and high incomes, but it is also true that wealth distribution largely follows a bit of a life cycle—so people start with low levels of wealth and they accumulate wealth through their lifetime—such that older Australians tend to have higher levels of wealth either via housing or superannuation, but relatively low levels of income. So to some extent you have some low-income cohorts who are relatively high in wealth.

I think broadly speaking, on the issue of the measurement of inequality, there has not been a huge movement in most of the accepted measures. The observation that we made at the very end of the report, however, was that there is a particular challenge with a cohort of people. Leaving aside the Gini coefficient or the ratios of incomes across the income spectrum, there is a group that is in a form of entrenched disadvantage. There are people who are below the poverty. And, using longitudinal data, for example, the HILDA survey, are in poverty, which, from memory, for HILDA, that is defined as half the median income but lower than half the median income, from memory. I'll correct that if that's wrong. There is a group that stays in poverty. A lot of people move in and out of poverty over time, but there is a group that stays in relative income poverty over a long period. There are some who move out temporarily, but move back into relative income poverty. My recollection is that we found, of the people who
were in relative income poverty in 2001, 30 per cent were still there in 2016. They either
stayed there the whole time or moved in and out or out and in again.

There are also others. The Brotherhood of St Laurence has done work trying to measure
material deprivation, not looking so much at the metrics of income but looking at things like,
for example, do you have enough money to keep one room of the house warm during winter?
Do you have enough money to make sure the kids have got clothes to go to school? Does
every child have a separate bed to sleep in? They tally up how many families, effectively, fail
one or more of those tests as a measure of material deprivation. It is a surprising number of
people that fail multiple of those. There is a cohort, which we estimated to be in the order of
about 700,000—that's a rough estimate—Australians, who fit that definition of entrenched
disadvantage, and that's a particular policy challenge. So, whilst broad levels of inequality
haven't really moved that materially—and in recent years, in the last decade or so, haven't
really moved much at all—I think there is, nonetheless, a policy challenge associated with
that entrenched disadvantage cohort that probably require some different policy responses to
the ones we've hitherto used.

Senator STOKER: Does the research show that every income decile in Australia has
experienced improved living standards over that period?

Mr Brennan: Over, like, a 30-year period?

Senator STOKER: Yes.

Mr Brennan: It would, from memory, yes. Certainly over the journey, whilst we've had
relatively low income growth over the last ten years, given that prior to that we had very
significant income growth—partly due to the terms of trade boom, but partly due to the high
productivity growth in the 1990s—it is the case that all deciles have seen an increase in
income over that period.

Senator STOKER: Is it also fair to say that the research showed that, for those who are in
lower-income households, there has been higher income growth in Australia than, for
instance, in the United States?

Mr Brennan: That is true, yes. The level of inequality in the United States has worsened
more significantly than anything we've experienced here.

Senator STOKER: Thinking about the distribution of wealth, how does equality compare
in Australia with other comparable countries—say, in the OECD?

Mr Brennan: As I mentioned in relation to wealth inequality, Australia fairs relatively
well. As I say, that is largely a function of the fact that our home ownership is relatively
broadly distributed, and also, by virtue of superannuation, we have a large shareholding
population, which many nations don't. For example, if you're in a country that has a
government-funded pension scheme only, you don't have that direct or indirect ownership of
shares. That's a relatively broadly based thing in Australia. The chart I'm looking at, which
ranks the Gini coefficient of wealth for the OECD—the United States is at the most unequal
end of the spectrum. Australia would be in the lowest quartile, basically. Lower than the UK,
Germany, Canada, New Zealand and the like.

Senator STOKER: In relation to Australians who experience economic disadvantage, is
that something that the research showed tends to be a permanent thing, or does it have a more
transitory character?
Mr Brennan: I think it's a bit of both, to be honest. The HILDA survey does show—and I've forgotten the precise figures—that there is a degree of mobility of those people who have given us a longitudinal survey of the cohort that's in relative income poverty in a given year. A fairly high proportion move out of that over time, and the same is true with the HILDA survey in terms of being in receipt of welfare. A lot of it just comes down to preferences as to what you think is an acceptable number for that, in a way. What level of mobility is an acceptable level of mobility? As I say, there is a cohort for whom there's not a lot of mobility. Whether we're doing well or not on that measure, I think opinions will just differ according to almost underlying preferences.

Senator STOKER: Thank you very much.

Senator SINODINOS: Congratulations on your appointment, Chairman.

Mr Brennan: Thanks, Senator.

Senator SINODINOS: In one of your early speeches you talked about the banks and bank profits, and you thought there was—I don't know whether you said it was—a monopoly element or an element that you could attribute to the lack of competition. Is that right? Do you think bank profits are unduly inflated?

Mr Brennan: Taking a lead from the work that we did that, again, predates me—the work on competition in the financial services sector—I think it is fair to say that the return on equity in banking has been relatively high and the net interest margin for Australian banks is higher than global peers, certainly for the big four. For other banks in Australia, maybe less so, but the net interest margin seems significant. So that's, if you like, the proxy for margin—price over marginal cost. It seems high, and it has been—as the observation has been made in our report—remarkably resilient over very significant changes in context, including a global financial crisis, and I think, as our report finds, that is prima facie evidence of market power. It is difficult to know how to tackle some of the market power. When you go back over Australia's economic history, there have been instances where we've had market power that was protected by a form of government fiat, if you like, and there is at least a reasonably easy, straightforward policy prescription as to how you might undo that: you abolish a two-airline policy or allow in some foreign competition or something. With banking, a lot of it does come down to consumer stickiness. There's not a lot of movement of consumers between banks and, to some extent, a funding advantage that the big banks enjoy, and that's partly an underlying advantage that they have. That's not all down to regulatory policy and the like. So it's a challenging public policy problem, but none of that is to undermine the fact that I think there are, arguably, some monopoly rents in the system.

Senator SINODINOS: So, in terms of competition policy, if there are two or three things you'd identify as having a capacity to influence the competitive structure of the industry, what would they be?

Mr Brennan: The sorts of things we pointed to were, for example, having a stronger voice for competition on the Council of Financial Regulators. We made a recommendation about having the ACCC as a member of it. We made particular recommendations around aspects of banking—having an access regime for the new payments platform. We made some recommendations in relation to mortgage broker remuneration and the like. I'm trying to think what other recommendation we had.
Ms Davidson: Just picking up on the point of consumers, some of our recommendations went to information provision and access for consumers so that consumers can make better-informed decisions in their own interests.

Senator SINODINOS: That's good.

CHAIR: All good? Thank you, Senator Sinodinos.

Senator KETTER: I just have a couple more questions. Coming back to your superannuation report that you released in December and, in particular, your assessment of the regulation framework. You said conduct regulation was 'missing in action'. But you went on to talk also about the 'yawning gaps in data'. One of the points I note, just looking at the overview. You said:

… there is remarkably little publicly available data on the outcomes that individual members are actually experiencing—in terms of the returns they earn, the fees they pay, the insurance …

And you talked about the fact that:

Among other things, APRA fails to collect reliable data on funds' true investment expenses, with pervasive non reporting and under reporting by funds. ASIC didn't escape criticism either, I note, but you have a number of recommendations, one of which was the capability review for APRA. I would be interested if you could comment on APRA's data systems in relation to super reporting and the data analysis that's been going on in APRA.

Ms Melanie: Only at a very high level, Senator. Effectively, as you've pointed out, there are a lot of data gaps that we encountered in doing this inquiry. For some of the data, like investment expenses, I guess we'd expect APRA to have a very comprehensive dataset, but there were gaps there. Hence, we had to do several surveys of funds to get some of the data to allow us to do the analysis that we had to do for this.

In terms of data analysis, we said in the report that we would also expect the regulator to be doing the sort of performance benchmarking that we've done, but as far as we know that hasn't been done in the past, so there hasn't been a proper assessment of funds' performance. There hasn't been a proper assessment of what outcomes members get, and that's a critical gap that needs to be fixed for the system to improve.

Senator KETTER: It's a pretty fundamental aspect if you're not interested in outcomes for members in a range of areas—returns et cetera. What do you put that lack of data down to?

Ms Melanie: There are probably a few factors at play. One is the resourcing issues. It does take a lot of time and effort to collect data on a consistent basis. There is also an issue about having a consistent interpretation of that information. We had a lot of issues trying to get a consistent set of data across different funds who do not necessarily collect the same information. I suppose it comes down to having a purpose for the information and having a capability to look at the data, make sense out of it and use it for performance monitoring. It doesn't seem that this has been the focus of the data collection so far.

Senator KETTER: You've said that APRA should enhance both its data capabilities and its fund reporting framework to provide visibility of outcomes at the product level and therefore over actual member outcomes. So how should APRA go about doing that? We'll have an opportunity to talk to APRA tomorrow.
Ms Melanie: That's a question you'd better put to APRA.

Senator KETTER: It probably is a question for APRA and possibly a question for the capability review. You also said on page 506:

Provision of performance data at the product level would … inform strategic surveillance and conduct regulation by both APRA and ASIC.

I'm interested in that part of it. Again, you might give me the same answer, but what specifically are you looking for there?

Ms Melanie: It is particularly challenging to get data at the product level when you've got roughly 40,000 products on the market, so it's about finding a framework that allows you to compare that data across different products and also a system that allows you to have a look at all these products and all their features in one place. At the moment that system doesn't exist, so part of our recommendations has gone to having very simple fact sheets that anybody can access so that you can easily compare how one product is doing against another.

Senator KETTER: I'm interested in this fundamental failure of data collection and monitoring. Did you form a view as to whether that was APRA taking its eye off the ball or whether it was that they encountered so much resistance from the funds that it made the job difficult? Can you give an explanation as to this phenomenon?

Ms Melanie: It is not an issue that we actually looked into, Senator.

Senator KETTER: Okay; I'll leave it at that.

Mr Brennan: It might be a good question for tomorrow.

CHAIR: As there are no further questions for the Productivity Commission, we will let you go. Thank you for appearing before the committee today.

Committee adjourned at 22:55