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SENATE
ECONOMICS LEGISLATION COMMITTEE

Wednesday, 10 April 2019

TREASURY PORTFOLIO

In Attendance

Senator Zed Seselja, Assistant Minister for Treasury and Finance

Department of the Treasury

Mr Philip Gaetjens, Secretary

Macroeconomic Group

Dr Angelia Grant, Acting Deputy Secretary, Macroeconomic Group
Ms Laura Berger-Thomson, Principal Adviser, Forecasting, Macroeconomic Conditions Division
Ms Jessica Robinson, Principal Adviser, International Policy and Engagement Division
Mr Ian Beckett, Division Head, Macroeconomic Modelling and Policy Division

Corporate Services and Business Strategy Group

Mr Matt Flavel, Deputy Secretary, Corporate Services and Business Strategy Group
Mr Thomas Wilkinson, Acting Manager, Chief Financial Officer Division
Ms Cristy England, Acting Division Head, People and Organisational Strategy Division
Ms Shannon Kenna, Division Head, Communications and Parliamentary Division
Mr Mike Webb, Division Head, Information Services Division

Fiscal Group

Mr Simon Atkinson, Deputy Secretary
Mr Jonathan Rollings, Division Head, Budget Policy Division
Mr Adam McKissack, Principal Adviser, Budget Policy Division
Ms Vicki Wilkinson, Division Head, Social Policy Division
Ms Philippa Brown, Principal Adviser, Social Policy Division
Ms Joanne Evans, Principal Adviser, Social Policy Division
Mr Robert Jeremenko, Division Head, Retirement Income Policy Division
Mr Darren Kennedy, Principal Adviser, Retirement Income Policy Division
Ms Michelle Dowdell, Principal Adviser, Retirement Income Policy Division
Ms Rebecca McCallum, Principal Adviser, Retirement Income Policy Division
Ms Lauren Le Cerf, Acting Division Head, Commonwealth-State Policy Division
Mr Hamish McDonald, Division Head, Structural Reform Division
Mr Damien Dunn, Principal Adviser, Structural Reform Division
Mr Tom Dickson, Principal Adviser, Structural Reform Division
Ms Kirsten Baker, Principal Adviser, Structural Reform Division
Mr Damien White, Chief Adviser

Markets Group

Ms Diane Brown, Division Head, Financial System Division
Mr Warren Tease, Chief Adviser, Financial System Division

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Ms Julie Greenall-Ota, Principal Adviser, Financial System Division
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  Ms Lucy Vincent, Principal Adviser, Consumer and Corporations Policy Division
  Ms Kate Lynch, Principal Adviser, Consumer and Corporations Policy Division
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  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 Mrakovicc, Deputy Secretary
  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
  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

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  Ms Catherine Willis, Acting Commissioner

Australian Taxation Office
  Ms Jacqui Curtis, Acting Commissioner of Taxation
  Mr Jeremy Hirschhorn, Second Commissioner, Client Engagement Group
  Mr Alex Adams, Deputy Commissioner, Service Operations, Enterprise Solutions and Technology
  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 Jonathan Todd, ATO General Counsel, Australian Taxation Office Corporate
Mr Jeremy Geale, Deputy Commissioner, Review and Dispute Resolution
Mr Brad Chapman, Acting Chief Operating Officer
Mr Ramez Katf, Chief Information Officer, Enterprise Solutions and Technology

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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**
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Mr Warwick Anderson, General Manager, Network Finance and Reporting
Mr Peter Adams, General Manager, Market Performance
Ms Angela Bourke, Director, Strategy and External Affairs
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Mr Andrew McLoughlin, Acting Inspector-General of Taxation and Taxation Ombudsman
Mr David Pengilley, Acting Deputy Inspector-General of Taxation

Committee met at 09:00

CHAIR (Senator Hume): Good morning. I declare open this meeting of the Senate Economics Legislation Committee. The committee will continue its examination of the Treasury portfolio with questions for the Department of the Treasury Macroeconomic and Corporate groups. The hearing then will follow the order as set out in the circulated program. I remind senators and departmental officials that the committee has set Thursday, 18 April as the date by which senators are to submit written questions on notice and has fixed Thursday, 30 May 2019 as the date for the return of answers to questions taken on notice.

Department of the Treasury

[09:01]

CHAIR: I welcome Senator the Hon. Zed Seselja, the Assistant Minister for Treasury and Finance, representing the Treasurer, and officers of the Treasury. Minister, or officers, would you like to make an opening statement?

Senator Seselja: No, thank you. We're ready to take questions.

CHAIR: Then we will kick off questions with Senator McAllister.

Senator McALLISTER: Mr Flavel, are you the senior officer at the table?

Mr Flavel: By default, yes. As you know, the secretary is unable to attend today. I'm the deputy secretary of the corporate group, and with me is Ange Grant, who's Acting Deputy Secretary of the Macroeconomic Group while Ms Quinn is travelling to the US for some international meetings this weekend.

Senator McALLISTER: So Ms Quinn is also unable to attend?

Mr Flavel: Yes, that's correct.

Senator McALLISTER: The committee received a letter from the secretary mid-morning Monday advising that he wouldn't be able to attend. Where is he travelling?

Mr Flavel: My understanding is he's interstate for meetings today.

Senator McALLISTER: Interstate for meetings?

Mr Flavel: Yes.

Senator McALLISTER: Can you advise the committee which meetings are more important than appearing at estimates.
Mr Flavel: Well, the secretary takes his responsibilities seriously. He attended Friday, consistent with the normal practice. This is a—based on my experience—more slightly unusual agenda where the department's been returning again for a full day of hearings. He was here for—

Senator McAllister: I'm not asking—You're answering a different question. What meetings is Mr Gaetjens attending?

Mr Flavel: I'm not aware but I'm happy to take that on notice.

Senator McAllister: When was this trip planned?

Mr Flavel: I don't know. I'd have to check with his office in terms of the actual scheduling and logistics around it.

Senator McAllister: Seriously? It's very unusual, in fact, that the secretary has chosen not to attend the Macro discussion, particularly given that the actual deputy secretary is not available to answer questions. So we have neither of the most senior officers in the department familiar with the Macro Group's work available to attend in the period scheduled for discussion of Macro. So I think you could have expected that there would be questions from opposition senators about what is happening. Senator Seselja, have you made inquiries about Mr Gaetjens's absence? Surely you're concerned that you're here carrying the can because Mr Gaetjens hasn't bothered to turn up?

Senator Seselja: It wouldn't have made any difference as to whether I was here or not in relation to Mr Gaetjens but, in relation to Macroeconomic Group, Mr Gaetjens was here answering questions just a few days ago and it's fair to say that the macroeconomic parameters wouldn't have changed much in the past few days. But we have plenty of officials here ready to answer your questions.

Senator McAllister: The estimates session has been known, and the fact that Macroeconomic Group would appear today has been known, since the Senate adopted the sitting schedule last year. Why did Ms Quinn book travel for this period?

Mr Flavel: As you would be aware, there are international meetings coming up. The IMF Spring Meetings are held every year at this time, in April, in conjunction with the G20 meetings. The head of Macroeconomic Group has attended those meetings for as long as I've been in Treasury. It is not that unusual that she would be attending, and heading to the US. It's an important function.

Senator McAllister: Why did Mr Gaetjens book travel for this period, given that the Senate adopted the sitting schedule last year?

Mr Flavel: I think I've already said that I am happy to make further inquiries with his office in terms of when he booked travel and the meetings that he is attending.

Senator McAllister: Senator Cormann was very clear when he appeared in another committee, the Senate Finance and Public Administration Legislation Committee, on Monday and said:

I was working on the expectation that we would have Senate estimates this week, and I'm indeed here to answer your questions. I don't know what is in other people's minds, but, as far as I'm concerned, the Senate had provided for this Senate estimates week, and here we are.

Was Mr Gaetjens not working on the same assumption?
Mr Flavel: I don't think I've got anything further to add.

Senator McALLISTER: He just didn't care. Did Mr Gaetjens seek any advice from the Treasurer about whether he was going to be required for this estimates session?

Mr Flavel: Again, that would be consistent with my previous answer; that is, I'll check with his office in terms of arrangements that he made.

Senator McALLISTER: Do you know, Minister?

Senator Seselja: No, I don't.

Senator McALLISTER: Did he consult with you, Minister, before making this decision not to turn up?

Senator Seselja: No.

Senator McALLISTER: When did you find out that Mr Gaetjens wouldn't be attending, Minister?

Senator Seselja: I'm not sure. I would have been aware before the hearing but I couldn't tell you exactly when.

Senator McALLISTER: There are very senior ministers here answering questions—very senior members of the executive. Are Mr Gaetjens' interstate commitments more important than theirs? Are they more important than Minister Cormann's, Minister Birmingham's and other senior members of the executive's, who have made it?

Senator Seselja: The official has taken some of the details of that question on notice, so we'll get back to you.

Senator McALLISTER: You're not curious, Senator Seselja, about what it is that Mr Gaetjens is doing interstate that's so important that he can't be here?

Senator Seselja: I'm very confident that we had officials here last week to answer questions on Macroeconomic Group and Corporate Group and that we have them here this week, and that they will be able to answer all of the reasonable questions that are put to them.

Senator McALLISTER: Can I ask about the letter. I'm a little bit confused about why we were only notified of Mr Gaetjens' absence on Monday morning. Why was this not communicated to the committee earlier?

Mr Flavel: I don't know.

Senator McALLISTER: You don't know? Can we find out, please?

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

Senator McALLISTER: We're not in caretaker mode. There is a whole department doing the work of the government. Surely the government would like to explain what is going on with Mr Gaetjens and his absence. Can we see if we can find out over the course of the day?

Mr Flavel: Sure.

Senator McALLISTER: I'd like to know where he is, what he is actually doing, when he planned that trip and why the committee was only notified on Monday that this was happening. Did Mr Gaetjens plan to be away because he expected that the election was going to be called?
Mr Flavel: No. He's at work this week, and there's been no assumption made. You are absolutely correct that the schedule for Senate estimates has been set down for some time. It is somewhat unusual, though, for us to appear, and for the secretary to appear, twice in succession at an estimates hearing, based on my longstanding experience in Treasury.

Senator McALLISTER: The convention is that the secretary appears for the first part of the discussion with Macroeconomics Group.

Mr Flavel: Yes, which he did on Friday.

Senator McALLISTER: Macroeconomic Group is appearing here today, and we do not have the head of Macroeconomic Group nor do we have the secretary. Did the secretary schedule any time for estimates preparation on Monday or Tuesday of this week? Was it in the diary?

Mr Flavel: I'd have to check with his office on his diary schedule.

Senator McALLISTER: That would ordinarily be what happens, wouldn't it, if you're going into an estimates session—you'd ordinarily schedule time to prepare?

Mr Flavel: I can certainly say that we would have had discussions prior to our hearing on Friday.

Senator McALLISTER: 'Would have' is not particularly useful; that's hypothetical. Did you have discussions?

Mr Flavel: Yes, we did have discussions.

Senator McALLISTER: So there was an appearance coming up. How much time was scheduled?

Mr Flavel: I suspect it would have been something like an hour. That would be the usual way in which we might have the executive team have a discussion prior to any estimates hearing.

Senator McALLISTER: So the executive team would get together for an hour in preparation for the secretary's appearance?

Mr Flavel: Not for the secretary's appearance—just to talk about issues that might be coming up, the allocation of responsibilities and those sorts of logistical issues.

Senator McALLISTER: Did you have time blocked out to prepare for today, Mr Flavel?

Mr Flavel: Given we were here Friday, there wouldn't have been a need to have had a separate session prior to this hearing. We are following exactly the same agenda that was on for Friday. It's been three business days since then, and there haven't been any major macroeconomic developments or other developments that would have forced us to have a separate preparation session or prepare extra briefing.

Senator McALLISTER: Mr Gaetjens is interstate. Which state is he in?

Mr Flavel: I don't know, but I've undertaken to get that detail for you.

Senator McALLISTER: He's not in Brisbane, working on the coalition campaign?

Mr Flavel: He is definitely not in Brisbane. I am happy to be corrected on the record but my understanding is that he may be in Sydney today.

Senator KETTER: Is there anyone at the table who has that information?
Mr Flavel: We've undertaken to get that for you.

Senator McALLISTER: The government brought forward the budget. This is all on the government's timetable. Senator Seselja, why is it that the government has scheduled estimates at this time but cannot make the relevant senior officials available for questioning?

Senator Seselja: I've already answered the question, as has Mr Flavel, and some parts of the detail have been taken on notice. As I stated earlier, the relevant officials were here to answer questions only a few days ago. As I said, there have been no major macro-economic changes in those three or four days and we now have a suite of officials who are ready, willing and able to answer your questions. If you want to ask them about macro-economic factors, they will do their absolute best to give you all of the information.

Senator McALLISTER: Frankly, it's contemptuous. Mr Gaetjens has had a number of opportunities since his appointment to actually demonstrate that he has some respect for this forum. It's true that, when he is here, Minister Cormann tends to talk over the top of him and prevent him from answering questions, but it is very surprising he is not here and I will be looking for a proper explanation over the course of the day about where he is and why he saw fit to schedule interstate travel instead of appearing, as expected, in the estimates period.

Senator KETTER: Just to follow up on that, Senator Seselja: wouldn't it have been more appropriate for Mr Gaetjens to advise that he had a clash and seek the permission of the committee to not be present rather than simply say he is not available? That, I think, goes to the issue of a contemptuous attitude towards this committee.

Senator Seselja: I don't accept the premise of that question, Senator Ketter.

Senator KETTER: This committee does have questions to ask of Mr Gaetjens, and he has chosen to simply make himself unavailable.

Senator Seselja: You had plenty of opportunities to ask Mr Gaetjens questions a few days ago, when he was here to answer your questions. Estimates is about departments coming in and being able to answer questions, and we have any number of highly-qualified officials who can answer your questions should you wish to turn to those issues.

Senator KETTER: My recollection is Mr Gaetjens did not appear for the full day last week. He left at about 11.15.

Senator McALLISTER: If you read back over the transcript, you'll see how it works.

Senator Seselja: You seem to have an obsession with Mr Gaetjens. These estimates are about the spending and the workings of government. This particular part of estimates is about macro-economic forecasts, amongst other things. We have plenty of officials who can answer those questions but if you don't want to get on to questions on that, that's completely your right.
Senator McALLISTER: There is a problem with the appointment of a Treasury secretary whose majority of work over the last decade has been as a Liberal Party staffer. Now he doesn't come to estimates. Can you see the problem?

Senator Seselja: Sorry; your suggestion is that, because a senior public servant has worked for a political office—

Senator McALLISTER: For the bulk of his time.

Senator Seselja: That's a problem? We've seen any number of senior public servants who have worked on both sides of politics. That is not uncommon, and I reject that attack on Mr Gaetjens. We could look around the Public Service and see how many public servants have worked in senior roles within Labor Party offices, have worked well on both sides of politics and vice versa. I don't accept the premise of that question at all.

Senator McALLISTER: It's a pattern that emerges, Senator Seselja. I have no further questions on this issue. Do you, Senator Ketter?

Senator KETTER: I would have thought, with the questions that have been asked previously about Mr Gaetjens' degree of impartiality, that Mr Gaetjens would have been at pains to present himself or, if he wasn't able to present himself, to seek permission for not appearing.

Senator Seselja: Your position is, because the Labor Party's attacked him, that there has to be a different and a new standard applied to him. I reject that.

Senator McALLISTER: No; the basic standard is that you turn up! That is the historic standard that your appointed Treasury secretary has not met.

Senator Seselja: Senator McAllister, you had a very good go. Senator Ketter asked a question, and I'm rejecting the premise of that question. The premise is: because you have attacked him, quite unfairly, somehow his behaviour needs to respond to that and reflect that. I reject that premise completely.

Senator McALLISTER: He needs to meet the ordinary standards that have been applied to every other Treasury secretary—

Senator Seselja: That wasn't the question put to me by Senator Ketter.

Senator McALLISTER: including your last appointment, Mr Fraser, who had the good grace to turn up.

CHAIR: Senator Ketter, did you have any further questions?

Senator KETTER: Yes. I don't think Senator McAllister has asked this question: Mr Flavel, are you aware of what arrangements Mr Gaetjens has taken in terms of unpaid leave in the near future?

Mr Flavel: As in future unpaid leave?

Senator KETTER: Is there any planned unpaid leave coming up for Mr Gaetjens?

Mr Flavel: Not that I'm aware of.

Senator KETTER: Will you take that on notice for us?

Mr Flavel: I'm happy to. Just so I'm clear: this is future plans to take unpaid leave?

Senator KETTER: Correct.
Mr Flavel: None that I'm aware of.

Senator KETTER: Has Mr Gaetjens travelled to Brisbane recently?

Mr Flavel: I'm happy to check with his office. I would generally have a pretty good idea, as the head of corporate, of where he is. I don't have a tracking device but I don't recall him being in Brisbane at any time in the recent past; by that, I mean in the last few weeks or even months, potentially. He would have been quite heavily involved in the run-up to the budget, being based in Canberra, and a whole raft of meetings around the ERC and other aspects of the budget preparation. To the extent that any of those meetings took place in Brisbane: that wouldn't have been unusual but I don't recall him travelling there for other Treasury business in the recent past.

Senator KETTER: I have some follow-up questions to those that I asked last week in relation to the advertising campaign, Mr Flavel. You provided us previously with the AusTender contract numbers. In terms of this campaign, are you able to tell us how much of the money to be spent on the advertising campaign will be spent in Australia and how much will be spent overseas?

Mr Flavel: I'm not aware of any of those moneys that would be expended overseas. The key component, as with most of these campaigns, is for television advertising, radio, print, website and the like. I'm not aware of any of those being—they're certainly not directed overseas. That would be highly unusual.

Senator KETTER: Are those consultants that are listed there all based in Australia? Will the work be conducted offshore?

Mr Flavel: Again, that would be highly unlikely. I think I covered this maybe not last Friday but the time before that when we were here, which was late February. The arrangement under the government's broader advertising communications policy is that the Department of Finance has a whole-of-government contract for various aspects of campaign management. Questions in terms of beneficial ownership, for instance, of companies that appear as contractors are actually better directed to them. That's the likes of Universal McCann and others that might be involved in that work.

Senator KETTER: You don't think it's appropriate for the department to inform itself of those issues?

Mr Flavel: That, again, would be an issue that the Department of Finance would go through in the selection of those contractors in order to make them available as part of the whole-of-government arrangement. As a department, we are obliged, under those arrangements, to use Universal McCann. That's not unusual, of course. We see that in travel and other aspects where there can be whole-of-government arrangements, but the actual contracting arrangements for due diligence and all actually the rest of it are matters for the Department of Finance when it comes to this particular area of government, which is around advertising and communications campaigns.

Senator KETTER: Universal McCann is the master media agency and the contract value there is over $16 million. Can you tell us a bit more about what is involved. What are they doing for the $16 million?

Mr Flavel: Most of that money would reflect the actual costs of securing advertising—for instance, spots on television, radio slots, print ads and those sorts of things.
Senator KETTER: Over what period of time will that $16 million be used?

Mr Flavel: I think we have previously put on the record, but I'm happy to again today, that the campaign went to air on 20 January this year and is due to be completed by this Saturday, 13 April. That was the plan that was made when it was approved. Like all these campaigns, they're ultimately endorsed by the secretary of the relevant department. The media plan that was put together to support the campaign had an on-air or in-market timetable from 20 January through to 13 April this year.

Senator KETTER: So, in a period of less than three months, $16 million will be spent.

Mr Flavel: I think it's a 12-week campaign, that's right.

Senator KETTER: Are you able to tell us which markets are involved?

Mr Flavel: I'm not sure what you mean by 'which markets', sorry.

Senator KETTER: Which advertising markets does it involve?

Mr Flavel: Ordinarily, once a campaign has been completed, it's easy for us to talk about the total amounts that might have been spent on the relevant medium—print, TV et cetera. In terms of things like the geographic aspect, that'd be information we'd need to seek from the contractor. I don't have that available.

Senator KETTER: You're not aware of what the target was for this particular campaign?

Mr Flavel: The target, as I covered back in February, was for a national campaign. It would be highly unsurprising to have television and other forms of advertising running in all parts of the nation. It's a tax campaign and it affects a broad range of stakeholders and parts of the community, so it's a nationally based campaign.

Senator KETTER: What about regional advertising as well as part of that?

Mr Flavel: I'll check on that, but, again, it wouldn't be unusual that there'd be a potential regional component, nor would it be unusual to have advertising targeted at particular culturally or linguistically diverse segments of the market as well. That's a pretty standard way of approaching these campaigns.

Senator KETTER: Is the focus of the campaign to tell people about the changes to their tax rates?

Mr Flavel: I think it had, very, very broadly—and I don't want to oversimplify—three main themes, if you like. One was the government's announced changes to personal income tax arrangements from last budget, another was various changes in the sphere of small business tax arrangements, and also there was the continuing work of government, particularly through the ATO, in the payment of taxes by multinationals.

Senator KETTER: Can you explain the purpose of that and how appropriate it is? In an advertising campaign to inform people that their personal income tax rates are going to change, when they really don't have to do anything and it's their employer automatically adjusting the rates of tax in the payroll system, what's the point of letting people know about that?

Mr Flavel: I don't want to veer into opinion, but I suspect that most individuals actually do have a quite direct interest in the amounts of tax that are being taken out of their pay,
notwithstanding the fact that, in a functional sense, it might be the employer who withholds it from week to week.

**Senator KETTER:** There must be an objective of this advertising campaign. Usually a campaign is a call for people to do something. If it's a health campaign, you're asking people to do certain things to assist with their health; but, in this instance, in the case of Australians who are in employment, their tax rates are going to be adjusted by their employer. So I'm at a loss to understand why we have a campaign to inform people about something that's going to happen automatically.

**Mr Flavel:** It happens automatically but it affects the way they might choose to save, invest, spend their money. I mean, it does actually impact, if we are talking about personal tax, on their disposable take-home pay. I think it is reasonable that, given the broad base of those changes, informing relevant segments—and the same for small business in terms of access to things like instant asset write-off and other aspects—and that people are made broadly aware of the changes, when they'll apply from and what the nature of those are, goes very much to the idea they can take the information and make decisions about what that means for their disposable income or business income and the like.

**Senator KETTER:** What are the KPIs for Treasury in terms of what you're looking at with this campaign to see whether it has been an effective use of taxpayer money? How will you assess this campaign?

**Mr Flavel:** There is various research that's done both through and at the end of the campaign that is designed to look at whether the message was effective in hitting certain target markets, whether that's small business, personal taxpayers and the like. We would do that ordinarily for any campaign.

**Senator KETTER:** What does that involve? Some sort of further survey activity?

**Mr Flavel:** In the details that we've provided to you on notice, there is a firm, Hall & Partners, which does formal evaluation. My understanding is that Hall & Partners is the firm that's used for all evaluations for government advertising. They would go and look at the penetration, the understanding and various aspects, I guess, of the effectiveness of the campaign.

**Senator KETTER:** Is there a certain number of people that you're looking to have reached? What's the department's objectives in terms of the success or otherwise of this campaign?

**Mr Flavel:** We don't set it to that sort of specific level. But I'm happy to come back to you with further details of more specific measures that we might apply, but it would be the case that the evaluation that's done afterwards would give us a pretty good sense of the overall effectiveness of the campaign.

**Senator KETTER:** It's referred to as a campaign. It's an advertising exercise. How often have we engaged in these types of advertising activities and referred to them as a 'campaign'?

**Mr Flavel:** That's just the way in which this is described more formally. For instance, Finance puts out and publishes on its website campaign advertising by Australian government departments and agencies. That's a report. A set of guidelines is provided. So the terminology I'm using is simply using it in the way in which it's described as part of the broader government campaign and advertising arrangements.
Senator KETTER: I think the official title for this is the Tax Integrity campaign. Is that how you refer to it?

Mr Flavel: I think I referred to it as the Better Tax campaign simply on the basis to ensure we are all talking about the same thing. I think you've referred in a previous hearing to the fact that there is a website, the bettertax.gov.au, so I refer to it as the Better Tax, and that's one of the by-lines of the campaign itself.

Senator KETTER: The campaign is not to do anything other than lift awareness about what the government is doing in these areas. Is that right?

Mr Flavel: We would think it was pretty common for a number of elements of government advertising and campaigns.

Senator KETTER: I think Senator McAllister has some questions.

CHAIR: Senator Stoker has been waiting very patiently. Can I go to her and come back to Senator McAllister?

Senator McALLISTER: Yes.

Senator STOKER: I want to ask a few questions that go to the issue of wage growth. What relationship is there between the decline in the terms of trade and wage growth in Australia?

Dr Grant: We released some analysis in late 2017, I think, that talked about the effect of the terms of trade on wage growth. You can think of the decline in the terms of trade as a large income shock to the economy, and, when the economy undergoes a large income shock, that just spills over. What it means is that you don't have as much aggregate demand as you might have had otherwise running through the economy, and of course that has an effect on nominal wage growth as a result.

Senator STOKER: Okay. Is that the only driver of wage growth in Australia?

Dr Grant: No. We were quite clear in the paper that we released that, in some senses, we do know that the terms of trade are something we can see and analyse and have a fairly considered view on. There are other structural factors that have been playing out for a much longer period that are harder to pinpoint. But we didn't rule out that there may be some structural factors at play in terms of affecting recent wage growth outcomes.

Senator STOKER: Are you able to explain what progress has been made on improving each of those drivers of wage growth?

Dr Grant: In terms of—sorry, I don't understand.

Senator STOKER: If we want to see wage growth, what progress has been made on each of the factors that have input into that outcome?

Dr Grant: Okay. Our view is—and it's set out in the economic statement—that wage growth will respond to the overall demand in the economy. We forecast fairly solid GDP growth over the forecast horizon. We also have the unemployment rate remaining at five per cent. We've also seen the underutilisation rates start to come down. One of the things we examined in late 2017 was the effect that spare capacity might have been having on the wage growth numbers outside of the unemployment rate, because we know that people might have jobs but want to work more hours. So, thinking about it from a macro point of view, as underutilisation rates fall, as the unemployment rate stays relatively low in terms of historical
standards and as growth in the economy continues to be fairly solid, we would expect wage growth to lift.

Senator STOKER: Do the rates of personal income tax have an impact on that outcome?

Dr Grant: Tax measures generally can have an effect on aggregate demand in the economy in the short run, and then there are questions about whether they have aggregate supply effects in the longer run. In the short run, if it's the case that tax measures support the economy, that means you've got support for aggregate demand; the more support you have for aggregate demand, the more you would expect spare capacity in the economy to be absorbed. So it can have an indirect effect.

Senator STOKER: How do policies that impose high taxes and higher electricity prices hurt the ultimate take-home wage of workers?

Dr Grant: It's less about their take-home wage and much more about their cost-of-living pressures and where consumers can spend money. So, to the extent that you've got higher prices through some of the essentials, like electricity, it means consumers have less money to spend somewhere else, which means that would dampen aggregate demand in the economy for other goods and services.

Senator STOKER: And does it have an impact on future investment?

Dr Grant: It can do. In the short run, it is all about the interaction of demand and supply, whereas investment decisions are being made on much longer run horizons. So it can have short-run effects; whether it has long-run effects is more difficult to untangle.

Senator STOKER: What's the relationship between productivity in the economy, increasing investment and achieving wage growth for workers?

Dr Grant: There's quite a strong relationship. Investment, of course, results in capital deepening, and capital deepening across the economy results in an increase in labour productivity. We know there's a long-run relationship between real wage growth and labour productivity. So, to the extent that labour productivity strengthens, you would expect real wage growth to also strengthen with that in the long run.

Senator STOKER: Then—just to round that off—how are the government's policies working to lift productivity and improve the competitiveness of Australia's economy?

Dr Grant: We focus very much on the short term in the forecasts, and productivity is a more of a longer run conversation in the sense it takes a while for that to come through the numbers. But any kind of support for capital deepening, any support through innovation or competition would also be expected to support labour productivity in the future. You basically want an economy that can build both human and physical capital and an economy that's flexible enough to respond in future shocks and that would give you positive productivity in the future.

Senator McALLISTER: Last week we had a discussion about whether or not macro group or indeed any other group, possibly revenue group, had been involved in modelling climate policy and economic impacts of climate policy. At that time, macro group said it had not conducted any such modelling. Does that remain the case?

Dr Grant: Yes.
Senator McALLISTER: So there's been no request in the intervening period for modelling in relation to climate policy?

Dr Grant: No, not to my knowledge.

Senator McALLISTER: Is that correct, Mr Beckett? Are you looking to provide some reassurance on that front?

Mr Beckett: That's correct.

Senator McALLISTER: Earlier this week, the department of the environment indicated that they were aware of modelling being conducted by the industry department in relation to climate policy. Has Treasury been asked to provide input into that modelling exercise?

Mr Beckett: We have been asked to provide some technical advice to the industry department in relation to that exercise.

Senator McALLISTER: And when did that request come through to macro group?

Mr Beckett: I'd have to take the exact date on notice.

Senator McALLISTER: So in the last week, in the last month?

Mr Beckett: I suspect it's January.

Senator McALLISTER: In January? Okay.

Mr Beckett: But I'd have to take the exact date on notice.

Senator McALLISTER: Okay, thank you. Who's conducting the modelling? Is it been done in-house by industry?

Mr Beckett: I think questions on the actual modelling should be directed to the industry department.

Senator McALLISTER: Yes. Have they informed you who is undertaking modelling?

Mr Beckett: They have informed us.

Senator McALLISTER: Who is undertaking the modelling?

Mr Beckett: On the question on who is actually doing the modelling, it's the industry department's modelling. We're providing advice to the industry department but they're the ones arranging the modelling.

Senator McALLISTER: Mr Beckett, on what grounds are you refusing to answer this question?

Senator Seselja: He's not refusing; he's simply pointing out that it's not up to the Treasury to answer questions on the industry department. The industry department, as I understand it, will be appearing—

Senator McALLISTER: Tomorrow.

Senator Seselja: tomorrow in this committee.

Senator McALLISTER: Treasury is providing technical advice in its official capacity, presumably on a voluntary basis, to a modelling exercise; Treasury is participating in the modelling exercise. I'm asking who is conducting it?

Mr Beckett: As I said, that's a matter for the industry department. We're providing advice to the industry department. We're not participating in the modelling exercise.
Senator McALLISTER: Providing advice is participating, I'd have to say, Mr Beckett.

Senator KETTER: Are you saying that, Mr Beckett, because you don't know or because you do know but you do not want to tell us?

Mr Beckett: I'm saying it's the responsibility of the industry department.

Senator McALLISTER: Chair, we have had this conversation a few times. I'd like to understand whether the witness is making a claim of public interest immunity in refusing to respond to this question. The question is: which entity is conducting the modelling? Is it in-house or is it being done externally?

CHAIR: Do you want a ruling?

Senator McALLISTER: I'm asking whether or not the witness is making a public interest immunity claim.

CHAIR: You can ask the witness that question.

Mr Beckett: I'm just saying that we're not conducting the modelling exercise. The industry department is conducting the modelling exercise.

Senator KETTER: But that's no reason, Mr Beckett, not to tell us the answer to the question Senator McAllister is asking.

Senator Seselja: You're asking questions of Treasury about another portfolio, a portfolio that will be appearing before you and can give you detailed answers, no doubt, tomorrow. This sort of game of getting one department to comment on the work of another department is, frankly, a bit ridiculous.

Senator KETTER: It's a question of fact.

Senator Seselja: The Treasury has commented on what it has responsibility for—giving technical advice—and the industry department has responsibility for the modelling, and no doubt they'll be able to answer your detailed questions on it.

Senator McALLISTER: Chair, I'm now asking for a ruling. The witness is non-responsive to a question about matters for which he is responsible in the department.

Senator Seselja: That's not true. That's a complete verballing.

Senator McALLISTER: I'm raising a point of order with the chair. Witnesses are required to answer questions and if they do not wish to answer a question, they need to explain to the committee why that is.

CHAIR: Or they can refer it to a minister and the minister can answer on their behalf. Is that what you're choosing to do, Mr Beckett? Minister, the officer has chosen to—

Senator McALLISTER: This is pathetic.

CHAIR: The officer has chosen to—which it says they can do in the standing orders—defer that question to the minister, and the minister can choose to answer it.

Senator Seselja: I'll make the point in answering the question that the official has answered the question in relation to Treasury's responsibility. He has not refused to answer any questions in relation to Treasury's responsibilities, unlike what your claim was to the chair just then. In relation to matters for industry, to the extent I can, I'll take them on notice but you'll have the opportunity to ask them tomorrow. I'll be sitting in the chair then but will have the relevant officials.
Senator McALLISTER: You're providing technical advice to the department of industry modelling exercise, Mr Beckett. What type of modelling is being undertaken for which the advice is being provided? Is it whole-of-economy, CGE modelling?

Mr Beckett: Again, I'd rather that we are providing technical advice to industry on aspects of modelling. I think, in terms of what the modelling is, it is again a question for the industry department, as they are conducting the modelling exercise.

Senator McALLISTER: You can't possibly be providing technical advice without understanding what model is being run. Do you have knowledge of the model that is being used?

Mr Beckett: The exact model?

Senator McALLISTER: The type of modelling that is being undertaken.

Mr Beckett: Again, the industry department is arranging that modelling, not us.

Senator McALLISTER: It's very difficult to provide technical advice, presumably, on assumptions if you don't know what modelling is being done. Any logical answer, you do know because it's not possible to do the work that you have said you're doing unless you have knowledge of the modelling work and the nature of the modelling work in order to provide technical assistance. So I'm asking you: is it CGE modelling?

Mr Beckett: It is CGE modelling.

Senator McALLISTER: Okay. Thank you.

Senator KETTER: As a follow-up a question, can I ask a bit more about the nature of the technical advice you're providing to the department of industry.

Mr Beckett: We're providing advice on modelling methodologies.

Senator McALLISTER: And are you providing advice about the assumptions?

Mr Beckett: Look, I'll have to take on notice exactly what advice we have provided. We generally are assisting the industry department with their understanding of technical issues relating to the modelling they have commissioned, so it is sort of technical assistance.

Senator McALLISTER: Mr Beckett, can you remind me of your job title. I cannot read it because I did not bring my glasses.

Mr Beckett: It is division head macroeconomic modelling and policy division.

Senator McALLISTER: So as the division head of modelling and policy, you're taking on notice what advice has been provided?

Mr Beckett: Yes.

Senator McALLISTER: You said you were providing advice on modelling technique, which is probably a good role for Treasury. Are you providing advice on the costs of particular abatement technologies?

Mr Beckett: That information will come from the modelling exercise, not from us.

Senator McALLISTER: When you undertake a modelling exercise, you need to develop assumptions. We've seen very public examples of those kinds of modelling exercises in the past. It's an input to the model, not an outcome of it. Have they provided you with the list of assumptions that they're making about the cost of renewable technology?
Mr Beckett: Again, I don't have the details in front of me. In some ways, there are different ways of doing these modelling exercises in that you can provide detailed bottom-up inputs on the cost of different sectors, or you can derive an outcome on costs of abatement from the modelling exercise. We haven't provided any detailed bottom-up information on the cost of abatement in different sectors of the economy.

Senator McALLISTER: What about the costs associated with different technologies—for example, the cost of electricity provision through solar thermal generation or the cost of electricity provision through wind generation?

Mr Beckett: We haven't provided any of that information.

Senator McALLISTER: Have you been asked to check or validate the assumptions of others in relation to those kinds of costs?

Mr Beckett: We may have been asked to provide comments on those things, but we haven't undertaken any of our own analysis on those topics.

Senator McALLISTER: So you may have been asked to provide comment. Does that mean that you did or you didn't? You were asked to provide comment and you haven't undertaken any analysis. Did you provide a response to that request for comment?

Mr Beckett: I'd have to talk to the officers who were directly involved in the meetings.

Senator McALLISTER: Do you know if the modelling makes any assumptions about the inclusion of access to international carbon offsets?

Mr Beckett: Off the top of my head, no, but I can take it on notice.

Senator McALLISTER: Do you know which policy scenarios have been modelled? Is it baselined on the credit scheme being modelled?

Mr Beckett: Again, I'd have to take that on notice. I'd have to check the exact details. I'm not sure that it is, but I'd have to take that on notice.

Senator McALLISTER: What has your personal involvement in the process been, Mr Beckett?

Mr Beckett: I guess my personal involvement was agreeing that we would assist the department of industry. I've had some discussions with staff members who have been doing the actual work about general sort of updates on progress with the issues.

Senator McALLISTER: What's been the work arrangement? You haven't personally been participating in those meetings or actually in the delivery of the work, I take it.

Mr Beckett: That's correct.

Senator McALLISTER: But there are staff who have been involved. Two staff? Three staff?

Mr Beckett: I think there have basically been two staff that have shared the role.

Senator McALLISTER: Okay. Has there been a working group set up with Industry? Have they been participating in formal IDC or informally contributing?

Mr Beckett: We have been involved in an informal advisory group with the Department of Industry, Innovation and Science.

Senator McALLISTER: I see. Does that include just these two staff members?
Mr Beckett: Yes.

Senator McALLISTER: Is there a clearance process internally before advice is provided through that channel?

Mr Beckett: A lot of the advice would happen in the room because Industry would be asking questions of us about the use of various modelling techniques and so that feedback would be given orally in the room.

Senator McALLISTER: So some of the feedback is given in the room but not all of it, I assume?

Mr Beckett: That's correct.

Senator McALLISTER: So some of it's a formal request for comment on a paper or a proposal?

Mr Beckett: Yes.

Senator McALLISTER: So there's been correspondence between Industry and Treasury on this question?

Mr Beckett: Yes.

Senator McALLISTER: In the clearance process for responding to that correspondence, have you been signing off on those responses, Mr Beckett?

Mr Beckett: I have read some of them, yes.

Senator McALLISTER: You have read some of them. Has Ms Quinn?

Mr Beckett: I'd have to take that on notice. I think I have generally done it, but I can't rule out that she was consulted.

Senator McALLISTER: Mr Gaetjens?

Mr Beckett: I'm not aware of any interactions with Mr Gaetjens on this issue, but again I can take that on notice to make sure.

Senator McALLISTER: So when Ms Quinn last week told the committee that no modelling was being undertaken and that Treasury was not modelling climate change policy, how was that evidence consistent with what is being presented to the committee now?

Mr Beckett: I think it is entirely consistent. Treasury is not undertaking any modelling of climate change.

Senator McALLISTER: Treasury is involved in a working group to undertake CGE modelling of climate policy. Mr Flavel, you are the senior officer at the table. How is that consistent with the evidence that was provided a few days ago and confirmed this morning that Treasury is not modelling climate change policy?

Mr Flavel: I think Mr Beckett's made it pretty clear that our role has been limited to providing technical advice. I think that is some way from actually doing modelling. That was the point that Ms Quinn made at the hearing last week.

Senator McALLISTER: Have you raised any concerns about the approach being taken by Industry?

Mr Beckett: We have made various comments on the modelling. All modelling has different pros and cons. Different approaches have different strengths and weaknesses, so we
have provided different input to Industry. But, at the end of the day, it's the industry department's modelling.

Senator McALLISTER: What are the concerns that you have raised or—

Senator Seselja: Chair, this is now going to the detail of advice to government.

CHAIR: Yes, I think we are coming a little bit close to—

Senator Seselja: Officials are always being asked and answering questions on what they are doing and the type of work they're undertaking, but the actual nature of the advice that goes to government is not something that's been the subject of questioning before.

CHAIR: Yes—

Senator McALLISTER: Senator Hume, at the beginning of this process you read out a statement which said that advice to the government is not a sufficient reason to not answer questions. That's correct, isn't it?

CHAIR: I don't actually know if that's entirely correct. You are allowed to ask questions about when and how policies are developed but not about the specifics of advice.

Senator McALLISTER: This isn't advice to government, though, is it? This is advice to the industry department.

Senator Seselja: You can't separate those two things. Because I think this is sailing close to the nature of advice to government, in order to assist, I will take it on notice and, to the extent that we are able to answer—

Senator KETTER: This is a working group that we're talking about—the work of a working group.

Senator Seselja: You've asked a series of questions about what type of work Treasury is doing, and that's fine. They have given advice in terms of the technical nature of the advice—that working with industry, industry has got the lead. You're now seeking to get into the detail of what advice is now coming to government. You know that those questions haven't been answered in the past by Labor governments or coalition governments. As I say, if it will assist the committee, I will take it on notice to see if there are aspects of that question that can be answered.

Senator McALLISTER: I am absolutely intrigued that these devices need to be deployed to prevent answering some questions. I don't what the big secret is.

Senator Seselja: No; you've had literally dozens of questions answered. But, when you go to the nature of the actual advice, that hasn't been the practice in any committee, as you are well aware.

Senator McALLISTER: At the beginning of the estimates process, the chair reads out the requirements for witnesses, and—

Senator Seselja: And the chair just clarified it for you.

Senator McALLISTER: witnesses are to answer questions, and the fact that a matter is advice to government is not a sufficient reason to not answer a question. That has made very clear repeatedly here and elsewhere, and it is based on advice from the Clerk.

CHAIR: Sorry; are you waiting for a ruling?

Senator McALLISTER: Yes, I am.
CHAIR: My understanding is that advice to government is not a defence for public interest immunity.

Senator KETTER: So the officer would have to make a claim for—

CHAIR: Would you like to make a public interest immunity claim?

Senator Seselja: No; the officer doesn't have to make a claim. The practice of successive governments has been that, when you start getting into the very nature of the advice that goes to government, we haven't answered that. I have undertaken to take the question on notice and examine which aspects of the question we can answer.

CHAIR: I don't think that we are going to get anything more detailed than that, Senator McAllister.

Senator McALLISTER: Through the process, has Treasury provided technical assistance around approaches to modelling a NEG-type mechanism?

Mr Beckett: I don't believe so through this process.

Senator KETTER: What can you tell us about the specific policy scenarios that are being modelled?

Mr Brand: Again, in terms of the actual modelling and the policy scenarios, I think the Department of Industry is best placed to answer those questions, because it is their modelling. We haven't contributed to the scenarios.

Senator McALLISTER: How many scenarios are being modelled?

Mr Brand: Again, I think that's a question best directed to the Department of Industry to contribute to.

Senator McALLISTER: But you do know the answer to how many scenarios have been modelled, don't you? I'm sorry, but you might need to actually say, because the Hansard doesn't recognise nodding, Mr Beckett. So you do know how many scenarios have been modelled?

Mr Beckett: I do know, yes.

Senator McALLISTER: Do those scenarios deal with a 45 per cent emissions reduction target? Does one of those scenarios include—

Mr Beckett: Again, I think that's a question best directed to the department of industry, because that's the department of industry's modelling.

Senator McALLISTER: Does macro group have the capacity to do this kind of modelling?

Mr Beckett: We are developing an in-house capacity to do this type of modelling. This is something that we've noted in the past in Treasury's corporate plan. We're developing a Treasury industry model which will look at enabling CGE modelling of various policy shocks across the Australian economy. We would link that with an international model and potentially a detailed electricity sector model. We've been developing this capacity for over 12 months. We have made pretty good progress, but we're not quite there yet in terms of our capacity to do this modelling in-house, and so what we've done in the past is generally contract out modelling.

Senator McALLISTER: With Monash or one of the other CGE modellers?

Mr Beckett: That's correct, yes.
Senator McALLISTER: So Treasury doesn't have the capacity right now to model whole-of-economy impacts of policy changes in the electricity sector?

Mr Beckett: If we were looking at the electricity sector, we would have to get somebody else to do detailed modelling of the electricity sector, because — depending on how detailed you go — that's very specific, so we would likely have to contract that out. If you were going to feed those inputs through — we're close on that — you'd also need to know what was happening internationally. So, again, that's something we'd have to use an external model like G-Cubed or something to do something like that.

Senator McALLISTER: You have got some of the pieces. You've got a model of the Australian economy. You acknowledge that with electricity sector modelling the expertise sits in the private sector and you'd probably go outside. And you'd want an extra piece of external modelling done around the international situation, but fundamentally Treasury's got the core modelling capability in macro group. Can you explain why you haven't been asked to lead on this?

Mr Beckett: Again, it's a government decision taken by the industry department. I think, in terms of our progress, we've been working towards our TIM model. While the model's nearly complete, we haven't completed the peer review process of it, so I don't think we'd quite be able to offer our services from now or in January.

Senator McALLISTER: What's the TIM model?

Mr Beckett: The Treasury Industry Model is one of the models we're developing which would enable us to provide counterfactual policy advice of impacts on the entire economy and 114 different industry sectors.

Senator McALLISTER: That will be an additional capability to the existing CGE modelling capability that Treasury's already got?

Mr Beckett: Yes. It's an additional thing we've been working on to develop in-house models. We've developed an overlapping generation model which looks at the impact of fiscal policy over multiple generations over 80 years. That's one thing we've been doing. The other thing we've been doing in the division is developing a more detailed capacity to do industry policy modelling. So they're two pieces of capacity building that Treasury's been undertaking over the past 18 months.

Senator McALLISTER: They'll essentially augment your existing CGE capability?

Mr Beckett: Yes. I think in the past we didn't have a lot of in-house CGE capability. We have a little bit. But we've generally relied on external models.

Senator McALLISTER: But it's fair to say that the expertise around CGE modelling lives with you? I mean, that's your title, you're head of the modelling and policy division in the macro group.

Mr Beckett: Within Treasury, yes. In terms of doing counterfactual policy analysis, I think that's reasonable.

Senator McALLISTER: So can anyone explain why Treasury is not doing this work and the industry department is?

Mr Beckett: Again, that's a government decision. From our perspective, if we'd been asked to do this work in January, we wouldn't have been in the position to deliver it because
we haven't finalised the core industry, the core TIM. That hasn't been through the peer-review process and, even if we had, we'd still have to commission other people to do some electricity sector and international modelling.

Senator McALLISTER: Yes, sure. Nonetheless you have the expertise. In terms of commissioning an external provider, that would ordinarily live in macro group, and historically macro group has taken responsibility for modelling climate policy.

Mr Beckett: In some ways, over time, there have been different modelling exercises commissioned by different ministers and departments. Some haven't involved us at all, some have involved us in a limited technical advisory sense and some, as you say, we've taken the lead on.

Senator McALLISTER: What about the MMRF model? You have access to that. Would the MMRF model not be suitable? Could you not have used it?

Mr Beckett: Which model is that?

Senator McALLISTER: You have a model which is the MMRF, which has been used in the past.

Mr Beckett: Is that the Monash one?

Senator McALLISTER: Yes. You could have gone to Monash, could you not?

Mr Beckett: Yes, I think we used that in the past. The TIM we're developing works in a slightly different way in terms of incorporating forward-looking expectations. I think MMRF was the model used in the past—or one of the models we used in the past, I should say. I think we've used a suite of different models. I should say I wasn't involved in those exercises, but I believe there have been a number of models we've used.

Senator McALLISTER: Yes, okay. Those were the very comprehensive modelling exercises that were done on the CPRS and the carbon pricing mechanism back in the previous administration.

Mr Beckett: I believe that to be the case.

Senator McALLISTER: So the capacity has been there in macro group in the past but, for some reason, it's now being tasked to industry.

Mr Beckett: No. What we did in the past was we set up a separate division of climate change modelling. I can't recall whether or not it was in MEG at the time. My recollection is we used a suite of models from different external providers. What we've been doing this time is developing an in-house model which we could use. Again, that could be used as part of a suite of models. But whatever we've done has never precluded other ministers and agencies from undertaking or commissioning economic modelling.

Senator McALLISTER: No, of course, but there has been a decision taken, as you indicated earlier, on this occasion, to have industry lead on this issue. We might come back to this, because we've obviously asked about it a couple times and had somewhat conflicting information about what's going on. For the moment, I'm going to leave my questions there, Chair.

CHAIR: I think Senator Stoker has more questions too.
Senator STOKER: I could ask one or two. I wanted to ask a question or two about the pipeline of housing projects that are on their way. What's expected in terms of the pipeline of dwelling projects under construction and projected into the near future?

Dr Grant: When we think about the dwelling investment forecast, you're right: we look a lot at building approvals in the pipeline. There has been an elevated pipeline for quite a few years, but we've seen building approvals fall recently. That is one of the reasons we're forecasting dwelling investment to fall in 2019-20. It takes a little while for building approvals to make their way into dwelling investment. We have a slight rise in dwelling investment in 2018-19, and it falls by seven per cent in 2019-20 and by a further four per cent. That largely reflects what we're seeing in building approvals.

Senator STOKER: Do those drops pose a risk to the economy?

Dr Grant: We make the point in the economic statement that there is a lot of uncertainty around the housing market, and that is because of what's been happening with housing prices and also because we are mapping some of the fall in approvals through to investment numbers, and that's always uncertain when prices are falling in the housing market.

Senator STOKER: What spillover effects can we expect that to have on the rest of the economy?

Dr Grant: There's a box in budget statement No. 2 that talks a little bit about the housing market and the effects. As we know, the movements in housing prices affect dwelling investment directly, but they can also affect household consumption. It means that the wealth of households is affected. We did see in the December quarter of last year that some of the categories of household consumption that are a little more related to the housing market experienced falls. So, there will be some effect on household consumption as a result of falls in housing prices. Now, as you could imagine, it's pretty difficult to pinpoint it precisely. In the box in the economic statement we talk through a scenario. It's like a stylised scenario that says that if there is an immediate fall in house prices of 10 per cent due to a reduction in demand then we expect the level of real GDP to be around half a per cent lower after two years, and that comes through both dwelling investment and consumption.

Senator KETTER: Coming back to the line of questioning from Senator McAllister, just briefly: Mr Beckett, is it correct to say that whatever results come out of the working group that you've been referring to that's been led by industry, in terms of the modelling exercise, the result of that is not something that could be referred to as Treasury modelling?

Mr Beckett: That's correct. It's not Treasury modelling.

Senator KETTER: So, how will it be referred to—Department of Industry modelling?

Senator Seselja: It's a matter for the industry department how they're going to refer to it. You can ask them that tomorrow.

Mr Beckett: Would it be possible for me to correct the record on one matter? I indicated earlier that I recalled being asked in January 2019, when the request came from Industry to assist them with some technical advice on this exercise. I've been advised that it was actually December 2018.

CHAIR: Thank you.
Senator KETTER: I just want to move to another issue—some of the comments that have been made by IMF lead economist for Australia, Dr Helbling. These were reported in the AFR recently. Firstly, Mr Flavel, are you aware of those comments?

Mr Flavel: I am, but I'll ask Dr Grant to answer those questions.

Senator KETTER: Mr Helbling is quoted as saying:

But it's also possible that maybe the inflation trajectory, the projection, shifts down a bit; labour market conditions are a bit weaker, and then by the very logic of the flexible inflation targeting regime, I would expect they would ease …

I think he's referring to monetary policy there. Does Treasury share those concerns that there are some real risks again that wage growth forecasts might not materialise?

Dr Grant: I don't have a copy of the article in front of me, but I did read some of the reporting as to what the IMF said. There are always risks around the economic outlook, and in statement 2 we talk about the housing market as being one source of those risks, and on both sides. So while you've got some downside risks, to the extent that employment growth is stronger you may have some upside to household consumption. There is a paragraph in statement 2 that provides a fairly partial but nonetheless important stylised scenario. On page 2-20 we basically include a scenario that says, 'If inflation outcomes were half a percentage point lower—'

Senator KETTER: Which budget paper are you referring to?

Dr Grant: Budget Paper No. 1, page 2-20. It's in the first paragraph. You'll see there:

… if inflation outcomes were ½ of a percentage point lower in each of 2019-20 and 2020-21, the direct impact on the level of nominal GDP could result in it being around 0.8 per cent lower than forecast by 2020-21, resulting in a deterioration in the underlying cash balance of around $2.7 billion by 2020-21.

We acknowledge there are risks around the timing of the increase in wages and this scenario gives you a sense of what that actually means for the forecast.

Senator KETTER: The Australian Financial Review article, quoting Dr Helbling, states:

"I think given where the economy is now, that this growth impetus comes forward is important in the current cyclical setting. The ambition [on infrastructure spending] is in many senses welcome," he said.

"The housing market downturn is sort of sagging on the demand side, so you want to have other demand sources pulling."

The article continues:

He said there was still a plausible scenario in which the economy weakens in the first half of this year and then picks up without damaging the labour market, or dragging on the inflation outlook.

The article then quotes Dr Helbling's comment that I just referred to, and then continues:

Asked whether that decision was likely to be made in the next few months, Dr Helbling said: "Yes".

"If there are material changes to inflation trajectory and, or—and typically it will be both, there will be an 'and', to the employment picture, I think they will."

The article then states that when it comes to the property market:

… the IMF's baseline forecast remains of an economy that absorbs the housing market downturn.

Do you acknowledge that there are significant downside risks to the economy, Dr Grant?

Dr Grant: There's both upside and downside. We do our best to do a central forecast—so we see risks on both sides. I would add that we also have—I think you used the word 'sagging'
from the quote—a detraction from growth in 2019-20 from dwelling investment. So, in some senses, the budget numbers are consistent with the housing market sagging or dragging on the economy over the forecast horizon, yes.

**Senator KETTER:** Has Treasury conducted any analysis on the impacts of monetary policy on wages?

**Dr Grant:** No, not to my knowledge.

**Senator KETTER:** Are you able to tell me what would reasonably be expected if monetary policy were to ease over the next 12 months?

**Dr Grant:** An easing in monetary policy would, of course, stimulate aggregate demand across the economy. As aggregate demand is supported or boosted, you would therefore expect that that would hold some of your labour market variables more firm than otherwise would have been the case. To the extent that the labour market holds up a little better, which you would think would happen after an easing in monetary policy, that should go through to support wage growth in the economy. It is very difficult to put a specific number on that.

**Senator KETTER:** No. But you'd expect that wages, rather than just staying constant, would increase by something—

**Dr Grant:** When I answered that question I was kind of talking generally about the macro economy. In terms of the forecast, it's important to note that we take what the market's expectations were for interest rates at the time. Therefore, our forecasts are based on what the market thinks interest rates will do, and commenting on whether an extra interest rate cut or another different move in monetary policy is very difficult for me to be able to do.

**Senator KETTER:** I guess I was more generalising to what economic theory tells us about what would happen if monetary policy were to ease over the next 12 months, in terms of wages?

**Dr Grant:** It would support the economy, the labour market and wage growth.

**Senator KETTER:** Can you tell us what the specific wages policies that are in the budget are? In terms of wages, what policies does the government have that manifest in the budget?

**Dr Grant:** When we think about the wages forecasts, we think a lot about the aggregate economy. That means that, if there are policies that support aggregate demand, automatically you have this indirect flow-through to how you think about the labour market and wages. When we do the forecasts, we don't go from the bottom up on policy, as you're already aware. We assess what we think's happening in growth and, to the extent that policies might support the economy in the short term, particularly through aggregate demand, you would expect that to then support your labour market and your wages variables.

**Senator KETTER:** The IMF has also downgraded Australia's GDP outlook this year to 2.1 per cent, down from 2.8 per cent late last year. This is a fairly significant downgrade, isn't it?

**Dr Grant:** Yes.

**Senator KETTER:** Is this of concern to Treasury?

**Dr Grant:** One point to notice is that it's very difficult to compare. That's a calendar year forecast from the IMF, and of course the budget is based on the financial year. In the 2018-19 financial year, growth is forecast to be 2¼ per cent. It's not significantly different from the 2.1
per cent, but then, of course, we have growth lifting to 2¼ per cent, which is, again, not too different from the 2.8 per cent. But comparisons are a little more difficult because they print calendar year forecasts instead of financial year forecasts.

Senator KETTER: I acknowledge that it's difficult for you, but how does this downgrade compare with budget forecasts? Isn't it the case that it's the financial year's 2.8 per cent?

Dr Grant: In terms of the 2018-19 year, in the 2018-19 MYEFO, real GDP growth was forecast to be 2¼ per cent and now it's forecast to be 2¼ per cent, so there was half a percentage point downgrade to real GDP growth in the budget, which is somewhat similar to some of the downgrades that the IMF have made.

Senator KETTER: If growth comes in at 2.1 per cent over the next year, what would you expect to happen to the unemployment rate?

Dr Grant: We estimate potential growth to be around 2¾ per cent, so, if growth was to be relatively subdued over the whole of 2019, it would definitely put upward pressure on the unemployment rate.

Senator KETTER: If you're assuming it to be 2.75, that's where it needs to be before unemployment doesn't increase?

Dr Grant: Yes. Although, of course, there's a fair amount of uncertainty around the estimates of potential, yes, you're right.

Senator KETTER: Earlier on there were some questions about the tax cuts and their impact. My understanding is that the tax cuts proposed by the government are more directed at higher-income earners. Can you confirm that for me?

Dr Grant: I understood that it was directed more to the low- to middle-income earners, particularly in the near term with the increase in the tax offset, in terms of the forecast horizon.

Senator KETTER: Okay. I want to come back to the wages issue. The context is that we've seen household consumption exceeding income for several years, which has seen a reduction in the savings ratio. Of course, wages growth has been one of the reasons for this, some would argue. Many families have had to dip into their savings as they struggle to pay bills. Has Treasury looked into why outcomes on wages growth have been lower than forecasts set out by Treasury in the last 22 economic statements?

Dr Grant: I'm unsure of the number of statements that have been made and then downgraded, but I think Ms Quinn might have touched on this last week, and that is that, at the same time that wage growth has been a little lower than forecast, employment growth has been a little higher than forecast. In some sense, that provides an offsetting feature to the wages forecast miss, which is that the increase in labour supply has been stronger than what we expected.

Senator KETTER: Has that been the case for the last 22 economic statements, though?

Dr Grant: I would have to take that on notice to get back in time.

Senator KETTER: Is that Ms Quinn's response to the fact that Treasury rarely gets the wages growth figure correct—at least in recent years?

Dr Grant: I think she was basically trying to make the point that, if you miss on one macro variable, you have to look at where another variable may have missed on the other
side. So it's true in recent years that the employment growth numbers have been surprising us in terms of their strength compared to the forecasts while the wages growth has been a little softer than forecast. What that means is that they are two variables that interact, of course.

**Senator KETTER:** I appreciate Ms Quinn's insight on that, but the question goes to whether or not you've done official internal analysis of this particular issue—the fact that getting the wage growth numbers right seems to be an elusive objective. Has there been any analysis of that and, given that you pinned down a potential resolution of this, has that been taken into account in future wage growth estimates?

**Dr Grant:** Every single time we update the forecast—it is a continual thing we do to think about the forecasts and, where actual results may be a little different to what we expected, it is not so much an internal kind of review process. It is this continual theme that we will look at. Every time we update the forecast, we will have meetings on each sector of the economy, we will work out why something may have happened that we didn't expect and what we think is happening. So that is something that just goes on all the time, and that includes for wage growth and all other sectors of the economy.

**Senator KETTER:** Okay, but there's a lot of public interest in the issue of wages growth. There's a view that we're seeing stagnant wages growth, and I think it's significant that in the last 22 economic statements we haven't got that right and there's been a constant downgrading of our assessment of wages growth. I know that, as you say, it's an ongoing and continuous process and that you look at all the factors, but my question goes to the issue of wages growth. So you're telling me that there's been no focus on that particular issue?

**Dr Grant:** There's been a lot of focus on it not as part of a one-off process but as an ongoing process. We always look into this, and of course wages has been something we've spent a fair amount of time on. The other point I would make is we're not alone in this in an international sense. During this economic cycle, wage growth has been slower to lift than what a lot of forecasters expected. We also have a look at what's happening internationally to get an idea or a sense of what other countries are now seeing at their part of the economic cycle and what we may expect going forward. So, no, I can definitely assure you that there's been a lot of work, thought and analysis that's gone into wages over the past few years.

**Senator KETTER:** Have you done any modelling as to how much better off the average and median wage worker would be if these wage forecasts had been met?

**Dr Grant:** Not so much modelling, but we are aware how large some of the forecast misses have been in recent times, and of course we are aware that that affects both average and median wages across the economy, in terms of our expectation of what that might have been versus what played out.

**Senator KETTER:** But you can't tell us, if you had been correct and spot-on in terms of your wages growth estimates projections, how much better off those average and median workers would have been?

**Dr Grant:** Not on the spot, but I can take that on notice.

**Senator KETTER:** Thank you. There is some scenario planning in the budget. I'm just interested in what would happen to the forecasts of the key economic indicators if the household savings ratio were to decline to zero.
Dr Grant: There is a scenario on consumption in the budget. I'm looking at scenario 2 in budget statement 7. It's on page 7-15.

Senator KETTER: Is this Budget Paper No. 1?

Dr Grant: Yes, it is. I was just looking to see if it says something about the saving rate more explicitly. This is a scenario—it's fairly clear from the introduction—where we've basically looked at if households reduce their rate of saving by more than forecast. In the budget forecast, the saving rate is broadly flat. This scenario says: what if that came down? We don't specify exactly where the saving rate finishes up. What it is is that the level of consumption is one per cent lower or higher than currently forecast in the budget. This splits out for you what happens. In table 4 it specifies the underlying cash balance impact of that scenario.

Senator KETTER: So you're not specifically modelling a certain specific reduction in the household savings ratio?

Dr Grant: It's not specific, but of course by definition the saving rate would be lower in this scenario than what is in the central forecast.

Senator KETTER: Even though you're not modelling a specific savings ratio outcome, you are able to tell us that there would be—what was the outcome you predicted?

Dr Grant: You can see from table 3 that the level of real GDP is quarter of a per cent lower after the first year and half a per cent lower after two years. So it's a level impact.

Senator KETTER: Is it within your capacity to model a scenario in which the household savings ratio declines to zero?

Dr Grant: The saving rate is always a residual in some regard, in the sense that you work out consumption. If you were to change the consumption forecast, you automatically get a different saving rate. We tend to go at it from a consumption angle and let the saving rate be the residual that moves. That's how the ABS do the statistics, so that's how we approach the scenario. Of course, if you wanted to look at a specific saving rate, you could flip the exercise. That's not what's done here, but it would have a lower saving rate in this scenario.

Senator KETTER: In terms of the consumption rate, what's the scenario in scenario 2?

Dr Grant: You can see it's about halfway down on page 7-16 and it says:

For the scenario, household consumption growth in 2019-20 has been adjusted so that, by the end of 2019-20, the level of consumption is either 1 per cent lower or higher—

it's just a metrics scenario—

than the levels currently forecast in the Budget.

This is a one per cent difference on the level of household consumption.

Senator KETTER: So it's like a sensitivity of the response.

Dr Grant: Exactly.

Senator KETTER: So, in order to model a situation where the household savings ratio is zero, what do you need to do?

Dr Grant: We would work out how much higher the level of consumption would have to be in order to get a household saving rate to fall to zero. You would basically figure it out from moving household consumption.
Senator KETTER: I think there's some concern with the level of household debt that's out there. I'm just interested why that particular scenario hasn't been modelled because we have seen a significant decline in household savings. Do we know whether the decline in household savings has been arrested as yet?

Dr Grant: The household saving rate came up a little bit in the December quarter. From the top of my head, it increased to about 2.5 per cent so it's not a lot. The saving rate is sitting flat over the past two quarters. Now, of course, it's notorious for revisions because it is a residual, so you have to be a bit careful feeling like you know exactly what the saving rate is doing. Everything you're asking in some sense conceptually goes back to household consumption. So, if you're concerned—and I think we make the point in statement 2 about household spending amid high levels of debt. So anything that households do is going to show up in household consumption. That scenario in some sense is a nice scenario because it is relevant for a number of uncertainties that are playing out in the domestic economy. It could be that the saving rate could be higher or lower. It could be that households change their behaviour because they're more concerned about debt, or less concerned about debt, and all of those scenarios would come through on a different household consumption forecast.

Senator KETTER: How does the savings rate at the moment compare with historical levels?

Dr Grant: The household saving rate has been falling recently as you know, after peaking, I think, at about 8.4 per cent—I'll just find that for you. So, yes, the household saving rate was 8.4 per cent in the June quarter of 2014 and 2.5 per cent in the December quarter of 2018, so it's been falling over that period.

Senator KETTER: Is that a significant concern?

Dr Grant: The saving rate is not a stock; it is the amount of income that is still being saved. It's still positive, so people are still saving a share of their income but they're now saving a smaller share of their income than they were saving. The household saving rate, like I said, is heavily revised so you do have to be a little bit careful thinking that it's going to stay where it is now. The other thing is that the saving rate is hard to interpret in a historical context. That's because financial deregulation and all of the reform that was going on saw a long decline in the household saving rate. It then increased following the global financial crisis and has since been declining. In our forecast, we have it remaining broadly flat from this point.

Senator KETTER: So you're linking financial deregulation to decline in the household savings rate?

Dr Grant: In a structural sense—in the past, of course.

Senator KETTER: And over what period of time are we talking about?

Dr Grant: It will be through the 1980s to the early 1990s—to the mid-1990s, you saw this long run of decline in the household saving rate. That's because the economy was shifting and adjusting, people were getting access to financial products that they hadn't otherwise had access to and, of course, households naturally change their behaviour in that environment.

Senator KETTER: Chair, I'm conscious I have a few other questions. I'm conscious that if somebody else—
CHAIR: I just wonder whether Senator Ciccone has any questions. No? Senator Stoker?

Senator STOKER: I'm all right.

CHAIR: You're good.

Senator KETTER: I can keep going?

CHAIR: Yes.

Senator KETTER: Thank you. I'm going to go to an issue that was raised last week but that I want to revisit. It's the issue of the $28 billion write-downs in payments to GDP. I want to take you to Treasury's response to my letter from last week.

Senator Seselja: Senator Ketter, I think they would be questions for Fiscal Group, which is coming up.

Senator KETTER: I'll just check if I have some other—

Senator Seselja: There's no requirement to fill the time for Macroeconomic Group. If you would like to move on to Fiscal Group, they are ready, willing and able.

Mr Flavel: Senator Ketter, I'm sorry to interrupt, but the response provided actually did say that it's a question best directed to the Department of Finance—just so as not to get your hopes up.

Senator Seselja: Sorry, I thought that if it was going to be Treasury it would be in Fiscal Group, but I wasn't aware of that.

Senator KETTER: I thought there was a reference to the fact that Fiscal Group was across that issue as well.

Mr Flavel: I'm just reading verbatim the response that has been provided to that question which you posted in your letter to us last week. The answer we've provided just says that the question should be directed to the Department of Finance. You asked for a full breakdown of the $28.4 billion in downward revisions to payments.

Senator KETTER: When I asked Mr Gaetjens—I went through my letter to Mr Gaetjens with him at the outset—I think it was his comment that Fiscal Group would be able to assist there as well.

Mr Flavel: I think he was making a similar point to Senator Seselja's, which is that if it were anywhere it would be in Fiscal Group. It's definitely not in this group.

Senator KETTER: I'm happy to wait and take my chances with Fiscal Group. I just want to double-check if I have any other questions for Macroeconomic Group. It doesn't appear so. As far as I'm concerned, we're able to move on to Fiscal Group.

CHAIR: Terrific. We'll let Macroeconomic Group go and we'll ask Fiscal Group to join us at the table.

Senator KETTER: Subject to the fact that I think Senator McAllister did indicate that she might want to revisit her line of questioning. She had to step out.

CHAIR: I don't know whether we can wait for the senator to continue or not. If she's got questions for the department, the department will still be here, but we can't sit around with Macroeconomic Group and wait for Senator McAllister. If there are no more questions from senators, we will move on to Fiscal Group now. Thank you, Macroeconomic Group.
Senator KETTER: Can I request a brief stop to make a phone call in relation to that issue?

CHAIR: It's highly unusual and normally unnecessary, Senator Ketter.

Senator KETTER: I'm trying to save time in the longer term to facilitate the—

CHAIR: All right, we can have a five-minute break. The committee will suspend for five minutes.

Proceedings suspended from 10:43 to 10:48

CHAIR: The committee will now resume. We'll let the Macroeconomic Group go and move on to the Fiscal Group. Welcome back to the committee, Fiscal Group. Senator Ketter, do you have some questions.

Senator KETTER: Yes. I will follow on from questioning last week. I was asking about the fact that there's a tension between the PBO's assessment of payments going forward and what's in the budget. Mr Atkinson, you said:

It gets it back a little bit to the structural decreases in the requirement for paying social security because of strong employment and the differential in growth rates between those payments and GDP growth, because this is always a percentage of GDP.

Whilst I appreciate your response, I don't believe the answer given was at a sufficient level of detail, so I want you to take us through the methodology changes for each of the key payment categories—for example, social security, as was mentioned. What was last year's budget medium-term growth rate for this payment category and what is it now?

Mr Atkinson: Just to clarify a couple of things there, I don't believe there is a discrepancy between the PBO's view of medium term and ours on payments. The second is that reading this payments line like a differential from the MYEFO line is not quite the right way to look at it. We've separated out payments and receipts this year, which gives extra transparency, but on some of the other tables it's a comparison with MYEFO. For instance, on the page before, if you look for budget statement 3, page 11, you actually have the underlying cash balance versus MYEFO. So I don't believe there are methodological changes, because I don't think there's actually much of a change to the structure of that since MYEFO.

Senator KETTER: Still, I'd like you to take me through each of the key categories. Just walk me through those. What's the best part of the budget to go to to go through those?

Mr Atkinson: It's a bit difficult, because that table is about levels, not about changes.

Senator KETTER: Which table are you referring to?

Mr Atkinson: You're talking about the chart in budget statement 3 on page 12.

Senator KETTER: This is budget statement 3?

Mr Atkinson: Yes, page 12.

Senator KETTER: And this is Budget Paper No. 1?

Mr Atkinson: Yes, Budget Paper No 1.

Senator KETTER: And what page is it?

Mr Atkinson: Page 3-12.

Senator KETTER: Yes, I'm with you.
Mr Atkinson: That table demonstrates the level of payments against GDP and the level of receipts against GDP, as opposed to page 3-11, which shows the change in underlying cash balance from MYEFO to budget. As you can see, there's not a huge change, and, as you can see, the major change between MYEFO and budget actually is the major revenue decisions in the budget, which are tax decreases. The rest of it tracks fairly similarly with MYEFO. So there's not really a movement. What is new is that, in last year's budget, we didn't actually separate the receipts and payments lines of that UCB, and that was why I was explaining the shape of the line and not what's driven change in the line. We could take on notice what the change in the line is, but I suspect the change in the line is very minimal. It's not a new thing in this budget. There haven't been decisions that have driven that.

Senator KETTER: Are you familiar with the Grattan Institute article from Friday of last week on this particular issue of payments as a proportion of GDP?

Mr Atkinson: I'm not personally familiar.

Senator KETTER: By Danielle Wood.

Mr Atkinson: No, sorry.

Senator KETTER: Ms Wood acknowledges certain restraints but says that:

… spending as a share of GDP hasn't come down significantly since the Coalition took office. And there have been a notable absence of savings measures in the past two budgets, other than the now almost obligatory measures to extract more efficiencies from the welfare budget.

What do you say to that, Mr Atkinson?

Mr Atkinson: Obviously I haven't seen it, but part of that is inconsistent with what it says on page 3-5:

As a proportion of GDP, payments are forecast to fall below the historical average of 24.7 per cent from 2019-20. Real growth in spending is expected to average 1.9 per cent between 2013-14 and 2022-23, the lowest of any government in 50 years.

That is based on the figures that we have for payments as a percentage of GDP. That's the only factual thing that I can point to. The rest of the commentary is across multiple budgets, and I probably couldn't comment on that.

Senator KETTER: I'm interested in your response to these points. Ms Wood refers to the surplus as fantasy surpluses:

… born on the spending side of the budget—payments as a share of GDP are projected to fall by 1.5 per cent of GDP by 2029-30. Achieving such a reduction would require significant falls in spending growth across almost every major spending area, during a period when we know that an ageing population will increase pressures on many components of spending.

And I've already referred you to the PBO's estimate of ageing wiping $36 billion off the bottom line by 2028-29. I know we had this conversation last week, but I think there is a real question about the legitimacy of the estimate here in terms of payments reductions.

Mr Atkinson: The medium-term projection methodology that underpins this has been the same for a very, very long time. It gets tweaked occasionally, but in essence, as I said last time, it projects forward off the end of the forward estimates. I don't really have anything further to add based on the commentary from the Grattan Institute.
Senator KETTER: But the medium-term estimates assume steady trend growth and no new spending announcements, other than for infrastructure and pharmaceuticals—isn't that right?

Mr Atkinson: That's not quite right. It reflects the current state of decisions and models.

Senator KETTER: How is that different to what I just said?

Mr Atkinson: It doesn't take into account any decisions that have not yet been made, except for the interaction of the tax cap in the final year. This methodology is also the baseline that the PBO uses for costings.

Senator KETTER: But Ms Wood makes the point: To believe these figures you would have to believe the Coalition would contest another three elections without spending an additional dollar.

Mr Atkinson: Are you suggesting that, if a future government spends new money that's not offset by decreases in payments or increases in taxes, the budget bottom line will be different?

Senator KETTER: Well, we're not seeing offsetting savings, are we?

Mr Atkinson: That's actually a matter for Finance, but there is a table on page 3-10 that demonstrates that.

Senator KETTER: It illustrates my point precisely. It makes the point that 'total payments impact of policy decisions' is actually a deterioration in the budget bottom line, and it's only the fact that you've got the non-economic parameter and other variations that negates that.

Mr Atkinson: That ends at 982 positive. I answered this particular set of questions last time, but it's actually a matter for Finance estimates. My colleagues in Finance went through this in quite a bit of detail in their hearings.

Senator KETTER: I've asked if you could take us through each of the key payment categories. What's the best place in the budget to look for a list of the key payment categories?

Mr Atkinson: Are you after base categories, as in levels, as opposed to changes, which are what the budget papers usually talk about?

Senator KETTER: I wanted to focus on things like social security and those types of payment categories. Where would you be comfortable going to?

Mr Atkinson: Budget statement 5 in Budget Paper No. 1 goes through expenses and net capital investment, and that puts the total payments in it.

Senator KETTER: What page are we on there?

Mr Atkinson: It's 5-5.

Senator KETTER: Okay, and we've got table 3 on page 5-8.

Mr Atkinson: There's just one other point I'd make on what we were talking about before: that's as a percentage of GDP, and, as I said last time, it's just a factor of mathematics that, if payments growth—and all of those payments are growing; they're not shrinking—is less than GDP growth, you'll have a reduction in the payments-to-GDP ratio. As you see in this paper, all of the levels are increasing over time.

Senator KETTER: Yes.
Mr Atkinson: So that's in 5-5, where we start with total government expenses and payments, one being cash and one being accrual.

Senator KETTER: All right, but can you take us through the major payment categories on 5-7 and tell us—as far as social security is concerned, you say there were no methodology changes?

Mr Atkinson: That is a matter for my colleagues in Finance. You can see the line there though, and it increases over the forward estimates. But this is their work.

Senator KETTER: So, education?

Mr Atkinson: Those figures are agreed between the Department of Education and Training and the Department of Finance.

Senator KETTER: And those projections are going up?

Mr Atkinson: Yes.

Senator KETTER: Health?

Mr Atkinson: Yes, they're there as well.

Senator KETTER: And they're going up as well?

Mr Atkinson: In nominal terms—these projections are not as a percentage of GDP. The payments as a percentage of GDP are in the back, in the historical tables. I think it's page 10-5.

Senator KETTER: Yes, that's the overall budget position. I was looking at each of the key payment categories.

Mr Atkinson: This is really a matter for my Finance colleagues. As to whether those payments are done as a percentage of GDP, they would have to take on notice what they were as a percentage of GDP. I don't believe I've seen the individual elements of BS5 done as a percentage of GDP previously. No, they're dollar numbers; they're levels. And, as you stated, those are all going up.

Senator KETTER: In terms of the methodology, you're saying you have no knowledge of that and it's the Department of Finance?

Mr Atkinson: For those, certainly, yes.

Senator KETTER: And the individual departments concerned?

Mr Atkinson: Yes.

Senator KETTER: I just want to revisit another area that I was exploring last week which goes to that issue of parameter variations rather than policy decisions, which are impacting the bottom line. Minister, my question is to yourself. Based on the testimony given by Treasury officials on Friday, the net effect of policy decisions since MYEFO has made the budget worse, not better. I think that was illustrated in the table that we were referring to earlier. In budget paper No. 1, on page 3-8—if I could take you to that—

Senator Seselja: I'll just have to get the—

Senator KETTER: I'm asking for your advice about this issue. If you look at budget repair strategy, it says:

The strategy sets out that:
new spending measures will be more than offset by reductions in spending elsewhere within the budget;

If you go to page 3-10, the first line tells us that the total payments impact of policy decisions taken since the MYEFO was over negative $8 billion. That's the impact of policy decisions. The second line of that table refers to the parameter variations. It's quite clear from your own table that the impact of policy decisions is a deterioration in the budget bottom line, and yet your budget repair strategy says that new spending measures will be more than offset by reductions in spending elsewhere within the budget. Can you please reconcile those two pieces of information?

Senator Seselja: Minister Cormann answered this in some detail yesterday, but I can refer you to that very page that you're talking about. It shows that for net payments the impacts of policy decisions in 2019-20 budget totals to a positive $982 million.

Senator KETTER: But that's not policy decisions. That's taking into account adjustments that are made.

Senator Seselja: As I said, the minister went through in it some detail. But for the net payments the impact of policy decisions in the 2019-20 budget is $982 million in the positive.

Senator KETTER: That's only after you take into account those parameter variations?

Senator Seselja: As I said, Minister Cormann went chapter and verse on this, and this is the net impact. That's where we arrive at when you take into account all of the decisions.

Senator KETTER: You rely on the non-economic parameters and other variations to satisfy your budget repair strategy. Is that what you're saying?

Senator Seselja: Well, no. No, but—

Senator KETTER: That's the impact of what you just said.

Senator Seselja: No, it's not. If I could just give a little more information. As I say, referring to the fact that Minister Cormann has already gone through it chapter and verse, what we've seen, in terms of our budget repair strategy, is that we have had the lowest rate of spending growth in 50 years. It's less than half of what it was when you were last in government. In terms of our budget repair strategy, it has been predicated on spending restraint. We are seeing growth in spending, but a lower growth in spending than what we've seen in previous years. We've seen decisions taken that have strengthened the economy and seen more people in work. There is the lowest proportion of working-age Australians on welfare in a generation, in 30 years. We've had less people on welfare, more people in work and more businesses employing people. We've had spending restraint, and we've had strong economic growth.

That has been at the core of our strategy, which is bearing fruit and which is now seeing a dramatic turnaround from what we inherited from the Labor Party—that was a $48 billion deficit. There has been a $55 billion turnaround. That is not an accident. It has come about because all of those. In turns of your specific question, the answer is that $982 million net figure.

Senator KETTER: That's the net figure. Mr Atkinson, perhaps you can disaggregate that $8.2 billion figure. What are the types of policy decisions that have been taken since MYEFO which are reflected in that figure?
Mr Atkinson: This is really squarely Department of Finance's area and part of the budget. These were discussed in great detail by my colleague, Mr Fredericks. I don't think I can add anything to what they've already put on the record. The movements in policy decisions are articulated in the papers here.

Senator KETTER: Can you just give me an overview?

Senator Seselja: Senator Ketter, you're asking the official from Treasury to go into the detail that is very much the responsibility of the Department of Finance. He's done very well to talk in broad terms about the headline figures, but the Department of Finance is responsible for those and many questions have been asked and answered on that very point.

Senator KETTER: My question—

Mr Atkinson: Just for background, it's on page 3-21. But it's Finance's area.

Senator KETTER: There are some of the major increases in payments. On the last dot point on page 3-21, are you able to speak to that, Mr Atkinson, in terms of the application of the received model of income assessment for social security income support payments, which are impacted by—

Mr Atkinson: No, that's Finance as well. This whole section is done by Finance.

Senator KETTER: That's expected to decrease payments by $2.1 billion.

Senator Seselja: It has been asked and answered. You are now seeking to re-prosecute issues that were dealt with in Finance and are the responsibility of the Department of Finance.

Mr Atkinson: The detail of that measure is on page 108 of budget paper No. 2, but it's Finance's area.

Senator KETTER: Mr Atkinson, once again, just going back to table 3 on page 3-10, can you assure us that all the non-economic parameter changes and other variations used in the figures in table 3 are directly attributable to the policy decisions taken and summarised in the first line of that table?

Mr Atkinson: I genuinely can't. It's created by the Department of Finance, and it's theirs to answer.

Senator KETTER: Doesn't that effectively mean that the government's taking credit for parameter changes outside of its control to justify policy decisions that are within their control?

Senator Seselja: No. You are now seeking to verbal the evidence that has been given to you. Mr Atkinson has been very generous in giving as much information as he can on an area that is the responsibility of another department. That is not what he said. That is not what I've said. This was explained in some detail by Minister Cormann. Please, don't verbal witnesses who have done their best to give you honest answers. That is complete verbaling of the evidence that was given to you just a moment ago.

Senator KETTER: I think that was just a direct question, which we're entitled to ask.

Senator Seselja: You were drawing a conclusion.

Senator KETTER: Minister, has the government broken its own fiscal and budget rules in this budget document?

Senator Seselja: No.
Senator KETTER: Have you broken the spirit of your fiscal rules?

Senator Seselja: No. To be getting these kinds of questions from a Labor Party senator is, frankly, just extraordinary. Spending growth under the Labor Party was something like 4.3 per cent. It is around 1.9 per cent real under us. We've set out our fiscal strategy.

Senator KETTER: Which is in tatters.

Senator Seselja: Officials have pointed you to the net effect of those being positive. We've had a consistent strategy over a number of years to deal with the mess that you left us. The net effect of that has been to take the state of the finances from a $48 billion deficit that we inherited to a $7 billion surplus under us. We've done it through strong economic growth that you can only dream of.

Senator KETTER: Clearly not.

Senator Seselja: We are not going to be lectured to you about our fiscal strategy, which has been highly successful. Frankly, you have played no part in it, other than seeking to block it where you can.

CHAIR: That's a good point for us to break on. The committee will now break for 15 minutes for morning tea and resume at 11.30 with the Fiscal Group.

Proceedings suspended from 11:15 to 11:30

CHAIR: The committee will now resume with the Department of Treasury and members of the Fiscal Group.

Senator KETTER: I want to move to the issue of the consumer data right. Is somebody able to give us an update on what's happening there, noting that the legislation hasn't passed and we've got an upcoming election. I'm interested in the timetable that is now being looked at in terms of, firstly, passing the legislation.

Mr McDonald: As you said, the legislation didn't secure passage during the period that's just happened. The government's policy remains that the sharing of product data would commence on 1 July. That is data in relation to things like bank accounts; it could be what the interest rate is or what terms are for different bank accounts—things like that. It's not consumer-level data, so it's not the data about individuals. But, as per the government's timeline that was announced in December last year, that will start from 1 July, and the government is still working with the banks in order to secure that.

Senator KETTER: My question was in relation to passing the legislation. What's the timetable we're looking at there?

Mr McDonald: That is a question for government in terms of what its intentions are—

Senator KETTER: But what do you know of the government's intentions?

Mr McDonald: The government's intentions are a question for government in terms of securing passage of that legislation. It is the case that sharing the product data is likely to be done possibly without legislation, although it will be supported by legislation.

Senator KETTER: The ACCC has released an exposure draft, I think, in respect of the rules. What's the timetable there?

Mr McDonald: I don't have in front of me the timetable for when they're looking for comments back on that, but they've certainly released the exposure draft and they're working
towards finalising those rules. Part of that is to make sure that there are consistent rules and data standards that banks could draw on when they come to share product data.

Senator KETTER: They'll need to be finalised before 1 July?

Mr McDonald: Yes, that's the intention.

Senator KETTER: But you don't have a specific date as to when—

Mr McDonald: I don't have a specific date for when that consultation is closing.

Senator KETTER: What's happening in relation to the technical standards?

Mr McDonald: Data61 is also working through the technical standards, and they have been doing that process collaboratively through their GitHub and quite transparently through their GitHub process, and the intention is that those are also in a position that they could support the product data being shared from 1 July.

Senator KETTER: Again, you don't have a specific timetable that you're aware of?

Mr McDonald: I don't have a specific date that they're planning on saying these are finalised.

Senator KETTER: You say the sharing of product data will be able to occur from 1 July. How does that differ from the government's original intention as to what was to happen from 1 July?

Mr McDonald: The timeline is consistent with what the government announced in December. That involves the sharing of product-level data. Following the government's announcement in December, there was a period of testing and further refinement of the consumer level data, including thinking about things like the right consent regimes and security, with the intention of the data being shared from early in the following year, in February.

Senator KETTER: From 1 July, what are the changes that consumers should be aware of or that will impact on consumers?

Mr McDonald: There'll be more transparency and comparable information about product offerings from the big banks, which we expect would, in turn, help consumers make better-informed choices about the different products that are on offer that they could apply for.

Senator KETTER: So the expectation was that a pilot would be commencing from July this year. Are all aspects of the pilot as originally envisaged going to be conducted, or are there aspects of the pilot that have had to be scaled back?

Mr McDonald: It's working through. The intention is that there will be a pilot, as you say, from July, and that will be part of the rigorous testing to make sure that the systems work for consumers. That will be an iterative process through those months. The ACCC and Data61 are going to work with the banks on exactly how that will work and the best way to sequence it, and that conversation is ongoing at the moment.

Senator KETTER: Given that we've got a delay in the process—the legislation hasn't been passed—what opportunity is there for the Treasury to consider the issues that have been raised during the inquiry process?

Mr McDonald: As we discussed during the inquiry process, we're working with the ACCC. We did quite a long privacy impact assessment as part of our process developing the
legislation. We're working the ACCC on a combined independent privacy impact assessment, which we expect to put out to tender, and we're working through the details of that. In part, that will be version 2.0, if you will, and that will take account of where the rules and data standards are to get to. We did the assessment based on the legislation that was put to parliament and where the rules and data standards were at that point. That's one of the things we're working further on with the ACCC.

Senator KETTER: You heard the fair degree of criticism about the fact that the Treasury was doing its own privacy and impact assessment. Is there any potential for that to be reviewed so it's done by an independent body?

Mr McDonald: As I said, we're working with the ACCC to do an independent privacy impact assessment of the whole regime, which I think goes to that point.

Senator KETTER: Okay. All right. When did that change occur?

Mr McDonald: As I said at the hearing about the legislation—I mentioned it then—we will work with them to do an independent privacy impact assessment, and that hasn't changed. As I said, there was an independent peer review of the privacy impact assessment that we did do, which was published before the hearing that we had. One of the things that came out of that was a recommendation around this. We took that on board, and that's what we're going to do, which is what we said at the hearing.

Senator KETTER: Will there be any other rounds of consultations on the element of the consumer data right?

Mr McDonald: There are ongoing consultations. As you said, there are consultations around the rules framework and the data standards. The rules framework and the data standards have been designed for the banking part of the consumer data right. The other two sectors that have been identified are telecommunications and energy. There are going to be further consultations around more detailed rules and data standards for both of those areas. That's yet to come. A lot of iterative consultations are expected over the coming years as it is developed and extended to new sectors.

Senator KETTER: I'm particularly interested in consultation on elements of the consumer data right that haven't been considered beforehand. You say there's an ongoing process, but is there another opportunity to consult on, say, the legislation?

Mr McDonald: The legislation has been presented to parliament and the government's position is that that is the legislation. As we went through in the hearing, this legislation has probably been through more consultation than a normal piece of legislation, when you consider there was the open banking review which went through a rigorous consultation, there was a process after the open banking review and before the government's response which went through consultation, there have been two rounds of consultation on the legislation itself, and there's been further consultation on the rules, the documents and the data. As I said, the data standards have been conducted essentially in public through a GitHub platform. So there's been a lot of consultation. That said, we did hear comments from stakeholders during the process. Part of those comments went to the question of how much things should be included in legislation versus how much they should be included in regulation. The legislation has been drafted on a principles basis. It creates the framework for the rules, and then the rules have been drafted by the ACCC. Part of the rationale for that structure, which I
acknowledge some stakeholders disagree with, is to allow the rules to be able to be updated more swiftly. This is a rapidly-changing area of policy. It better allows the rules to keep up with the change of technology.

**Senator KETTER:** In terms of the privacy impact assessment, you're working with the ACCC on that. Can you give us a bit more detail as to where that's up to?

**Mr McDonald:** The tender is not out yet. We're working on the documentation. As I said, the idea is that would be an assessment that takes account of the final set of rules. We've been doing a privacy impact assessment that takes account of the rules in play. I acknowledge the stakeholder concerns about the process. My observation about a number of the stakeholder concerns is that they probably agree with things that are in the rules framework and things that are in the draft rules; they would just rather they were in the legislation. As I explained the legislation, it's on a principles basis.

**Senator KETTER:** You can't finalise the tender for the privacy impact assessment until the rules are set—is that right?

**Mr McDonald:** The idea is that we'll do the privacy impact assessment once the rules are set. That's not to say we can't finalise the tender a little bit before that point.

**Senator KETTER:** What sort of time frame are you looking at?

**Mr McDonald:** We don't have a fixed time frame for that tender.

**Senator KETTER:** As far as the rest of the year is concerned, taking into account all of these factors, what do you expect will be completed by the end of the year?

**Mr McDonald:** As I said, the policy is that product-level data will start to be shared from July. There will have been further testing of the systems and further refinement of the systems to ensure consumer safety and to ensure consumer understanding and engagement, and that will have occurred through that period until the end of this year, and then we plan for the consumer data to commence in February the year after.

**Senator KETTER:** At this stage, you believe you're on track for 1 February?

**Mr McDonald:** Yes. That's absolutely what we're working to.

**Senator KETTER:** Chair, that brings me to the end of Fiscal Group.

**CHAIR:** We will let Fiscal Group go. Thank you very much for joining us today.

**Proceedings suspended from 11:44 to 12:01**

**CHAIR:** The committee will now resume. I welcome representatives from the Revenue Group and also from the ATO. Senator Ketter, do you want to start questions?

**Senator KETTER:** Yes, thank you very much. I would like to start off with the issue of how the ATO administers tax cuts. I want to firstly refer to the media release that the ATO put out on 8 April, which was after a correction to a The New Daily media release in which you clarify that if bipartisan support for tax cuts is flagged: then we would be able to update the tax withholding schedules, to allow the tax cuts to be reflected in people's take-home pay.

However, we could not issue assessments based on the tax cuts until these are passed into law.

Ms Curtis, could you firstly explain how a situation where changes to income tax rates or thresholds can be administratively changed for PAYG taxpayers?
Ms Curtis: Actually, Second Commissioner Mills will take you through this, because it is quite complex. But before he does that, if it's okay, I would like to acknowledge the correspondence we received from you yesterday and table our responses to that, and also, if it's possible, table our responses to the questions on notice that we had last week, which were around the whistleblower issues raised by Senator Patrick.

Senator KETTER: Thank you.

Ms Curtis: I will now hand over to Second Commissioner Mills.

Mr Mills: The difference between the two gets down to whether or not we can issue an assessment, which requires law to be in place for us to do so, versus whether we can issue tables that vary the withholding that employers make from salary and wages. That is not a final position, but with clarity that the parliament—by both major parties supporting it—intends to pass that into law gives us enough that we can effectively work on the basis that that will be the case. So, by the time the next set of assessments come around, then the schedules, the amount of withholding, has already reflected that. This has been a common practice for many years.

Senator KETTER: So when you know that there's a bipartisan position on it, then you are able to initiate an administrative change?

Mr Mills: That's right—insofar as we're talking about the withholding schedules. And perhaps the level of complexity in relation to this is that a distinction needs to be made between the withholding schedules and issuing an assessment which is the final position. The commissioner can only issue an assessment in accordance with the law, which means it has to have already been passed by parliament.

Senator KETTER: So the changes to the PAYG tax schedule, such as those from 2016, were able to be done administratively through the withholding tax because you had the knowledge of that bipartisan position, but, at that point, you had to have the law in place for the assessment?

Mr Mills: For the assessment—that's correct.

Senator KETTER: According to the budget website, the low and middle income tax offset, or LMITO:

…will be received as a lump sum on assessment after individuals lodge their tax returns.

As I understand it, that means it's not the type of tax cut that can be felt in the PAYG paid weekly or fortnightly?

Mr Mills: The LMITO—sometimes referred to as 'the lamington'—can be reflected in the schedules as well, but I think the reference there is to the 2018-19 assessments. It's too late to change schedules at this point and, to be frank, I'm not quite sure we have absolute clarity that both sides actually support the exact nature of it. And I say that very carefully because, although there have been indications, we need the absolute clarity that there is identity between what's proposed on one side and what's agreed to on the other.

Senator KETTER: So there's no way for the ATO to administratively provide the benefit of the LMITO reforms proposed in the 2019 budget without enabling legislation?

Mr Mills: Again, this is the complication: insofar as it relates to the 2018-19 tax year, it will only be able to be reflected in assessments, and we cannot issue those assessments until
such time as we have the law. Insofar as the LMITO affects 2019-20 and subsequent years, if we have clarity that both sides of the parliament propose to support it in the same form, then we are able to proceed by changing the schedules, so that's reflected in the PAYG withholding.

Senator KETTER: How do you reconcile that with the budget website which says that the LMITO will be received as a lump sum on assessment after individuals lodge their tax returns?

Mr Mills: As I say, again, that's a reference to the 2018-19 LMITO, as opposed to subsequent years.

Senator KETTER: On 7 April, The New Daily reported suggestions that, without the passage of legislation, the LMITO reforms for the 2018-19 year could be applied administratively. But, from what you've just said, Mr Mills, you've made it clear that's not possible. So, Ms Curtis, the effect of your media release that I referred to earlier is that you were clarifying that you could not do that for the 2018-19 year?

Mr Mills: That's right.

Senator KETTER: If someone were to say that there is no impediment to people feeling the benefits of the 2019 LMITO reforms, that wouldn't be true, would it?

Mr Mills: Again, I'd have to make a distinction between the 2018-19 tax year and the 2019-20 and subsequent years, where LMITO can be reflected in schedules on the assumption that both sides of politics support it.

Senator KETTER: Right, but in terms of the immediate benefit of the LMITO, there is an impediment, isn't there, when it comes to legislation?

Mr Mills: Insofar as we're talking about the 2018-19 year, it does need to be reflected in assessments; that's correct.

Senator KETTER: Ms Curtis, have you had direct contact with the Treasurer, the Treasurer's office or Treasury about the implementation of the LMITO tax cut changes since budget night?

Ms Curtis: No, and that is in the information we tabled in response to your letter.

Senator KETTER: Would anybody else? So you're speaking on behalf of the ATO? Mr Jordan wouldn't have been involved in anything?

Ms Curtis: We've checked with everybody who is actually available at the tax office. Unfortunately, Mr Jordan is unavailable to be contacted at the moment. He is on a trek. I can't even tell you where, actually. But, anyway, we can't contact him by telephone, so we're unable to check with him. But we have checked with his office, and there is no record of him speaking to anybody. So we're pretty certain that he hasn't spoken to Treasury since budget night. Certainly none of us, in response to that question, have.

Senator KETTER: So that goes to the Treasurer himself, the Treasurer's office or Treasury on this particular issue?

Ms Curtis: That's correct.
Senator KETTER: Are you aware of any view that's been expressed by Treasury, or the Treasurer's office, that LAMITO tax cuts could be implemented administratively before legislation passes?

Ms Curtis: Not that I'm aware of, but Mr Mills may well be.

Mr Mills: Yes. There were discussions prior to the budget where Treasury sought our views on what the rules were. Basically we gave an outline to you already in my earlier response of the way in which that operated, and the sense of that was communicated to Treasury.

Senator KETTER: But this was prior to the budget?

Mr Mills: It was prior to the budget—that's right. So whether or not Treasury's given subsequent advice based on that is obviously a question for Treasury.

Senator KETTER: What was the view expressed by Treasury at that point?

Mr Mills: By us to Treasury?

Senator KETTER: No, by Treasury to you in terms of whether or not the LAMITO could be implemented administratively?

Mr Mills: They expressed no view to us. They were asking us whether we could implement them and how we would go about it. I gave the same kind of explanation that I gave to your earlier question about how that would operate.

Senator KETTER: So they were aware, prior to the budget, of your position in respect of this?

Mr Mills: Yes.

Senator KETTER: What about the issue that has been reported in The New Daily? Are you familiar with that article?

Mr Mills: I am.

Senator KETTER: From what you've told me, since that article's been published, you haven't had any contact from Treasury about that issue.

Mr Mills: No, Treasury haven't spoken to us about that issue.

Ms Curtis: Treasury did contact us to ask us—and it is reflected in the document that I've tabled—

Senator KETTER: Have I got that document?

Ms Curtis: The Treasurer's office did contact us, as I have—

Senator KETTER: Can you point me to which response you're talking about?

Ms Curtis: The one to question 4.

Senator KETTER: Okay.

Ms Curtis: They did contact us basically just to ask what we had said to the media, and that's what we told them—the two lines we'd given to the media in response to their inquiry.

Senator KETTER: So they asked you about what position you'd provided to the journalist?

Ms Curtis: That's correct.
Senator KETTER: When did that occur?
Ms Curtis: It was on Monday afternoon, maybe half past four or so in the afternoon.
Senator KETTER: Just on the one occasion?
Ms Curtis: Yes. It was 4.22 on Monday afternoon. It was just to ask us what we had provided to the journalist.
Senator KETTER: In relation to the ATO statement that was issued on Monday, 8 April, was a view expressed from Treasury or the Treasurer's office that another statement should be made by the ATO?
Ms Curtis: No.
Senator KETTER: I want to query some of the wording that was used in your release. You said:
For example, if the Labor party agrees to support the Coalition tax cuts as announced, then we would be able to update the tax withholding schedules, to allow the tax cuts to be reflected in people's take home pay.
That is only in relation to the next financial year, isn't it?
Mr Mills: That's correct.
Senator KETTER: You weren't referring to the 2018-19 year in that regard?
Mr Mills: That's correct.
Senator KETTER: Were you referring to any other phases of tax cut changes from 2022?
Mr Mills: It would be too soon to change any schedules. As a matter of practicality, we tend to issue the schedules just prior to the beginning of a year, unless there are other changes that occur during the year. They are usually provided at the beginning of the year so that employers can put them into their systems and deduct the right amount of tax.
Senator O'NEILL: How chaotic is it for you, Mr Mills, in the current environment?
Mr Mills: I wouldn't say it's chaotic. There is no chaos involved in waiting for a law to apply in order to implement something in an assessment. Nonetheless, as is always the case, we will prepare for the eventuality that parliament does ultimately pass those, but we're ready to move on the existing basis as well. Luckily, the kinds of changes we're talking about are changes to existing formulas in terms of changing a percentage, an amount and that kind of thing. Because the framework is already there for the tax to be calculated, those types of changes are capable of being done in a relatively straightforward kind of way I'm told.
Senator O'NEILL: Mr Mills, you did make the point that for the scale of the impact of decisions you usually leave a rather long lead time to allow businesses to adjust. That's not the sort of time frame we're talking about here, and there's considerable uncertainty about the government's action in this space still.
Mr Mills: I don't recall saying anything about the time frame. My apologies, but I just don't recall using words related to time frame. I'm sorry if I gave that impression. What I did say was that we usually update the tax withholding schedules just prior to the beginning of each year and that is put into employer's payroll systems so that they can deduct the right amount of tax in each year. We usually do that around the middle of June, from recollection, but I can take on notice to give you the exact period, if you like.
Senator O'NEILL: One of the things that concern me living in the community I do on the edge of the city is that the populations we talk about—they are often described by the government as tradies—are frequently sole traders or might have irregular employment, which these days is part of the signature of this government. Changing systems is not always that easy for small businesses to do.

Mr Mills: If they are sole traders then this—

Senator O'NEILL: Won't affect them—

Mr Mills: shouldn't affect them.

Senator O'NEILL: but they do have casuals coming off and on.

Mr Mills: If they have people they employ, that's absolutely correct. My experience, both inside and outside the ATO, with small businesses, tradies and so on is that they run one of two things: they do a completely paper based system and look up whatever the schedules are on our website at the time of payment or they rely on commercially available payroll software that connects into MYOB or one of those kinds of commercially available products, which have the right scales in them because they update their software which they then provide to people.

Senator O'NEILL: I guess, given the way in which this government has governed, it's hard to believe there could be such uncertainty at this point. After six years of government, businesses across the country do not know what's coming down the line—the government could have organised the business of undertaking any changes much, much earlier in their program and they failed to do so—and now people in the Australian community are just caught up in the chaos and the uncertainty that this government is creating.

Senator Seselja: So you're standing in the way of tax cuts and then seeking to blame the coalition for the fact that the tax cuts haven't been able to be legislated?

Senator O'NEILL: No; that is absolutely a mischaracterisation, Senator Seselja.

Senator Seselja: You've got to be kidding. Have you told the tradies in your electorate why you won't stand up for middle-income tax cuts?

Senator O'NEILL: You have chaos reigning, and this is another example of you shifting this chaos—

Senator Seselja: Who's going to raise all their taxes?

Senator O'NEILL: on to small businesses across this country.

Senator Seselja: Are you going to each of those small businesses and telling them how much more they'll be taxed if you get into government?

Senator O'NEILL: I'll support small businesses a lot more frequently than you, Senator Seselja.

Senator Seselja: Oh, yes; you've got a great policy for them! Yes, $200 billion in new taxes. That'll go well.

Senator O'NEILL: That's absolutely not the case, but this is a reign of chaos from this government, and the impacts on small businesses are known and being felt right up until the election.
Senator Seselja: You keep defending the tax cuts. Go to the Central Coast and tell them why you want higher taxes for them.

Senator O’NEILL: Chaotic. Just chaotic.

Senator PATRICK: Thank you for your answers provided on notice so quickly. I want to move to question on notice number AET50, which is in relation to flights. In that answer you state there are six ATO executives that have membership to both the Chairman’s Lounge and The Club, and you provide some statistics on that. Then you have one ATO executive that has only Qantas Chairman’s Lounge access, and you've got some statistics for that. I'm pleased to note that this year, unlike last year, that one official has now flown with Virgin more than Qantas. That's setting a good example. But I am curious: last year that person flew 89 flights. It just seems to me that's quite large. I'm wondering if someone could offer an explanation as to what sort of circumstance you'd find where an employee is doing 89 flights in a year.

Ms Curtis: I'll try and answer that question for you.

Senator PATRICK: Sure.

Ms Curtis: I would suggest it's very much to do with the role that they have.

Senator PATRICK: If you said it was the commissioner, I would then say, 'Actually, that's fine.'

Ms Curtis: I'll just have to check this with my colleague. It is in fact our CFO. Our CFO is responsible for not just finance but also property. She has a very broad remit. She is based in Docklands, in Melbourne, and she's also a member of our executive. So she does have to regularly travel because of the scope and the nature of her role. And you're quite right; she has actually started flying a lot more with Virgin this year.

Senator PATRICK: It worries me the other officials haven't yet, so you've still got some work to do.

Ms Curtis: We are working on that, I can assure you.

Senator PATRICK: I have nothing against Qantas or, indeed, Virgin. I often don't know who I'm flying with until I jump in the car on the way to the airport and I go, 'Which terminal do I have to go to?' I have a 'book me the cheapest flight' policy and almost always I'm on Virgin when I fly. That's my own experience.

Ms Curtis: We try very hard. We obviously follow all of the guidelines around best fare of the day et cetera, but often it is to do with schedules. I note that, particularly for Melbourne, sometime the schedules are difficult. But I, like you, don't often know where I'm flying and who I'm flying with until I'm nearly on the way to the airport.

Senator PATRICK: I presume you're probably in amongst some of—

Ms Curtis: I'm amongst the other six, Senator.

Senator PATRICK: Fantastic. And what about generally across the department or the ATO, are we getting to a point where we're getting closer to parity between the two?

Ms Curtis: We definitely have had a focus on really looking at this issue. I don't have the stats with me, we could take that on notice, but I think you will see a very big improvement.

Senator PATRICK: I'd be really interested, if you provide that on notice, to also look at any savings compared to previous years.
Ms Curtis: Yes, certainly.

Senator PATRICK: That was the objective of my line of questioning.

Ms Curtis: We certainly monitor our travel expenditure very carefully. It's something that we've obviously got as a concern because of the budget pressures et cetera, so we definitely will do that for you and provide any information—

Senator PATRICK: Any other departments listening, I'm going to continue in my pursuit of this. Thank you very much.

Senator KETTER: Coming back to the media releases in relation to this question of the LMITO, can you tell me who authorised the recent ATO media releases if Mr Jordan is on leave at the moment?

Mr Mills: It was a discussion held amongst the executive members, including the acting commissioner, myself and some others, around what had appeared in The New Daily, what needed to be corrected because of the spin that had been put on it. We made a decision on Monday. I settled the final version of what went out with our media people.

Ms Curtis: Just to clarify, Senator: the first response to the media inquiry was cleared by an executive level officer over the weekend and did not have any of the usual oversight that would be given if it was during the working week, and then, as Mr Mills said, he cleared the final response that was put out on Monday afternoon.

Senator KETTER: So the first one I believe is the media release headed 'Correction to New Daily article'. Is that the one?

Ms Curtis: No. I'll have to check this, but I think that would have been our chief of media and parliamentary. They would normally clear media releases, unless there was anything that needed to go further up or escalate further up the hierarchy. In the second instance it was Mr Mills.

Senator KETTER: Okay, because I've got two in front of me. One's headed 'Correction to New Daily article'. The other one's headed 'Clarifying how we administer tax cuts'.

Ms Curtis: I'm sure the first one that you talked about would be our head of media and parliamentary, and I'll check that for you. The second one was Mr Mills.

Senator KETTER: But in consultation with the leadership group or executive of the ATO?

Ms Curtis: Yes.

Senator KETTER: Can you tell me why you felt it was necessary to issue that second media release?

Mr Mills: Well, to ensure that we told the whole story. The New Daily article was taking a particular line in respect of what wasn't clear from the article—that it only related to assessments for the 2018-19 year, not the broader proposition about the whole package that we normally would adopt.

Senator KETTER: But there's no suggestion that the article didn't report accurately what the Treasury position was?

Mr Mills: I haven't done the comparison to double-check.
Senator KETTER: Mr Mills, you mentioned that you'd had that conversation with Treasury or the Treasurer's office, I'm not sure which it was, prior to the budget to explain the arrangements in respect of how tax cuts can be administered without the need for legislation. Can you give me a bit more detail about how that meeting occurred?

Mr Mills: I don't think it was a meeting. Ms Mrakovcic, the deputy secretary of Treasury, rang me. We had a conversation. She also spoke separately with one of my staff on a subsequent occasion. On each occasion, the final result was the same in terms of explaining what we could do and what was required to occur for us to be able to reflect it in assessments.

Senator KETTER: Ms Mrakovcic, the information that you received was passed on to the Treasurer's office?

Ms Mrakovcic: That's correct, Senator.

Senator KETTER: I'm just wondering how, if you passed on that information, why an impression was created that was at odds with the factual situation. Can you explain that for me?

Ms Mrakovcic: I can't speculate on that. It's a matter for the government.

Senator KETTER: I'd like to turn to the super guarantee amnesty. We've seen here that the ATO has been waiving part 7 penalties for employers not compliant with the SG. Last year's budget included an announcement to provide a 12-month amnesty for historical underpayment of the SG. The enabling legislation has not passed the parliament, and we've seen an article from Adele Ferguson which has outlined the ATO's decision to waive penalties in the absence of the legislation passing. Mr O'Halloran, can you explain how the ATO has gone about administering the amnesty in the absence of that legislation passing?

Mr O'Halloran: Firstly, if I may, Senator, there are perhaps a couple of corrections that I think need to be unpacked on that matter. We haven't waived penalties as described in that article at the time. If I could just take a couple of minutes to walk through why I'm confident to say that, and then address some of your particular issues.

Senator KETTER: Thank you.

Mr O'Halloran: Firstly, in the absence of law, no-one can claim a deduction for SG payments as it currently stands, and that remains the same. Secondly, in the absence of law, the administration penalty—as opposed to the part 7 penalty—again, cannot be waived. You'd recall, Senator, that we've discussed that previously. And of course, there was nothing in the amnesty announcement that has prohibited our audit program. On the reference to the 'waiving', as it was described, what I'd report to the committee is, regardless of how and why people came forward to the ATO to bring forward outstanding SG obligations, they were all treated the same, consistent with what we do in our normal course of business and in alliance with our practice statements.

The reference in that article, and some others at the time, certainly did highlight that, as is normal practice under part 7, the commissioner does have discretion to apply a remission of the so-called 200 per cent penalty in accordance with a number of features. One is, obviously, the individual circumstances, the compliance history, and also the voluntary nature—albeit required under law—in terms to bring forward and lodge, without the ATO knowing about it, the super guarantee charge form. In particular, in relation to that and our compliance work, I would report that we've continued, despite the reporting. I acknowledge that there are
different views on what the penalty—if you like—regime should be. I'm not suggesting that we haven't had that discussion previously here. But certainly, to say that there was a blanket waiver because of the amnesty announcements: that's not correct. Both in our audit work and the normal treatment of SG charge lodgements: in this instance we certainly applied our normal processes and that to me, I think, is an important distinction. I'm happy to elaborate a bit more on that and a few other related matters but also happy to pause there.

**Senator KETTER:** The article that I referred to says that the tax office confirmed—this is back in early March—that:

… it would treat the employers as though they had voluntarily reported themselves under existing rules meaning they would have to repay unpaid superannuation as well as interest to the employee and pay an administration charge of $20 per employee per quarter.

Is that correct?

**Mr O'Halloran:** Yes, and, certainly, as with the normal situation with SG charge statements that are brought forward that are not initiated by the ATO, we apply a practice statement and do consider whether a voluntary component needs to be recognised, and that certainly was done. But I make the point, Senator, if I may, that that's no different to what we do with any situation where people come forward, in a situation where we don't necessarily know that they had outstanding SG payments. The second related point, though it may be perhaps a bit too detailed, is that also, of the people that came forward on our early analysis—and noting that we're still applying the current law—many in fact would have not been eligible for the amnesty anyway; primarily because they were still currently under audit or, conversely, they were reporting outstanding SG in relation to periods that weren't covered by the amnesty—that is, after May 2018. There are a couple of other things, if you'd like, about all this.

**Senator KETTER:** Okay. But in the absence of the legislation—and you set up fact sheets and designed amnesty applications on the assumption that the legislation would be passed—what's the process at the moment for an employer?

**Mr O'Halloran:** Nothing has changed, in the sense that our audit activity and our review activity continue; they're not mutually exclusive. There's already an obligation for employers to come forward where they become aware of a late or an overdue payment. That remains the same and has not changed. They submit an SGC form, and they may or may not bring forward payment with that. We examine the circumstance there, given that they are in fact bringing forward information that is not readily available to the ATO, and that is then either processed or, in some instances, referred for audit—or, conversely, we concentrate our penalties efforts, certainly in relation to cases where we're initiating activity, where people haven't come forward.

**Senator KETTER:** Okay. What is the status of the amnesty? This article says that the legislation's not there, but what's the status of it? There was a media release on 24 May last year saying 'the 12-month amnesty will run from today' and there was a warning to people if they didn't take advantage of it. What's the current position?

**Mr O'Halloran:** Firstly, it's still government policy that there is to be legislation to support the proposed amnesty. From our point of view, we certainly did walk what we felt at the time was an appropriate balance. There had been such a public announcement about the SG amnesty that we did feel, as you've reflected, that we needed to draw that to people's
attention in a number of iterations on our website. Probably our thinking at the time—certainly, mine—was that that number needed to be high. But I can indicate that, in the changes to our website material—and, I think, broadly, in our subsequent discussions, both formal and informal, with people who've inquired—there have often been up to four references to say that we will continue to apply the current law. We did have some early feedback: it just wasn't overt enough and clear enough. But there's no material that we've published through our website and so forth that hasn't indicated that we're applying the current law, including the $20 admin fee in terms of applying that to the account.

So, in answer to your question, it's a government announcement that we've been cognisant of, and certainly we've continue to apply the current law, noting that we've in fact increased our assessments in terms of activities for cases and reviews; we've increased the number of director penalty notices significantly; and we've increased our penalty profile, where it's suitable and in the right circumstances. In my view, it's really business as usual. Clearly, some people have anticipated—equally, some people perhaps have had the view—that they needed to do reviews. But I do draw attention to the increase in cases and reviews, and some of the things I've touched on. If we get to people first, we've continued to apply the right sorts of penalties and sanctions and, importantly, collections.

Perhaps something that gets lost in all this is that there is $100 million or so that has actually gone to employees as a consequence of people coming forward—again, I can go into some more detail if you'd like—

Senator KETTER: Yes, I would be interested in hearing a bit more.

Mr O'Halloran: and that's of course including nominal interest. So employees have in fact gained from the activity of people coming forward. I obviously highlight that it's a current obligation of employers to come forward when they identify or know or realise that they have a late or an overdue payment. In a sense, that momentum perhaps has picked up a little bit. But, equally, so has our audit activity to get to people, off the profile that SG has gained in the community, so that we can continue to close the tax gap but also protect employees who may not be getting paid their due and payable.

CHAIR: Can I just ask for a clarification of that. That $100 million—that's in the last 12 months, did you say?

Mr O'Halloran: I'm sorry?

CHAIR: The $100 million in unpaid super that you say has been reunited with superannuants—that's in the last 12 months?

Mr O'Halloran: Yes, since May.

CHAIR: How does that differ from previous years?

Mr O'Halloran: I don't have that figure in my head. I know it's an increase for a couple of reasons. One is what I've been talking about—money that has been paid directly to the ATO. So it's money in your hand, and therefore money we can distribute back to identified employees. That's in the order of $86 million—as opposed to liabilities, Senator, if I may. There's about $61 million that is currently, as a consequence of the SGC lodgements—which includes some people who may or may not have had a view on the government announcement. $61 million is under active debt management or payment arrangements. So, as that comes in, super guarantee has a priority rating in the sense of the distribution back to
identified employees. And, of course, if I may, Senator, that's also not people that we can only identify or that have been identified by the employer; in fact, we, obviously, make sure that we equally distribute the money to all employees who are eligible et cetera. There was a further $14 million that was paid directly to funds by people, but they notified us through the SGC form, which is a bit hard to prevent. So that's a total just slightly over $100 million. We're continuing now to issue amended assessments and communications for people who came forward, which is quite normal in the SGC process, as required under the law, but perhaps they forgot the payment bit. So we're certainly following that up. Coming forward is one element, but the real voluntary component that really sticks is when people have, in fact, paid the amount overdue, the nominal interest, and, of course, we collect the administration fee.

Senator KETTER: Wouldn't it be fair to say, though, Mr O'Halloran, that there would be some confusion out there amongst employers about what's actually happening, given that the government made an announcement in May of last year about an amnesty period, yet we don't have an amnesty in place? Aren't they entitled to be confused?

Mr O'Halloran: We've tried to support that information by making it very plain what was proposed and what was needed, specifically, on probably the first three pages. I've had to read it that often, I certainly remember most of it. We made it quite plain that it was an announcement by government and legislation needed to be passed. With reference to your point, I can't speak for all the community, but clearly there has been enough public commentary and people are asking, 'What's happening with it?' I just remind people, if I may, that the fundamental obligation for an employer to come forward to report when they're late or overdue continues to exist and always has. Equally, the best way not to have a debt to us is to pay SG when it's due and payable to your employee every quarter.

Senator KETTER: I have no argument on that point. But can you tell me how many employers came forward since the announcement back on 24 May thinking that they were making an application under the amnesty?

Mr O'Halloran: There are probably two issues there. Firstly, regardless of how people came in or what they had in their minds, they were all treated the same. There are some people who may have had a course. I acknowledge—whether you're aware of it or not, Senator—that we did have a form which was meant to be educational to show people in anticipation of what is likely to be the process and the circumstances. But both of those forms were not distinguished once they came out, in terms of how we treated them. In answer to your question, as at 28 February—and I'm not distinguishing perhaps the drive or the impression that people may or may not have had, because they were all treated the same—certainly we think we've had about a 10 to 15 per cent growth over most of the months. It's died off a fair bit now, but the overall figure is approximately 19,000 employers have come forward since 28 February. That's within the SGC normal process. I can't really break it down, because when people report they report on the outstanding number of quarters and you've got a lot of variations. So I can only report that it's about a 10 or 15 per cent increase. But of the 19,000 employers that have come forward, we think 73 per cent of them are microbusinesses with less than $2 million turnover, 21 per cent are medium businesses with $2 million to $250 million turnover, and four per cent are not for profit. Interestingly, the average number of employees—and I'm highlighting average rather than a sensitivity analysis in its fullest
circumstances—is about 36 employees. For most of the disclosures, payments, 51 per cent are in the order of $10,000, 35 per cent are $10,000 to $50,000 and the balance are over the spread. If you're looking at significant entities—and I'm only raising this to give a sense of scale because my main premise supports our observations out of the working group report as well as our experience and observations from the tax gap—perhaps because of unsophisticated businesses or cash flow difficulties et cetera, we had about 12 of the employers in a broad category come forward for the period. I hope I'm making myself clear. We are in the categorisation of having employers of 1,000 to 5,000. The vast majority, 93 per cent, are in the small to medium businesses. They have a relatively small number of employees. Anything from probably 85 per cent of the total declaration of the non-payment or the payment of SG, including nominal interest, is less than $50,000—if that assists, Senator.

Senator KETTER: Just to be clear, you said there were 12 employers that were of a significant size. Did you say those were between 5,000 to 10,000—

Mr O'Halloran: No, it was 1,000 to 5,000.

Senator KETTER: That is fairly significant.

Mr O'Halloran: That was 12 out of the approximately 19,000. I obviously haven't counted all these, but that's the broad picture that I've been able to bring together.

Senator KETTER: So that's 19,000 applications since 24 May last year.

Mr O'Halloran: It is 19,000 SGC charge statements, which near enough probably equates to one for one. In other words, somebody may have had a second SGC charge statement. It is unlikely because generally it's not the case. I'm counting off the SGC charge statements that have come in, regardless of what form or what was in their mind or what their adviser may have said. They are carrying out an existing obligation. When we looked on the month on month, really up until prior to Christmas, there was probably a bounce of about 1,000 to 1,500 on the average month. That's just an approximate trend, to give you a sense of the growth plus the normal. This SGC charge process works reasonably well. Obviously the objective is that it's a process that isn't needed either by law or by behaviour. That is the outcome.

There is something that I should mention, which I believe has been misunderstood or perhaps not reflected in the newspapers. There seems to be a view in the early stages of this—and I apologise if this is evident—that amnesty-like things often sound like, 'Well, we're stopping other activity'—in other words, 'You can't do anything because there's a stay of prosecution,' or that sort of conversation. With the additional money that we receive from the government for the SG task force and some recent powers that have come in for our enforcement capacity et cetera, I'd make the point without labouring it that we've continued our review and audit action—if anything, we've escalated it—because there was no reason to wait for somebody to come forward. That was an important distinction to what may have been read as another element of dynamics that never existed.

Senator KETTER: Okay. What is the value of the SG liabilities, the total value that's been declared, under the amnesty and how many employees is it in respect of?

Mr O'Halloran: I've given you the figure of what is money in the hand, in terms of that $86 million, $61 million plus $14 million. I can't do the sums sitting here. From memory, there is about another $30 million that people have come forward with through the SGC process but haven't in fact come forward with the money yet. We're following up those now.
If I could estimate, I think it's about another $20 million or $30 million that is still due to be paid, regardless of any new law; that's obviously an important finishing component. In relation to the number of employees, it's quite a complicated count. That's probably not unusual, because people report on quarters. We estimate that it's probably in the order of about 5,000 to 6,000 employees.

**CHAIR:** Is it fair to say that you think that more employers have come forward because of their understanding that there was an amnesty than would have otherwise?

**Mr O'Halloran:** As much as I'd like to say yes, I'm always cautious to speculate why people may have come forward. I've been in this role for three years or so now. The profile and the importance and the non-acceptance of non-payment of SG has dramatically grown over the last couple of years. We did see a growth in the number of SGC charge forms that were lodged. If you use proxy 101, that's probably reasonable. I think, pleasingly—and perhaps I'm speculating from experience—the amount of payment that's actually come in without what I call the toe-in-the-water principle is evident by the amount of money. But, as importantly, I don't want to undersell what my colleagues do in terms of the audit work, and we're now moving into the new visibility of data that we have in terms of the payment of SG reported through myGov et cetera as well as the new enforcement tools we have in terms of some recent amendments. All of those things together have made an increased awareness and less tolerance of nonpayment.

Australian Charities and Not-for-Profits Commission

[12:51]

**CHAIR:** Ms Willis, thank you very much for rushing. I understand you have an opening statement that you've tabled on behalf of Dr Johns explaining his absence today.

**Ms Willis:** That's correct. The ACNC Commissioner, Dr Gary Johns, has asked me to read the following statement on his behalf:

I apologise to the Committee for being unable to attend today’s hearing. I trust my colleague, acting Assistant Commissioner Catherine Willis, will be able to answer your questions regarding the operations of the ACNC.

If there are any issues that you would like to raise me with directly, Ms Willis can take these questions on notice and I will respond in writing.

I am unable to attend the hearing today as I am in Wellington to meet with New Zealand’s charity regulator and represent the ACNC at the two-day Charity Law Association of Australia and New Zealand Conference. The ACNC has strong relationship with CLAANZ—a peak body that brings together charity law experts in both Australia and New Zealand.

The conference organisers approached the ACNC in September 2018 to invite representatives from the ACNC to attend the 2019 conference in Wellington. As Commissioner I committed to representing the
ACNC. In September 2018 when the ACNC was approached by CLAANZ I was unaware of the change to the Senate Budget Estimates hearing dates from May to April.

I do however greatly respect the Committee and the Senate Estimates process. It is important that senior public servants are held to account by the Committee, who of course represent the community.

Again, I apologise for being unable to attend and look forward to providing written responses to your questions.

The Hon Dr Gary Johns
ACNC Commissioner

CHAIR: I think we'll kick off with some questions. Thank you, Ms Willis.

Senator ABETZ: Could the secretariat hand out the two documents that I'll be referring to? First of all, has the charities commission become aware of the Tides Foundation from the United States at all?

Ms Willis: I would have to take that question on notice. I don't have any information on that.

Senator ABETZ: All right. The Tides Foundation is, according to at least one commentator, the 'left's best-kept secret', and it funds, from the United States, Greenpeace, the anti-Israel J Street and a number of other organisations including, according to their own documentation which I understand is now in front of you—is that correct?

Ms Willis: I have documents headed Environment Victoria and Tides Foundation.

Senator ABETZ: Yes. With the one that's entitled Tides Foundation, if you move down to where there is the square bracket in pen, you will see that Environment Victoria received US$1,005,000. If you move to the other document, which is entitled Environment Victoria, for the appropriate year you will see grant income of $158,000, and $215,000, which does not seem to account for the over US$1 million that they were allegedly given according to the documentation that the Tides Foundation lodged with the US Internal Revenue Service for 2017. So the question is: does this sort of discrepancy attract the ACNC's attention and will it investigate the matter?

Ms Willis: I don't have any specific information on this particular entity or Environment Victoria, but I can assure you that any concerns that are brought to us either directly or through our web page—we have a 'raise a concern' website which says what sorts of things we can and can't deal with—would be considered by the commission appropriately.

Senator ABETZ: Thank you. The US$1 million which was given—and this is on the documentation—to Environment Victoria to accelerate the successful closure of coal-fired power stations in Australia. It has huge economic impact in Australia and, of course, it's foreign interference in an issue that is the matter of public debate in Australia. Here we have an alleged charity accepting US$1 million for the purposes of impacting a domestic policy. This is very serious, in my submission to you, and I would invite you to investigate this matter and seek a full explanation from Environment Victoria.

Ms Willis: Certainly, if these are entities that we have regulatory powers over, we can receive concerns, as with any other organisation that's a charity regulator, from the community and look into those.

Senator ABETZ: Thank you very much. I believe that this should be investigated, because the Tides Foundation has been funding many anti-coal groups in Australia, giving
hundreds of thousands of dollars to groups like Lock the Gate, Market Forces and the Sunrise Project. Now this latest one, which is not been disclosed by the alleged recipient, Environment Victoria, is a matter of great concern. Either Environment Victoria is covering something up or the Tides Foundation has made an error. The sum of US$1 million is not a small sum and can have a huge impact on local campaigns and on local decision-making.

Ms Willis: As I said, if these are entities which are regulated by us, as with any entity that's regulated by us—I can't comment on the specifics of this one—we do welcome people from the community to raise concerns with us, and we will take appropriate action.

Senator ABETZ: Can you confirm just for the record that Environment Victoria does in fact report to the ACNC?

Ms Willis: I'm afraid I don't have that information to hand, but we can take that question on notice.

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Senator ABETZ: Can you confirm just for the record that Environment Victoria does in fact report to the ACNC?

Ms Willis: I will certainly take that back to the commission.

Senator ABETZ: I am advised that there's just been no response at all from the commission since that letter was sent on 14 May 2018.

Ms Willis: I will certainly take that back to the commission.

Senator ABETZ: If you could, I would encourage investigation of this matter and that that be taken seriously, because a lot of public money is involved here—$250,000—which a lot of volunteer boards around Tasmania are most concerned about as to how the money has been spent and how the rules have been breached. So I'll leave that one with you as well. Finally, if I may, I turn to another matter, which is: are there rules around charities and not-for-profits being used for personal financial benefit and self-promotion? Are there such rules?

Ms Willis: A charity, to be registered with us and to retain its registration, has to be for purely charitable purposes, and using funds for private benefit would be a disqualifying purpose.
Senator ABETZ: Would a charity that pays its staff 65 per cent and 52 per cent of its income in consecutive years and then has the bulk of the rest going on unknown expenses attract your attention?

Ms Willis: It would be a matter of looking at the holistic facts and circumstances of the particular entity. There's no hard and fast formula for how much would be relevant, but again, if a concern is raised and is investigated, that might be a flag for a particular concern.

Senator ABETZ: Time is now very short, so can I just raise with you the organisation called The Parenthood, which claims its main activities are advocacy and civic activities. Its purpose is 'to play a part in the public debates and decisions that influence policies that affect parents and children', and it vaguely claims that these activities help the general community within Australia. Inviting you to investigate this organisation. It's quite apparent that this organisation is nothing but a platform for promoting the political career of a would-be Labor candidate and operates as a blatant front for the Labor Party and United Voice. I would invite you to have a look at this organisation, as to whether it fits your criteria, given its activities, and also draw to your attention that it has not lodged financial report and annual information statements for 2017 or thereafter and is therefore behind with its filing requirements. Thank you, Chair.

Senator Williams interjecting—

CHAIR: Thank you, Senator Abetz.

Proceedings suspended from 13:00 to 14:01

Senator WILLIAMS: Ms Willis, I want to take you to the issue about Aussie Farms. If something is a registered charity, when a member of the public donates to that charity their donation is tax deductible. Is that correct?

Ms Willis: Charities attract certain tax concessions and if they have deductible gift recipient status, yes, they do get tax deductions for the money they give to that charity.

Senator WILLIAMS: Do most registered charities fit that criterion?

Ms Willis: I wouldn't know the complete statistics, but a number of them would. Yes, most of them would.

Senator WILLIAMS: Will you check whether Aussie Farms fits that criterion? In other words, whether anyone who donates money to Aussie Farms can claim tax.

Ms Willis: I can take that question on notice.

Senator WILLIAMS: I want to bring you to this very activist group's website Aussie Farms. I raised this with Mr Johns in February. He replied:

I can't comment because of the secrecy provisions, but rest assured that I take note of any information in a public place.

Do you know whether Mr Johns has taken note or acted at all on my questions in February at the Senate estimates?

Ms Willis: Dr Johns is certainly aware of the media, and it's in the public domain that a couple of ministers—the Minister for Agriculture and Water Resources and also the minister responsible for the ACNC—have directly raised their concerns with the commissioner. The commissioner had put in his column and published on our website that probably the unusual step is to acknowledge the concerns in the media. He is bound by secrecy provisions, but he
explained what he can do in the circumstances, in terms of the sorts of actions that can be taken if an entity is under investigation and when we can make those actions public. The sorts of things that we would be doing if an entity was under investigation, could be to give directions, give warnings or proceed to revoke that entity's registration. Those actions are placed in the public domain, on our website, so that people who want information about a charity can know that those actions have been taken. We just have to go through the right steps to make sure that they are done properly, because any decisions we make about compliance can be subject to appeal and that, obviously, incurs extra time and cost for us as well. So when we do undertake investigations—as I say, I can't talk about the specifics of this entity—we need to do them very carefully and being mindful of complexity so that they're not subject to challenge later, which doesn't help anyone. If an entity is removed from the register, if it does have its charitable status removed, it does mean that it loses access to certain tax concessions and similar sorts of concessions. I think sometimes there's a misunderstanding that we can sort of shut the charity down. The entity can continue to operate regardless of its charitable status or otherwise; it's up to other regulators or police or whatever to respond to other activities that the entity might be engaged in. But certainly it does remove that entity's access to certain sorts of tax concessions.

Senator WILLIAMS: Let me read from your own website. It says:
The Standards require charities to remain charitable, operate lawfully, and be run in an accountable and responsible way.
I put it to you, Ms Willis, that Aussie Farms encourages activists that are not lawful, nor accountable, nor responsible. We've seen that in the media this week with the invasion of farms, the invasion of abattoirs, break and entry, trespassing and blocking the traffic in Melbourne. Surely they don't come under the standards of operating lawfully or being accountable and responsible in any way whatsoever. So I hope you have a good close look at this mob. I find it wrong that people who support this group can actually get a tax deduction for donating money to Aussie Farms. That, to me, is wrong when they are breaking the law and encouraging bad behaviour. I can assure you that rural Australia is very unhappy about it. I'm worried someone is going to get hurt in the future when these protesters lock horns with farmers or whatever. I can't see any reason why the ACNC does not have ground to deregister the charitable status of Aussie Farms.

Senator Seselja: Senator Williams, in addition to that, if I could—

Senator WILLIAMS: Please, Minister.

Senator Seselja: In relation to the DGR status, that is something that Treasury is responsible for, so we can take that on notice separately from the question to the representative of the commissioner. Also I would just make the point—it was touched on in one of those answers—that Minister Littleproud and I did very strongly express our concerns in terms of the operations of Aussie Farms, and we made our views known to the commissioner as well. We did that publicly and privately. So we take these things very seriously, but obviously the work that the commissioner does is completely independent of government.

Senator WILLIAMS: Ms Willis, you will leave here today with no doubt about how many of us feel about Aussie Farms and what they're doing.
Ms Willis: Absolutely.

Senator WILLIAMS: No doubt whatsoever?

Ms Willis: No doubt whatsoever.

Senator WILLIAMS: Thank you. Thanks, Chair. Thanks, Minister.

Senator KETTER: Before I return to my questions to the ATO, I want to advise that we do have some further questions in relation to the issue of net overseas migration, both in terms of the numbers for the budget as well as some of the assumptions underpinning this area. We're interested in the birth rate assumptions as well.

Senator Seselja: To which area of government are you intending on asking those questions, just so I can clarify?

Senator KETTER: I'm hoping that—

Senator Seselja: I might seek some clarification from the officials, but I'm not sure that it's Revenue Group necessarily.

Ms Mrakovcic: Senator, some of those questions that go to the numbers on migration would be an issue for Macroeconomic Group. But how that flows through into the revenue estimates and, therefore, into the revenue side of the budget is something we can try handling. If we cannot, perhaps we can just offer to take the questions on notice.

Senator KETTER: OK, I'll see how we go with that and I'll come back to that. Thank you for that.

CHAIR: Senator Ketter, while we've got the ACNC here, I know Senator Brockman has questions for ACNC. Did you have questions specifically for ACNC?

Senator KETTER: I do, but I'm happy for Senator Brockman to go.

Senator BROCKMAN: I won't be long, Chair. Thank you to the committee. I wanted to follow up on a letter from my Western Australian colleague, Senator Dean Smith, regarding the charity Animals Australia. He wrote to you on 25 January this year, and you replied on 30 January, basically describing the secrecy provisions under which you are required to operate. I fully accept that you have to comply with the law you're under. Is there any way that you can update us on the status of that investigation work you have done? Is there anything you can tell us in that space?

Ms Willis: I'm afraid I don't have any information to hand on that at the moment. I can take that question on notice. I suspect policy would not be, because of the secrecy provisions, to comment on an active investigation if such an investigation even exists. There's a difference between when we have an active investigation versus when we're listening to and looking into concerns. There is technical internal jargon around that as well. When any sort of formal compliance action is taken, which can be a range of activities from warnings and directions to people to seek independent advice or pick up on their governance, many of those sorts of formal compliance are put on the website against the name of the charity under our compliance decision. If there is—

Senator BROCKMAN: That would be publicly available.

Ms Willis: Certain sorts of compliance actions, when they have been formally completed, would be made publicly available. That is one source of information, but I will take on notice
your question about that specific entity, because I don't have any information on that specific entity to hand.

Senator BROCKMAN: You can't tell me if there's any current change to the website on that particular entity?

Ms Willis: I'm not aware of it. I will have to that on notice and double-check to make sure I don't mislead you.

Senator BROCKMAN: The first notification of the public, following an investigation, not into this particular enterprise but in general, that a charity had received a warning—what other penalty could you put in place?

Ms Willis: It would depend on what we decided to do. If we think it's something where the charity can remediate its behaviour then it might be appropriate to give it a warning or direction to undertake certain action—

Senator BROCKMAN: That would be made publicly available?

Ms Willis: I believe most of those, unless the entity has ground for asking us to withhold that material. We can tell them we're going to publish that information on the register. They can then ask for a review and ask us to withhold that information. We don't tend to allow many of those applications, because the register is there for the public to know what is going on with charities. The other option with any entity is, if we find the behaviour has disqualified it for registration, it would have its charitable status revoked and that would be put on the register too.

Senator BROCKMAN: What powers does the ACNC have to follow the money, or do you have to draw those powers from other organisations? If, for example, there were an accusation that an organisation with charitable status had used funds in a particular way, do you have the powers to track that money to find out if that money flowed from the charitable organisation?

Ms Willis: I don't want to mislead you. I would have to take that question on notice so I could give you a specific answer on whether we work with other entities or draw our powers from other entities who have those specific powers. I would have to confirm that and provide that material to you in writing.

Senator BROCKMAN: That's the substance of Senator Smith's concerns in his letter to you—that payments were made by Animals Australia to procure certain footage. Do you have the powers to track those payments?

Ms Willis: I will take that on notice so we can give you a completely correct answer that doesn't mislead.

Senator BROCKMAN: Finally, what requirements, if any, would there be under the act which you and the charities operate under that would affect staff or board members of charities who are also candidates for political office? In particular I'm thinking about whether that then puts that particular charity under any restrictions or reporting obligations concerning expenditure of funds on political campaigns.

Ms Willis: We have a governance standard which covers things such as people who are associated with charitable entities entering into situations where there is a conflict of interest or into related party dealings which are not aligned with the charity's appropriate purposes.
More broadly a charity is set up on the basis of wholly charitable purposes. As time progresses, if there is behaviour by people associated with the charities that might be seen to be inconsistent with the purposes then we have to consider whether those activities somehow affect our understanding of what the purposes are. Someone associated with a charity may do something. I think one of the examples we give is hand out a how-to-vote card at an election. That doesn't necessarily mean they have disqualified the charity from being charitable, but there might be other sorts of persistent, constant behaviour approved or not rectified by the charity on an ongoing basis which then raise concerns with us that the purposes as stated aren't necessarily consistent when we look at the holistic activities of the charity. If those concerns are raised with us, we might look at considering whether that charity still has that charitable purpose.

**Senator BROCKMAN:** In that case I will keep an eye on your website.

**Australian Taxation Office**

[14:15]

**Senator KETTER:** I return to my questions in relation to the super amnesty. The amnesty period was to extend for a 25-year period. What are the average liabilities per year declared over that 25-year period?

**Mr O'Halloran:** I'm not sure I have that either with me or even available. Could I just check I understand: you're asking how far back people disclosed?

**Senator KETTER:** What's the distribution over that 25-year period?

**Mr O'Halloran:** I don't have that and I'm not sure that analysis is even readily available. From some early data that I saw a while ago, it did appear that the pattern—I can't distinguish whether it was with an amnesty in mind or through the normal SGC process—most of it was clustered around the last five years. As for whether I have an analysis of that, I'm genuinely not sure. When I saw some cluster analysis on some pretty high-level data, it seemed to be that most of the disclosures were within that four or five-year period—as in, retrospective.

**Senator KETTER:** Would you have a view as to what the disclosures represent in terms of what would be the reasonable annual estimate of noncompliance?

**Mr O'Halloran:** The pattern or perhaps the amounts?

**Senator KETTER:** What you're familiar with is the most recent five-year period. If you look at each of those years, how do they compare with what might reasonably be expected to be the level of noncompliance?

**Mr O'Halloran:** One of my difficulties is by their very nature the hundreds of pieces of data that come in require a disclosure by an employer for each quarter for each employee. There are a lot of quarters. Other than that the numbers are high and the amount of payment is actually higher, because people have come forward and paid at the same time, I'd have to take that on notice, to be quite candid. I'd only be speculating on not much more data than what I've outlined here this afternoon.

**Senator KETTER:** Yes, could you do that, thank you. What checking does the ATO undertake, then, to assess whether the declared amount is actually correct?

**Mr O'Halloran:** There are probably two things. Normally through the SGC statement process it does come relatively complete in the sense of its specification of the employee, the
periods et cetera, because otherwise it can't be processed by the nature of any payment that's made; we don't know whom to disburse it to. You are also then getting into a situation where the whole design behind the SGC statement process is for people to bring forward so that there's not a disproportionate allocation of resources on what should have been complied with in the first instance. There's foundational checking of that data. Whether it's referred for further work varies a little bit. I'd have to be quite candid: in a sense, it looks complete, it matches with some of the algorithms and there is manual checking of the documentation, the calculations and the manner in which it is presented. Sometimes that needs correction or some follow-up. That's the general essence. What I'm referring to there is not the casework component—as I touched on before, some 18,000 cases per year. That's probably the best response I can give without going into a lot of procedural detail that is probably not the essence of your question. We certainly do checks on the history of the people concerned, and those sorts of things, to see if there is anything that looks disproportionate, in line with our practice statement. Other than that, that is probably the way I would describe it for today.

**Senator KETTER:** How would you pick up that they have not declared the full amount they should have paid?

**Mr O'Halloran:** The short answer is that, like many of these things, we make some risk judgements in relation to that. Since this committee, and others, have raised questions around not relying on employee notifications, at least on paper, we are now running at about 45 per cent of all our casework being initiated as a result of ATO analysis, which includes a whole range of sources, which does give us a profile on the likelihood of non-compliance and the history of the employer concerned.

**Senator KETTER:** Who calculates the relevant SG charge amount?

**Mr O'Halloran:** It's part of the submission process. There are also automatic checks and balances on the calculations on the forms as presented.

**Senator KETTER:** Can you confirm that both the nominal interest charge and the general interest charge have been applied to amounts declared under the amnesty?

**Mr O'Halloran:** Yes.

**Senator KETTER:** And what's the value of each, in addition to the SG shortfalls declared?

**Mr O'Halloran:** I'd have to take that on notice.

**Senator KETTER:** What is the value of the part 7 penalties that have been waived under the amnesty? And I note you made the point earlier that they haven't been waived.

**Mr O'Halloran:** Yes, I won't go back over that. I would have to take that on notice. I have a figure in mind, but I can't be certain that that is specifically quarantined for part 7.

**Senator KETTER:** What's the value of liabilities that have actually been paid to the ATO under the amnesty and how many employees is that in respect of?

**Mr O'Halloran:** I thought I mentioned that before, but I am certainly happy to confirm out of session as well. We estimated approximately 5,000 employees. There has been $86 million paid to the ATO directly, there is $61 million under active payment plans—in other words, people are contributing according to a payment plan weekly, fortnightly or monthly,
according to the terms and conditions—and there was $14 million paid directly into employees' funds. The sum of that is about—

Senator KETTER: What is the value of the actual payments that have been made to the super accounts of employees?

Mr O'Halloran: $14 million.

Senator KETTER: That has now been paid?

Mr O'Halloran: Am I missing the point? To employees?

Senator KETTER: Yes.

Mr O'Halloran: Sorry, I'll rephrase that in case I have missed it. The $86 million that has come into the ATO has been paid to the employees.

Senator KETTER: It has all been paid into the super accounts of the employees?

Mr O'Halloran: Yes, according to the identification of the employees that comes in. The $61 million is progressively paid as the terms and conditions are executed, over the weeks or months or whatever the individual payment arrangements are. As that comes in, that is then prioritised. The Super Guarantee is a high order disbursement point, so the money goes out to employees—into their fund. The $14 million—which really happened outside the ATO, but the ATO were notified—went straight into an employees' fund from the employer. Does that clarify that, Senator?

Senator KETTER: Yes. Thank you. Given that there has been no legislation passed, obviously employers won't be able to claim a tax deduction on the historical underpayments. How are you going to ensure that they don't?

Mr O'Halloran: As we move into tax time, obviously that will be the sorts of checks and balances we will be checking as we continue to sort this data once we are confident over the next period that the amnesty is not proceeding. But that would be a normal part of our risk because it is such a clean-cut issue, if I may say, to make sure that for identified employers—who, of course, we can identify from the material that has come forward—we would be able to set up a check. I'm not sure whether it will be automatic or manual at this stage, but it is in the order of 15,000 employers, which, on a relative scale, is a moderate size but not an unmanageable population.

Senator KETTER: Can you tell us: what evidence is there that the amnesty has resulted in a higher level of SG liabilities being raised and successfully paid to employees compared to normal compliance activity in previous years?

Mr O'Halloran: Firstly, the only evidence I can give at the moment is that the incidence level seems to be somewhat higher. In other words, a higher number of employers have come forward. I think I mentioned 10 to 15 per cent. We haven't, as yet, done a comparison in any detail with previous normal SG submissions, other than on a numerical count. As I say, this is quite intensive, given that it's reported per period, per employee. I suppose that's the only early indicator: there's been a higher level of awareness as well as participation, if you like. I don't think we'd have much more at this stage. Certainly, as I mentioned earlier, anecdotally if not in practice, the profile of the acceptance or non-acceptance of not paying superannuation guarantee to their employees is changing in tone. In the next couple of weeks we will start to use some of the new enforcement tools. One, which we will use sensibly, progressively,
within the law and within tone, is the ability for us to notify or contact employers where we reasonably believe—I think that's what the law says—or have a reason to believe that they haven't been paid their SG. It is an important feature because, until that announcement, we were limited by only being able to communicate with employees who had made a complaint—an employee notification to the ATO. We will be measuring the effectiveness of those. I'd like it sooner rather than later.

Obviously, we would like to think that, as people and employees are now aware—and I apologise if I'm going over old ground—and I put great store in visibility, and people can see their SG payments through ATO online services—and I'll be tracking it very closely—our employment notifications will, ideally, reduce over time. There are the 20,000 or 25,000 we get a year, which is employees who believe they were not paid super guarantee. That's a feature that will change aspects. The second one is the continued activity and better data as well, from our point of view. Our proactive or ATO initiated cases will have a much stronger profile from the macro data from the funds, from our own analysis and obviously from some of our casework. We are trying different models to—to be honest—to be more assured that there are adjustments that can and should be done and that we can apply in an appropriate framework to collect the SG.

Senator KETTER: Will employers who have come forward under the amnesty be flagged and subject to future compliance activity or audits?

Mr O’Halloran: The law never existed. As with any super guarantee payment—and I touched on this before—we don't see a distinction. Perhaps I could put to you the question which is a feature. If people have come forward under a super guarantee charge process in the normal course of events, that is a feature. If they've come up in audit before, one would need to be mindful. Dare I say: once is an accident, coming forward two or three times is a behaviour that may, in fact, impact if we are auditing them as a consequence of other things. Is it a major targeting issue—the fact that somebody has come forward within the current law to actually make arrears, if you like? It's a consideration, but not in the terms that you've described it. It would be part of the profile of an employer, similar to other issues. Sometimes it's beneficial; sometimes it might indicate that what they said was an accident wasn't an accident and is actually a course of conduct that, when audited, one would take into account. Perhaps there hasn't been good compliance history or there has been misuse of the opportunity to learn from mistakes in terms of late payment or underpayment.

Senator KETTER: If the underpayments have occurred over a significant number of years, wouldn't that raise alarm bells?

Mr O’Halloran: Sorry, that's my point. It's one of the determining factors. It is one of a range of factors. Particularly in ATO initiated cases that come forward, that's the sort of background information that we would normally get. It's not in the sense of, if I may, coming up through the amnesty; it's part of the history of the interactions that the person has had with the ATO, when they come forward with the superannuation guarantee lodgement.

Senator KETTER: I'm talking the cohort of about 19,000 employers that you were talking about. Is there going to be an analysis of each of those declarations, to identify if there is a need for a follow-up—an audit, or some sort of compliance activity?
Mr O'Halloran: The short answer is no, not just because of that trigger—in other words, just because they've come forward. And it has always been open to people to come forward. That might be a good thing. That 19,000, of course, is the full number of people who have come forward under the existing SG charge process or arrangements. But if they come up through other processes then what would become part of a history, as opposed to targeting them because they've come forward, because, if it's been a full and frank disclosure and if it's been paid et cetera, then, in a sense, that's one of the reasons, including the nominal interest, that there is an ability for employers who discover, or realise, or choose to come forward, under the current law. Have I misunderstood your point, Senator?

Senator KETTER: No, that's okay. What's the ATO's policy going forward as to part 7 penalties? Is there a minimum 50 per cent or 100 per cent penalty—

Mr O'Halloran: No.

Senator KETTER: or is each case assessed on its merits?

Mr O'Halloran: Each case is assessed on its own. The practice statement, as it currently stands, outlines quite clearly that there are remission considerations—behaviour, characteristic et cetera. So, with reference to what had been speculated on, at this stage there's no change in the ability, other than administratively, for the ATO to consider each circumstance and balance a range of features, as opposed to a floor—or a ceiling; I'm not sure which way it is!—of 50 per cent. And I think, across all heads of revenue, it's always been a position. And it is, obviously, a matter of differing views at different times. But certainly the individual circumstances and so forth should always be taken into account. As I mentioned earlier, we have in fact tried to—through better information, rather than subjective judgement. We will see things like: for the first time, somebody hasn't paid an employee or group of employees SG for the last four periods, and we'll know it within 10 days or something of when the payment should've been made. So I think: once is an accident; two or three times becomes a pattern of conscious behaviour. That's where I think we will in fact be able to get a fair and balanced but also empathetic penalties regime.

Senator KETTER: My final question on the SG amnesty issue is this. In the past 12 months, how many 200 per cent part 7 penalties have been applied to non-compliant employers?

Mr O'Halloran: I know the first answer will be none, in terms of 200 per cent. If you can just bear with me, we have in fact—I'm sorry—

Senator KETTER: If the answer is none, that's the answer. That's what I'm—

Mr O'Halloran: But there has been an increase in the over 50 per cent and the over 100 per cent.

Senator KETTER: Well, if you've got those figures, I'm happy to have those.

Mr O'Halloran: I'll have to take it on notice.

Senator KETTER: All right. I know we have some further questions in relation to the ACNC, but, before we do that, I want to come back to that issue of net overseas migration, and perhaps, Ms Mrakovic, you might be able to help us with those. There was a letter that I'd sent as to the estimates of net overseas migration for the 2019-20 budget forward estimates, and I think Senator McAllister asked some questions in relation to this issue. As to
Treasury's response to my letter from last week—and there was a subsequent response to that—I just wanted to firstly confirm that, compared to the last budget, net overseas migration is roughly 40,000 higher per year.

Ms Mrakovcic: I might ask Mr Brine to answer those questions.

Mr Brine: Sorry—I have the figures for the permanent migration program here, but I don't have the NOM figures with me; they are in BP3, but I can bring that document along. Macroeconomic Group prepares the NOM figures and is responsible for the composition and the level of those. We sort of translate the NOM figures into revenue forecasts. There was a lot of concentration in this budget update around changes to the permanent Migration Program and how they feed through to revenue, and I can certainly help with any questions in that space. But NOM, as you know, is composed of the permanent Migration Program, changes in temporary visa levels and also arrivals and departures of Australians, and that's very much in the Macroeconomic Group's space.

Senator KETTER: Did you say you have another file that has information in respect of this matter?

Mr Brine: In relation to NOM?

Senator KETTER: Yes.

Mr Brine: Another file?

Senator KETTER: Your first comment was that—

Mr Brine: If there are questions about the permanent Migration Program changes that were announced in the budget context and how they feed through to revenue, I can certainly help with those. But, on the NOM figures, my understanding is they were a little bit below 260,000. They increased to a little bit above 270,000. But I just don't have the comparison to previous budgets for that overall figure here.

Senator KETTER: Okay.

Senator McALLISTER: It's a very significant comparison. I don't have my documentation with me either, but I did ask questions about this last time. It's essentially somewhere between 40,000 and 46,000 higher than the figures that were used in MYEFO, I think. So it's a very significant change.

Mr Brine: My vague recollection is that change—

Senator McALLISTER: My apologies—it was in comparison to the last budget. Looking from the last budget to this budget you get around 40,000 additional people.

Mr Brine: My vague recollection is that there has been a significant increase in the number of students. But, again, this is the Macroeconomic Group's territory. I offer that to be helpful, but I'm certainly not an expert in the NOM figures.

Senator McALLISTER: On the assumptions you're making in terms of revenue, there's something like an 80,000-person increase in migration above the permanent cap. If you think the permanent cap is going to be 160,000 and Budget Paper No. 3 tells us that in 2019 there's going to be a 271,000-person increase in net overseas migration it's about 80,000 people who are coming in by means other than the permanent program. What proportion of those 80,000 people do you assume have work rights and, therefore, flow through into revenue from an income tax perspective?
Mr Brine: I don't know that exact proportion. I do know that there were around 1.7 million migrants living on temporary visas as at December 2018, and that 1.7 million included New Zealanders living in Australia, students, working holiday-makers and temporary skilled workers. But I just don't know the split of those or what's driving that change in the 1.7 million over time.

Senator O'NEILL: Can I ask a clarifying question about information we received from the Fair Work Ombudsman the other evening. This is from memory, but I'm pretty sure 758,000 was the number they were talking about.

Mr Brine: For temporary visa holders with work rights?

Senator O'NEILL: Yes. So if that number of 758,000 is correct, can you explain the other million?

Mr Brine: That would be New Zealanders living in Australia, students and working holiday-makers.

Senator O'NEILL: How many?

Mr Brine: I don't have those numbers available, sorry. I have a total, but I don't have the decomposed numbers. Again, these are questions that are really the Macroeconomic Group's responsibility.

Senator O'NEILL: But the revenue numbers are your responsibility.

Mr Brine: They give us the NOM figures. Yes, that's right.

Senator O'NEILL: So that's the numbers of people who were there, but the assumptions that they would then make about how many of those people with rights would actually activate those rights must affect your revenue number? The Fair Work Ombudsman were quite clear that they didn't have a sense of how many people were working. They did with students, but with the other groups they didn't know. So I'm trying to figure out how you can make up these numbers and stand here and support them if you can't answer questions which are interrogating the value of the data that you're attributing to another entity that can't answer the question here.

Mr Brine: There are two products we provide in the Tax Analysis Division. One is the costings of policy changes and one is the revenue forecasts. In the costings of policy changes, we do a fairly detailed disaggregation of visa classes. We draw on our microsimulation models, where we can see the amount of tax being paid by people on different visa classes, so we can do a pretty granular assessment of how change in planning levels for different visa class levels will impact the budget over time. For the revenue forecasts, we use a base-plus-growth model, where we take the last observed outcome for each revenue head and we grow it forward according to different parameters. So we might grow individuals' income tax in line with compensation of employees, or we might grow other income in line with gross mixed income, or we might grow company tax and certain company tax income streams and deductions in line with gross operating surplus.

Those components come to us from MEG, and they have built their NOM estimates into those components—into those elements of the macroeconomic forecasts. So I don't need to get their NOM numbers. I rely on them to have fed their NOM numbers through into their
estimates of compensation of employees, GMI and GOS. They give me those numbers and then I grow the base of the different revenue heads using the appropriate parameter.

Senator O'NEILL: I understand what you're saying to me. I still don't necessarily have confidence that that's of sufficient granularity given the differentiation about what's going on in each of those cohorts was unknown to the Fair Work Ombudsman. Who's got the clarity of view of the—

Mr Brine: Macroeconomic Group would be the people who make the assessment of how the changes in NOM will feed through into things like COE, GOS and GMI.

Senator KETTER: In Budget Paper No. 3, for net overseas migration there's a table, A.2, on page 92. Does that assist you with—

Mr Brine: That's the figure I mentioned before. We're slightly below 260,000 in 2018, the figure increases to slightly above 270,000 in 2020, and then it comes back a little bit. That's definitely the total NOM figure. The componentry sitting underneath that total I can help with in some respects—I can explain how those NOM figures feed through into our revenue forecasts—but exactly what is driving that change over time and why the NOM figures might be different to previous years are really questions for our Macroeconomic Group colleagues, who rely heavily on the immigration department.

Senator KETTER: There is a roughly 80,000 person increase in migration above the permanent cap. Are you able to tell us what proportion have work rights?

Mr Brine: No. As I think I mentioned before, I don't have information on what proportion of those—

Senator KETTER: But isn't that information necessary for you to look at the revenue implications?

Mr Brine: No. As I mentioned before, we do costings on a fairly detailed level. We do costings for things like government policy changes, such as change in the permanent migration program. We would do detailed analysis of visa classes, looking at the amount of tax paid, the amount of income tax and indirect taxes paid by people coming in on different visa classes. We can estimate pretty accurately how changes in individual visa classes will result in changes in revenue. For the revenue forecasts, we use a different model. We use a base-plus-growth model. We take the last observed tax outcome, which at the moment would be the 2017-18 year. We then grow that in line with the appropriate economic parameters. The appropriate parameter, say, for individuals' income tax would be compensation of employees. So the growth in the amount of the economy that we think is going to end up in employees' wages is the parameter that we use for individual income taxes. That parameter comes from our colleagues in Macroeconomic Group, and in producing that parameter they will take into account the NOM forecasts. That occurs in another part of Treasury and we get the CoE forecasts—compensation of employees, gross mixed income, GOS. Other parts of the economy feed through to other parts of the revenue forecasts. So we don't need to know the exact NOM numbers for the revenue forecasting, which, as I mentioned, is different to the costing.

Senator KETTER: So you wouldn't be able to help us with the number of people that have work visas compared to student visas?
Mr Brine: That's correct. That would be something that Macroeconomic Group would take into account, but they wouldn't necessarily give us visibility of that.

Senator KETTER: Chair, I would like to explore that issue further. I'm not sure whether or not we can look at having Macro come back, if Macro is the group that is best placed.

CHAIR: I'm very reluctant to call back a group for a third time.

Mr Brine: Could I help assist. While Macroeconomic Group is responsible within Treasury, of course the immigration department are the experts in this and they would be feeding information to Macroeconomic Group. If there were someone to provide granular information about net overseas migration, it would be the immigration department.

CHAIR: And Home Affairs have come and gone too.

Mr Brine: Sorry, Home Affairs.

Senator O'NEILL: They're in witness protection. We can't get them up in the Senate. They'd have to answer serious questions about Minister Dutton.

CHAIR: We did have them for two days earlier in the week.

Senator KETTER: I've got some other questions in relation to birth rate assumptions that have been used to inform population growth forecasts in the budget. Is that something you're able to assist with?

Mr Brine: Again, that would be Macroeconomic Group.

CHAIR: Senator Ketter, I'm conscious that Senator Siewert has more questions for ACNC.

Australian Charities and Not-for-Profits Commission

[14:46]

Senator SIEWERT: I was going to ask where Dr Johns is, but I've got the opening statement, so I won't go there, but I do have a series of questions, which I'll try to get through quickly. I don't mean to be rude, but what's your position? Are you acting commissioner?

Ms Willis: No. They've given me a promotion here; I'm acting general counsel at the moment. Murray Baird has been the general counsel. It's an SES band 1 position. I'm an SES band 1 substantive with the tax office. I have moved to the ACNC on a temporary transfer while Murray is on leave, initially for three months, but I've been asked to be available for up to six months. It's just to provide some continuity for the staff and decision-making in the general counsel role while he's on leave.

Senator SIEWERT: Thank you. That takes me to some other staffing issues, if that's something that you can address. If not, you might need to take it on notice. I notice there are a number of people that have been in the organisation for a while whose positions now seem to be vacant, or they're not no longer with the ACNC: David Locke; you have just been talking about Mr Baird; Susan Cotterill; Annie Keely; and Madison Lovell. Are those positions going to be filled?

Ms Willis: In relation to David Locke, I think there was a question on notice from the last estimates confirming that his position would not be refilled. At the moment, I'm sitting in Murray Baird's role for three to six months. I'm not aware of what will happen after that. I go
back to the ATO, presumably, after that. The other names aren't familiar to me. I'm not clear what their roles are, I'm afraid, because I've not been at the ACNC for very long.

Senator SIEWERT: I appreciate it's probably an unfair question, so I apologise. Perhaps you could take that on notice.

Ms Willis: Shall do.

Senator SIEWERT: That would be great. I do realise that David Locke's position has been changed. I'm interested then in finding out how that is then going to be dealt with by the structure, if, therefore, a new structure is going to be put in place.

Ms Willis: There's a structure that's evolving at the moment. There is no separate assistant commissioner; I think compliance was essentially David's responsibility. We have a senior director who is head of the compliance team at the moment. But I can take on notice any questions more broadly about different positions.

Senator SIEWERT: That would be appreciated. I have had a few people suggest that there's been a longer waiting time now in terms of phone answering for general inquiries for the ACNC and that the processing time for new applications has blown out a bit. Could you update us, please, on what the phone-answering time is and on the processing time now for applications?

Ms Willis: With this last registration cycle, if we're talking about the annual information statement, we have a new IT system. Because that is still coming up to speed and coming online, we provided an extension of time for people to lodge their statements. I have some material on why there were some delays and hiccups with that IT system, but we believe we have identified what the issues were with the system in terms of lodging those annual information statements.

Senator SIEWERT: It's also for new applications. It is not just the information processing for existing charities but for processing applications for charity status?

Ms Willis: We had a new IT system come online. I will take on notice the specifics related to actual registration of new charities and get back to you.

Senator SIEWERT: Could you take on notice what the most recent processing time has been and what it used to be?

Ms Willis: I can do that, yes.

Senator SIEWERT: Say two years ago.

Ms Willis: Yes.

Senator SIEWERT: In terms of phone answering, have you fewer people answering the phone now? First I should say: has there been a reduction?

Ms Willis: I can't answer that, because I haven't been at the ACNC for long. What period are we talking about? I know with the most recent round of lodgements we had people making themselves available for longer times to allow for technology outages and so forth.

Senator SIEWERT: Sorry, I missed that.

Ms Willis: With the latest round, when we were having our information statements lodged and there were the technology hiccups, which we hope now have been resolved, our staff did
actually keep the call centres open a bit longer so that they could serve the public a bit better. But are you talking in terms of raw staff numbers?

Senator SIEWERT: No, I'm asking about the wait times for people to get their phone inquiries answered.

Ms Willis: Okay. Recently, compared to?

Senator SIEWERT: Say 12 months ago. Can I have 24 months, 12 months and now?

Ms Willis: Yes, I'll get those figures for you.

Senator SIEWERT: That's in term of the phone inquiries. If you could also take on notice how long, over the same period, it's taken to process the applications for charity status. In terms of the information statements, could you provide, on notice, how long that has been taking as well?

Ms Willis: Yes.

Senator SIEWERT: How do you measure your performance? What process have you been undertaking to measure ACNC's performance on an ongoing basis?

Ms Willis: In terms of service delivery standards and interface with the public?

Senator SIEWERT: Yes.

Ms Willis: I'd have to take that on notice, because it's not my direct area of responsibility as general counsel. I need to get you the correct information.

Senator SIEWERT: Thank you. Just on that—and I'm not having a go at you at all—

Ms Willis: That's all right.

Senator SIEWERT: who made the decision about who should be representing the ACNC when Dr Johns couldn't make it?

Ms Willis: Dr Johns requested. He tried looking at his calendar to see if he could make the dates work and it wasn't possible, so he asked me, as the next most senior person in the organisation.

Senator SIEWERT: And he didn't send any support—I absolutely mean no offence, but you're in an acting position and there are other ACNC staff; they didn't think to send any ACNC staff to support you?

Ms Willis: I've had a very great team of people back in the office briefing me. But, in terms of actually having people travel with me, we didn't feel it was appropriate or necessary in terms of budget and time and so forth.

Senator SIEWERT: This is about the— I don't know—third or fourth time that we have not been able now to get answers to our questions on the day because Dr Johns has decided not to bring additional staff with him.

Ms Willis: I'm happy to take feedback, or on notice, if you feel there are particular areas for future estimates that you feel require coverage.

Senator SIEWERT: Thank you. That would be appreciated. Note that I'd rather get the questions answered now than continually having to put questions on notice.

Ms Willis: Yes.

Senator SIEWERT: Is there an intention to restart doing the annual charities report?
Ms Willis: I'm not aware of that. I can't answer that question.

Senator SIEWERT: I presume you can't answer why that process is no longer occurring?

Ms Willis: No, I can't answer that. Again, I can get that information for you on notice.

Senator SIEWERT: Could you take that on notice as to why there hasn't been one and does the ACNC propose to restart that process, so that charities can get access to the information they provide?

Ms Willis: Yes.

Senator SIEWERT: Thank you. I have started asking questions about this previously, about the process to inform donors around the activities of charities—I've had people describe it to me as 'a stock exchange for charities'—so that donors can have a look at charities. And Dr Johns seems to be particularly attracted to that process. Can you update us as to where that process is up to now?

Ms Willis: I think he refers it as the taxonomy. The idea is to provide donors with better information not just about perhaps the stated purposes of the charity, but a bit more information about the programs that they actually operate so that potential donors—people who want to give money or people who want to find a charity that aligns with their interests—are better able to locate those charities via a register. We are working with a group called Our Community. They have a classification system called CLASSIE. I'm not quite sure what that acronym stands for. It provides, perhaps, some common terminology so that people can align their programs with that terminology, so that people are able to compare apples with apples versus apples with oranges. That's an ongoing project.

Senator SIEWERT: When you say it's ongoing, where is it up to?

Ms Willis: Let me find out. We are still working at the moment with Our Community to—

Senator SIEWERT: Who is Our Community?

Ms Willis: I will have to get the details of that organisation to you on notice.

Senator SIEWERT: You don't know who they are? The ACNC's carrying out a consultation with them to develop up this process but you don't know who they are?

Ms Willis: I have a general understanding that they are a group that bring together a number of charities, and I'm aware that they're running some events with multiple people who are interested in and involved in the charity sector, but in terms of the specifics of their structure and who they are, I think it's better that I don't mislead you by giving you incorrect information.

Senator SIEWERT: If you could, again, take that on notice. In terms of who is being consulted over this process, you have just said Our Charities are running some events with other charities is that a form of consultation?

Ms Willis: It's not a specific consultation that the ACNC has organised. They are their activities. We will participate in those as appropriate, as will other entities involved in the charity sector or government.

Senator SIEWERT: If they're not carrying out consultation, they're developing up—gathering from what you said—a common—
Ms Willis: They have developed this taxonomy, which we think we can then use, because it is something which has already been, I suppose, developed and up and running rather than us trying to start something from scratch.

Senator SIEWERT: What consultation has been undertaken with not-for-profits, charities, academics and other sector leaders?

Ms Willis: I'd have to get you details of which particular entities have been consulted to date.

Senator SIEWERT: What consultation has been undertaken with not-for-profits, charities, academics and other sector leaders?

Ms Willis: I'd have to get you details of which particular entities have been consulted to date.

Senator SIEWERT: Who commissioned it? Was it Dr Johns who made that decision?

Ms Willis: Again, I would have to confirm that, because I don't want give you misleading information.

Senator SIEWERT: Why was the decision made to go to limited tender?

Ms Willis: Again, I'm afraid I'd have to get you the correct information about that on notice.

Senator SIEWERT: Was there any consultation with the sector before that was commissioned?

Ms Willis: Again, I'd have to take that on notice and give you the complete information.

Senator SIEWERT: The report has been released, and I've had a look at it—where to from here with that report. When was that report commissioned?

Ms Willis: I don't have the precise date with me. It would be on our website, but I don't have that to hand at the moment.

Senator SIEWERT: Who commissioned it? Was it Dr Johns who made that decision?

Ms Willis: Again, I would have to confirm that, because I don't want give you misleading information.

Senator SIEWERT: Why was the decision made to go to limited tender?

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Ms Willis: Again, I'd have to take that on notice and give you the complete information.

Senator SIEWERT: The report has been released, and I've had a look at it—where to from here with it?

Ms Willis: I think Dr Johns views it as a way of starting the discussion about these issues. He published an editorial opinion article recently with Pro Bono online—I think that was a few weeks back—and he has made it very clear that he has been exploring some of these issues with a variety of stakeholders, including charities, academics, researchers and professional advisers. There's an ongoing focus on working out how, or the best ways, to assess the criteria in paragraph 1(b).

Senator SIEWERT: Thank you. First off, is his talking to the people you've just mentioned a formal process? Is he seeking people's opinion on that report?

Ms Willis: I would have to check what consultations have taken place so far with the stakeholders I mentioned and what's planned going forward.

Senator SIEWERT: Can I ask what veracity has been placed on that report? I'm looking at some of the metrics or terminology used—for example, around the vibrancy of the sector. I think it's the vibrancy one that talks about mergers. Sorry, but I don't measure the vibrancy or value of our civil society and not-for-profit sector on the number of mergers that have occurred. It seems to me a very peculiar approach to take to measure our not-for-profit sector in this country.
Ms Willis: I don't believe that any measures have been finalised around the second object's attributes based on that report. Dr Johns does view it as the start of the discussion and to get different viewpoints, such as the viewpoint you've expressed just now.

Senator SIEWERT: Was the report peer reviewed? Was the work peer reviewed?

Ms Willis: I would have to get that information for you.

Senator SIEWERT: You'll take that on notice. I'm trying to get my head around what Dr Johns is trying to achieve with both the letting of that consultancy and in terms of object 1(b)?

Ms Willis: Dr Johns has said that he's very happy to provide further information directly when he returns.

Senator SIEWERT: Thank you. Are you able to provide a copy of the most recent ACNC staff survey?

Ms Willis: I don't believe I have that, and I would have to check whether we have released it or not, or whether it's available for release. There were some FOI requests, but I'm not sure what the subject matter of those requests was.

Senator SIEWERT: Could you take on notice then, please, whether you can actually release that report.

Ms Willis: Certainly.

Senator SIEWERT: Not if you can—will you please release it.

Ms Willis: Can I clarify: the ACNC staff survey, the public service—

Senator SIEWERT: The latest one.

Ms Willis: Yes.

Senator SIEWERT: Thank you. I have a few questions around a specific case and then I'm finished. Can I ask about Waubra, which was dealt with a while ago by the ACNC. It was deregistered a while ago. When it was deregistered, it had about $81,000 worth of DGR donations. They were frozen. The annual report has said it has now given its funds to another organisation registered with the ACNC. Can you tell us which organisations received that money? Do you monitor that?

Ms Willis: I don't have that information at the moment, but I will take that on notice.

Senator SIEWERT: Are you able to answer whether you monitor that?

Ms Willis: I don't know the answer to that question.

Senator SIEWERT: Could you check if you did you monitor it and, if you did, which organisations the money went to. Does the organisation that the money goes to have the same or similar charitable objectives—that is, health promotion?

Ms Willis: I'll confirm that for you as well. I don't want to mislead you.

Senator SIEWERT: To be clear, I'd like to know whether they have to have a similar charity status and, if they don't, why not.

Ms Willis: I'll take it on notice.

Senator McALLISTER: I want to follow up on some of the questioning around how the commission is going. How long have you been there?

Ms Willis: Two weeks and two days.
Senator McALLISTER: Just two weeks. We've asked, I guess a few times, about staff morale at the ACNC. In the short time you've been there, how would you assess staff morale?

Ms Willis: That's a difficult question after two weeks, and any observation would be a personal observation. I'm aware of the discussions at previous Senate estimates, but no concerns have been raised with me directly.

Senator McALLISTER: If you're aware of the questioning, you'll be aware I've asked in the past about a staff survey and the information that was provided in that staff survey—

Ms Willis: Is that the same staff survey that Senator Siewert was referring to?

Senator SIEWERT: I asked for the most recent one.

Senator McALLISTER: I wonder if you'd seen it, Ms Willis?

Ms Willis: I haven't seen that material yet.

Senator McALLISTER: This may be the same question, in another form, that Senator Siewert asked, but is it the case that the director of education and public affairs has left the commission?

Ms Willis: I'm not aware. We have someone who has returned from leave. She has been on eight months leave but is back now.

Senator McALLISTER: Right. That person was on extended leave?

Ms Willis: Yes.

Senator McALLISTER: And she has returned to permanently fill that role?

Ms Willis: I understand she returned to the position she was in previously.

Senator McALLISTER: The director of legal and policy?

Ms Willis: I'm not aware of any change. The person who was acting in the general counsel role previously—between the time when I started and when Murray Baird went on leave—has, I believe, reverted to the role that she was in previously, which would be as the director of legal and policy.

Senator McALLISTER: What about the chief operating officer directing corporate services?

Ms Willis: I'm not aware of the term 'chief operating officer' in the organisation. I'd have to take that on notice.

Senator McALLISTER: What about the director of corporate services? Do you have one of those?

Ms Willis: Yes, we have.

Senator McALLISTER: Is that a recent appointment?

Ms Willis: I would have to check how recently. Certainly he's been in the role for longer than me, but that's not very long at all. I'd have to check how long he's been in the role.

Senator McALLISTER: Do you think that your difficulty in answering these questions does suggest, as Senator Siewert alluded to—whether it's you or Dr Johns sitting in this chair—that the commission may need to consider resourcing the estimates process appropriately?
Ms Willis: I think that's feedback we can certainly take back to the organisation. I'd be happy to take that feedback.

Senator McALLISTER: You've indicated that former assistant commissioner David Locke has left and that his position is not to be filled. What was the basis for decision?

Ms Willis: That decision was made some time ago, certainly before I was approached about moving to the ACNC. I understand he's taken up another role, so I don't know the background to why it hasn't been filled.

Senator McALLISTER: But it's not to be filled at all?

Ms Willis: In the response to a question on notice from the last Senate estimates, I believe that was confirmed.

Senator McALLISTER: You don't know the policy rationale for a restructure that reduces the number of commissioners and assistant commissioners from three to two?

Ms Willis: I believe the response to the question on notice last time noted Dr Johns was interested in, I suppose, a flatter structure, and also we have to be mindful of our budgetary constraints.

Senator McALLISTER: But the remaining assistant commissioner, Murray Baird, continues in that role, notwithstanding the fact that he's on extended leave?

Ms Willis: That's correct for the moment, as far as I'm aware. I've been told to be available for at least six months—sorry, up to six months.

Senator McALLISTER: It's unusual to have quite so much movement. Has the commission requested a mobility officer from the ATO?

Ms Willis: At the same time I started with the ACNC someone from our ATO People team also joined on a temporary transfer to work with me.

Senator McALLISTER: I see. What functions will that person be performing and what is their title?

Ms Willis: I'm not sure of the title, but her functions are to essentially be a resource if people want to raise issues to do with staff engagement or mobility or various options. It's really because my focus is around the counsel role—it's simply to be a resource if people require it.

Senator McALLISTER: Sorry, you're going to have to explain that a little better. Your role is to be a resource if people require it?

Ms Willis: No, sorry—the other officer who has accompanied me. Because my focus is on the general counsel role, the other officer, who has come across at the same time, will be a resource available if the ACNC or its staff require it to consider things such as mobility or other staff engagement measures.

Ms Curtis: We might be able to help with this line of questioning. The acting Chief Operating Officer, Brad Chapman, can perhaps give you some of the explanation as to why an officer was requested to go across from the ATO to the ACNC to support Ms Willis.

Mr Chapman: Following the earlier conversations between Dr Johns and Murray Baird and ATO officers, Murray Baird was offered a move to the ATO into another role that could utilise his skills on a temporary basis. Noting some of those conversations, we did send a
senior ATO officer, an SES officer, from HR over to the ACNC to have discussions with all of the directors from the ACNC to test whether there were any issues that they felt they needed to raise with the ATO. Those conversations with the directors certainly were, in the main, positive and did not identify any systemic or significant issues. But, certainly, as per any organisation, we did identify some opportunities to enhance engagement, and so another officer from the ATO's HR area, who was looking for some opportunities to also broaden their experience and give them some new experiences, has been sent over for a period of six months to work with the ACNC doing some work on engagement opportunities.

**Senator McALLISTER:** These conversations that took place between Assistant Commissioner Baird and the ATO—

**Mr Chapman:** It was between Mr Baird, an assistant commissioner from the ATO and Dr Johns as well.

**Ms Curtis:** And me.

**Mr Chapman:** And Ms Curtis.

**Senator McALLISTER:** What was the nature of these conversations?

**Ms Curtis:** ATO officers, HR officers, were approached by Mr Baird, and he raised some issues that he had in the workplace. He had some concerns. They were brought to myself and to Mr Chapman in his normal role as head of ATO People. We spoke to Mr Baird. We also spoke to Dr Johns. We decided, with their agreement, that it would be best to talk to both of them together and try to understand what the issues were that were going on in the workplace. When we talked to them, it was quite clear that really there was a disagreement about leadership styles and probably philosophy, I guess, about how the organisation was operating. So we talked through what the best solutions might be to resolve that, because you are always trying to resolve things at the lowest level possible and we talked to Mr Baird about perhaps working back in the ATO for a while, whilst we worked through the issues that were there, and that's what has actually occurred.

Ms Willis has now gone into that role and, as Mr Chapman said, because there were also some concerns raised by Mr Baird about the engagement within the ACNC, we wanted to explore that. We did explore that. We sent one of our ACs for People down to have conversations—again with the permission of Dr Johns and with staff—and as Mr Chapman just reported, there were no systemic issues found. We, on the whole, found most of the staff appeared to be engaged and positive but we did feel that, given that there were some challenges raised about things like mobility, because it's a very small organisation, it might be worthwhile putting an additional staff member in there just to work that through with them for the next six months and to provide some support to Ms Willis in her role and to Mr Johns as well.

**Senator McALLISTER:** I know that the language of HR is its very own special language. Are we talking about a circumstance where there's a fundamental disagreement in the senior leadership of the ACNC about what the purpose of the organisation is? Is that a fair characterisation?

**Ms Curtis:** I think it is a disagreement about leadership style, to be frank. It just appears there is a disagreement between Dr Johns and Mr Baird. They don't see eye-to-eye, and we wanted to resolve this at the lowest level possible to try and resolve the conflict. We agreed
with Mr Baird and Dr Johns, that the best thing to do was that, while we worked through that, we would offer Mr Baird an opportunity to come back into the ATO, into a legal role, which his skill sets do suit, and that is what has actually happened. We have asked Ms Willis to go over there for a period of time. I should say that Mr Johns is—

Senator O'NEILL: Is that a permanent arrangement?

Ms Curtis: It's not permanent, no. It was while we worked through the disagreement in leadership styles and, to be frank, I think that it is just one of those situations where you have conflict in the workplace. Sometimes it's best if you remove a person out of that conflict while you're working through the issues. Dr Johns is a statutory officer and, in fact, we don't have jurisdiction over that statutory role. We got involved because the staff in ACNC are actually ATO employees under our enterprise agreement, and we offered Mr Johns support in order to really do the right thing by the people in the organisation and to assist Mr Johns. He welcomed that opportunity, as did Mr Baird. So we've been trying to provide some support to them. But going to your original question, I think it is a disagreement over leadership style, which often occurs in the workplace, and the best thing to do then, in HR speak, is to remove somebody from the situation until you can resolve it.

Senator McALLISTER: Having met Dr Johns, I can understand why there might have been a disagreement about leadership style.

CHAIR: Thank heavens we don't have that in Parliament House ever!

Senator McALLISTER: So we've got a mobility officer there to work through any outstanding issues. When we're talking about a mobility officer, I'm sorry to interrogate the HR speak, but what exactly does a mobility officer do? Do they arrange transfers out of the ACNC to another organisation where people can cope with the leadership style?

Mr Chapman: The staff member who has moved over is a HR officer from the ATO, not specifically there as a mobility officer, but certainly one of the engagement opportunities that was identified relates to mobility.

Senator McALLISTER: Is leaving?

Mr Chapman: Maybe not leaving, but mobility within the ACNC but also, given the ATO is in the same building and has a large number of people, would there be some opportunities for people to move in and out between the two organisations that would also provide, I guess, refresh and renewal for people.

Senator SIEWERT: How many people have moved in and out?

Mr Chapman: I'd have to take that on notice. But she has only been there for, equally, about two weeks, from memory so I don't think many people will have moved yet as a result of any of that work.

Senator McALLISTER: Was one of the issues raised in relation to the leadership style Dr Johns's physical location? Is he still based in Brisbane?

Ms Curtis: He is based in Brisbane. I can't recall that that was one of the issues raised.

Senator McALLISTER: Is anyone else from the ACNC based in Brisbane?

Ms Willis: No. Dr Johns usually works in Brisbane on Mondays and Fridays and is with us for three days during the week. But obviously that depends on if he's travelling for other
reasons, but that's probably not unusual for a senior leader. I think three days in the office is actually quite a good time, compared to a lot of senior leaders.

**Senator McALLISTER:** So he's based in Brisbane for the purpose of travel allowance and then he travels to Melbourne for his duties?

**Ms Willis:** Correct.

**Senator McALLISTER:** He has an office in Brisbane?

**Ms Willis:** I believe he has an office at the ATO.

**Mr Chapman:** Yes, that's correct.

**Senator McALLISTER:** Who is the minister who appointed Dr Johns as the charities commissioner? Can someone remind me?

**Senator Seselja:** I believe it was Assistant Minister Sukkar, to my recollection, but I obviously wasn't in the portfolio then.

**Senator McALLISTER:** Have you been briefed about all of this, Minister Seselja?

**Senator Seselja:** No, I haven't. No.

**Senator McALLISTER:** So this is news to you?

**Senator Seselja:** Yes.

**Senator McALLISTER:** Any concerns?

**Senator Seselja:** Look, we allow the ACNC to operate independently. I don't run the ACNC. We allow the commissioner to do that. Obviously, if there are any concerns that need to be brought to ministerial level, they will be, but they haven't to date.

**Senator McALLISTER:** Who would elevate them to ministerial level if the actual concern was the head of the ACNC? Whose job would that be?

**Senator Seselja:** Well, it could be anyone to whom it came to their notice.

**Senator McALLISTER:** Yes, but in the chain of command—

**Senator Seselja:** But no-one's sought to bring it—

**Senator McALLISTER:** How does that work?

**Senator Seselja:** No-one's sought to bring it to my attention.

**Senator McALLISTER:** But you've heard the evidence now that we've appointed, apparently, a person whose specific job it is to help people transfer out of the ACNC. Does that concern you at all, minister?

**Senator Seselja:** I'm happy to get some further briefing on it based on some of the evidence here today but, as I say, it hasn't been raised with me prior to this.

**Ms Curtis:** I do have to clarify that it was not our evidence that we've put somebody in there to transfer people in and out. Actually, I would say that when we offer opportunities in ACNC to our staff, there is quite a good uptake from the ATO. And as I said earlier, and as Mr Chapman said, when we did go and talk to the directors and the staff in the ACNC, quite independently, there was nothing systemic found with regard to motivation or issues that they raised around engagement.

**Senator McALLISTER:** When Dr Johns was appointed as the Charities Commissioner, was he given a formal undertaking at that time that he was able to base himself in Brisbane?
Senator Seselja: I don't know the detail of that. I'd have to take that on notice.

Senator McALLISTER: In taking that on notice, can I ask that if a commitment was provided in writing to Dr Johns—

Senator Seselja: Again, I'll take that on notice.

Senator McALLISTER: Perhaps I could complete my question. If there was a commitment that was provided in writing to Mr Johns, could you table that for the committee?

Senator Seselja: I'd have to consider it. I don't know; I don't have the details so we'll take the question on notice and we can answer that part of it as well.

Senator McALLISTER: I think you answered this earlier, Ms Willis, in relation to the formal decisions at the ACNC regarding charity registrations and compliance, who is making those formal decisions at the moment?

Ms Willis: The original decisions around registration, revocation of registration and so forth, go out in my name. So the staff report to me on those issues. If there is a decision that is subject to review—for example, an entity objects or seeks a review of a decision around, say, revocation of registration—we have a separation of decision-making and review to show some sort of independence. A separate person does that review process and that decision goes out in the commissioner's name.

Senator McALLISTER: I apologise if this was answered earlier when I wasn't in the room. Where is Dr Johns today?

Ms Willis: He is in New Zealand. He is attending a meeting with New Zealand's charity regulator and also to represent the ACNC at the Charity Law Association of Australia and New Zealand conference. This was organised late last year when he was of the understanding that Senate estimates would take place in late April or early May. It's essentially a peak body conference in New Zealand, which has been long planned.

Senator McALLISTER: Surely accountability to the parliament would take priority over attending a conference? That would be the ordinary understanding for most senior officers. Was there any discussion in recent weeks about Dr Johns changing these arrangements to meet the accountabilities that he has to the parliament?

Ms Willis: Dr Johns did look at his scheduling and what it was possible to change or move until quite late in the piece and also confirming very precisely what the timing of this session was going to be. As he said in his opening statement, he does very greatly respect the Senate estimates process but, in the circumstances, he was committed to the travel to New Zealand.

Senator McALLISTER: It doesn't look like respect to me. Thank you, Chair. That's all I have for Dr Johns and his team.

CHAIR: Are there any further questions for the Revenue Group?

Senator O'NEILL: I would like to ask some questions of the ATO.

Senator Seselja: Can I confirm we're done with the ACNC?

CHAIR: I have no further questions, and I don't think anyone else does. The ACNC can go.
Australian Taxation Office

[15:27]

Senator O'NEILL: Firstly, I will go to evidence that you gave on 20 February to Senator Ketter around the ATO office in Gosford. Is there somebody who's got a pretty detailed knowledge of that here?

Mr Chapman: Yes, Senator.

Senator O'NEILL: Much has been made by the local member of there being 600 jobs. It's been a signature theme. At any point in time, have there been 600 jobs filled in the Gosford office of the ATO?

Mr Chapman: Not to date. The site was expected to achieve 600 roles across a number of agencies—300 of those by the ATO and the balance across other agencies. Whilst there were a number of agencies that had initially expressed interest, they did not proceed with that interest. As a result of that, we have to date had 542 people recruited into the site, 490—

Senator O'NEILL: I will get all these aggregated figures from you if I can, but I want to interrogate that number. That is a little different from the last time that we were here. Can you—

Mr Chapman: Can I just clarify, Senator, we've used the same point-in-time figures.

Senator O'NEILL: What point in time are we talking about?

Mr Chapman: That is as at the end of February.

Senator O'NEILL: Let's talk ATO jobs. In terms of the ATO jobs, do you want to tell me exactly how many there are?

Mr Chapman: To date, we have filled 498 ATO jobs as at the end of February, of which 406 are currently filled. We have also got—

Senator O'NEILL: Just talk me through the gap there. There are 498 but only 406 filled?

Mr Chapman: There are 406 filled at the moment. We have had exits from the site in the order of 92.

Senator O'NEILL: You've had 92 exits?

Mr Chapman: Yes, that's correct.

Senator O'NEILL: That's a lot of people leaving work in a place with a relatively high level of unemployment?

Mr Chapman: It's not disproportionate to what we would have expected when opening a completely new site because we were bringing in so many people at one point in time. We do have people who either decided that it wasn't the sort of role that they were looking for or who perhaps we decided weren't necessarily working out as well as we had hoped. Also, a portion of the workforce is casual and we do tend to see higher turnover in casual staff. However, we have seen recent activity to convert some of our casual employees to both non-ongoing and ongoing employment as well.

Senator O'NEILL: I never hear this differentiation when, 'It's 600 jobs.' It's supposed to be fantastic. Everybody thinks they're full-time jobs with great pay and great conditions. The reality seems to be that there is some considerable difference from that articulation. Take me
through the 498. Is that the maximum number of people you've had employed there for the ATO at any point in time?

Mr Chapman: I wouldn't say at any point in time. In the period of a bit over 12 months that the site has been opened, we have provided ATO jobs to 498 individuals.

Senator O'NEILL: You currently have filled 406 jobs.

Mr Chapman: That's correct.

Senator O'NEILL: Can you take me through exactly what those jobs are? How many are full-time ongoing?

Mr Chapman: I can't give you the split between full-time and part-time. I can take that on notice, Senator.

Senator O'NEILL: I think that was something you were going to do last time, but I haven't been able to get those numbers either.

Mr Chapman: Sorry, Senator. We did table the response, but it wasn't a split between full-time and part-time. I think it was a split between ongoing versus non-ongoing and casual. Within that 406, we have 306 ongoing staff, 21 non-ongoing staff, 64 casuals, 13 labour hire and two external contractors.

Senator O'NEILL: Hopefully they get paid every fortnight or so. Somebody's got to know how many full-time and part-time there are?

Mr Chapman: Yes, we can provide that on notice, Senator.

Senator O'NEILL: I'd prefer to get it today if possible, if anybody is listening in or if you can ask one of your staff. Surely that should be a figure that's easy to come by?

Senator Seselja: They've taken it on notice, so if it's able to be made available—

Senator O'NEILL: Yes, I know. I'm over the protection racket that's being run here, because the truth needs to be told.

Ms Curtis: Senator, if we can get that information to you today, we will.

Senator O'NEILL: There could be 100 full-time jobs and the rest are part-time. Let's find out the reality of what's going on in there.

Ms Curtis: The thing about the workforce mix is that, in any of our sites, we would always have a mix of full-time and part-time, because obviously we like to offer flexibility to our staff. That's one of the requirements of a modern employer—casuals, contractors et cetera—and, also, the nature of our work is that it's not consistent throughout the year. In the Gosford site, we have set up to have a variety of all the different functions from compliance right the way through to service delivery staff and the workforce mix is always changing. That's why you will see in the numbers that there is fluctuation—ons and offs. And, as Mr Chapman just said, originally we were filling for 600 jobs with other agencies and there has been some difficulty in actually getting the other agencies on board with this. We do have people in there from the NDIA, for example, and that's working very well. And we're also running recruitment campaigns to try and recruit more staff. But one of the things that we have found in this location is it's very difficult sometimes to actually get the staff with the skills that we need. So we are making our very best efforts to get the office up to the 600 jobs, and we continue to do so.
Senator O'NEILL: Have you had any conversations with the local TAFE about providing high-quality, properly funded skills training for the population? They're desperate for jobs, I can tell you, but many of them can't afford to pay the TAFE fees.

Ms Curtis: I would have to take that specific question on notice, but I do know that Mr Chapman has been working with the local university. I don't know if you can add anything more to that?

Senator O'NEILL: I noticed your evidence around that; thank you very much. And the university is doing quite an extraordinary job, but this problem of the gap between the skills that are supposedly absent and the capacity to gather them and get the jobs in our local community is a very significant failing. It's certainly not 600 jobs. Going to the 64 casuals, how long are the average shifts the casuals get? How many hours do they get a week?

Mr Chapman: I'd have to take that on notice, Senator. We do offer different arrangements based on the individuals and their desire, what shifts they're available for, so our staff can actually nominate different shifts. I can take it on notice.

Senator O'NEILL: Would it distress you, Mr Chapman, if I tell you that people who have been employed as casuals there are very, very unhappy with the kinds of hours that they're being offered?

CHAIR: Senator O'Neill, I think you're going to have to provide some evidence for that assertion.

Senator O'NEILL: I'm a senator who has been talking to people in the community, and I've come and put it on the record right here, right now. There are many people who are contacting me who are very concerned about what they thought they were going to get when they were employed and the very short hours that they're getting—women who were trying to juggle two and three jobs to make ends meet and people who thought they'd have secure work with a government department who were let off just before Christmas with no funds and no work at all over the Christmas period. That's certainly not the impression that they were sold.

Mr Chapman: If I could just clarify, Senator, the ATO doesn't tend to let casuals go over the Christmas period, but certainly we advertise that the ATO closes down between Christmas and New Year as per a lot of government agencies. It is something that we certainly advertise to the community around our opening hours and that has a flow-on through to our casual workforce, because our casual workforce assists us, in particular, in managing peaks and troughs in our workloads.

I think a couple of key points of interest is that we have actually recently seen a number of our casual employees switched over, if you like, from casual work to non-on-going contracts and to ongoing roles as well. In fact, across the ATO's various sites, Gosford is one of our highest engaged sites. Notwithstanding that, I'm sure there are employees who would appreciate more hours; but, of course, we also have a seasonal workload as we go through tax time and then other quieter periods of the year.

Senator O'NEILL: Could I ask about the labour hire? What are they doing?

Mr Chapman: As at the end of February, we had 13 labour hire staff on the site and they were working on lodgement project work—so projects around securing lodgements for outstanding obligations.
Senator O'NEILL: Okay. I think I understand, but can you do it in ordinary speak for me? What are they doing? Are people just putting in their tax return?

Mr Chapman: No, it will be contacting taxpayers or perhaps tax practitioners who are representing clients who have not met their lodgement obligations. So they may not have lodged an activity statement or a tax return, and it's outstanding.

Senator O'NEILL: Why is that a job for a labour hire company that can't be a full-time job within the ATO? Is it full time? Are labour hire companies employing people full time?

Mr Chapman: I'd have to take it on notice for those specific employees, but certainly some of our labour hire employees work the equivalent of full-time hours, and often they may be additional resources to assist us with peak workloads.

Senator O'NEILL: Mr Chapman, you said last time: 'Our labour hire workforce tend to work full-time hours. Our casual workforce tend to have more varying shifts.' My question to you is: why do you have a labour hire workforce of full-time people but you can't provide those full-time ongoing positions with security through the ATO?

Mr Chapman: The labour hire arrangements may be where the particular project, say, specific lodgement projects, a particular focus area, is determined that it will go for six or 12 months or for a particular period but not necessarily be an ongoing piece of project work. As an office, we are continually making improvements into our systems and processes and making it easier for members of the community to meet their obligations. So there are some workloads that we recognise or we expect to see decreases in moving forward. Therefore, we don't want to be in a position where we, in fact, bring in more ongoing staff than we would require to do that work only to then have them at risk of not having sufficient work available into the future and potentially being made redundant.

Senator O'NEILL: Thank you for your answer. Who are the labour hire companies that you have engaged?

Mr Chapman: I'd have to take that on notice, but happy to provide those details.

Senator O'NEILL: Are they specific to the Gosford site or are they a labour hire company that you use in multiple contexts?

Mr Chapman: We have a panel established that we draw from. Certainly my assumption would be that it would be a firm that we are using in other sites as well, but I'll take that on notice and confirm.

Senator O'NEILL: Okay. With regard to the site itself, there were lots of concerns about the design of it, the way in which the work was commissioned and the build—you would remember it was quite problematic—and then finally it was opened. How many desks are provided in there for people to work at?

Ms Curtis: I have to ask our CFO, Frances Cawthra, to come to the table.

Ms Cawthra: The Gosford office, as you would be aware, was opened on 3 December for occupation and formally opened on 26 April. I'd have to take on notice exactly how many desks there are available, but there are sufficient desks in there to be able to cater for 600 staff.

Senator O'NEILL: But that's not being utilised at the moment, is it?
**Ms Cawthra:** At the moment, no, but we do have other agencies and we have other work spaces, and we're arranging a flexible opportunity for agencies to be able to work in and out of our office in addition to that.

**Senator O'NEILL:** Ms Curtis indicated that there have been some difficulties in getting other agencies there.

**Ms Cawthra:** Initially, to fill the building, there were some difficulties.

**Senator O'NEILL:** There must still be some because it's not full.

**Ms Cawthra:** Well, they're not difficulties, Senator. Other agencies have to make decisions regarding their workforce, as we need to make ours. But we do have what we're calling a flexible workspace, and other agencies who need to come in and work for a short period have desks available for them to do so.

**Senator O'NEILL:** So it's a hot-desk centre now?

**Ms Cawthra:** It's not a hot-desk. There is a portion of the workplace that has space available so that, if agencies choose that their staff need to come and work somewhere in the Gosford area for some reason, there is space for them to do so.

**Senator O'NEILL:** Well, I’d call that hot-desking.

**Ms Cawthra:** Hot-desking is a little bit different. Hot-desking is set-up specifically around maximising the space available for a large range of resources to access.

**Senator O'NEILL:** But that's not a problem we have in Gosford, because we haven't got a building teeming with people, have we?

**Ms Cawthra:** We do have a relatively full building. It's well over half full, and we do have this space where people can also have the opportunity to work, which is a great benefit for other agencies where they're seeking workspace that is available to work from the Gosford office.

**Senator O'NEILL:** How frequently is that occurring?

**Ms Cawthra:** I'd have to check that for you to confirm that.

**Senator O'NEILL:** Thank you. Could you explain to me the transfer of ownership that occurred from DOMA Development to the new owner and the transaction details?

**Ms Cawthra:** We rent our buildings, and transfer of ownership between buildings is regular across our portfolio. It doesn't change our position. It doesn't change our contract. It's quite standard that developers build them and we rent them and they change ownership.

**Senator O'NEILL:** What was the cost of the building?

**Ms Cawthra:** Our rent out over the next 10 years, including things like electricity etcetera—the operating costs—was $71 million over 10 years.

**Senator O'NEILL:** So, essentially, $71 million for rent and utilities?

**Ms Cawthra:** There's a whole range of things in there. There is rent, lease uplifts, reviews, things like guarding and security—all of the things you need to functionally run a building.

**Senator O'NEILL:** What's the square metreage of that building? That seems like an extraordinary amount of rent for that period of time in Gosford.
Ms Cawthra: I'll have to take that on notice.

Senator O'NEILL: Could you find out the square metreage of the building and indicate how much of that square metreage is actually occupied by full-time employees?

Ms Cawthra: I'll see what I can do to get the best and closest information for you.

Senator O'NEILL: Yes, by full-time employees. So, the ownership of the land: what's the status of that currently?

Ms Cawthra: The land was a commercial negotiation between the developer and the New South Wales government. It is not part of the ATO's remit. We rent the building from the developer.

Senator O'NEILL: From the developer, or the second purchaser? Is the developer still the owner?

Ms Cawthra: Well, it's whoever we have the contract with that contracts to the next person. Our lease is not relative to the purchase of the land or the commercial arrangements between the original developer, which was Doma Group, and the New South Wales government, in which the land you're referring to was purchased. The building was then onsold to the new owners and we continue to rent under our contract to the new owner.

Senator O'NEILL: What was the purchase price of the land?

Ms Cawthra: That's a negotiation between Doma and the New South Wales government, and I don't have that.

Senator O'NEILL: Who paid for the building?

Ms Cawthra: Doma Group.

Senator O'NEILL: And how much did we pay them to do that?

Ms Cawthra: We rent the building. We don't own the building. So, we don't pay them on the ground. We rent the facilities over a negotiated period with a lease in place.

Senator O'NEILL: Can you provide any details of the original lease agreement and any changes that happened when there was a change of ownership?

Ms Cawthra: Certainly. I can get that on notice for you.

Senator O'NEILL: And there was a change of ownership, wasn't there?

Ms Cawthra: There was a change of ownership, certainly. But our lease remains in place.

Senator O'NEILL: Okay. So, basically it went like this: there was a school there, the school was removed, the community expected that there would be investment in community infrastructure, the land was sold by the New South Wales Liberal government to Doma Developments, with the support of the federal government. Doma Group built it and have sold it. There's a lot of activity there of private entities.

Ms Cawthra: What I can say is that the ATO had an agreement and made a lease with the Doma Group to lease the building. That is our interest, and that's sort of the box in which we have worked. We are not privy to any other commercial arrangements between the Doma Group, the New South Wales government or anyone else.

Senator O'NEILL: So, $71 million, and we've got 306 full-time jobs in there of what was promised—600 full-time jobs. That's a lot of money.
Ms Cawthra: There were no promised full-time jobs. It was 600 jobs across a range of agencies—

Senator O'NEILL: I can tell you from on the ground that it was promised. You might be a bit more careful in the way that you use that information, but certainly the local member keeps talking about 600 jobs, and she implies that they're full-time every single time she says it. So, that's rather a problem for us.

Senator Seselja: I think now you're just verballing the local member.

Senator O'NEILL: Yes. It's frustrating to see people get away with that for all this time.

CHAIR: Could I just clarify: in that 600, or in the number of jobs that the ATO have just reported, does that include the NDIA component? And how many people work at the NDIA and the ATO offices?

Mr Chapman: As at February, there were 39 NDIA staff members.

CHAIR: That's on top of—

Mr Chapman: In addition to the ATO staff.

CHAIR: Okay. That takes us a bit closer, doesn't it?

Senator O'NEILL: And how many full-time NDIA workers do we have there?

Mr Chapman: That would be a question for the NDIA.

Senator O'NEILL: Full-time? Part-time?

Mr Chapman: I can tell you that of the ATO staff who are ongoing and non-ongoing, only 35 of those staff are part-time, with the remainder being full-time employees. The ATO, as Ms Curtis mentioned, has certainly been promoting flexible work arrangements. Those part-time staffing arrangements, I believe, are all driven by the employees seeking part-time work, not by the ATO requiring those employees to only work part-time.

Senator Seselja: Senator, if I can just understand your critique, your critique is that Lucy Wicks, as the local member, managed to bring over 500 jobs to her community, and you're criticising her for that. Is that the general tenor of this question? It's extraordinary—over 500 jobs.

Senator O'NEILL: No. Jobs for the coast is fantastic. I support jobs for the coast every single time.

Senator Seselja: What an outstanding local member. Perhaps you should congratulate her.

Senator O'NEILL: But you shouldn't lie about the number for six years. You shouldn't be lying to the community.

Senator Seselja: You haven't been very good on numbers today, Senator O'Neill. You claimed your $200 billion tax increase wasn't in fact real when I put that to you. Is that still your claim?

Senator O'NEILL: I don't even know what you're talking about now. Let's just go back to the reality here.

Senator Seselja: We've got an outstanding local member who has delivered over 500 jobs to the Central Coast, so well done.
ECONOMICS LEGISLATION COMMITTEE

Senator O'NEILL: How many agencies are anticipated to go in there? Do you have an idea, Ms Cawthra?

Ms Cawthra: We don't have any firm plans from other agencies at this time.

Senator O'NEILL: No firm plans?

Ms Cawthra: We haven't had anyone sign up. We are in discussions with them.

Senator O'NEILL: The number of jobs that are there now, in total, is 406 ATO, because we've had 92 exits?

Mr Chapman: Yes, 406 ATO, and 39 NDIA.

CHAIR: It would be interesting to get a gender and age breakdown of your employees there too, if you can provide that.

Mr Chapman: Yes. We can take that on notice.

Ms Curtis: I think the other point of interest is the demographic mix of employees. We've gone, in this particular site, deliberately out of our way to try and recruit people from all sorts of backgrounds. Diversity is a very big focus for us in the Gosford site. We do believe that's one of the reasons that the engagement in the site is so high. Whilst the numbers are, as they stand, in the 400s, since that building has been opened there have been over 500 jobs created in the Gosford site.

CHAIR: How many employees participate in the university program? That sounds quite interesting.

Ms Curtis: I'll have to ask Mr Chapman.

Mr Chapman: We certainly had four new commencements on the ATO's graduate program in the Gosford site during February, and we have other university programs, such as our university partnership entry program. I can take on notice how many we have in that particular program, but that's—

CHAIR: I would imagine that those employees would seek flexible employment arrangements so that they could participate in those sorts of programs.

Mr Chapman: Yes, definitely. In fact, they tend to be in that casual pool, so they can adjust their shifts around their studies whilst they're on that university program. I should mention that we expect to engage a further 60 staff into the site in the coming two months.

Senator O'NEILL: If you're planning to do it, you must have a plan with an indication of how many full time, part time, ongoing, non-ongoing, casual, labour hire.

Ms Curtis: As Mr Chapman said, sometimes people actually prefer part-time work; they actually ask us to offer that employment type so that they can fit around school hours or they can fit around other things—they might even have a second job. The fact is that, in all of our sites, we have a mix of functions and a mix of employment types. We need to do that because our work is not consistently standard—we have peaks and troughs. That's why you see in all of our sites the flexibility not only to offer different employment arrangements to staff, because that's what's required in a modern, contemporary organisation, but also—
Senator O'NEILL: Absolutely. I've got no problem with flexibility, but there is significant underemployment because of the casualisation of the workforce. That is made very clear to me by many people who have contacted me who are working in that office who are very unhappy with the level of hours that they're being offered, forcing them, against what they were hoping would occur, to try and juggle that commitment with other work so that they can feed their children. That's the reality on the ground.

CHAIR: Perhaps, Ms Curtis, you could provide Senator O'Neill with the name and number of the person within the ATO that those people could speak to to adjust their working hours in a flexible and appropriate way.

Ms Curtis: Absolutely. We can do that. We'll find the name of the officer. But there are obviously people within the ATO in HR, in particular, or direct managers who can look at the hours that people are working. As we said earlier, it is one of the sites with the highest engagement. To my knowledge—I don't know if Mr Chapman has any more information—we haven't had any issues raised with us. So we will look into that, and we will definitely provide that information to staff in the office.

Senator O'NEILL: In terms of the levels of the staffing, how senior are the full-time staff? What's the mix?

Ms Curtis: We'd have to take that on notice as well. We wouldn't have that with us today.

Mr Chapman: No, I certainly don't have the break-up, but I can tell you we have APS levels all the way up to and including Senior Executive Service officers based in the Gosford site.

Senator O'NEILL: Do you have management of sites like this that have been established around the country?

Mr Chapman: Sorry, Senator. Could you clarify—

Senator O'NEILL: There are other sites of a similar kind to this. I understand that there's one in Albury.

Mr Chapman: Yes, we certainly have sites around the country. We've got 22 sites at present.

Senator O'NEILL: So what happens when the lease runs out in those contexts? What's been happening?

Ms Cawthra: Three years out from when the lease is due, we prepare and we go to market. We approach the market for the competitive opportunity to find someone or a place. Either we will stay where we are or, if we find a better opportunity and something of better value for the Commonwealth, we will move sites.

Senator O'NEILL: What certainty is there for the workforce that you will stay in that region?

Ms Cawthra: We have committed to a range of local regions. For instance, we've made a commitment to Townsville, we've obviously made a long-term commitment to Gosford, and we have a range of other areas as well that we make long-term commitments to.

Senator O'NEILL: So is 10 years your long-term?
Ms Cawthra: It's 10 years, plus there are options on that depending on the site. Generally, property is a 20-year proposition. It's 10 years plus two five-year extensions where we can extend should we choose to or we can test the market, because we do need to make sure that we're continually getting the best value for money.

Senator O'NEILL: One of the arguments that were put for why this had to be the size and the shape of the building that it is was that the ATO needs to be in a standalone building. Is that correct?

Ms Cawthra: I'm not aware of any instruction around that.

Senator O'NEILL: The argument, as I recall, was that there are security issues around the ATO that mean that it can't share buildings with other agencies, but that doesn't seem to be the case here.

Ms Cawthra: We build and have security requirements. Other Commonwealth agencies generally have the same security requirements that we do, and therefore we can sublease should we choose to in our buildings. We've done an awful lot of work around subleasing to other Commonwealth agencies. There are other concerns and things that must be considered around security should we think of, for instance, going with the private sector, but at the moment our buildings are in a position, generally, when we build such that we can have other Commonwealth agencies join us. We try to make the building facility as flexible as possible so that we can seal off or quite deliberately have a security floor where other people can use those accesses.

Senator O'NEILL: Given you have no firm plans for other agencies and you have unused space, do you have any plans to sublease parts of the building?

Ms Cawthra: We have certainly had discussions with a range of Commonwealth agencies, and we have certainly had some discussions with state government agencies. At this moment, none of those plans have any signature on paper as to them taking over additional space. But certainly, if other Commonwealth agencies wanted to join us, we would be able to facilitate that.

Senator O'NEILL: Are you in discussions with any private entity?

Ms Cawthra: Not at this time.

Senator O'NEILL: Thank you very much.

CHAIR: It being nearly four o'clock, I think the committee might break for 15 minutes now. Are there further questions before we do for the Revenue Group or the ATO?

Senator KETTER: I have just a few further questions for the ATO. It might be quicker if we just did those now.

CHAIR: I'm happy to extend another five minutes or so, but I don't want to throw the committee out further.

Senator KETTER: I suspect I know the answers to these questions, but I'm just very interested in the ATO's consideration of the Parliamentary Joint Committee for Corporations and Financial Services report into the Franchising Code of Conduct. The report is only very recent—it was released on 14 March. There was a recommendation that the ATO, amongst other agencies, conduct investigations into the operations and dealings of Retail Food Group.
One of the issues to be looked at was the potential for tax avoidance. You might be able to answer this. Have you considered the report?

Mr Hirschhorn: We are aware of that report. We cannot disclose what we're doing in relation to particular taxpayers, but we are aware of that report and, where appropriate, we act on things that we become aware of.

Senator KETTER: Has the government provided you with any instructions regarding any outcomes from that report?

Mr Hirschhorn: I'm not aware of any specific instructions from the government in relation to that report.

Senator KETTER: Has the government provided you with any instructions regarding any outcomes from that report?

Mr Hirschhorn: I'm not aware of any specific instructions from the government in relation to that report.

Senator KETTER: So you're not able to confirm that there is an investigation going on in relation to RFG?

Mr Hirschhorn: I can't confirm or deny, on the basis of privacy, that there's an investigation going on in relation to RFG.

Senator KETTER: The recommendation from the committee was for the ATO, ASIC and the ACCC to conduct investigations and to look at:

... its former and current directors and senior executives and companies and trusts they own, direct, manage or hold a beneficial interest in, with regard to matters including, but not limited to, the Australian Consumer Law, the Franchising Code of Conduct, insider trading, short selling, market disclosure obligations (including related party obligations), compliance with directors' duties, audit quality, valuation of assets (including goodwill), and tax avoidance.

Tax avoidance is potentially—without confirming or denying what's happening—one area that the ATO could be involved in. Of the list I just read out, are there any other areas that the ATO might have an interest in?

Mr Hirschhorn: I'd say just generally that those topics are matters for other agencies.

Senator KETTER: So the only one you would have jurisdiction—

Mr Hirschhorn: We are very interested in tax. Where it is possible for us to help other agencies, although that is in limited circumstances, we will help other agencies. We, of course, are most interested in tax.

Senator O'NEILL: Mr Hirschhorn, how carefully have you read the report?

Mr Hirschhorn: I personally have not read the report.

Senator O'NEILL: Is it your responsibility?

Mr Hirschhorn: It falls under my responsibility, but, to give a sense, I have about 2,000 people dealing with private wealth and complex compliance matters. I would not expect to read every report.
Senator O'NEILL: Certainly not, but I want to point out to you that it is not just Retail Food Group, although that's the nature of our questions here. We saw evidence before this committee of very high levels of churning and the incredible impact on small business owners who thought they were buying into a safer model of small business with franchising support. I think the committee's unanimous report indicates that there is high risk in this—certainly risk to individuals, risk to the tax paid by those people and risk to wages and flow-on. So there are quite a number of strands that I suggest very much interact with what the taxation department might be interested in, and I encourage you to have a look at it because, as a unanimous report, it does document a very significant number of businesses that are operating across the country under this model, and there is a degree of fragility about it that I think is very concerning.

Mr Hirschhorn: As I say, we're are very aware of that report; we're very aware of that sector. As I understand it, many of the concerns of the report are the position of the franchisee and, in a sense, the abuse of power between the franchisor and the franchisee.

Senator O'NEILL: Yes.

Mr Hirschhorn: Just respecting the limited nature of our bailiwick, we are, of course, interested in the tax affairs of the employees of the franchisee, and that also goes to their superannuation entitlements. We are interested in the tax of the franchisee, but, generally, a business which is failing will not have tax obligations, because they're not making a profit. So, from a compliance perspective, in a sense, it's not a tax compliance issue. It might be a market abuse issue and an issue for one of those other agencies, but not for us. We are then, of course, also very interested in the tax affairs of the franchisor and the owners of the franchisor, but I just want to emphasise the point that, because we are interested in the tax elements, we will be interested in particular pieces of the position of the franchising industry, not so much in the entire confronting report, but there are some elements of that which are just not, in a sense, relevant to us as an agency.

CHAIR: Mr Hirschhorn, this will probably come up with the ACCC tomorrow, which might be the more appropriate agency.

Senator O'NEILL: Yes. The particular point at which RFG transitioned to a publicly listed company and the activity that followed immediately afterwards is a period of particular concern from that company, based on the evidence that we received, so I very much encourage you to look quite closely at the report—at chapter 4.

Mr Hirschhorn: Yes, thank you, Senator.

Senator Seselja: Chair, just further to an answer earlier in relation to jobs on the Central Coast, I can confirm that, in addition to the 500 jobs we discussed, I think the unemployment rate in Robertson is down from 5.1 per cent when we came to office to 4.6 per cent. Again, obviously, in addition to the 500 jobs, Lucy Wicks is doing an outstanding job in growing the local economy and having more jobs in Gosford and surrounds.

CHAIR: That is indeed very encouraging news. Thank you very much for that. The committee will now go to a break—

Senator O'NEILL: Underemployment, insecure employment, youth unemployment, lack of access to TAFE—
CHAIR: Senator O'Neill! The committee will now go to a break until 20 past four, when we will resume with the Inspector-General of Taxation. We'll let Revenue Group and the ATO go. Thank you very much for your appearance today.

Proceedings suspended from 16:07 to 16:20

Inspector-General of Taxation

CHAIR: I welcome the Inspector-General of Taxation. Do you have an opening statement for the committee?

Mr McLoughlin: I do, but when we spoke earlier to the secretariat we understood that you're looking to move quickly.

CHAIR: We are hoping to move quickly.

Mr McLoughlin: I'm happy to table the statement, if that's helpful, and take it as read that it was read.

CHAIR: That would be terrific. Thank you very much.

Mr McLoughlin: We've got copies for you if you would like to scan through them.

CHAIR: That would be very convenient. We are without a minister at the moment. Where is our minister?

Mr McLoughlin: The statements are just coming to you now. Our apologies. We were notified only yesterday afternoon that we would be attending.

CHAIR: That's all right.

The statement read as follows—

Thank you for the opportunity to appear before the Committee. We are pleased to update the Committee on our activities since our last appearance 2 months ago in February 2019. Since our last appearance, two reports of our reviews have been publicly released. Last week, the report of our review into the future of the tax profession was authorised for public release by the Minister. This review was undertaken in response to requests from a broad range of stakeholders including the Commissioner of Taxation.

The review examined the challenges and opportunities presented by new and emerging digital technologies, along with the accompanying social, policy and regulatory impacts on the administration of the tax system and the tax profession.

A key report finding was that the role of tax practitioners in Australia is unlikely to diminish significantly in the short to medium term. However, it is important that tax practitioners consider the potential impacts of the future on their ability to service taxpayers.

To assist them, we will release a companion report before the end of the financial year that seeks to assist tax practitioners in considering the nature of these issues and opportunities that may arise over the medium to long term. Naturally we will consult with the tax profession before the release of any such report.

Last month, we also publicly released our report of our review into the Australian Taxation Office’s (ATO) use of garnishee notices. This review involved allegations made by a current and former ATO officer in the ABC’s Four Corners program that aired on 9 April 2018. Our powers of access ensured that the review was able to consider the full range of the relevant
ATO debt collection activities in the 2016-17 financial year as they pertained to the issue of garnishee notices. The Government had announced and conducted a broader review through the Secretary of the Treasury, to which we were invited to make submission.

Our review was extensive. Our investigation team used the IGTO's strong investigative powers to go to operations sites in Melbourne, Penrith, Parramatta and Adelaide, to see firsthand ATO system operations and personally interview over 50 ATO staff during the investigation, as well as access ATO systems, information and records.

Importantly, we provided ATO staff with opportunity to directly contact our investigation team anonymously or on a disclosed basis. This was without the need for the involvement of any other officers or ATO management. This was notified via email communication to all ATO debt staff which provided a direct personal mobile telephone number for a senior IGTO officer.

Importantly, our report highlights a constructive way forward to better support affected small business taxpayers through the tax administrative systems framework. This way forward aims to address taxpayer's real concerns in real time and with real care through the IGTO's independent and free Taxation Ombudsman service. This service seeks to address small business concerns with the ATO as a first port of call, where the ATO has not been able to achieve that with the taxpayer. In fact, 28 per cent of the assistance sought from the IGTO has been by small businesses. We are aware, however, of the need to raise awareness of the IGTO's services and we have taken steps to roll out our media and communications strategy and expanded avenues of engagement.

In addition to our own reviews, we have also contributed to a number of other reviews regarding compensation, regulatory and small business areas. In particular, these include the review announced by the Minister for Finance and the Assistant Treasurer into the *Scheme for Compensation for Detriment Caused by Defective Administration* with regards to the ATO and small business, as well as the Department of the Treasury's review of the Tax Practitioners Board (TPB) and the *Tax Agent Services Act 2009*.

In the midst of the above, we continue to provide support and assistance to all taxpayers with complaints or concerns about the administrative actions of the ATO and the TPB as well as the operational improvements that we flagged at our last appearance.

Once again, I acknowledge and thank my staff for their ongoing and tireless efforts in progressing all of this work. It is not an overstatement to say that none of this would be possible without them.

In conclusion, we also welcome the Government's appointment of the new full time Inspector-General, Karen Payne, who commences on 6 May.

**Senator McAllister:** Perhaps it's worth observing that opposition senators do not have questions for you. We didn't call you.

**Mr McLoughlin:** That's okay; we appreciate that. We do appreciate the committee seeking to accommodate. I'm happy to explain the nature of the situation. We had a planning day that was arranged much earlier with staff, just out of Newcastle. That's what we were trying to get to. With estimates being brought forward, it was a clash, so we've been seeking to attend where it would fit best. We can still arrange it, but at no time were we seeking to be
excluded. We were grateful the committee did choose to do that and we're at the committee's behest should they require us.

CHAIR: Thank you. I'm very grateful that you've been so flexible on this when it has been something of a moveable feast.

Senator PATRICK: When did that planning occur?

Mr McLoughlin: A number of months ago. Typically, we would do it about six to seven months out or earlier.

Senator PATRICK: The Senate resolved in November to have estimates on this day, on this week.

Mr Pengilley: This period in April is what we've kept for a number of years for our planning days, in our annual planning cycle.

Senator PATRICK: I'm just pointing out that the Senate resolved to have estimates during this week back on 29 November. There is an important accountability function that gets played out here. I understand you're saying that you're keen to attend but, you know, it's—

Mr McLoughlin: At no stage did we ask to be exempted. It was simply to try to find a time that may have worked more effectively.

Senator PATRICK: Sure. I want to go to the IGT's report into garnishee notices. I'll start off by going to the email that was sent around the Adelaide office on 20 May, which said:

The last hour of power is upon us… That means you still have time to issue another 5 garnishees… Right?

You understand the seriousness of a garnishee notice and the effect it has on a business?

Mr McLoughlin: I would hope the report reflects that. There are a number of references throughout the report as to their importance.

Senator PATRICK: I'll be genuinely honest and, in some senses, brutal. Your response to that was:

In the IGTO's view, the statement in the email was conveyed as an ironic remark.

You obviously discussed that with the person involved and went on to say:

Each manager in any organisation has their own style of communication which is adapted to suit the work environment.

Noting the seriousness of garnishee notices and your role in maintaining the highest standards across the ATO—I mean, you're the safety person—I can't understand why it almost looks like you were writing up an excuse for the tax office. That has set off a really big alarm bell for me in respect of you as someone who should never be making excuses for the tax office. You should always be maintaining the very highest level of standards and should have made a very strong recommendation that that sort of email is simply not acceptable.

Mr McLoughlin: I believe that we did not express agreement that that email was an appropriate way to go. If you read further in the report, Senator, it says that that is an unfortunate expression, and that should not have been issued in that manner, so I'd encourage you to read further in the report.
In relation to the earlier part, where you were actually talking about the email, the nature of the email is contextualised throughout the rest of the discussion within the report. The facts are that it was impossible to issue five notices in the manner suggested. It would take two weeks to actually issue that number of notices. That's outlined in the analysis of the report. It isn't a jumping to that as a particular conclusion in isolation. It is important to appreciate the overall facts and circumstances in which it was issued. It was 12 people working on the Saturday who were doing overtime, who are from different groups, and the email was sent as a point of notification that the end of work was going to be occurring for the day—because, ordinarily, there would be other people within the office but on that particular occasion there were only 12 people. So it sits in a particular circumstance. We didn't come to that conclusion lightly. We don't think that garnishee notices are things that should be issued in any way that is anything but appropriate and according to the nature of the policies and procedures that are outlined, and we go through that in the report in some detail.

Senator PATRICK: Well, for any senior person to issue that, even in jest, noting the effect it has on businesses, I think is offensive.

Mr McLoughlin: We did not say it was in jest. That is not what we said.

Senator PATRICK: Even in any particular context—

Mr McLoughlin: We did not say that that was appropriate. The report clearly acknowledges that that's an unfortunate expression.

Senator PATRICK: The report also says the ATO issued over 40 per cent fewer garnishee notices in the 2016-17 financial year than planned. That has an implication that there's a plan, there is a target, in respect of garnishee notices. That's in your executive summary.

Mr McLoughlin: In relation to the planning of activities, that's correct: the ATO does plan around activities. But they do not plan in relation to the exercise and the allegations about individual officers targeting particular amounts to be collected. That's what the report found. The report's very clear that planning for activities and the issuance of notices and all the other activities throughout the office are actually done on a planned basis.

Senator PATRICK: My reading of that says that they plan a particular number of garnishee notices.

Mr McLoughlin: That's correct.

Senator PATRICK: Or they plan to achieve a particular result out of those garnishee notices.

Mr McLoughlin: Senator, the number is correct. The actual result, and going to amounts collected and being measured against individuals, is not correct. By way of analogy, the ATO, before the 2016-17 year, had actually planned to issue some 50,000 garnishee notices. In the year after the subject year of 2016-17, similarly, they issued around 52,000 notices. So the actual target year of 43 was actually a reduction as against—

Senator PATRICK: No, I understand that. It just disturbs me. I just get the idea that that is a tool that you have in respect of trying to recover tax owed to the tax office. I get that.

Mr McLoughlin: Yes.
Senator PATRICK: But the notion that you should even pick a number—surely there's a toolbox of measures that you use to obtain, or maybe to achieve a particular target. I read your report and how they might calculate it as a percentage. But to suggest that there's a particular number of garnishee notices—

Mr McLoughlin: No, it's to say that they plan on that basis. It's not that they will actually issue that number. It's in order to allocate resources. That's why we went through in the report in some detail around the allocation of resource. So when the ATO is actually looking at allocating its budget internally, they go to quite a lot of trouble to look at making sure that they've got expected numbers, in order to allocate resources internally. So it isn't just for garnishee notices, it's right across a whole range of actions and activities that the ATO would take. As I say, it's on an expected basis and it usually takes the form of what it was the year before. In some respects, it's quite an old-school approach of looking at what we did the year before, and then looking to plan out what resources we would need to do that, if that was required.

Senator PATRICK: They would need, not we.

Mr McLoughlin: Sorry—they would need to do, as the office.

Senator PATRICK: You're not part of the ATO. In fact, I hope you're very, very separate.

Mr McLoughlin: No; that's correct.

Senator PATRICK: I want to go to the staff levels in these offices. I read your report. It said that they, basically, brought on a whole range of people and they were conducting some training to get them up to speed but that these people were, in effect, empowered or given a delegation to issue these notices. This is very, very serious. It has been put to me that some of the trainees, or new people, would not perhaps have even talked very much to a client but were given the power to issue these garnishee notices. Do you think that's appropriate?

Mr McLoughlin: In relation to that—and I'll let my colleague speak to that in a moment—I think it's important to appreciate that we did the debt collection review earlier and made a number of recommendations in the debt collection review. They are mentioned within there, but the intention was not to make the report any longer because we'd already made findings and recommendations earlier about the nature of seniority issues and the seriousness. So we didn't want to unduly roll out additional comment that had already been made in our earlier reports. Certainly that's an aspect that Mr Pengilley is very familiar with as the acting deputy, because he was actually one of the chief designers in relation to the report at the time.

With respect to the garnishee notices, we had deliberately kept the focus very narrow because of the other reviews that were being undertaken by government through the Secretary to the Treasury. They had announced a review and we seek to outline that in the report. I'd be very happy to take that particular aspect to you, because it was a broader range of inquiry than we were asked to consider in the context of that. So there was no overlap between what the government was doing as a review and what we were doing in relation to the garnishee notices review.

Senator PATRICK: I know there are matters before the courts, but I'm just looking at the discharge of your duties in respect of the IGT report, not activities that are before the court. Did Richard Boyle provide you as input to this a 22-page complaint back in November 2017?
Mr McLoughlin: We're not at liberty to talk about complaints that are lodged with us. They're individual and personal—

Senator PATRICK: Let me just inform you that the secrecy provisions in your act are subservient to the inquiry powers of the Senate. If you wish to advance a public interest immunity claim that states a harm in mentioning a name or mentioning a fact, you can do that, but just the fact that there are secrecy provisions in your act does not apply in this forum. You are protected by parliamentary privilege. You cannot be found in breach of those acts.

Mr Pengilley: I think it's a bit more than just the legality of the secrecy. It's maintaining a space where people can have confidence that they can come to us and disclose information without—

Senator PATRICK: That's a judgement, but there are specific public interest immunity arguments which you're entitled to advance. I want to get to the detail of the discharge of your duty and you are not going to hide behind any secrecy provisions—okay?

Mr Pengilley: We're quite happy to. I think it's a question of discussing that in a public forum and discussing the implications it would have for others, although we're quite happy to discuss that, perhaps in camera or—

Senator PATRICK: No, this committee can't go in camera, okay? If you want to have a full-blown Senate inquiry into this, I guess we can.

Mr Pengilley: No, that's certainly not the case. How we've handled this previously is that, where the particular individual has given authority to that person, we've been able to sit down one on one and show everything—all the files and everything that we've got.

Mr McLoughlin: And we'd be very happy to do that, where someone authorises us to do that.

Senator PATRICK: I'm going to insist upon an answer, and you're entitled to make a public interest immunity claim. So I'm going to ask the question again: did Richard Boyle provide the Inspector-General of Taxation with a detailed 22-page report in November 2017?

Mr McLoughlin: Senator, you asked us in relation to a complaint. I would have to look at getting public interest immunity because I think that it would be damaging to individuals if we were to come into the house and every time a senator asked us about someone who'd lodged a complaint—

Senator PATRICK: That's oversight. So you're advancing public interest immunity. You're a statutory officer. You don't have to go to a minister. I'm about to call a meeting of the committee. We'll go into a private session under privilege resolution No. 10 and we'll seek to find out whether or not the committee is happy to hear from you.

Mr McLoughlin: If I could just finish in relation to what I was looking to advance—

Senator PATRICK: I'm going to ask a number of questions here. I do not want you to hide behind any secrecy provisions you're not entitled to. You are here being oversighted by the Senate. I'm going to ask you a bunch of questions. They are not personal questions but they go to the discharge of your duty as the IGT.

Mr McLoughlin: I'm sorry, with respect, I disagree. They are personal questions about an individual complainant.

Senator PATRICK: Personal questions are not public interest immunity.
Mr Pengilley: We're not trying to hide. We're just saying there is an alternative way of doing it, in which case we can maintain the confidentiality of people and maintain the confidence of others who may choose to contact us.

Senator PATRICK: I actually want to have the public maintain the confidence that the IGT has done its job properly, and this might be a good way to do that. That's the counterbalance to your argument. The entire public are entitled to know that, when you take on a particular task and you carry out a report like this, they can have confidence that the IGT has done this properly.

Mr Pengilley: That's why we publish our reports. That's why we provide a line of sight to the evidence—

Senator PATRICK: Are you advancing a public interest immunity?

Mr McLoughlin: I'm very uncomfortable, and I will have to cite immunity in relation to that, because I believe that as an ombudsman's office if people come to complain to us and we have to disclose in the house individuals and whether they have complained to us—they presume that they have a right of anonymity and privacy in relation to their complaints. It poses a very difficult position for the people involved.

Senator PATRICK: All right, that's okay. I'll get the committee to make a decision.

Mr McLoughlin: It is not about me or about my role. I honestly think that that needs to be considered. Otherwise, we will find it difficult also to get ATO officers to talk to us anonymously. Because we also have a situation where ATO officers—

Senator PATRICK: I'm not going to talk about anything they might have said to you. I'm simply asking whether or not he made a complaint to you.

Mr McLoughlin: But that's part of identifying individuals who come to us to make a complaint.

Senator Seselja: We might then seek some guidance then from the—

Senator PATRICK: Under privileges resolution No. 10, I would like to call a private meeting of the committee. I think this is a really important matter that we need to go to. In effect, you erode the ability of the Senate to conduct oversight if you accept these claims in relation to very simple non-personal questions that mean, on the flipside, there's a huge confidence issue associated with the IGT.

Mr McLoughlin: Senator, you contacted our office. We offered to meet with you and—

Senator PATRICK: That's irrelevant. This is a public forum.

Mr McLoughlin: We had a meeting booked meeting and that meeting was cancelled.

CHAIR: All right, the committee will—

Senator Seselja: Before you do, Chair, could I just clarify, because there was a little bit of back and forth, has the claim of public interest immunity now been made?

CHAIR: The claim of public interest immunity has been made.

Senator Seselja: And the committee will now consider that claim.

CHAIR: The committee will now consider that claim.

Senator KETTER: [Inaudible] saying it's more about the harm to the public
Senator Seselja: That's obviously open to the committee, if they would like the acting inspector-general to provide that of that information to assist the committee in making that judgement.

Mr McLoughlin: I'm very happy to. The nature of ombudsmans' offices is that they receive complaints from people in a private capacity. They are entitled to have that completely private and confidential. The agencies aren't allowed to disclose that when people complain to us and we raise that complaint with the agency. We operate as the ombudsman's office in seeking to care for people and to make sure that they're treated appropriately and that their anonymity is preserved at all times. It's not just the taxation ombudsman. Any ombudsman's office would be forced into a similar situation to defend the individuals who come to make complaints to us. With respect to their own complaints, they are their complaints. If we were nominating whether people had actually come to us, that could have other implications in litigation or elsewhere. It also has the potential for them to have their own matters, where they may or may not understand the nature of their issues appropriately, opened out into public forum, where they could be seen to be denigrated or to have made something that may be regarded as being a spurious claim which could actually impact upon their own identity and their good right to enjoyment where people may feel that they didn't understand the tax system or didn't have an appropriate claim to make as a complaint. Not every complainant who comes to us necessarily understands the tax system, and people can say some things that other people may regard as not being very smart or not very clever. I would hate to see a situation where we were in a position where it was expected that complainants to any ombudsman's office could be disclosed, because there may be detriment to the party being disclosed at first instance, and certainly to talk about the nature of their complaint would render otiose the nature of ombudsman's processes generally.

Mr Pengilley: So, quite simply, people would be discouraged from coming to us. The very people who wish to raise with us issues of concern would be discouraged from doing so.

CHAIR: It would undermine the integrity of your organisation—

Mr Pengilley: Yes, exactly.

Mr McLoughlin: They would be even more vulnerable, particularly where officers come to us and talk to us and make complaints to us. We take their complaints anonymously and disclosure could have serious implications for them. In that report it's very clear about public interest disclosure. We are absolutely keen to ensure that whistleblowers are never disadvantaged. There's an appendix where we outline exactly what we go through when someone comes to talk to us, particularly former ATO officers, because we're very mindful they could trip themselves up and make disclosure in a manner that could actually be detrimental to them. So we actively try to encourage them to use the public interest disclosure regime. We explain that to every former—and I mean every—ATO officer who comes to see us or a current officer who maybe in some degree of difficulty or otherwise. We are very, very cautious to make sure that whistleblowers are fully aware of the protections—and that's not through our office; that's only through the PID regime, which is administered through the Commonwealth Ombudsman.

CHAIR: I'm happy to go to a private meeting should you wish to do so, but I think that Senator Ketter's view and my view are aligned on this one, that a public interest immunity claim can be made on this issue.
Senator PATRICK: I'd like to go to a private meeting.

CHAIR: The committee, in its private meeting, resolved to reconsider this issue of public interest immunity at a further private meeting, which will take place outside of the estimates period. At that private meeting the committee will consider sending this issue to a self-referred inquiry, where it will potentially interview all stakeholders involved.

Senator Seselja: Just to clarify: what does that mean for the purposes of this hearing?

CHAIR: The issue will not be pursued any further by senators.

Senator Seselja: So it is a temporary acceptance of the public interest immunity claim, subject to further consideration?

CHAIR: By this committee; that's right.

Senator Seselja: Thank you.

CHAIR: Senator Patrick, do you have any further questions?

Senator PATRICK: No, I don't.

CHAIR: Does anyone have any further questions for the Inspector-General of Taxation? If not, we will let the witnesses go. Thank you very much for appearing before the committee today and for being so flexible with your time. For the benefit of the Hansard transcript, I should probably make clear, Minister, that that was in fact a deferral of the public interest immunity claim as opposed to a temporary acceptance of the public interest immunity claim.

Senator Seselja: I wasn't sure of the language but, for the purposes of the hearing, I just wanted to know what the status of it was.

Senator McALLISTER: The committee will not insist upon an answer at this time.

Senator Seselja: Indeed. I think we're on the same page; it was just a language question.

Department of the Treasury

[17:03]

CHAIR: Welcome, Markets Group. Thank you for being so patient. Senator Ketter, do you have questions?

Senator KETTER: Yes, thank you, I have a number of questions, firstly in relation to the registry modernisation project. I want to take you back to the inquiry that we had into the bills. There were statements made during that inquiry that there was money set aside in the 2018-19 budget to write a business case. At the time, Ms Vincent made the comment that the business case would be used 'for consideration by government in relation to the 2019-20 budget'. Can you tell me what funding or staffing or plans are in this budget or the portfolio budget statements regarding this modernisation project?

Ms Vincent: The Modernising Business Registers Program and the creation of DINs remain stated government policy, and a decision on the business case will be considered in the 2019-20 MYEFO context.

Senator KETTER: So it has been pushed back to MYEFO?

Ms Vincent: It remains policy, and a decision will be made in MYEFO.
Senator KETTER: Just to be clear: there are no details in this budget? There has been no money set aside in this particular budget; is that what you're saying?

Ms Vincent: You won't find a measure in the budget.

Senator KETTER: What about each year of the forward estimates?

Ms Vincent: No. As I said, the decision in relation to the business case, which will include a decision on funding, will be made in MYEFO.

Senator KETTER: You said that it remains the policy of the government. What does it mean if there are no details in this budget, yet it remains policy and the government views the project as necessary? I'm trying to reconcile these things.

Ms Vincent: There is funding for the remainder of this existing financial year. In relation to continued work, we will continue to consult on the data standards and the disclosure frameworks, both of which were raised in the committee hearing we had in Melbourne that you referred to earlier; that is in relation to the legislation that was introduced into parliament on 13 February. We'll continue to consult on options on how people will actually get and use a director identification number. There will be some testing of how a whole-of-government IT registry platform would work, and we will continue with our review of ASIC's registry fees structure.

Senator KETTER: When will the government finish its consideration of the business case?

Ms Vincent: All I can tell you is that my understanding is that a decision on a business case will be considered in MYEFO.

Senator KETTER: Can you please tell me, Ms Vincent, why the government decided to introduce the legislation when there was no action being taken in this budget in relation to this matter?

Ms Vincent: That's not really a question that I can answer. That's a matter for government in terms of its legislative priorities.

Senator KETTER: Perhaps I should refer that to Senator Seselja.

Senator Seselja: I will have to take that question on notice, Senator Ketter.

Senator KETTER: I have another brief line of questioning in relation to the issue of choice product dashboards in superannuation. I want to ask some questions on ASIC's recent further extension on class order relief for choice superannuation product dashboards, which was granted on 8 April.

Mr Brake: Superannuation is handled by Fiscal Group, so they would need to answer those questions.

Senator KETTER: So this issue of the dashboards—your department doesn't have any oversight of this area?

Mr Brake: Not our group. The Treasury certainly does, but within Fiscal Group.

Senator KETTER: That finishes that. Thank you.

Senator WILLIAMS: Who is responsible for the user-pays, if I can call it that, for ASIC? We had a situation where ASIC was spending a lot of money on financial planners and liquidators. There's been a user-pays system brought in. Who's responsible for that?
Ms Vincent: I believe you might be referring to the industry funding model of ASIC; is that correct?

Senator WILLIAMS: Yes.

Ms Vincent: In terms of who's responsible: ASIC issues the invoices under IFM, if that's what you're referring to.

Senator WILLIAMS: Excuse my ignorance; IFM set the rate, do they?

Ms Vincent: Sorry; in relation to—

Senator WILLIAMS: Here's my problem. I have a friend who is a very honest, decent financial manager. He manages an investment fund of about $7 million. He has been hit with an ASIC fee of about $30,000 a year, which seems to be very, very expensive given that there's not a big profit in the management of the fund. I was wondering whether that could be reviewed. I think it's too expensive. I understand the user-pay system, where ASIC, I think, were spending $30 million a year on policing financial planners and collecting about $2.8 million in registration fees; and with liquidators spending about $10 million a year and collecting only about $40,000 a year in registration fees. I can understand, instead of the taxpayer funding all the monitoring and surveillance of industry, the user paying. But in this case, where someone has a small investment fund of $7 million and is billed $30,000 a year, I think it's a bit over the top. I was wondering whether there is a review system for it.

Ms Vincent: Yes, Senator. ASIC is required to publish what's called a cost recovery implementation statement, often referred to as a CRIS. Each year they're required to do that under the Australian government charging framework. The latest one came out in March. It's available on ASIC's website and it's open for comment.

Senator WILLIAMS: So I'm better off putting a question to ASIC, am I?

Ms Vincent: Yes. You, or indeed the person that you're referring to, are more than welcome to make submissions under that.

Senator WILLIAMS: All good. Thanks, Chair.

Senator KETTER: In lieu of those other questions, I will ask about the issue of the outsourcing of legislative drafting. I think that's an area for Markets Group—is that right?

Mr Brake: Those questions are probably best go to our Law Design Practice colleagues, who are part of Revenue Group.

Senator KETTER: I'll direct them in that direction. Thank you. All good, Chair.

CHAIR: No more questions. I'm very sorry to keep Markets Group waiting for so long. Thank you very much for appearing before the committee today. We'll let you go. We'll go to the Productivity Commission and then ASIC.

Productivity Commission

[17:12]

CHAIR: Thank you very much for your patience in waiting today. If you have an opening statement, for the sake of time we might ask you to table it. But if not we'll go straight to questions.

Mr Brennan: No, thank you.
Senator KETTER: If I could start off with your report into superannuation. In fact, this is my only line of questioning for you. I can put other matters on notice. We did have a discussion about this at the last round of estimates. You're on the record saying that one of the issues is that people don't draw down on their balances enough. The Productivity Commission seems to think that there may not be much we can do to ever change that behaviour. You have raised some issues about retirement income. You've talked about the fact that we focus too much on the accumulation phase and there's less focus on the retirement phase, which sees, in your view, a very high proportion of retirees going into account based pensions. You make the comment that the insight of the Murray inquiry was that some portion of an account based pension with a deferred life annuity or group self-annuitised product might be appropriate. I want to take you, firstly, to figure 4.10 of the report, which is on page 233. If you could comment on that in the context of your concerns about outcomes for those people with low superannuation balances, and especially if people with low balances have lower levels of financial literacy to be able to comprehend complex retirement income products that might be difficult to exit or change later on.

Mr Brennan: Some of the specifics of figure 4.10 I might take on notice, but I'll be able to furnish you a response or provide some additional information fairly quickly, I think—not today but hopefully by the end of the week. The broad point that you make is correct. I think you're referring back to some of my oral testimony at the last estimates committee.

Senator KETTER: Yes.

Mr Brennan: It is true, and we make the observation in the super report, that over the accumulation phase for the most part members' needs are fairly homogenous. Most people want the same thing: high returns, low fees, clarity about what insurance they've got through their superannuation et cetera. Once they hit the retirement phase, their needs are much more varied and heterogeneous depending on what other assets they've got, what their risk appetite is, their own sense of life expectancy and their own subjective view about how much money they want to have in something like an account based pension which they know is there and readily accessible in the event of unforeseen circumstance versus how much they might like to protect against what we somewhat bureaucratically call the longevity risk, which is the risk of living a long time—it's a good thing, but it's the risk, in part, of outliving your money.

The CIPRs agenda is partly an attempt to provide a broader array, given that it's something like 96 per cent, from memory, of either members or dollars in an account based pension, a fairly standard product, in the retirement phase. Prima facie that seems like a lot. It seems more likely that people's needs might be better met by some blend of a longevity product with an account based pension. That may be less true for people with very low balances. I think what figure 4.10 is trying to get at is a net present value of what aged pension entitlement you would have for different combinations of a lifetime product, be it a deferred life annuity or a self-annuitised product on the one hand and an account based pension on the other. I'm reading from this that, for the most part, it's really that the age pension means test for those with relatively high balances is a little more generous. It's relatively more generous for those who move a bit away from the account based pension and add some other element, like a deferred life annuity or a self-annuitised product. I'll probably be able to put more flesh on the bones of that. I can get someone to set out what we think the key findings of that are and get that to you on notice.
Senator KETTER: Okay. That would be appreciated. As I said earlier, there is this challenge in the super system that people do not draw down on their balances enough in the retirement phase—is that fair to say?

Mr Brennan: I think that is part of the logic of the CIPRs work. In part, if you are in the position of having all of your money in an account based pension, you have no protection against what I'm describing as longevity risk, so you are effectively self-insuring against longevity risk. Then the natural tendency will be to not spend as much, because you're worried about not only merely outliving your expenses but the large, unforeseen expense that might hit at a later point. To the extent that you can insure some of that risk, maybe it provides people with a bit of peace of mind that would allow them to spend more in retirement, more of that retirement balance, rather than dying with a very large retirement balance, not having optimised the consumption over retirement.

CHAIR: Can I clarify that? The recommendation for CIPRs came out of the Cooper review, if I remember right. That was a while back. The problem has always been that, even though they seem like a good idea, they're very expensive, particularly when long-term yields are very low. Does that remain the barrier to the development of these products?

Mr Brennan: Yes. I confess: I'm not an expert on what the barriers are, but low yields are certainly a barrier because they make the product relatively expensive for the income stream that you get. There are cultural barriers. Most people are familiar with the account based pension, and it probably does provide some peace of mind associated with having the money there. Prior to the budget prior to this one, there was no determined means test treatment. There was for life annuities, but there wasn't for a deferred life annuity or a group self-annuitised product. That is now in place. So there's a more generous tax treatment and there is now a means-test treatment, so at least the ground rules have been determined. I think that does open the way for products to come to market, but we'll see what the extent of take-up is. The other decision the government has made is to defer, on our recommendation or consistent with our recommendation, the timing of the covenant on superannuation trustees to require them to, in effect, provide the CIPR as an alternative.

Senator KETTER: The alternative to the account based approach is the annuity products. At the moment, would you agree that there is very limited competition in that space?

Mr Brennan: I would probably take that on notice. That could well be the case. There's one significant player in the market that offers those annuity products, but I would have to check. I'm not an expert on what is the level of competition in that market.

Senator KETTER: Do you have the view that, because of the nature of the product and the market, the question of limited competition may well be an issue going into the future?

Mr Brennan: The question of whether there is adequate competition?

Senator KETTER: Yes.

Mr Brennan: Quite possibly. I would, again, have to take that on notice. I may not come back with a definitive view about the level of competition, but we might have a view. Let me take that on notice.

Senator KETTER: Page 234 of your report goes to some extent to this issue. The question, Mr Brennan, is: would you agree that we need to be careful in the transition to other retirement income products?
Mr Brennan: I think that is a reasonable reflection of the recommendation that we made—that there was merit in delaying the timing of the introduction of the covenant to ensure that the policy settings were put in place carefully.

Senator KETTER: Looking at your report, is it reasonable to draw the conclusion that those on low account balances will probably continue to prefer the flexibility of an account based pension as well as the annuity pricing being non-competitive at the small scale, and those on high balances won't value annuities; they'd prefer to wear the risks themselves. That presumably leaves a cohort in the middle, where annuities might be beneficial.

Mr Brennan: That is all possible. On the situation in relation to low-balance retirees, it's fair to say—and I reflected on this last time in my testimony here—I think opinions are mixed. But there is certainly a view that, for those with relatively low retirement income balances, the sort of annuity that would be purchased for that lump sum would be a fairly small increment to what would probably be a full age pension and, therefore, it may not be particularly attractive. It may be for other reasons, but it may prove more attractive for them to keep that money in an account based pension. Beyond that, I wouldn't really venture a view about the relative attractiveness of the account based pension versus lifetime products for those who are of high or middling balances. I think it'll depend a lot on individual circumstance.

Senator KETTER: If that's the case, what do you say about the desirability of designing a system which defaults most or all people into some sort of CIPRs? Do you think that's misplaced thinking?

Mr Brennan: I would characterise our recommendation as not perhaps quite as strong as that but just to express a note of caution, that it's a complex area and it warrants careful implementation.

Senator KETTER: What do you say would be the path forward in this area?

Mr Brennan: We recommended a delay to the covenant—I'm trying to recall the date—which was subsequently taken up by the government. I'm just trying to find the appropriate recommendation. We talked about it last time, didn't we? It was recommendation 10 on page 69:

The Australian Government should reassess the benefits, costs and detailed design of the Retirement Income Covenant — including the roles of information, guidance and financial advice — and only introduce the Covenant if design imperfections … can be sufficiently remediated.

We then go on to talk about a couple of the other things that the government should do. I would characterise that a little less strongly than your description. I think it's a kind of call for caution in the implementation, given the complexity and given the challenges of having an appropriate covenant for what is effectively a very broad and heterogeneous range of retirees.

Senator KETTER: In the assessment of the benefits, costs et cetera which you talked about, what are the sorts of questions or issues that would be helpful in thinking about a future system?

Mr Brennan: I think it does boil down a bit to some of the things that you're referring to. What is the scope to effectively default people into a CIPR? What's the form of the CIPR? Is there something that can operate as an appropriate default, given that, as we know, defaults tend to be quite sticky, so people may not necessarily exercise a lot of choice to depart from
that product. It would be, to some extent, what is right for different individuals, given their retirement income balance. And to some extent—and I'm thinking through it—the interactions potentially with the age pension means test are also going to be a factor for most people, because they will probably have, in some instances, assets outside of superannuation which might also interact with the age pension means test in respect of a CIPR, which is different to the assets test in respect of an account based pension.

**Senator KETTER:** You highlight in that particular recommendation the need to consider equity impacts. Would you like to elaborate on that?

**Mr Brennan:** I think it's a core part of any assessment of a policy that you have to take account of the equity impacts. I think that's probably two things. That's a reflection of potentially the needs of people with lower retirement balances but it might also be a reflection of the need to ensure that you have products that are suitable and easily understood by people who don't necessarily have high levels of financial literacy.

**Senator KETTER:** Thank you very much.

**CHAIR:** If there are no further questions for the Productivity Commission, we'll let you go. Thank you very much Mr Brennan, Ms Bell and Ms Davidson for joining us today.

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**Australian Securities and Investments Commission**

[17:31]

**CHAIR:** Welcome, Mr Shipton and all the officers of ASIC. Thank you very much for joining us here this evening. Mr Shipton, you've got an opening statement but you are happy to table it?

**Mr Shipton:** Yes, Chair, if that's okay with you.

*The statement read as follows—*

**Introduction**

• Good evening Chair.

• On behalf of my colleagues, thank you for the opportunity to appear before this committee.

• Along with Deputy Chairs Daniel Crennan QC and Karen Chester, also joining me are Commissioners Danielle Press and John Price.

• Commissioners Cathie Armour and Sean Hughes apologise for being unable to appear tonight.

• We also have Executive Directors Greg Kirk, Michael Saadat, Tim Mullaly and Warren Day Tonight. Our Chief Financial Officer, Emily Hodgson, also joins us.

**Maintaining the momentum and the fairness imperative**

• The Royal Commission has now finished. However, ASIC’s work in maintaining the momentum for reform and improvement in the financial services sector continues.

• As you know, ASIC’s focus is on making Australia’s financial system a fair, strong and efficient one for all Australians.

• And notably those three words - fair, strong and efficient - resonate well with a long-standing obligation of financial institutions under the Corporations law --- to act efficiently, honestly and fairly.

• Financial institutions now must embrace and embed in everything they do concepts of fairness for there to be meaningful cultural change in the industry.
• We welcome the Government's announcement of $400 million in additional funding to give effect to ASIC’s goals. We also welcome the Federal Court receiving $35 million to extend its jurisdiction to corporate crime. These are important building blocks for the enhancement of our regulatory work.

• The additional funding allows ASIC to:
  o Give effect to our ‘Why not litigate’ enforcement strategy since it will allow us to significantly increase the number of cases we pursue and accelerate the speed of court-based enforcement outcomes;
  o use the full extent of our new powers and penalties;
  o embed and expand our new supervisory approaches; and
  o play our part in implementing the Government’s package of reforms and our new obligations and responsibilities following the Royal Commission. Importantly, this includes a proposed expanded role for ASIC to become the primary conduct regulator in superannuation.

• As mentioned, we are accelerating our court-based enforcement outcomes driven by our ‘Why not litigate?’ stance. By way of update – from February 2018 to March 2019:
  o there has been a 15% increase in the number of ASIC enforcement investigations;
  o a 65% increase in enforcement investigations involving the big six (or their officers or subsidiary companies), and
  o a 129% increase in wealth management investigations.

• Also, yesterday we released ASIC’s biannual overview of enforcement outcomes, priorities and cases during the period 1 July 2018 to 31 December 2018. With permission Chair, I seek to table that document.

• Deputy Chair Crennan can elaborate on our enforcement statistics further.

• ASIC also welcomes the recent passage through Parliament of key financial services reforms contained in the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) legislation introducing:
  o a design and distribution obligations regime for financial services firms; and
  o a product intervention power for ASIC.

• We note this passage received extremely broad support in the Parliament.

• Together these new powers will enable ASIC to take more proactive action to improve standards and achieve fairer consumer outcomes in the financial services sector.

• Before I close, I would like to also briefly address some commentary to the effect that consumers are finding it harder to obtain credit, and that somehow the responsible lending obligations are contributing to this. This is not true.

• We have been administering the credit laws that have been in place for nearly a decade. These laws are eminently sensible, and there have been no changes to the core responsible lending obligations since they were first enacted. Nor has there been any change to our advocacy that lenders put these legal principles into practice reasonably and fairly. We understand house prices have fallen in some areas, and as a result fewer consumers are seeking finance. However, as the Governor of the Reserve Bank recently noted, this ‘demand side’ factor appears to be the principle contributing factor to current market conditions.

• It is also important not to confuse our new enforcement posture with responsible lending laws. Australians need to have confidence that fundamental consumer protections are being enforced. ASIC has been reviewing industry practices for many years, and particularly since 2016 – and well before
recent changes in market conditions – we (alongside APRA) have observed much improved lending standards.

• I will also highlight here that because the laws are principles-based they are adaptable to changing technology. New data sources such as open banking will be a game changer: they will make it much easier for lenders to verify consumers’ financial situation. Against this backdrop, ASIC has recently commenced a public consultation to update our guidance on responsible lending. The responsible provision of credit is critical to the Australian economy.

Conclusion

• In closing, I would like to reiterate what I have said recently – meaningful change is the ultimate responsibility of financial institutions. Financial institutions must respond responsibly to the challenge.

• Chair, lastly I would also like to recognise that this is ASIC’s last Estimates with Senator John Williams. Over the years, ASIC has had much engagement with Senator Williams – some of it particularly robust. But that has been, in the end, very fruitful for ASIC as Senator Williams has been a true advocate of a fair, strong and efficient financial system for all Australians. Thank you Senator for your service and all the best for the future.

• Chair, we are now ready to take your questions.

CHAIR: Thank you. Senator Williams.

Senator WILLIAMS: I welcome everyone from ASIC. This is probably the last time I will see you at estimates. That's not your fault! Mr Price, complaints have come to my office about a company called Henry Morgan. People are fearful that they are losing their investments et cetera. Do you know anything about Henry Morgan?

Mr Price: Henry Morgan and associated companies are known to us. In fact, not so long ago, there was a series of takeover panel applications where we made various submissions. We have an interest in the Henry Morgan group of companies in relation to various other matters, and we are making inquiries about those companies at the moment.

Senator WILLIAMS: All right, I will leave it at that. Mr Shipton, you would be aware of an inquiry we have just completed into the franchising industry. Recommendation 4.2 of the inquiry report states:

Recommendation 4.2

4.76 The committee recommends that the Australian Competition and Consumer Commission, the Australian Securities and Investments Commission and the Australian Tax Office, conduct investigations into the operations and dealings of Retail Food Group, its former and current directors and senior executives and companies and trusts they own, direct, manage or hold a beneficial interest in, with regard to matters including, but not limited to, the Australian Consumer Law, the Franchising Code of Conduct, insider trading, short selling, market disclosure obligations (including related party obligations), compliance with directors' duties, audit quality, valuation of assets (including goodwill), and tax avoidance.

You are familiar with that recommendation?

Mr Shipton: Yes, I am.

Senator WILLIAMS: Has ASIC taken any action in regard to that as yet, or are you preparing to look at the situation?

Mr Shipton: We are certainly looking at the situation. My colleague Commissioner Price has further detail on this that he can expand on.
Mr Price: We certainly take those recommendations from the Parliamentary Joint Committee on Corporations and Financial Services very seriously. We are treating those as a report of misconduct. Mr Day's team is looking into those issues at the moment. Our focus, of course, is limited to the matters that are within our jurisdiction—related party transactions, market matters, directors duties and audit issues—but we certainly have a range of inquiries underway in respect of those issues that were referred to us from the Parliamentary Joint Committee on Corporations and Financial Services.

Senator WILLIAMS: Senator Ketter was on the committee with me. I'm sure he would agree with me that the witnesses know that the previous management were not impressive to the committee—if I can put that in a rather smooth way. Mr Shipton, I have one further question. How do you see resources and funding for ASIC?

Mr Shipton: Very positively. We are grateful for the government's announcements of funding towards ASIC moving forward. This is a significant increase. This will allow us really to focus in on those initiatives that I mentioned earlier relating to our enforcement posture and the creation of the Office of Enforcement that my colleague Deputy Chair Crennan can speak to if there are further questions. We can also start work on expanding our new supervisory approaches. Very importantly, there are a number of recommendations coming out of the royal commission and indeed the government and indeed other parliamentary committees—as you mentioned earlier, Senator—that will allow us to take on additional responsibilities which are expected of us by the parliament and, importantly, by the community.

Senator WILLIAMS: Goodo. Good luck in the future. I hope you do your job well and I hope you're successful in cleaning up the bit of a mess, as I can call it after the Royal Commission. You're very familiar with it. I just wish you well in the future.

Mr Shipton: Madam Chair, with your indulgence, may I just make a remark to Senator Williams?

CHAIR: Please.

Mr Shipton: Senator, thank you very much for your ongoing oversight of ASIC over many years and your commitment to the community and ensuring that we have a fair, strong and efficient financial system for Australians. Your work and advocacy has been significant. Importantly, you've held this organisation and this agency to account, and we are a better agency because of you and your colleagues on committees like this. Thank you very much, Senator.

Senator WILLIAMS: Thank you very much.

Senator Seselja: Wacka, I doubt you'll be asking me questions tomorrow, so can I just, on my own behalf and the government's behalf, echo those comments but also particularly wish you well in your retirement, mate, back on the farm. I hope you have some great times. I really honour the work you've done over many, many years fighting for the underdog, for your community and for regional Australia. So well done, mate.

CHAIR: Hear, hear!

Senator WILLIAMS: Thank you, Minister. I appreciate it very much. Good luck, everyone.
CHAIR: Thank you.

Senator KETTER: Good luck to you, Senator Williams. Senator McAllister will lead off for us.

Senator McALLISTER: At the last estimates, I had an exchange with Ms Armour, who I think is not here today.

Mr Shipton: Unfortunately, she had to send her apologies. She is overseas on business.

Senator McALLISTER: That's okay. You may be able to assist in any case. She gave evidence. She said:

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.

We were talking about the disclosure obligations of companies. Which part of the act was she referring to?

Mr Price: There are a range of provisions that deal with misleading or deceptive statements, under both the Corporations Act and the ASIC Act. Section 1041H of the Corporations Act, from memory, is one example. There are provisions in the ASIC Act around section 12, although I can't recall the exact numbers. If you're talking about prospectuses, there are specific provisions there if you're thinking about continuous disclosure announcements.

Senator McALLISTER: That is exactly what we were discussing.

Mr Price: For continuous disclosure announcements, there are various provisions around section 674 and 675 of the Corporations Act. Again, that's off the top of my head. I'd need to go away and check it.

Senator McALLISTER: Thank you. At the time, Ms Armour undertook to provide advice about the penalty range associated with the breach of those obligations—both the civil and criminal penalties available. I wonder if ASIC can provide that information now.

Mr Crennan: I can provide some of it. Section 674(2A) is the provision that captures the individual contraverter. It's actually entitled 'an offence', but it's both civil and criminal. Section 674(2) is the provision which captures the entity, and that's a civil penalty provision. Section 675 is the section which captures a non-listed entity, so an entity that is public but unlisted. That's actually administered by ASIC in the sense that—unlike 674 and 674(2A), where the disclosure is required to be made to the ASX—because these companies are not on the ASX, they make it to us and we publish it. So that's the way that part of the act works. I haven't got it with me; I apologise. As for the penalties, I would have to take that on notice as to the quantum of the maximum penalties. We may be able to dig that out now.

Senator McALLISTER: As part of that discussion last time we were discussing the Helloworld scandal. At that time they had made one statement to the ASX, which was titled 'Clarification of media reports'. They made that statement on 20 February. Since that time they've made two more statements in relation to the matter. There was one on 21 February titled 'Statement from Helloworld Travel CEO Andrew Burns' and then 'Corrections and statement of regret' in The Sydney Morning Herald and The Age on 25 February—so, a series of disclosures. At the time Ms Armour gave evidence that the committee would follow-up
with Helloworld to ascertain the accuracy of the statements they had made, which at that time was only the first of those three statements. Did that follow-up happen?

**Mr Price:** Yes, it did, and there were, of course, the media reports to which you are referring—that the US ambassador may have used his position to help Helloworld to win a government contract. That was the allegation. Both the US Ambassador and Helloworld publicly refuted the claims and the media outlets subsequently acknowledged inaccuracies in their initial reports and expressed regret in respect of those inaccuracies. We did make inquiries into the veracity of the claims. We examined trading in Helloworld shares and we reviewed market disclosures in respect of the first announcement and we have not found any evidence of misconduct. In respect of the subsequent announcements that you have mentioned this evening, I would like to take some further advice from ASIC staff about whether we looked at those subsequent announcements that you have identified.

**Senator McALISTEr:** Essentially, your inquiry involved an examination of the public statements and an examination of the share movements around the time of the statements. Are there any other elements of the investigation, in terms of how you go about such an inquiry?

**Mr Price:** What we typically do is look at trading data. We'll look at various information that's been provided to the market. We may on occasion speak with the market operator. We may exercise compulsory notices to obtain documents, where we think that is necessary. It really depends on the facts and circumstances of each case. I would rather not go into the particular detail of what we have done. One particular thing, though, I did want to clarify: I think I said earlier that the media reports were that the US ambassador may have used his position to help Helloworld. Of course, I was referring to the ambassador for the US, not a US citizen—just as a point of clarification.

**Senator McALISTEr:** Thanks, Mr Price. Just in terms of the process, this is a precursor to formal inquiries. You have a kind of hierarchy of investigations internally in terms of your compliance practice? Could you step me through that?

**Mr Price:** Whenever we receive a report of misconduct, there are a variety of paths that we can take. When we are talking about market misconduct, often we would liaise with the market operator—in this case that's ASX. We would consider whether or not we need to utilise compulsory powers. If we do need to utilise compulsory powers, there are a range of provisions we can do that under. We can consider in some cases setting up an investigation under section 13 of the ASIC Act, which provides us with the ability to utilise additional compulsory powers. Sometimes that's necessary and sometimes it's not. As a matter of course with these sorts of things, we'd also typically have a look at trading data. We get real-time feeds of trading and other data from a variety of sources and we use both computerised means and also human judgement to indicate whether there are any unusual aspects in the trading in respect of those matters. It really does depend on the case. As you mentioned, we have a hierarchy of powers and we tailor those, as needed, in each particular case.

**Senator McALISTEr:** Did you use any of your compulsory information gathering powers in this instance?

**Mr Price:** I'd prefer not to go into that detail at this stage, but I'm more than happy to take that question on notice.
Senator McALLISTER: Did you seek assurance from Helloworld that their statement to the ASX was accurate?

Mr Price: Again, I'm happy to take that question on notice.

Senator McALLISTER: Did Helloworld provide ASIC any assurances that their statements were accurate?

Mr Price: Again, on the exact detail of how we conduct this type of work, it's atypical for us to get into that level of detail, but, if the question is provided on notice, we can consider what information we can provide.

Senator McALLISTER: Did you ask for documents from Helloworld?

Mr Price: Again, I don't want to get into the detail of particular instances, but it's not uncommon for us to seek documents or obtain documents from various firms subject to inquiries.

Senator McALLISTER: Did you interview anyone?

Mr Price: I'll take that on notice.

Senator McALLISTER: The CEO?

Mr Price: I'll take it on notice.

Senator McALLISTER: Is ASIC undertaking any further inquiries in relation to this matter?

Mr Price: Not at this stage. As I say, we've obtained a range of information and we've reviewed a range of documents. At this stage, that's not indicating any misconduct. Of course, if there's other information that we do not have or have not had access to or there are fresh allegations, we're always happy to review that as part of the work we do.

Senator McALLISTER: I was going to ask you the same thing: have there been any other statements provided to ASIC or to the ASX that have not been made public?

Mr Price: Not that I'm aware, but, again, I'd like to take that on notice.

Senator McALLISTER: If there have been, could they please be tabled?

Mr Price: Again, if I could take that on notice, that'd be good.

Senator McALLISTER: Has ASIC prepared a written report into this matter?

Mr Price: An internal report; an external report—what are you considering?

Senator McALLISTER: Any written report, internal or external, in relation to this matter.

Mr Price: Again, I'd like to take that on notice, if I may.

Senator McALLISTER: Could that please be tabled?

Mr Price: Again, I will take that on notice. In tabling written documents, there can be various issues around public interest, and I think it's important we consider those.

Senator McALLISTER: Thanks, Mr Price.

Senator SINODINOS: The public interest here is to smear the company. Let's be quite open about that. That's why this matter is being reheated in this way in this chamber.
Senator McALLISTER: Senator Sinodinos, I think it's in the public interest—all of the matters in relation to Helloworld. If you don't think so, that's a clear difference of opinion between you and me, but that's just a gratuitous political comment. I asked some pretty straight questions. Mr Price has given a range of indications that he's taking things on notice and has explained the reasons why he is doing that. I haven't contested that or sought to make a fuss about it. I don't know why you would.

CHAIR: Thank you, Senator McAllister. I have a couple of questions. I'm not entirely sure where I should direct them, but, when we last saw you at estimates, you still had something of a wish list of legislation to be passed. Since that time, we've seen the Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Bill passed, which gives you new disgorgement powers and strengthens penalties. We've seen the design and distribution obligations and the product intervention powers passed. I wonder whether you could give us the Reader's Digest version of how they make your lives that little bit easier in the tasks that you have been set out to do.

Mr Shipton: Thank you for the question. I will start and then hand over to some of my colleagues, who can speak to some of the new powers and penalties with greater specificity. But, taken together, these new powers and penalties, combined with the budget, are very powerful and will enable us to be more effective and efficient in our regulatory output. We have been long advocating for these powers and long advocating for these penalties, so they are very welcomed. I will acknowledge that I understand that they had overwhelming support in the parliament, and we are very grateful to the parliament for the support of these various pieces of legislation.

Perhaps I could just focus in for a second on the penalties. It is very clear to us that we need to provide meaningful deterents for illegal, wrong and unfair behaviour in the market. For us to have effective and meaningful deterrents we need meaningful penalties. The penalty in particular around the fair, honest and efficient provision of section 912A of the Corporations Act is a cornerstone provision. Prior to these amendments, prior to these new acts, there was no penalty for that important provision. There was no penalty for that cornerstone provision to enable or require honest, efficient and fair conduct of financial services businesses in Australia. We now have meaningful deterrents; we now have meaningful penalties, and part of our enforcement priority moving forward will be to pursue cases of this nature.

The design and distribution powers, the product intervention powers: these are really important tools that we've been looking at that have been utilised overseas for quite some time. They will allow us to more directly and more quickly intervene when we see detriment happening in the market to consumers. Now, 'detriment' is a legal word that I personally believe connotes issues of fairness, and fairness is something that we believe should be a priority for the entire financial system. But I'm going to pause there and perhaps ask my colleagues Dan Crennan and Greg Kirk to supplement.

Mr Crennan: I might just make a few remarks on the penalties. Without indulging in an exegesis as to general deterrents, I think it's well understood that higher levels of financial penalties and longer terms of custodial sentences are important in affecting general deterrence. If they're not used, of course, that effect diminishes. In terms of 912A, as Mr Shipton says, that does contain cornerstone obligations owed by those that benefit from
having an Australian financial services licence to the consumers of those services and therefore to all citizens of Australia. It has been in the legislation for some years—I think 14, off the top of my head—that that particular obligation, the fairness and efficiency and so on, has been subject to some judicial observations in recent years. We have brought some cases when coupled with other contraventions that warrant the case going to court, because there's not much purpose in bringing a 912A case when there's nothing to seek other than a declaration, using public funds to do so. However, Justices Beach, Foster and Gleeson, all of the Federal Court, have in recent years—and very recently—made the observation that it's a composite obligation. So, those three words need to be read together. They are simple English words, and they express simple human concepts.

There is work being done on explaining that further, perhaps. There seems to be an indication from the regulated community via the media that fairness is difficult to understand. I won't make any rude remarks about that narrative. However, Justice Beach certainly says that this is a very simple human concept and should be very easy to understand. The notion that that legal obligation, which has been in the legislation for well over a decade, wasn't important to those it was designed to regulate or designed to be observed by, because there was no consequence, is quite revealing. That is why the penalties bill was so important to us—because now there are consequences, and quite significant civil penalty consequences. Moreover, with 912D, the obligation to report, that is no longer only a criminal consequence; it's a civil penalty. So, you're dealing with a different burden of proof, and that also assists us greatly.

I won't take up too much more time, because there are a lot of other amendments, but I should also make the observation that the recent passing of the member outcomes bill in relation to superannuation will become quite important to us if recommendation 6.4 by the royal commission is implemented, thereby making us a conduct regulator of the CIS act. The reason that is very important is that, firstly, that is our bread and butter, so to speak. That is part of the purpose of ASIC's existence, and it's a very significant part of our operations—that is, conduct regulation. We have very limited ability under the current SIS Act to engage any regulation of that particular regulated community. With the introduction of that bill, for the first time, civil penalties will attach to sections 52 and 52A. Section 52 is the trustee obligations. Section 52A is the director of the corporate trustee obligations. There are also cornerstone obligations that include, for example, acting in the best interests of the beneficiaries—in other words, members. They lacked any penalties. Now they have a civil penalty, which means, particularly under section 193, they will incur penalties if they're contravened.

Secondly, under certain factorial scenarios where there has been dishonesty—and there are a few other locutions of how this section is engaged—in section 202 of that act, they will be criminal offences. This is a very significant seismic change in terms of the legislative framework where the regulators will be acting. With APRA, if we are a co-regulator, so to speak, we will also be the conduct regulator of those very significant sections which have recently also passed.

**CHAIR:** So that could mean that trustees of superannuation funds that have been consistently—I know I'm wading into Ms Chester's previous life—underperforming are potentially up for not just civil penalties but criminal penalties. Is that what you're saying?
Mr Crennan: The underperforming may not warrant the criminal penalties. The criminal penalties only get engaged in the in extremis fraudulent examples where a third party, for example, is deliberately benefiting contrary to the interests of the members. That's one scenario. I should also say that many of the trustees are AFSL holders in any event, so if we do become a conduct regulator they may very well be facing 912A cases and sections 52 or 52A cases. So there will be a great legislative tool kit for us as a regulator to use in the superannuation space if that recommendation is implemented.

CHAIR: And trustees of persistently underperforming superannuation funds will fall under your 'why not litigate' mantra.

Mr Crennan: One would hope so, if we become a conduct regulator. I'll hand over to Ms Chester to elaborate, but we do have the machinery that is possible to go after a persistently underperforming fund. However, if we become the conduct regulator of the SIS Act, it'll be more fit for purpose.

Ms Chester: That's correct. Us having those powers under the SIS Act is a game changer for ASIC in terms of being the conduct regulator and introducing for the first time true deterrence conduct regulation in the super space. The persistence underperformance, given that some robust methodology was well established by the Productivity Commission, does see the way clear as to how that can be demonstrated. The key point is that we can get enforcement action underway before that other legislative change occurs to the SIS Act under section 912A, particularly now that there's meaningful penalty attached to it, given that most superannuation trustees hold an AFSL. If you hold an AFSL under that provision of the Corporations Law, you have the obligation to act fairly, honestly and efficiently in the provision of those services. That's what was intimated more recently at the AFR Banking & Wealth Summit but, in an ideal world, doing it under the SIS Act gives us much more muscle to be able to help the government weed out the persistent underperformance that is causing members great harm. That's the lens we'll be bringing to this, informed by both the royal commission and the work of the Productivity Commission. Where is the greatest harm to members, and how does that relate to misconduct so we can take some good cases forward for that deterrence effect?

CHAIR: Thank you. I know we haven't quite got into the design distribution obligation or the product intervention powers. I don't know whether you want to—

Mr Crennan: I'd ask Mr Kirk that. Both those new obligations are things that ASIC's advocated for for some time. I think starting during the financial system inquiry something that was recommended then are very important changes in terms of the overall toolkit for ASIC as a regulator. They really are part of shifting the focus from the Wallis inquiry settings, which were all about disclosure and which assumed the remedy to any problem in the financial system was either better or more disclosure. Really, the focus in the design and distribution obligations becomes much more a focus on those manufacturing products and then distributing them to really target them towards those sectors of the market that they're appropriate for and not to target them to people who they're not suitable for or, to do scattergun or just market Wide Bay as if it's really only a product suitable for particular people in particular circumstances.

So that broad obligation is a very important one and a big shift in terms of responsibilities on industry. Given the significance of that change, they're given a two-year transition period.
so there's time for industry to adjust and look at how they're going to meet the obligations in terms of the appropriate identification of the target market for their products and then how they would guide distribution towards that target market.

The second provision, which is the product intervention power, is something more directly given to ASIC and, again, that moves away from a focus on disclosure to giving ASIC a broad flexible tool to address failures in the market and problems that are arising, despite the fact that disclosure's taking place, where there are adverse outcomes for consumers and to address them in a flexible way. Sometimes that might still be improvements in disclosure but, in other instances, it might be other changes to the way the product is marketed or in the most severe cases that I think are probably relatively rarely the banning of the sale of the particular product.

CHAIR: The impression that I have now is that in the last 12 to 18 months ASIC has been given the resourcing, the enforcement powers and every tool that is now required in order to do the job ahead of you, which, I might add, is a substantial one, particularly post Hayne royal commission. Before I turn over to Senator Ketter, can you tell me whether there is anything more that you need specifically in your toolkit in order to undertake your duties.

Mr Shipton: Thank you for that summary. Yes, we feel in a very confident position moving forward for the task ahead. We now have a mantra in our organisation and our agency of just getting on with it. That's going to be a core priority because there is community expectation that we need to get on with our important regulatory work but, as my deputy chair colleagues have highlighted, there are a number of proposals that are coming out of the royal commission that have come out of the Productivity Commission that we would very much like to work with parliament on, moving forward.

I would also make a pitch, which is a recommendation which has been taken up, I believe, by government and others, as to the extension of the BEAR agreement, the accountability regime for executive officers into the world of conduct. Just by sheer force of numbers, the proposal will capture and make accountable tens of thousands of men and women in finance who hold important positions and they will be accountable under the law under the proposed extension of the BEAR regime. So that is something that I would highlight as an important next step, and of course we very much look forward to working with parliament into the future and with committees like this into, hopefully, getting meaningful and effective legislation before you.

CHAIR: Thank you, Mr Shipton. Senator Ketter.

Senator KETTER: Mr Shipton, firstly, can I just quickly get an update from you on the work by ASIC in respect of the aftermath of the royal commission, particularly what progress has been made on the referrals made by the royal commission to ASIC for investigation of potential criminal offences. The last report I received at the end of February said you were prioritising 13 referrals from the commission and your enforcement team was investigating a further 12 matters that featured as case studies. What's the latest?

Mr Shipton: Before I hand over to my colleague executive director Tim Mullaly, who is the executive director responsible for our royal commission referral's response, let me just start by saying there is a body of work that we are doing in relation to the royal commission both by way of policy and by way of other regulatory outcomes. But your specific question is
in relation to both the referrals, as I understand it, and also case studies that were mentioned in the royal commissioner's report, which are indeed being prioritised, and I shall ask my colleague to supplement.

Mr Mullaly: Currently in that project, there are now approximately 90 investigations afoot. Since September, that's an increase of 45 investigations and, since this time last year, it's about 129, 130 per cent increase in the number that we had on at that time, so it is a significant amount. There are currently 14 matters in litigation with six of those being civil penalty matters, two of those are criminal matters and then there are six administrative banning matters, four of which are appeals before the Administrative Appeals Tribunals or the Federal Court. We've got two other matters that we've referred off for action, one being a criminal matter and one being an administrative banning matter, and then 60 matters that are under investigation and they are at different stages.

Senator KETTER: I was interested specifically in the referrals from the royal commission?

Mr Mullaly: They are being assessed to see whether or not those matters need further investigation or they are in fact under investigation, so those are the referrals from the royal commission.

Senator KETTER: Just again, how many are there?

Mr Mullaly: My recollection was that there are 13 matters that we got from the final royal commission report, and then there were, as mentioned, 14 or so case studies that we identified. You need to understand it's a big body of work. We're getting breach reports that come in and we're getting other matters that we're identifying ourselves through surveillance work or through the investigations that we're doing that touch upon matters that were raised at the royal commission or relate to some of the parties that were before the royal commission, and that's all part of this sort of body of work. We're prioritising those matters that we think need to be prioritised for their seriousness for the outcomes that we'll get. We've said on previous occasions that some of the matters that were referred to us out of the royal commission would not result in penalties per se because of the nature of the allegations made. We're weighing those up against matters where we will either get civil penalty or potentially criminal matters.

Senator KETTER: At what stage of an investigation with these referrals is the financial service provider made aware that they are under investigation?

Mr Mullaly: That will depend on the nature of the investigation but, generally, pretty early we will serve compulsory notices on those entities and those notices will indicate the nature of our inquiries or investigations and they'll have an understanding at that point.

Senator KETTER: And how many of the investigations have reached that stage?

Mr Mullaly: I would say, at a minimum, of those 90, 76 approximately. There are 14 or so matters out of that 90 that are in a form of pre-assessment, pre-investigation stage. We're looking at other material that's available to us to determine what our next steps would be.

Senator KETTER: And have all the relevant financial service providers been contacted to notify them that they are under investigation?
Mr Mullaly: I couldn't say, without going and looking at each and every investigation, whether or not they've received notices. But, as I say, of the investigations within the wealth management project, I would imagine, approximately 75 would have been given some form of notification because the investigations have progressed to some extent.

Senator KETTER: And given the degree of public interest in this issue, with the work of the royal commission being carried on, do you have a target as to when you wish to finalise these referrals, at least to the extent of deciding whether or not to proceed with criminal prosecution or civil action against the relevant entities?

Mr Mullaly: Not in relation to all of them. We haven't set those sorts of targets in relation to all of them. We recognise that there's a significant public interest in us finalising our work as quickly as possible, but the matters of this nature have varying degrees of complexity, which sometimes makes it difficult to say we will have it done by a particular date. For example, as has been in the public domain, we've got a significant investigation in relation to fees for no service arising out of the conduct at AMP. We would have liked to be further progressed in relation to that, but we had to go through a civil case in relation to AMP around the production of information that they claimed LPP on. Those sorts of things inevitably delay us getting to the end result. Setting targets can sometimes be frustrated by that sort of action, but we do like to prioritise matters, and we do have in place a prioritisation exercise which is aiming to get a number of matters finalised by mid-May and a further number by 30 June this year.

Mr Shipton: If I may supplement that, the commission, as the lead governance body of this agency, takes a tremendous amount of interest in the progress of these cases. So we have a governance structure that sits on top of this important work which is monitoring not just the speed but also the efficiency and the effectiveness.

I'd also pick up on something that my colleague mentioned, which is the terms of engagement, as it were, by some of the entities that we are investigating. I think it's very important that they act fairly and responsibly, because, of course, that is our intent as well.

Senator KETTER: Thank you for that. I want to move on to another matter.

Mr Mullaly: Just for the record—because I know it came up last time—at the moment there are approximately 70 FTE working solely in relation to this project. I think last time it was somewhere around 45. So we're trying to ramp it up. I should also say that is supported and supplemented by external resources—external law firms, barristers et cetera. That includes staff from a range of teams within ASIC. Within financial services enforcement, there are about 131 FTE that are available to work on these matters. So we try to keep it pretty flexible, with an agile sort of approach to it. We recognise there's a public interest in getting it done, and we're trying to get it done as quickly as we can. 'FTE' refers to full-time equivalent.

Senator KETTER: Thank you. Mr Shipton, I want to move on to another matter, which was some recent media commentary which was quite extraordinary. It was reported that there were some unnamed senior bankers who claimed that ASIC is on a frolic, and I note that you took vehement exception to that. It appears that some of these people don't get it. So why do you think these senior bankers have made these comments?

Mr Shipton: Thank you for the question, because it raises an important point. To clarify and to be fair to the unnamed senior banker, though, he or she didn't use the word 'frolic.'
think that was an expression I used, saying that we're not on a frolic. But the point that you make is nonetheless an important one.

I have a couple of observations, if I may. I actually calculated the number of days between the final report of the royal commission and these press reports, and it was less than 50. It was very disheartening that, within 50 days of this very important document and almost universal support for the direction of travel within it, we were getting this resistance and pushback. My colleague Deputy Chair Crennan has made some very useful remarks about how we expect the industry to engage constructively with us in relation to these enforcement matters. We are not saying for one second that they should abandon their legal rights, but there is a scope for constructive engagement when we come to our investigations and our court based enforcement actions.

It is very disheartening, and I was very quick at my first public remark to call out that these comments are ultimately unhelpful and destructive, because they do not represent the constructive engagement that we want to have. It also reflects, I think, a mindset in some, not all, segments of the financial services industry that they do not realise that there is a trust deficit and a need for them to prioritise fair outcomes for consumers and also to make our financial system just better and stronger.

There is also a risk that, with the royal commission coming to an end, some of these segments of resistance, these pockets of resistance, will see it as business as usual. You can have our assurance on behalf of our agency—and I'm sure I speak equally for our peer regulatory agencies—that our intent is to carry on the important work of making sure that we do make the financial system a fair, strong and efficient one and impress upon the leaders of the financial system that they need to prioritise fairness, they need to prioritise honesty and they need to prioritise constructive engagement with regulators and, indeed, parliamentary committees.

Senator KETTER: I note that even Ms Bligh from the Banking Association said in this article:

I don't doubt there are people at those senior levels who are saying those type of things. Let's assume it is middle management where the issue is predominant. Do you think there is sufficient understanding within the chain of command in the banks about the significance of the cultural and compliance reforms that are necessary to prevent this misconduct from occurring again?

Mr Shipton: I think it is work in progress, Senator. I think your question is very astute, because it is work in progress. There are hundreds of thousands of people who work in finance, and we need to get a message through to all of them that, if they are doing their job fairly, if they are working within the guidelines that are set appropriately for them in financial institutions, they have a very noble and important job to do, which does benefit society, which does benefit the community. What we need to do—and this is what we are actively doing in our agency—is constructively engaging with the senior leadership group about the importance of cascading down throughout their organisations and through their organisations the importance of constructive engagements with regulators, the principles of fairness and honesty, and putting the consumer and the customer and the system first.
I'd also highlight—and this an area that we're going to be expanding in the future—that our close and continuous monitoring program has been very effective because it has started to engage with that middle management rank, with that cohort, not only at the senior management rank but throughout the system. We want to expand that because we want the message to get through to middle management and, indeed, everybody throughout the organisation that, ultimately, ASIC is an organisation that wants to put fairness back into finance. We want that message to cascade through organisations, and we're going to do what we can by that engagement at the senior level. We're going to do that by our engagement through close and continuous monitoring. We're having hundreds of meetings now with middle management that we didn't have to the same degree of intensity before. Importantly, as I mentioned earlier in my comments about the extension of BEAR, the extension of BEAR into conduct will attach to tens of thousands of people in finance. Having them accountable and having them realise that they're accountable will be a very strong net positive for that cultural challenge that you rightly highlight.

Senator KETTER: Just coming back to the royal commission referrals again, Mr Mullaly, are there any documents that you can table about the timetable or targets for when you'd like to reach particular milestones in relation to any of the matters referred by the royal commission—for example, targets for when you'd like to have made the decision on whether to litigate?

Mr Mullaly: I'd have to take that on notice to see what documents might be specific to that.

Senator KETTER: Thank you.

Mr Mullaly: I'm not sure that we've prepared a document of that type.

Senator KETTER: That would be good. I've got two other areas I'd like to explore. Ms Chester, I'd like to turn to some of the comments you made at the AFR summit on 26 March. There was some media reporting about those. Firstly, can you tell me whether you prepared any speaking notes or papers in preparation for your appearance?

Ms Chester: Yes, I did.

Senator KETTER: What were the points that you wanted to communicate at the summit?

Ms Chester: They sort of expanded on the comments I made earlier—that is, the royal commission and the government's response to the royal commission have asked ASIC now to be the lead conduct regulator with respect to superannuation. So it was reminding folk that in being that strategic conduct regulator we will bring the lens of member harm. It was revisiting the good evidence base that we could draw upon from the work of the royal commission and the work of the Productivity Commission to remind folk of what that member harm was and what the primary areas of concern remain and to also signal that ASIC was stepping up to that plate immediately. As intimated before, there are some current provisions of the corporations law, now with meaningful penalties attached, that we can use if we would like to get that enforcement action underway before the more important and fulsome legislative reform through the SIS Act.

Senator KETTER: I'm just interested in what discussions you had prior to 26 March with other ASIC staff on what you were about to say. Did you speak to Mr Shipton?
Ms Chester: Mr Shipton was aware that I would be talking about super through that lens, and I of course had some internal discussions with fellow commissioner Danielle Press before she went overseas and a couple of other colleagues in the wealth management area that specialise in super.

Senator KETTER: And you conveyed to those other ASIC colleagues this comment, 'We are looking to litigate if a fund has a persistently underperforming product or they themselves have consistently underperformed over the long term'? That's a matter you discussed with ASIC colleagues beforehand?

Ms Chester: Yes. I think it was clear from earlier work by both the royal commission and the Productivity Commission that an area of members' best interest is clearly being breached if a superannuation fund has knowingly or unknowingly persistently underperformed—and we're talking about over the long term—their own portfolio benchmark by 50 basis points. There is an issue then. There could be other elements of misconduct that could be attached to that underperformance—related parties, for example, or trustee directors not discharging their duties—but, for us, that was a clear area of member harm where we would want to be seen to be deterring any of that related misconduct either under the corporations law before the other legislative reform occurs or ideally once the SIS Act legislative reform has taken place.

Senator KETTER: Did you speak to Mr Crennan beforehand?

Ms Chester: Yes. I did.

Senator KETTER: I think you mentioned you had spoken to Ms Press and Mr Price?

Ms Chester: No, I don't recall any discussions with Commissioner Price.

Senator KETTER: Did you speak to your media, corporate affairs or government relations team?

Ms Chester: When we're looking at doing panel addresses at a forum like the AFR Banking & Wealth Summit, we of course have discussions internally for several reasons. One is to make sure that everyone is on the same page in terms of what we're going to be saying at these forums. But, secondly and particularly, we're in the world of pre- and post-legislative reform. We have had some legislative reform to the Corporations Act which now means that there are meaningful penalties attached to 912A and there is a prospect that we could pursue enforcement action if we were to identify an appropriate superannuation fund or trustees where there is persistent underperformance over the longer term and there might be some other misconduct attached to that. These are all the sorts of things that we would normally talk about before we made such speeches. It's then a separate matter to internally go through our governance structures, which Chairman Shipton referred to before, to decide which matters we would look to pursue with which parties.

Senator KETTER: Did you speak to anyone in APRA before your appearance at the AFR summit?
Ms Chester: We do, as a matter of professional courtesy, give our brethren a heads-up in terms of what we're looking to say at a high level. I was also very cognisant that member Rowell was speaking the next day and early in the morning.

Senator KETTER: So you spoke with Ms Rowell about this particular issue prior to your comments?

Ms Chester: I had a high-level discussion with Ms Rowell about the nature of the comments that I was looking to make on the panel, if the planets did align and I got appropriate questions on the panel to be able to respond along those lines.

Senator KETTER: Did you have to clear any of your final speaking notes before appearing at the AFR summit?

Ms Chester: What do you mean by 'clear'?

Senator KETTER: Was there an approval process for the speaking notes that you used for the AFR summit?

Ms Chester: The clearance process was: my notes were fact checked following the discussion, so folk knew what direction I was heading in with the commentary I was looking to make. But they were fact checked by two of the specialist people in the super team to make sure that what I was saying, particularly with respect to the legislative issues, was correct.

Senator KETTER: Okay. Mr Shipton, what's the normal process in circumstances where ASIC leaders are appearing in public, in terms of being cleared to make certain comments?

Mr Shipton: Well, as Deputy Chair Chester was referring to, we consult with each other when it comes to the matters which we're going to speak to. I will make an observation that there is a structural difference between a panel, which is Q&A—and my observation of these types of panels, question-and-answer panels, is that they have a life of their own, and comments that may be prepared in advance aren't necessarily deployed when you get up on the stage—and speeches at a different level. So we consult as a commission, as the deputy chair mentioned. We've also put in place a structure whereby we review what speeches or public forums we are engaging in in the future, and we have a discussion in and around messages and the points that we want to deploy, particularly in speeches and, if we get an opportunity, during panels. That is a process of collegiality and engagement. And we also, as I said, have a structure whereby we capture and note what types of speeches or public engagements are coming, so that we can actively monitor them.

There is a chain of command in our organisation. There is a hierarchy. Executive directors will consult with sponsoring commissioners, when it comes to engagements by staff and my colleagues, on technical matters and, if there are messages that need to be cleared, they would be cleared or ventilated through that chain of command and the governance structures that I mentioned.

Senator KETTER: Okay. The normal processes of clearing comments: you're saying that they were followed in this particular situation?

Mr Shipton: Yes, I believe that they were followed. There was consultation. You must remember, again, that I spoke at this particular conference. What I did was to circulate my remarks, or draft remarks, with the commissioners. I actively sought input from my fellow commissioners and colleagues as to what messages we wanted to take across.
As I said, when it comes to panels—Deputy Chair Crennan was also in a panel at that particular conference—we did discuss and confer about the important messages that we wanted to impart to the industry and the sector about the types of matters that we would pursue in the future. But I do want to underline and reinforce what Deputy Chair Chester said: that should in no way be taken to fetter the governance structures and arrangements that we have in place when it comes to the pursuit of specific and actual matters. It's very important for us to get the message out—which I believe we did—that this and other areas are a focus into the future because we do want to highlight the importance of fair outcomes to members and superannuation funds. We do want to highlight the importance of fairness full stop, and so we use these opportunities to impart messages. But again I do underline that this isn't going to fetter, constrain or take away from the important governance structures that we have in relation to the commencement of actual proceedings against a superannuation trustee in this case or any other individual corporation or entity.

CHAIR: We are due to take a dinner break at 6.30, and I know that Senator Sinodinos has some questions. I'm happy to put the remainder of my questions on notice. I'm wondering how long you think you might have?

Senator KETTER: I have a couple more questions on this point and then I do want to ask Mr Price my traditional questions about Mr Palmer! He can probably reel off the answers from memory, so I don't think I'll be more than 10 minutes or so.

CHAIR: I'm quite happy to push on then.

Senator KETTER: Mr Shipton, very quickly, what's your view on ASIC's role in taking action on underperforming funds, noting that APRA also has a role here? I'm just interested in how Ms Chester's comments stand up against those views.

Mr Shipton: Of course I support Ms Chester's comments. She also supplemented that, when we would be thinking about a particular action, we would be looking at the body of conduct. Underperformance is one example of what we believe to be unfair conduct and, because it's unfair conduct, we want to call it out. The way we see it is that consistent underperformance is about real people's life-savings. It's real people's retirement, and we want to put trustees on notice that they need to be taking this particular aspect very seriously. Now, again, I want to reinforce that there are processes and procedures before we take on a particular matter. We'd have to look at the whole body of evidence, the whole book of conduct—its level of seriousness, its egregiousness, how much harm has resulted—before we pursued an action. That is the context and, I think, a really important context that these remarks, which I support, should be seen in.

Senator KETTER: All right. Thank you for that. Let's turn to Mr Palmer. Mr Price, can you update us as to where ASIC is in relation to the investigations of Mr Palmer and Queensland Nickel, particularly in relation to allegations of shadow directorship?

Mr Price: I think it was fairly recently—late February, from memory—that I provided the last update. I don't have a material update for you further at this stage. I would note, not in relation to the mineralogy matter but in relation to the Palmer Leisure Coolum matter, that the Brisbane Magistrates Court has listed criminal proceedings for a mention on 23 June this year, although that date may change.
Senator KETTER: Okay. Are criminal charges or further civil action being further considered by ASIC?

Mr Price: In relation to the mineralogy matter, all options are on the table. As I said, in relation to the Palmer Leisure Coolum matter, criminal proceedings were commenced in relation to Palmer Leisure Coolum Pty Ltd and Mr Palmer, as a director of that company.

Senator KETTER: Are there any new allegations that you have started following up on?

Mr Price: No; nothing.

Senator KETTER: So nothing further?

Mr Price: Nothing new at this time.

Senator KETTER: Can you say if you've spoken to Mr Palmer himself or Mr Mensink, as part of your investigation so far?

Mr Price: As mentioned, I think, in late February, it's probably not appropriate to go into that level of detail. But we have spoken to a number of people in relation to those matters.

Senator KETTER: You indicated previously that you were considering a new range of possible offences that Mr Mensink may have committed. Is there any update on that?

Mr Price: There is no material update at this stage.

Senator KETTER: Finally: is there any update around attempts to extradite Mr Mensink from Bulgaria?

Mr Price: I'd prefer not to comment on that.

Senator KETTER: Thank you very much.

Senator SINODINOS: Your opening statement mentions the fact that you have recently commenced a public consultation to update your guidance on responsible lending. I just wanted to get some elaboration on why that was the case and what the objectives were.

Mr Shipton: I will start the response and then hand over to my colleague Michael Saadat, the executive director of financial services, who is leading the consultation. One important point to note is that this consultation process on responsible lending has been in the works for quite some time because of changes in technology and expansion of the market. The fact that, I believe, the responsible-lending laws have been in existence now for 10 years and that they are principles based has triggered and catalysed a consultation process to update the guidance to account for changes in technology, more information being available, open banking developments and best practices that we have seen, and also, for that matter, practices that we would deem as unfair. That's the context in which we started the consultation. I will quickly add—I do think it's important, because it's in my opening remarks: I do believe that the responsible-lending laws are a fundamental backstop of fairness and protection to borrowers, and, also, a very prudent practice that should be applied responsibly and fairly by the lenders. With that, I'll hand over to Mr Saadat.

Mr Saadat: I don't have a lot to add. The consultation process started shortly after the final report of the royal commission was released. We are still consulting at the moment. It's a very significant piece of regulatory guidance for ASIC. It covers the provision of all consumer credit in Australia, not just mortgages—so it covers credit cards, personal loans, etcetera. Because the law is principles based, providing guidance from ASIC is quite important...
for the industry so that it understands what our expectations are. The guidance hasn't been updated for a couple of years, although we have done a number of reviews. We felt it was timely, now that the royal commission's final report is out, to commence a process to consult with the industry and other stakeholders, and bring our guidance up-to-date as necessary.

**Senator SINODINOS:** The statement makes reference to your approach, because it's principles based, adapting to new technology, and it refers particularly to open banking. How do you see open banking impacting?

**Mr Saadat:** We think it's potentially a very significant development for the responsible-lending obligations. The obligations require that lenders make reasonable inquiries into a borrower's financial situation and then take reasonable steps to verify the borrower's financial situation. What open banking will do is allow lenders to collect very granular information about a borrower's financial situation. Using technology and the APIs that will be in place under the open banking framework, they will be able to collect and analyse that information very quickly and efficiently come to a decision about whether a proposed loan is suitable for a customer. Traditionally what lenders have had to do is collect paperwork from consumers to varying degrees, and this will replace the need for that inefficient process. What our guidance proposes to do is recognise the role that things like open banking and other data sources can play in fulfilling your obligations to make reasonable inquiries and take reasonable steps to verify the borrower's financial situation.

**Senator SINODINOS:** Will it eliminate, for example, the need for consumers to be making estimates for various categories of their expenses? In other words, will it get to the point where you will have very individualised information about a person's income and expenses?

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

**Senator SINODINOS:** And that information will be collated from what sources?

**Mr Saadat:** The way that the open banking framework, as proposed, will work is that parties that have access to the APIs that are in place to allow information to be extracted from somebody's transaction account, credit card, mortgage—that information will be able to be shared in a secure and safe environment so that consumers can authorise the transfer of that information about their spending habits, and the lender can then analyse that information and determine whether a proposed loan would be affordable for that consumer.

**Senator SINODINOS:** And if a consumer doesn't give that consent it would immediately send a signal to the potential lender that there's a concern?

**Mr Saadat:** I think there might be a transition as open banking rolls out more broadly across the country. It will be new to many consumers initially, so some consumers might be wary about consenting to the transfer of their data. But we think that, within a short period of time, it will be become well-established, much like many of the other technologies that have come through the financial system. ASIC will certainly play a role in providing guidance to consumers through our MoneySmart website. A third of Australians visit that website, so it's a very valuable source of information, and it will help industry with that transition.

**Senator SINODINOS:** Thanks. I have one final question, and it's for the chairman. It goes to the issue of public comments made by you, the deputies and other members. I assume the rule that you follow and the rule that your deputies and others follow is that, when
speaking in public or on panels, you're expected—and certainly I think politically we would expect—to be frank and fearless in the advice that you give. Is that right? Is that the approach that you take?

Mr Shipton: Absolutely. We need to be very direct and clear as to how we see that the financial system could be improved, and providing direct, frank and fearless guidance on a range of different issues is absolutely fundamental to what we do. We need to send important messages. These messages are very deliberate because they're sending a message to the industry to reform itself. They're sending a message as to the areas that we believe that reform, improvements and fairer outcomes need to take place. We make these types of comments strategically all the time. In many respects we try and use forums like today's to send the important messages about where our concerns are.

It would be a great outcome, and I believe that the industry has a capacity—whether they are willing and able to do so is another matter—to ensure that they put fairness first and that they pursue the culture that Senator Ketter was referring to and the fairness outcomes that we all want throughout an organisation. In many respects, the heavy lifting has to be done by the financial services providers, full stop, across the entirety of the sector, in every area. There needs to be a tremendous amount of heavy lifting.

I will highlight something that was made very clear in the royal commission—the first line of responsibility for the fairness, efficiency and honesty of the financial system rests with those entities and people in the financial system. We're being very strategic and direct about how we believe the system could be fairer, more efficient and more honest.

CHAIR: We had an indication from another senator that they had questions, but they haven't shown up. I'm are acutely aware—

Senator SINODINOS: That's their problem.

CHAIR: It is their problem. I think that we might have to place further questions on notice. Thank you very much to representatives from ASIC for joining us today and for staying late. I think the committee will adjourn until tomorrow morning. Thank you, Hansard. We're back with the ACCC and APRA tomorrow morning.

Committee adjourned at 18:44