



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

ECONOMICS LEGISLATION COMMITTEE

Estimates

TUESDAY, 31 MAY 2011

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SENATE
ECONOMICS LEGISLATION COMMITTEE
Tuesday, 31 May 2011

Senators in attendance: Senators Abetz, Bushby, Cameron, Colbeck, Cormann, Eggleston, Heffernan, Hurley, Joyce, Ludlam, Milne, Nash, Pratt, Ryan, Williams and Xenophon

RESOURCES, ENERGY AND TOURISM PORTFOLIO**In Attendance**

Senator Sherry, Minister for Small Business, Minister Assisting on Deregulation and Public Sector Superannuation and Minister Assisting on Tourism

Executive

Mr Drew Clarke, Secretary

Mr Martin Hoffman, Deputy Secretary

Mr Andrew Fowler

Corporate Services Division

Ms Jo-Ann Rose, Chief Financial Officer, Corporate Services

Mr Robert Towner, General Manager, Corporate Services

Ms Nicola Morris, Chief Legal Counsel, Corporate Services

Resources Division

Ms Tania Constable, Head of Division

Mr Bruce Wilson, Principal Adviser, Resources and Energy Policy

Mr Chris Stamford, General Manager, Minerals Branch

Mr Demus King, General Manager, International Strategy and Taxation Analysis Branch

Mr Michael Sheldrick, General Manager, Fuels and Uranium Branch

Mr Peter Livingston, General Manager, Petroleum Regulatory Reform, Offshore Resources Branch

Mr Graeme Waters, General Manager, Petroleum Regulatory Reform, Offshore Resources Branch

Mr Patrick Davoren, Manager, Radioactive Waste Section, Fuels and Uranium Branch

Mr Chris Lloyd, Manager, Environment, Safety and Security Section, Offshore Resources Branch

Energy and Environment Division

Mr Brendan Morling, Head of Division

Ms Louise Vickery, General Manager, Industrial Energy Efficiency Branch

Mr Paul Johnson, General Manager, Environment Branch

Dr Gino Grassia, General Manager, Energy Security Branch

Dr Chris Locke, General Manager, National Energy Market Branch

Mr Andrew Lewis, Manager, Energy Efficiency Opportunities Team

Mr Oliver Story, Manager, Demand Side Policy

Ms Robyn Casey, Manager, Liquid Fuel Security, Energy Security Branch

Mr Shane Bush, Senior Policy Officer, Australian Energy Security, Energy Security Branch

Clean Energy Division

Ms Margaret Sewell, Head of Division and Chief Executive Officer, Australian Centre for Renewable Energy

Ms Sarah Clough, Deputy Chief Executive Officer, Australian Centre for Renewable Energy

Mr Geoff Stone, General Manager, Energy Futures Branch

Ms Helen Bennett, General Manager, Low Emissions Coal and CO₂ Storage Branch

Mr John Karas, Manager, Low Emissions Coal Policy

Mr Mark Weaver, Manager, CCS Major Projects

Ms Sarah Leeming, Manager, Renewable Investments

Ms Catherine Zerger, Manager, Geothermal Energy

Mr Gary James, Manager, Solar Flagships

Ms Andrea Grosvenor, Renewable and Low Emissions Energy Demonstration

Mr Peter Slobodian, Manager, Energy Technologies

Tourism Division

Ms Jane Madden, Head of Division

Ms Kathy Harman, General Manager, Industry Development Branch

Ms Helen Cox, General Manager, Market Competitiveness Branch

Mr Wayne Calder, General Manager, Tourism Research Australia

Mr Nick Dowie, Acting General Manager, National Tourism Policy Branch

Australian Solar Institute

Ms Jenny Goddard, Chair

Mr Mark Twidell, Executive Director

Mr Eric Lemon, Chief Financial Officer

Geoscience Australia

Dr Chris Pigram, Chief Executive Officer

Dr Clinton Foster, Chief, Petroleum and Marine Division

Dr James Johnson, Chief, Onshore Energy and Minerals Division

Dr Andy Barnicoat, Acting Chief, Geospatial and Earth Monitoring Division

Ms Nicole Pearson, General Manager, Corporate Branch

Mr Geoff McMurray, Chief Financial Officer

National Offshore Petroleum Safety Authority

Ms Jane Cutler, Chief Executive Officer

Tourism Australia

Mr Andrew McEvoy, Managing Director

Mr Grant Le Loux, Executive General Manager, Corporate

Mr Tim Mahony, Manager, Government and Media Relations, Corporate Communications

Ms Gail Stevenson, Executive Officer

Committee met at 09:01

CHAIR (Senator Hurley): I declare open this public meeting of the Senate Economics Legislation Committee. The Senate has referred to the committee the particulars of proposed expenditure for 2011-12 and related documents for the Resources, Energy and Tourism portfolio. The committee must report to the Senate on 21 June 2011 and it has set 22 July 2011 as the date by which answers to questions on notice are to be returned. Under standing order 26, the committee must take all evidence in public session. This includes answers to questions on notice. Officers and senators are familiar with the rules of the Senate governing estimates hearings. If you need assistance, the secretariat has copies of the rules. I particularly draw the attention of witnesses to an order of the Senate of 13 May 2009, specifying the process by which a claim of public interest immunity should be raised, and which I now incorporate in *Hansard*.

The extract read as follows—

Public interest immunity claims

That the Senate—

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

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

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

(1) If:

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

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

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

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

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

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

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

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

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

(Extract, Senate Standing Orders, pp 124-125)

Department of Resources, Energy and Tourism

[09:02]

CHAIR: The committee will begin today's proceedings with the resources and energy outcome of the Department of Resources, Energy and Tourism and will then follow the order as set out in the circulated program. I welcome Senator Nick Sherry, representing the minister for Resources, Energy and Tourism, and officers of the department. Minister or officers, would you like to make an opening statement?

Senator SHERRY: I do not, thank you, Chair.

Mr Clarke: No statement, thank you, Chair.

CHAIR: We will start straight away with questions. Senator Eggleston.

Senator EGGLESTON: Thank you very much, Chair. We do have some questions for resources, energy and tourism—not a great number, but nevertheless some. First of all, the Carbon Capture and Storage Flagships program. I understand that this program was significantly reduced in the May budget, which might be said to have compromised its already limited chances of success. What projects are now funded or are likely to be funded under this program?

Mr Clarke: Thank you, Senator. I will ask for my officers to answer that in two parts. If I could first get my chief financial officer to take you through the actual changes in the measure to this, then I will ask the program officers to update you on the status of the CCS Flagship program.

Senator EGGLESTON: All right then. That would have been my second question, so you have pre-empted me.

Ms Rose: There were several variations to the Carbon Capture and Storage Flagship program announced both in the lead-up to the budget and published in the budget. There have

been a number of re-phrasings, both to reflect the change in the anticipated program delivery but also to assist with ensuring that savings were achieved in the short term. There has been a \$90 million reduction in the program over the life of the program.

Senator EGGLESTON: A \$90 million reduction out of how much—what was the total?

Ms Rose: The total is now about \$1.7 billion.

Senator EGGLESTON: So we have taken out nearly \$100 million. It was originally about a \$1.8 billion program, wasn't it? Is \$1.7 billion the figure now or what it was originally?

Ms Rose: About \$1.7 billion is what it is now, Senator.

Senator EGGLESTON: So originally it was nearly \$1.8 billion. What difference will this make? What is going to happen as a result of this cut?

Mr Clarke: In advising the government on the impact of this potential reduction, the department was of the view that this reduction would not undermine the integrity of the program and the ability to achieve its goals.

Senator EGGLESTON: Yes, that is fine. But what specific things will not now happen?

Mr Clarke: To answer that question, I need to ask Ms Sewell to give you a brief on where we are at in the process of assessing projects and moving towards announcements.

Ms Sewell: There has been approximately \$93 million spent out of the CCS Flagship program already. You would be aware that four short-listed projects have been progressing through the next stage of assessment. That funding has been used to support all four projects as they move through either scoping studies of pre-feasibility studies. The government has in front of it advice from its independent assessment panel, which has reviewed the status of all four projects. So that is the Collie South West Hub project in Western Australia—

Senator EGGLESTON: This is from the Collie power station?

Ms Sewell: It is a project which is intended to develop a commercial scale storage site for CO₂ emissions from a range of emissions intensive industries. That would ultimately pick up the existing power station, CO₂ from an alumina refinery and CO₂ from the proposed Perdaman coal to urea fertiliser plant.

Senator EGGLESTON: Is that alumina refinery Wagerup in Pinjarra?

Ms Sewell: I will have to get some advice on that from my colleagues, Senator.

Senator EGGLESTON: I presume it is, because it is the only one in the locality.

Ms Sewell: I think that is right.

Senator EGGLESTON: Okay. Keep going.

Ms Sewell: The Carbon Net project in Victoria is designed to pick up industrial amounts of CO₂ from Latrobe Valley power stations and store that CO₂ under the seabed close to the Victorian coast in the Gippsland Basin.

Senator EGGLESTON: Are there any other projects in any other states?

Ms Sewell: There are two projects under consideration in Queensland: the ZeroGen integrated gasification combined cycle power station and the Wandoan integrated gasification combined cycle power station.

Senator EGGLESTON: So you are saying that this money has gone towards shortfalls in those programs?

Ms Sewell: The money has been advanced to all four projects to help them to prepare their application for the next stage of assessment.

Senator EGGLESTON: Do you have a breakdown of how much money has gone to each project?

Ms Sewell: Yes, I do. The ZeroGen project in Queensland has received a total of \$47.5 million. The Wandoan project has received a total of \$13.5 million. The Carbon Net project in Victoria has received \$5.06 million and the Western Australian project has received \$500,000.

Senator EGGLESTON: So that adds up to \$66.5 million. But that still leaves another \$27 million doesn't it?

Ms Sewell: The \$93 million relates to the actual grant funding that we have committed to provide to the states. The figures that I have just given you specifically refer to the funds that have actually been advanced to proponents as they have met critical stages in negotiating the funding agreements.

Senator EGGLESTON: So what are your plans for the other \$27 million?

Ms Sewell: It will depend on the government's decision on the next stage of assessment of these projects. This has been a competitive process. The government, when it announced the program, announced an intention to fund between two and four projects. We currently, as I said, have four projects on the short list and the government will be making a decision on which projects move to the next stage of this program.

Senator EGGLESTON: You are not going to restore the funding to the original program?

Ms Sewell: The next stage of the program is for the projects move to is not necessarily taking a final investment decision and to commence actual construction of a plant or prove up of a storage site. The next stage of the program that the projects may be advanced to is to do further pre-feasibility work. So it is still the intention that the full amount of the CCS Flagships program will be available to construct whichever plants are finally moved through to the construction stage.

Senator EGGLESTON: I see. That is an interesting proposition. Do you want to make any comment about the status of each of these programs that you have mentioned, in addition to what you have said?

Mr Clarke: As Ms Sewell said, the assessment of the four projects is currently before the government. We expect an announcement soon regarding the next stage. So it is not appropriate, while the analysis is being done and the government is considering the analysis, for us to provide any commentary on these commercial projects at this stage.

Senator EGGLESTON: I accept that comment. You did use the word 'commercial', then. So could you tell us about any industry funding that is being contributed to these projects?

Ms Sewell: The CCS Flagship program was constructed on the basis that Australian government funding would leverage a third of the total funding for the project. The other two thirds would come from the state that was hosting the project and from the industry itself. So

either the black coal industry in Queensland and New South Wales or the industry proponents in Victoria and Western Australia.

Senator EGGLESTON: So the last third is a combination of state and commercial, is that what you said?

Ms Sewell: Yes.

Senator EGGLESTON: What has been the response? What proportion has the response been in? What has industry contributed and what have the various state governments contributed in terms of a proportion for the last third?

Ms Sewell: I can give you those figures for some of the projects. I am not sure I have the specific breakdown for others. Certainly in relation to the Collie southwest hub project, the industry and the Western Australian government have contributed equal amounts of money.

Senator EGGLESTON: So it is 50 per cent each. Good.

Ms Sewell: Sorry, the total is one million dollars of funding into that project to date. So we have provided \$500,000—

Senator EGGLESTON: And the other \$500,000?

Ms Sewell: That has come from the state government and from industry.

Senator EGGLESTON: And what proportion has each made to that \$500,000? Is it fifty-fifty? And other projects?

Ms Sewell: For the Victorian project, the Victorian government has committed \$26.3 million to date and industry has provided \$4 million to date. Can I make a clarification there: the equal funding split is to be calculated over the life of this project. So we have deliberately built in some flexibility at the early stages of the project where funding has not been available for certain parts of the project in some cases, or where funding commitments are going to take longer to deliver.

Senator EGGLESTON: What is the life of the project expected to be—how many years?

Ms Sewell: Looking at the Carbon Net project, which I think is fairly typical of the time lines that we are going to see across all Australian projects, the highest priority there is to prove up the storage site. We anticipate that could take up until 2016 or 2017. Then there is the retrofitting of the existing Latrobe Valley power stations, which will take less time. There is the construction of the pipeline that will collect the CO₂ emissions and transport to an offshore site. So the Carbon Net project should be fully constructed and operating before 2020.

Senator EGGLESTON: And you expect the industry to contribute more as that proceeds, obviously?

Ms Sewell: Yes, Senator.

Senator EGGLESTON: So all three programs are sort of underway but not very far down the track. Is that a fair assessment of their status?

Ms Sewell: I think some projects are more advanced than others. The ZeroGen project in Queensland, for example, is one of Australia's longest running attempts to deliver a CCS plant. That has had more funding invested in it. Other projects are at far earlier stages of their development. So the Collie southwest hub project is probably the least developed. But we

would expect to see a rolling out of projects around the country. Not all projects are going to be at the same stage. A multi-user commercial-scale storage site project is going to be a more difficult project than a single, standalone power station with CCS.

Senator EGGLESTON: Obviously that is the case. How do you monitor the progress of these projects?

Ms Sewell: We have funding agreements with each of these projects, as do the other funding partners. We have steering committees established for each of the projects, which meet regularly. And each of the projects is required to provide regular milestone reports to us as well as to other funding partners.

Senator EGGLESTON: So you are really keeping a pretty close watch on it?

Ms Sewell: Yes, Senator.

Senator EGGLESTON: Coming back to the general issue of the fact that funding for these programs was significantly reduced in the May budget, how far do you think that reduction in funding has set these projects back?

Ms Sewell: Just a point of clarification: as Ms Rose described, the actual reduction in funding was \$90 million out of a total program budget of \$1.8 billion. It is hard to see that that money will have a significant impact on the final delivery of projects in this country.

Senator EGGLESTON: All right. Thank you very much. We will have to wait and see and ask you at the next round of estimates what the progress has been on these various projects.

Ms Sewell: Thank you, Senator. Can my colleague clarify your earlier question about the location of the alumina refinery?

Mr Weaver: It is the Alcoa alumina refinery, which I believe is at Wagerup.

Senator EGGLESTON: Yes, near Pinjarra. It is a very big refinery. Not very far from Collie, in fact. Thank you very much for that information. Australia has been the dominant source of funding for the Global Carbon Capture and Storage Institute. We have recently heard that an Australian was appointed to head this organisation. So how much has Australia committed to the funding of the Carbon Capture and Storage Institute?

Ms Sewell: Australia has a total funding commitment of \$305 million.

Senator EGGLESTON: And how does that compare with other countries.

Ms Sewell: To date, the US government has committed to provide half a million dollars, and other countries have provided significant in-kind support, through the provision of office space, for example, or through the secondment of people to the institute's headquarters in Canberra.

Senator EGGLESTON: So why is it that Australia's funding is so much greater than anybody else's, particularly the US?

Senator CAMERON: We have lots of coal, Senator.

Senator EGGLESTON: Half a million is not very much from the United States, and I thank Senator Cameron for reminding me that we have lots of coal.

Mr Clarke: Senator, we have canvassed this before, and I am happy to go through it again, of course.

Senator EGGLESTON: If you would.

Mr Clarke: When the Australian government decided to create this institute, it was a deliberate considered decision that the Australian government would fully fund the institute from commencement. This was a decision that was taken in order to ensure that the institute got started quickly and that we did not have to go around the world asking others to contribute money to it. Instead, we went around the world saying, 'Please come on board and support this by bringing your programs and your expertise.' That strategy was very successful in getting the institute up and running quickly. The institute is now at a stage where it needs to start diversifying its funding base. Its board and incoming chief executive, I am sure, will be focused on that. But the plain fact of the matter is that we have not been asking other governments for money. The institute has not been asking other governments for money. The institute has been focusing on getting its core programs in place.

Senator EGGLESTON: Why did we decide in a general way to set this up in Australia, when other countries, like Norway for example, have a lot more experience in carbon capture and storage? Are we repeating the sort of work that has been done elsewhere? What are we hoping to achieve by this?

Senator Cameron interjecting—

Mr Clarke: Not at all. This is not a competition; this is a cooperative exercise with all of the countries with an interest in the technology, which includes Norway, the United States, the United Kingdom, Australia and Canada. They are probably the prominent ones, but by no means the only ones. The exercise in this institute is about accelerating the understanding and commercialisation of this technology worldwide. As the largest exporter of coal and as a heavily fossil fuel dependent economy, Australia has a first order interest in this technology being successful. So it is in Australia's interest and it is in the world's interest for this technology to succeed. It made sense, therefore, for Australia to underwrite the commencement of this enterprise.

Senator EGGLESTON: Nevertheless, have we approached other countries for funding and contributions towards this? You mentioned Canada. They are not there. Only the United States seems to be contributing.

Mr Clarke: No. I said we have not. The institute's business plan was deliberately set up so that it did not have to go through the process of seeking financial contributions from members during its early years. So we welcome the US initiative to put money in, but it was a deliberate strategy not to require external party contributions during those early years.

Senator EGGLESTON: The purpose of my question was simply if other countries are going to benefit from the research outcomes, then perhaps they might like to contribute. China, for example, has a lot of coalmines as well. Did we think of asking China if they would like to contribute to this program?

Mr Clarke: As I said, the board and incoming chief executive of the institute, we know, will not be turning their focus over the next few years into diversifying the funding base for the institute. The time is now right for that process to commence. The institute has established its work, it is now a very credible and authoritative source on the status of CCS technology globally and it is supporting a number of key projects. Now is the right time to start that process.

Senator EGGLESTON: Given that the viability of the coal industry is fundamentally threatened by the CO₂ problem, to what extent, and most particularly in terms of the Australian coal industry, is the coal industry contributing to the funding of the CCSI?

Senator CAMERON: Good question.

Mr Clarke: The Australian coal industry's contribution in this technology is particularly important and critical to the CCS Flagship area. The industry are members of the institute and are contributing their expertise. But I will ask Ms Sewell to talk about their research and development program directly, both in terms of the R&D work, the cooperative research centre and the Queensland fund that is the industry's contribution to the flagship programs.

Ms Sewell: The Australian black coal industry is the only coal industry in the world which has voluntarily committed to levy itself to raise approximately a billion dollars over 10 years to put into—

Senator CAMERON: Sorry, was that a million or a billion?

Ms Sewell: A billion. And that funding will be directly and solely expended on efforts to move more rapidly towards low-emissions coal. That fund has so far spent \$141 million across a range of work in Australia—ranging from the Australia Coal Association Research Program, which is undertaking more basic R&D work, through to investment in, particularly, the Queensland CCS Flagship projects and investment in some CCS work in New South Wales.

Senator EGGLESTON: Very good. I am very anxious to know that. It is not often that Senator Cameron agrees with my questions, but there we are.

Senator CAMERON: I do on that one, but I don't think they are putting enough in.

Senator EGGLESTON: Well, that may well be true, Senator Cameron. But this is all towards the low emissions clean coal initiative, I presume. So do we think that that level of funding support is reasonable? Do we think that this is enough from the coal industry, or do you feel that it would be reasonable to ask them to contribute more?

Ms Sewell: I think that that is actually a question for the industry, with respect. The industry so far has contributed, as agreed, to federal government CCS projects and has expended its own funding on initiatives to expand on the portfolio of work that is underway on CCS in this country.

Senator EGGLESTON: Okay, thank you. I would have thought, given the issue of carbon to the coal industry, that they would be very interested in making very large contributions to this project. What general benefits has Australia derived from its investment in this organisation to date and, more broadly, what are the achievements of the CCSI? Do you have runs on the board, do you think?

Ms Sewell: As Mr Clark indicated, the real role of the global institute is in bringing together the countries that are taking a leadership role in accelerating commercial deployment of CCS. It has importantly advanced global understanding of the status of CCS projects around the world and it has built very strong networks between project proponents, in terms of information sharing designed to bring down the cost of technologies and to reduce the duplication of effort. When I look particularly at how Australia has benefited in relation to the global institute's work, we have participated in developing common knowledge-sharing

principles, which have been agreed globally and which we have built into funding agreements with our project proponents. So there is an obligation on CCS projects that are being funded from Australian government funds that they ensure that the maximum amount of information available from these projects, as they develop, is available to the world and to other similar projects in terms of bringing down costs.

We have, for example, also participated in an exercise undertaken by the CCS Institute to develop a common definition of CCS ready. That global exercise provided the framework for the Australian government's work in this area. Again, that meant that we were not imposing either exceptionally onerous or exceptionally flexible arrangements that would not be put in place around the world. We have certainly benefitted from a better understanding of an ideal portfolio of CCS projects. We have benefited from a range of capacity building work that the institute has undertaken in some of our major coal customers around the world, and we have benefited from the fact that Australian projects have received funding from the global institute, primarily to advance knowledge in areas that are less understood.

Senator EGGLESTON: Thank you very much. I would like to ask you about renewable energy targets next.

CHAIR: Senator Eggleston, do you mind if we deal with CCS all at once?

Senator EGGLESTON: I just have three questions to ask.

CHAIR: Okay, fine.

Senator Sherry: We would have to bring other officers to the table, Chair.

Senator EGGLESTON: In that case, why don't we finish.

CHAIR: Senator Cameron.

Senator CAMERON: Mr Clarke, I understand that the value of exports alone in the Australian coal industry was \$55 billion in one year. Is that correct?

Mr Clarke: Senator, I would need to call a colleague to the table to develop that, but it sounds right. I cannot—

Senator CAMERON: You do not need to call on a colleague. That is the general reporting I have seen—about \$55 billion. So a billion dollars over 10 years is certainly not a significant contribution, in my view, to the future of the industry.

Mr Clarke: We would welcome an increase, Senator.

Senator CAMERON: What is government doing to try to muscle up on the coal industry to get a better contribution, because a billion dollars over 10 years on technology that is absolutely essential—not only essential with coal but with steel and cement—

Mr Clarke: And gas and oil.

Senator CAMERON: Yes. And it is actually supported by lots of conservationists around the world, as part of the technological approach on this, isn't it?

Mr Clarke: It is. Senator, it relates in part to the questions that Senator Eggleston asked about where this technology is at this stage and how it is being progressed globally. The flagship publication of the global institute, which Senator Eggleston was asking about, is in fact an annual review of this very question of where the technology is at and what has happened in the last 12 months. So this is a rolling program that they now push through. The

most recent report shows that governments are still the ones doing the heavy lifting at this stage.

The integrated power station projects—which are the ones that need to succeed if this technology is to make a contribution to global emission reductions—are the most advanced at the moment. They are the ones where industry has found a commercial and economic benefit of enhanced oil recovery or convenient opportunities, such as depleted gas fields, for storage. That will get us so far. It is very welcome, particularly as it helps improve the understanding of the geology and economics of storage. But the big licks of abatement that this technology will hopefully contribute, particularly in things like the 450 ppm scenario for the middle of this century, will come from integrated power station projects. And at this stage they are still in an early stage of development, where government is doing most of the funding, in terms of research, development and demonstration. For commercialisation, you are absolutely correct. Industry, not just the coal industry but also the power industry that consumes the coal, will need to make a much larger contribution.

Senator CAMERON: But there is a contribution from industry starting to emerge. I was at Doosan Babcock in Glasgow 18 months ago, and they have their own research labs and they have the capture models that they are actually building and running. So this is Korean companies and UK companies merging and working on this.

Mr Clarke: That is correct. When you go through the profile of governments around the world that are supporting this technology, their investments invariably—and I do not think that there are any exceptions—require industry contribution when they get to the demonstration and commercialisation stage. It is a different story at R&D, of course. So yes, industry is coming in but it is still at the stage where government needs to lead with either incentives or grants that mitigate the risks that are at the early stages of these technologies. But industry is coming in with all of it. Most encouragingly as well is that major equipment suppliers—the General Electrics, the Alstoms, the Mitsubishis—who manufacture the heavy engineering work at the capture stage of this, are developing the capture technologies and marketing them. Having industry weight on the supply side and the technology side is important. A number of companies that are specialists in the geology and geophysics of this are also building commercial businesses around the development of storage options.

Senator CAMERON: But there is another element as well, and that is the process. I mean, you cannot change the chemical processes in steel, but I understand that companies are looking at how they can actually get the CO₂ compressed, and they are working on the chemicals. Companies like Linde are spending a lot of money and time at aiming chemicals that capture it. So there is a lot of work being done, but you do not hear much about that.

Mr Clarke: No. This sort of scrubbing technology, of working on flue stack emissions and capturing out the CO₂, is an important part of it. You are right in that CCS as a technology is sometimes simply associated with coal, but that is a very narrow interpretation of it. Its early commercialisation was in the oil and gas industry. It is certainly necessary for the power industry if it is going to continue much beyond the middle of this century. And industrial applications—steel, cement, et cetera—where there is greenhouse gas intensity in flu stack emissions, the amine scrubbing technologies are all the sorts of pathways that are needed. You are right.

Senator CAMERON: There is lots of money being spent, and I know that there are conferences on in Europe looking at how you can increase the intensity of CO₂ within the process so the chemicals work more effectively. You hear a lot of opposition to this, but there must be multi-billions of dollars being spent around the world on this.

Mr Clarke: These are technologies like oxy firing, where you change the combustion cycle in order to get a more intensive CO₂ stream in the emissions. It is more amenable then to capture and then pipeline and storage.

Senator CAMERON: But I don't see too much of that happening in Australia in terms of our steel industry. They are just whingeing about how much they have to spend, but they are not actually looking 10 years ahead and doing the research and development on this. I am not sure if any of them are looking at oxy firing.

Mr Clarke: I will as Ms Sewell to talk in a moment about the oxy firing project. It is not in the steel industry, but the technology is applicable and the project we are supporting there. In the four projects Ms Sewell outlined to Senator Eggleston that are still in the hunt for the flagship funding, two are integrated power station projects and two are hubs. One is in the Latrobe Valley, which is essentially a brown coal power precinct, but the one in Collie is interesting because it is in a more diversified industrial base where there are a number of industrial sources of CO₂. So there is certainly interest in Australia, and it is interest that we have supported to develop these industrial precinct models for capture.

The key thing in the hubs is that we should not think of CCS technology as just a single source of emissions, a pipe and storage. It is far more likely that successful commercialisation will involve high-emission hubs with a common user pipeline infrastructure and a common user storage facility, and that different commercial business models will apply in each stage. Capture will be the responsibility of the facility, pipelines will probably be a transport responsibility—there is a very successful business model in the pipeline industry—and storage could be a separate business itself. So the business models as well as the technologies are still emerging.

Senator CAMERON: A fair bit of work is being done on that in Scotland at the moment. When I was there I got documentation showing the proposal for hubs in the UK, and there are a number of demonstration programs and competitions being run by the Conservative government. It was the Labour government, but the Cameron government is continuing that process in the UK, aren't they?

Mr Clarke: That is right.

Senator CAMERON: We should get some of them to come out and talk to the coalition here.

Mr Clarke: That is why the Western Australia Collie hub and the Victorian Carbon Net hub are particularly strategically important projects in the flagship mix.

Senator CAMERON: I want to come back to this last point—I mean, \$1 billion over 10 years. Do we have a figure for the profitability of the coal industry in this country?

Mr Clarke: I do not have that at hand.

Senator CAMERON: Can you take that on notice?

Mr Clarke: Certainly.

Senator CAMERON: I want to know what a billion dollars is as a percentage of the profitability of the coal industry over that 10 year period.

Mr Clarke: Thank you, Senator. I will take that on notice.

CHAIR: Senator Milne.

Senator MILNE: Thank you, Chair. I would like to go to the recent decision by the Victorian EPA to approve the HRL dual gas plant, but at 300 megawatts in size—half of the size of their application. We know from recent FOI documents that when the LETDF grant of \$100 million was awarded, it was in the knowledge that HRL's proposal would not be economically viable at a scale less than 400 megawatts. Is it a condition of HRL's funding deed from the LETDF that the project proceed at 400 megawatts or more, and, if so, will the department now cancel the \$100 million grant?

Mr Clarke: No it is not a condition that is tied to a particular megawatt level. The essential condition, the core condition, for the Commonwealth to release the funding that has been allocated against this project is that the project is viable, that the project reaches financial close. It is plausible that the Victorian EPA decision will be such that that is not achieved, in which case the project will not proceed and Commonwealth funds will be reallocated. But at this stage, we have not reached that point.

Senator MILNE: So can you just explain to me whether the department or the minister together with the department is currently reviewing its funding to the project, given the EPA's decision? If there is a review of the grant, when do you expect that to be completed.

Mr Stone: At this point in time, Dual Gas has indicated that it is reviewing the EPA decision and what action it might take. My understanding of the EPA legislation is that parties have 21 days in which to appeal any decision. That may be a course of action that Dual Gas chooses to take. So at this point in time, until that process has run its course, we do not know what the final outcome is going to be.

Senator MILNE: What I am interested to know is that since the Commonwealth knows that the proposal will not be economically viable at a scale of less than 400 megawatts, can we have an undertaking that the Commonwealth is not going to provide a project that it knows is not economically viable, given that context?

Mr Clarke: There are two propositions in your question, one of which I think we unreservedly accept—that is, the project has to be viable. That is the core precondition for the release of the funds. So, yes, that is an essential precondition. The Commonwealth will have to be satisfied that the financing is in place for the project, and that it has the capacity and strong probability of being implemented and successfully operated. If that is not achieved, then the Commonwealth's objectives are not achieved. Whether or not a particular number of megawatts is the determinant of that, we can not say at this stage. We absolutely acknowledge your point that at different stages along the way, assessments have been made about the viability of that. That is absolutely correct. Whether the company is able to reconfigure the project to be viable in a different structure, whether there are other developments, we have to let the company give it its best shot before making our final decision.

Senator MILNE: That might be the case, but can you at least give an undertaking that that grant is on hold pending that?

Mr Clarke: Absolutely. The Commonwealth allocation against the HRL project will not be released until the Commonwealth is satisfied that there is a viable commercial project can be executed.

Senator MILNE: There was a recent report in the *Financial Review* stating that HRL had approached the federal government for \$200 million in additional direct funding. Can you confirm that that is the case? And what was the Commonwealth's response to their request for an additional \$200 million?

Mr Clarke: With the companies that we choose to receive these sorts of grants, we make that decision at a stage where the Commonwealth offer is a necessary step for them to raise the balance of finances. But, of course, as we have said, it is a condition precedent that we don't actually spend any of the money until they have reached close. During that stage it is not unusual for companies to come back to the Commonwealth and seek variations or even additional funding. That is a pretty common occurrence across the board in all sorts of projects. My general posture is that the nature of those conversations between proponents and the Commonwealth should be treated as commercial in confidence, but I know that there is a lot of material on the public record through FOI and other processes on this. I think the best that I can say to you at this stage is that no further funding has been offered or committed to HRL by the Commonwealth.

Senator MILNE: But you are not commenting on whether they have asked for another \$200 million?

Mr Clarke: I am saying that it is common across the board for companies—

Senator MILNE: For them to ask for more. But the Commonwealth has not undertaken to give more, but you are not confirming or denying their ask?

Mr Clarke: Correct.

Senator MILNE: Okay, thank you. On to the next thing. Recently released FOI documents indicate that one of the concerns regarding the HRL proposal for funding under the LETDF was the absence of carbon capture and storage technology and technological assessment. The document also shows that HRL was told as recently as December last year that the project will need a clear pathway for CCS to be considered for Commonwealth funding. So can you indicate to me whether you now have that pathway? It seems to me that this project does not tick any of the boxes.

Mr Clarke: No, we do not have that pathway yet. That pathway is an integral part of that project. It is exactly as you put it: it is one of the boxes that has to be ticked if this project is to ultimately receive Commonwealth support.

Senator MILNE: I want to go to its involvement in the Carbon Net project. The Victorian government Department of Primary Industry's Carbon Net proposal is one of the shortlisted projects under the Carbon Capture and Storage Flagship program. Can the department table the Carbon Net application to the CCS Flagship?

Ms Sewell: I think that I will have to take that on notice. Can I also suggest that the Carbon Net concept actually involves a range of other projects, and I guess I am thinking in terms of the commercial nature of some of the information in the projects that will underpin Carbon Net. So Carbon Net is a concept involving a commercial scale collection of CO₂, transport via a pipeline and storage. In dealing with the Carbon Net project, we have been

dealing directly with the Victorian government. The Victorian government is dealing with the projects that will underpin Carbon Net. I think I can probably say that a number of those projects are not proceeding as originally anticipated, so there is quite a detail of commercial information in some of that paperwork.

Senator MILNE: Can you tell me if the proposed HRL Dual Gas power plant is listed as part of Carbon Net?

Ms Sewell: Yes, it is.

Senator MILNE: So if the Carbon Net application was to be successful, how much money will be allocated to support the HRL power plant under the Carbon Net application?

Ms Sewell: As Mr Clarke indicated, we are nowhere near being able to finalise figures for HRL funding. The first advice from HRL will be what the implications are from the EPA decision. Negotiations will then have to continue in relation to the capture and compression parts of the HRL project.

Senator MILNE: The issue for me here—and you can see where I am going—is how many pathways to the Commonwealth’s funding are HRL going to find through a variety of different projects—via the Victorian government under Carbon Net, via direct application and so on? I would like to know if HRL’s participation in the Carbon Net project satisfies the concerns regarding the fact that they do not currently have a pathway to CCS. Would this be deemed an appropriate pathway to CCS for the purposes of Commonwealth funding?

Mr Clarke: It has the potential to do that, but we do not have enough evidence in front of us to say whether it will in fact do that. I take you back to the Commonwealth’s policy intent, which actually goes back to when the previous government announced the HRL project under the previous program. It is about the ability to gasify the brown coal resources in the Latrobe Valley in a manner that lends itself to capture and storage. So it is to extend the life of this resource in a low emission manner. The attraction then, and the attraction that remains on the HRL project, is to demonstrate a commercial approach to brown coal gasification with capture and storage of CO₂. So whether the project that was supported in the LETDF, which was around the gasification element but needed a pathway, and whether inclusion in Carbon Net is a potential pathway, again, we have not made a decision to allocate funds to HRL. We have not selected Carbon Net as a CCS flagship program yet. We are a long way from being able to give definitive answers to those questions.

Senator MILNE: Can you just tell me whether the department considers it appropriate to allow entities to meet obligations under one federal grants scheme by proposing to fund those obligations under another federal grants scheme?

Mr Clarke: There are scenarios where that would meet all of the necessary program management tests, yes. It is not a black and white question. Each case would have to be looked at on its merits. But I certainly can’t say to you, ‘No, I rule that out’. That is certainly a plausible scenario.

Senator MILNE: So why doesn’t the Commonwealth just build it itself?

Mr Clarke: Because it goes back to Senator Cameron’s question; the Commonwealth is not about building these projects off of the Commonwealth’s balance sheet. The Commonwealth is about leveraging our funding to get industry engagement in building them.

The HRL and, indeed, the Carbon Net models are both predicated on needing industry support, or else the Commonwealth funds will not flow.

Senator MILNE: Well, except that it seems that the door is fairly open for HRL to put up any number of grant applications. I understand that a debenture note held by the Victorian government comes due in July and that HRL must either repay \$385 million to the Victorian government or surrender assets of equal value. HRL has indicated that they are likely to surrender a number of companies that hold as their only asset the IP upon which the dual gas project is built. Is the department aware of that debenture note and the intention of HRL to relinquish the dual gas IP?

Ms Sewell: No, Senator, we are not aware of that.

Senator MILNE: If that were to be the case, what effect would relinquishing of the IP have on the capacity of HRL and Dual Gas to secure financing when they are no longer able to transfer the technology?

Ms Sewell: I am sorry, Senator, but without having seen any of the paperwork, I really cannot comment on that.

Senator MILNE: The issue here is that there are so many questions around this particular plant and this particular grant. Can you understand why the community is getting to the point of asking why the Commonwealth is keeping this particular grant application on its books when there is no possibility of CCS in even the medium term, and it is just a constant pathway to more grant applications?

Mr Clarke: Can I understand? Yes. It is a subject of legitimate public scrutiny. What I would go back and say is that the policy purpose is the reason, the goal. The policy objective is why the posture has been to give these projects every chance of success. This project has had a very difficult pathway. It may or may not reach closure to the satisfaction where the Commonwealth can do it. We think, though, that the policy objective is important enough that we want to give it every chance to present its best case. This is the same posture that we took, for example, with the solar systems project that went through a difficult commercial period, and we are optimistic that it is actually going to reach financial close. We don't know whether HRL will, but we don't think that it is our job to pre-empt the market decisions around intellectual property, funding and environmental approval. All of those issues have to be worked through by the project. We do not think that it is our job to pre-empt those decisions. We think the project needs to be given a chance to work it through itself.

Senator MILNE: When I rather cynically asked why you don't build it yourself, that is where this question goes. In their July to December 2010 financial statement, HRL indicated that they no longer controlled the affairs of Dual Gas due to the role of the project review committee formed and run by the Victorian and federal governments. Is this correct and, if it is not, would you agree then that such statements from HRL are incorrect and misleading?

Mr Clarke: Could you quote that again?

Senator MILNE: Yes, in their July to December financial statement, HRL indicated that they no longer control the affairs of Dual Gas due to the role of the project review committee formed and run by the Victorian and federal governments. So is it true that HRL no longer controls the affairs of Dual Gas?

Mr Clarke: I do not have the benefit of the document in front of me, but I am not sure that I accept the premise that a project committee drives those sorts of commercial outcomes. So unless my colleagues can advise, we might have to take that one on notice. But I do put the marker down, Senator, that I am not sure that I accept the premise of the information in your quote. So I am happy to take that on notice and come back to you on that.

Senator MILNE: At the same time then and in relation to the same matter, you may wish to take on notice as well if it is indeed true that the project review committee run by the Victorian and federal governments are controlling the affairs of Dual Gas. Do you think it is appropriate for the department to run a private company while at the same time being responsible for overseeing the allocations of grants under the LETDF that have been awarded to HRL and Dual Gas? At the same time it is responsible for assessing the company's appropriateness for grants under the CCS Flagship program, which HRL/Dual Gas may be eligible for? Clearly that is a conflict of interest.

Mr Clarke: I agree with you. We are not controlling the interests of any of these companies. Again, I do not accept the premise in the material that you have quoted to me. I do accept the principle that if the Commonwealth had a commercial interest in a project then there is a conflict of interest issue that would have to be managed. But we do not have a commercial interest in this project in the way in which it has been presented.

Senator MILNE: It may not be commercial in the sense of running the company at the board level, although, if this project review committee is indeed controlling the affairs, you would argue that it was, surely. Anyway, I accept that you are going to take that on notice and we cannot resolve that matter here. Can you give me a time frame on the whole HRL grants decision?

Mr Clarke: Mr Stone?

Mr Stone: The first step, as I outlined before, would be the finalisation of the EPA decision. If the EPA decision stands and the project is 300 megawatts then it will be up to HRL to come back to the department with a proposal. The comment earlier about it not being commercially viable was made in 2006. It would be up to HRL to come back to the department with a case, if it wished to try and pursue a 300 megawatt proposal.

We have given HRL until the end of this year to satisfy its conditions precedent. That will be the next lot of information we get from HRL in relation to the conditions under the contract.

Senator MILNE: Thank you.

Senator EGGLESTON: I would like to ask a couple of questions about renewable energy targets, which I understand might involve different officers.

Mr Clarke: Senator, can I flag: it may well involve a different department as well, because this department does not administer the renewable energy target program.

Senator EGGLESTON: We know that. I assure you I do understand that. I acknowledge that you have only had a small input into the design of the mandatory renewable energy target program. Do you have a view on the likely impact of the scheme on smaller companies affected—not about the scheme itself but the impact on smaller resource and other companies?

Mr Clarke: I am sorry, Senator; I really do not understand the point of your question. The mandatory renewable energy target is the 20 per cent by 2020 obligation that is imposed through retailers across Australia that results in largely the building of what underpins the wind farm development around the country at the moment. I am not—

Senator EGGLESTON: There is a target to be achieved, and that implies that companies have to purchase electricity from the companies producing renewable energy, which may be more expensive, I suspect. That is the background to this. The mandatory renewable energy target was largely set by the three big mining companies to suit their particular circumstances while the smaller companies did not have a lot of say in it. But the impost of higher costs of energy will certainly have an adverse impact on smaller companies. The question really is about what your department says is the impact of higher energy costs from the mandatory renewable energy targets on smaller resource companies.

Mr Clarke: Senator, I am sorry; in framing your question, your reference to the three large mining companies—I do not understand that context at all.

Senator EGGLESTON: That is the generally accepted background.

Mr Clarke: No.

Senator EGGLESTON: Well, it is by many people. Let us come back to the real question, which is the impact on smaller companies of higher energy costs.

Mr Clarke: I am sorry, Senator; I am struggling to draw the link between the mandatory renewable energy target and the resources, and resources companies, large or small, in particular.

Senator EGGLESTON: Because in effect it is an increased cost, and that may affect the viability of some smaller resources companies. That is what the purpose of the question is.

Mr Morling: As Mr Clarke has said, this is the policy responsibility of the Department of Climate Change and Energy Efficiency. One background point is that the Department of Climate Change and Energy Efficiency commissioned some modelling by MMA at the start of the scheme which had the impact on residential customers' retail prices of around four per cent.

Senator EGGLESTON: Have you had any representations at all from smaller companies about these issues—higher energy costs related to the mandatory renewable target program?

Mr Morling: Not me, Senator.

Senator EGGLESTON: In fact, if you have not had any representations you cannot tell me what your response to them was, naturally, it would seem. Okay, that is one question. The other question I would like to ask is: there was a report in the *Age* on 10 February this year saying that the government was considering uranium exports to India. The article was on page 1 and says:

Resources and Energy Minister Martin Ferguson has told the United States embassy in Canberra that “a deal to supply India with nuclear fuel could be reached in 3-5 years”.

Would one of your officers like to comment on that—whether the story is true and any other information you might like to provide to this committee about this matter?

Mr Clarke: Can I just clarify? My recollection is that the article you are quoting from is a WikiLeaks report.

Senator EGGLESTON: It is indeed; a WikiLeaks file is the source of it.

Mr Clarke: Then we have no comment to make on that material, Senator.

Senator EGGLESTON: You are not prepared to deny that it is a matter under consideration or to say that it is a matter under consideration?

Mr Clarke: I would refer you to remarks that my minister has made in regard to that and I have no intention of going into the space of commenting on WikiLeaks reports, Senator.

Senator EGGLESTON: I suppose not making a comment is a comment, so I thank you very much.

CHAIR: Thank you, Senator Eggleston—although not making a comment is not making a comment.

Senator Sherry: It is on the *Hansard*.

CHAIR: We have five minutes before the morning tea break. Senator Ludlam?

Senator LUDLAM: While we are on the subject, I might put some questions on the uranium industry framework, if I could. Can you just give us the current status, composition and the work program of what is happening? Is it still called the uranium industry framework?

Ms Constable: Yes, Senator, it is the Uranium Industry Council.

Senator LUDLAM: What is it doing?

Mr Sheldrick: I think your question, Senator, had two parts—the composition and what it is doing.

Senator LUDLAM: The current work program, yes.

Mr Sheldrick: The current work program consists of finalising, and essentially launching through the government, the national dose register that is due to be released very shortly. Funding arrangements were put in place in the recent budget to ensure the ongoing funding for the dose register. The dose register, as you know, was developed through ARPANSA, in consultation and collaboration with the industry through the uranium council. It has had an ongoing Indigenous communication strategy. There have been various forms of communication developed specifically to inform Indigenous communities around the issues that may be relevant to those communities from uranium mining. There has been work going on through the council around a transport strategy. There will be an increased focus on that through next year. That goes to issues around ensuring availability of viable transport routes out of Australia.

Senator LUDLAM: Do you mean out of Australia export corridors, or within Australia, or both?

Mr Sheldrick: The strategy will look at both domestic and international transport issues.

Senator LUDLAM: Regarding the Commonwealth-WA working party on streamlining uranium approvals processes for Western Australia, can you tell us where that is up to and what issues you have identified or addressed?

Mr Sheldrick: The department, separately from the UC but also through Western Australia's engagement in the UC, has engaged with Western Australia on those issues in the past. As to its current status, I am not right across where it is at. They are involved through the UC with the other members of that in looking at principles around stakeholder engagement.

By that I mean the way the regulators engage with the companies. We are looking collectively through the UC across the three jurisdictions that have uranium mining; there are essentially different approaches in those jurisdictions to how regulators in the industry work together. The Western Australians are involved in pursuing that issue with us.

Senator LUDLAM: Is anything likely to be published? That all sounds a little bit vague. Are you going to be publishing anything for broader comment or is it strictly government-to-government at this stage?

Mr Sheldrick: On that particular engagement approach, there have been some principles developed, and there is work going on at the moment to develop more developed guidelines in that area.

Senator LUDLAM: Sorry, that was not the question that I put to you.

Ms Constable: It is always the intention when you have government-to-government and cross-jurisdictional issues to bring it before the Ministerial Council on Mineral and Petroleum Resources, which will shortly change to the energy and resource council. That particular issue will certainly be brought forward either as a noting item or for consideration by ministers. So it is more for information, as opposed to approval of ministers.

Senator LUDLAM: I do not get invited to those meetings and neither does most of the general public.

Ms Constable: There is always a communique that is put out after those meetings. If there is a report published then that report is always made public.

Senator LUDLAM: Okay. What is the frequency of meetings at the moment, again specifically on that issue of the cross-jurisdictional stuff?

Ms Constable: We will have to take that on notice.

Mr Sheldrick: With respect to the frequency of the uranium council meetings, there are generally about two a year. There is one scheduled for 7 June in Perth where the work program will be discussed.

Senator LUDLAM: Will that coincide with the world uranium conference?

Mr Sheldrick: The AusIMM conference.

Senator LUDLAM: So there will be a meeting at the same time. Where is that due to take place?

Mr Sheldrick: Sorry, Senator?

Senator LUDLAM: Where and when is that taking place?

Mr Sheldrick: That meeting?

Senator LUDLAM: Yes.

Mr Sheldrick: It is on the 7th. I think it is in the venue of the AusIMM but I would need to check that.

Senator LUDLAM: If you could check that for us; I think that is next week. In recent correspondence to national environment groups and other stakeholders, Minister Martin Ferguson referred to himself as the minister with the portfolio responsibility for nuclear policy. Is this correct and can you confirm—I do not know if I should throw to you, Minister—whether there has been a change of portfolio or a restructure?

Ms Constable: Uranium is the area that the department considers, of course. Uranium is a very important part of the nuclear fuel cycle. Consideration of uranium mining is always in the context of a full nuclear fuel cycle. The department has particular areas of responsibility within that nuclear fuel cycle, starting from the exploration and mining activities of uranium, out to radioactive waste issues. What we do not have responsibility for, because we do not have nuclear energy in Australia, is nuclear power, nuclear energy.

Senator Sherry: Therefore, I think the minister's general description is correct.

Senator LUDLAM: I am wondering whether the minister for the environment, the minister for health or the Minister for Foreign Affairs were notified about the portfolio change or whether Minister Ferguson has just taken this on unilaterally.

Senator Sherry: There was not a portfolio change. Secondly, I would have to take it on notice, if you seriously want me to pursue that. Do you want me to take it on notice?

Senator LUDLAM: Yes, I am very interested to know. I have never heard of a portfolio responsibility for nuclear policy. That is brand new.

Senator Sherry: I think you are, frankly, over-reading into the comments made by the minister.

Senator LUDLAM: No, they are not comments. It is in correspondence.

Senator Sherry: Nevertheless, I will take it on notice.

Senator LUDLAM: If you could, I would appreciate that.

CHAIR: Senator Ludlam, are you close to finishing? I can give you another couple of minutes.

Senator LUDLAM: I can come back after the break. That is fine.

CHAIR: The committee will adjourn for morning tea.

Proceedings suspended from 10:16 to 10:31

CHAIR: We will recommence, and continue with the resources and energy section of the Department of Resources, Energy and Tourism. Senator Cameron has a clarification of his question on notice.

Senator CAMERON: Mr Clarke, I asked you about profits. I am sure that you do not have a crystal ball that enables you to look at the profits 10 years hence, so could you look at the profits 10 years back and then compare that to \$1 billion. What percentage that is of the profits of the previous decade for the coal industry?

Mr Clarke: Yes.

CHAIR: Senator Eggleston.

Senator EGGLESTON: I would like to ask some questions about another article which appeared in the press. It was in the *Financial Review* on 28 February and relates to fossil fuel subsidies.

Senator CAMERON: Did you have to source WikiLeaks for that?

Senator EGGLESTON: No, it is not a WikiLeaks document. It may well be an FOI, but at the moment it is just an article in the newspaper. It says that Australia has fossil fuel subsidies of around \$8 billion a year. But Australia has made a commitment, as a member of

the G20, to eliminate such subsidies. I wonder where we are with this because it seems that we have undertaken to the G20 to eliminate these subsidies. Also, apparently it has been a personal commitment of President Obama to see such subsidies eliminated in OECD countries. Where are we at with these subsidies in terms of our commitments to the G20? How much are the subsidies? What do they amount to and can you list what they are?

Mr Morling: Perhaps I could answer the second part of the question first in terms of the G20 commitment. The G20 commitment at the Pittsburgh summit in 2009 was to rationalise and phase out over the medium term inefficient fossil fuel subsidies that encourage wasteful consumption. Australia's submission in support of that commitment was that Australia does not have measures related to the production of fossil fuels that fall within the scope of the G20 commitment and the Australian government does not have measures related to the consumption of fossil fuels that fall within the scope of the G20 commitment. Having said both those things, I also note that Treasury has primary carriage of this issue, as it is a G20 issue.

Senator EGGLESTON: That may be the case. So you are denying the point of this article, which is that we do have about \$8 billion in subsidies now paid to fossil fuel consumption and production. You are saying that we do not have such subsidies at all.

Mr Morling: No. I am saying that, in terms of the G20 commitment, we do not have any subsidies that fit within that definition. In terms of estimates of actual subsidies, a number of people come up with different views. I do not know which particular estimate you have there, but we do not have an actual figure that we have calculated.

Senator EGGLESTON: This is an article by Laura Tingle, who says that bureaucrats last year identified these subsidies. She says that in February last year, which was 2010, an interdepartmental committee on fossil fuel subsidies specified federal and state measures that were potentially relevant to Australia's G20 commitment. These include excise treatment on fuels, including the \$5.1 billion fuel tax credit scheme; a \$750 million aviation fuel concession; tax deductions for exploration worth up to \$1 billion; and the \$1.1 billion fringe benefits tax concession for employees' cars. State schemes were excluded, since other countries were limiting their declarations to national schemes. She says that these have been identified as G20-relevant subsidies, but you are saying that we do not have any.

Mr Clarke: Senator, you answered the question in your quote: they were 'potentially' relevant to the G20. The government's final decision was that none were actually relevant.

Senator EGGLESTON: The article goes on a little further—and it is an interesting story, this one—to an internal Treasury email on 23 March. It says that a senior official working on G20 matters notes, 'We need to make a choice between trying to remove them from the list through narrow definition of a subsidy or keeping them and justifying them. Use of a narrow definition has risks. It will be seen as a failure by the green groups and may be contrary to the approach of intergovernmental organisations and it would also depart from the US-Canadian approach.' At the same time use of a broader definition has risks, as we will have lots of measures that will be listed but not removed.' So you do not have a position on this? It is quite a big issue, I would have thought.

Mr Clarke: My position is the government's position. The government has assessed those measures and reached a conclusion as to their consistency or otherwise with the G20

definition. The analysis that you are quoting—my recollection is that this was as a result of an FOI request—was a Treasury analysis and I would suggest that you direct your questions on that analysis to Treasury.

Senator EGGLESTON: In that case, I will certainly do that because it is an interesting matter as to whether or not we are being open about the subsidies we have, or perhaps concealing them. Thank you very much.

CHAIR: Senator Ludlam, do you have further questions?

Senator LUDLAM: Yes. I might stay on the subject that I was on. It is mainly around the Rum Jungle Mine. I understand that we are still spending about \$1.2 million this year and \$2.4 million next year on the Rum Jungle remediation up in the Alligator Rivers Region of the Northern Territory. Can you update the committee on the work that taxpayers are still funding to remediate a small mine 40 years after it closed?

Mr Davoren: That is correct, broadly. About \$7 million is being provided over four years, under a national partnership agreement, to the Northern Territory government to conduct a series of assessments of the current state of the Rum Jungle site and to put the site under an appropriate management regime.

Senator LUDLAM: So obviously I am incorrect. The \$7 million is not for remediation at all; it is just for assessment.

Mr Davoren: That is right.

Senator LUDLAM: What is the estimated cost of cleaning up that site?

Mr Davoren: That is one of the things that these studies are designed to work out. The process involves characterising the site, describing the hazards that are there and then coming up with a range of costed options for any further work that is required for the government to consider.

Senator LUDLAM: So there is no point in trying to get you to estimate what the final remediation cost will be. When do you hope to have those answers?

Mr Davoren: In 2013. There is a fairly good website that is run by the project through the Northern Territory Department of Resources, which has a Gantt chart for the whole project.

Senator LUDLAM: I asked the Supervising Scientist last week about negotiations over the extended application of ERA's rehabilitation and closure bond for the Ranger Mine in the Northern Territory and Kakadu. I was told that that was the subject of current discussions between ERA and DRET. Obviously, in 40 years time, after the Ranger Mine has closed, we do not want to be still forking out millions of dollars of taxpayers' money to clean that one up. Can you provide us with an update for the closure planning for the Ranger Mine, to the extent to which you are involved in that?

Mr Davoren: I am not involved in it at all.

Ms Constable: Perhaps I can answer that question. The ERA is required to produce an annual plan of rehabilitation; that is managed by the department. The department holds a bond in relation to the annual rehabilitation plan. It is updated on a yearly basis. That plan is reviewed by the Supervising Scientist, the Northern Territory Department of Resources and the Northern Land Council. After they look at the plan, we have an independent contractor assess the plan and advice is then provided back to the Commonwealth for consideration.

Senator LUDLAM: The Supervising Scientist told me the other day that that is essentially so that if the mine is forced to close for any reason on the spot they have a remediation plan—ready to pull out of the box.

Ms Constable: That is correct, yes.

Senator LUDLAM: How much bond does the company have squirreled away in the event that that plan needs to be executed? How much money is there in the bank?

Ms Constable: The company does not have any moneys put away.

Senator LUDLAM: Do they deposit a bond with the NT department?

Ms Constable: It is deposited with the Department of Resources, Energy and Tourism, so we hold the bond in trust. At the moment we hold, in the form of cash, \$54,389,515.34. Bank guarantees held by HSBC are \$34,520,678.94 and BNP Paribas \$80,379,659.72, making a total of \$169,289,854.

Senator LUDLAM: What was the last figure? I missed that.

Ms Constable: It was \$169,289,854.

Senator LUDLAM: That is in total?

Ms Constable: Yes, that is correct.

Senator LUDLAM: How much of the final bill for closure and complete remediation of that site is that estimated to cover?

Ms Constable: It is the complete site closure.

Senator LUDLAM: One hundred per cent?

Ms Constable: One hundred per cent, yes.

Senator LUDLAM: And they top it up a little bit every year, as the mine gets larger.

Ms Constable: It is assessed every year. It is based on a risk assessment. So, if there are changes to the mine, if more is required, a new assessment takes that into account.

Senator LUDLAM: Have you seen that final closure document, or is that just between the OSS and the NT government and the company?

Ms Constable: It is provided to the department every year.

Senator LUDLAM: Who assesses whether \$169 million is enough to bring that site, which is huge—the ground disturbance there is extraordinary—back to values compatible with the site pre-mining?

Ms Constable: As I have mentioned, it is independently verified, but there is also oversight by the Department of Resources in the Northern Territory, by the Northern Territory Land Council and by the Supervising Scientist. So a range of people contribute to that final assessment.

Senator LUDLAM: Who is your independent verifier?

Ms Constable: For the current program, it is QS Services.

Senator LUDLAM: And everybody is completely confident that \$169 million is enough to bring that site back into harmony with the values of the park before mining?

Ms Constable: We are confident that that is a figure that reflects the rehabilitation of the Ranger Mine site.

Senator LUDLAM: How much greater is the area of ground disturbance at the Ranger Mine compared to Rum Jungle? I do not expect you to have that right in front of you.

Ms Constable: I would have to take that on notice.

Senator LUDLAM: I appreciate that. Has a uranium mine the size of Ranger—anything of that order of magnitude—ever been rehabilitated before anywhere in the world?

Ms Constable: Mines certainly have. Again, I would have to take on notice that specific question as it relates to uranium mines.

Senator LUDLAM: Yes. Not every mine is stockpiling tens of millions of tonnes of carcinogens; that is what is different about these kinds of mines. The licence condition on this one says that not only does it have to be restored to the values equivalent to those in the surrounding environment but also it needs to be isolated for a period of not less than 10,000 years. That, as far as I know, is unique in rehabilitation conditions.

Ms Constable: Many mine sites around the world have been successfully rehabilitated. This is the most strictly regulated industry in the world and, in terms of environmental assessments, a very close eye is kept on Australian uranium mines. So we are very confident that the Supervising Scientist, in its technical capacity, is providing very solid environmental advice about the rehabilitation of the mine and the surrounding areas of the Alligator Rivers Region.

Senator LUDLAM: I will move on; but I am interested to know that, 40 years after we closed Rum Jungle, we still have not managed to assess how to properly rehabilitate that one. Yet everyone is supremely confident that a mine that is probably 100 times the size or thereabouts—you will tell us exactly what it is—can be perfectly rehabilitated.

Ms Constable: We have learned a lot in the last 40 years around the world about mining in terms of environmental management. Yes, at the time it was considered appropriate. All of the work that is being done, even in Australia, on making sure that we have leading practice on environmental management is certainly a focus for the Australian government and the Northern Territory government.

Senator LUDLAM: I wonder what people in 40 years time will think of this transcript. But I will wait and see what you can provide for us. Mr Davoren, while we have you at the table, I will turn to your other area of expertise, which is the radioactive waste management side of things. Are any other sites, besides the land identified at Muckaty Station by the NLC, under any form of scrutiny, observation or research as potential sites for a national radioactive waste dump?

Mr Davoren: As you are aware, the current legislative framework was established under the Howard government, and this government has said that it would not proceed under that legislation. So there has been no scrutiny in the field or anywhere else since the Parsons Brinckerhoff reports were submitted to us.

Senator LUDLAM: Yes, which we have spoken of before. So no other sites have been submitted to the department for evaluation?

Mr Davoren: No, none at all.

Senator LUDLAM: You are not aware of anything else out there?

Mr Davoren: No. I would know if they had been.

Senator LUDLAM: I would hope that you would. Are there any other sites on Muckaty Station itself, apart from the one that is identified in the PB study?

Mr Davoren: Other areas there were looked at. One other area was looked at as a regional investigation site in the Parsons Brinckerhoff studies. But there has been no further study of the nominated site or the regional investigation site.

Senator LUDLAM: That is pretty clear; thank you. Are you aware of documents sourced from the National Archives that reveal substantial inconsistencies in submissions and evidence provided to Senate committees by your department and by others that show that one Aboriginal family group does not exclusively own the land that was nominated by the Northern Land Council?

Mr Davoren: I am aware of those documents and I have been for some years. They were reports relating to the Aboriginal Land Commissioner's examination of the Muckaty site. The basis of those reports is that they can be subsumed by better and more complete evidence subsequently taken into account by the Northern Land Council when it was identifying the owners of the land. They may have been surprising to the counsel for Mr Lane, but they were certainly no surprise to the NLC or to this department.

Senator LUDLAM: That is interesting—'subsumed'. Were you asked to provide any advice to the minister on that matter?

Mr Davoren: I am sure we have.

Senator LUDLAM: Would you be able to confirm what form that advice took and when it was tendered?

Mr Davoren: I am sure that would have been in advice to our previous minister, Minister Bishop.

Senator LUDLAM: Sorry; I think you misunderstand. You are saying that it was no surprise whatsoever to you when those documents came to light. Were you asked to provide any advice to your minister in this more recent—

Mr Davoren: In relation to that, no. But I am sure that issue has been raised with the minister before. This was no great discovery. It may have been news to the counsel representing Mr Lane, but it certainly was not news to anyone else.

Senator LUDLAM: It is just surprising that it appeared to directly contradict evidence that had been tendered to two consecutive Senate committees.

Mr Davoren: There was a thorough examination of all evidence undertaken by the Northern Land Council. That evidence included the work of three anthropologists, one of whom has had a long association with that community. Taking into account all of the available evidence, the Northern Land Council, which has responsibility for these matters, reached the conclusion that they did.

Senator LUDLAM: I think where you have me at a disadvantage is that nobody has seen those anthropological reports, because the NLC will not release them to anybody, not even to the Aboriginal families that—

Mr Davoren: I am referring to the Land Commissioner's reports. The Land Commissioner's reports summarised that material.

Senator LUDLAM: I am interested in seeking your views on an issue that I think has been neglected. We spoke to ANSTO yesterday about the reactor core from Lucas Heights that eventually will be decommissioned and taken up to Muckaty. We also spoke again and got another update on the long-lived intermediate-level material that is due to be returned from Europe. They confirmed for us—I will seek your views on this—that the Muckaty site, if it goes there, or the remote site that we eventually land on, is not the final resting place of that material at all. That is just an interim store for the really dangerous, long-lived material. Is that correct?

Mr Davoren: That is quite true, and that has been the consistent position of this department and its precursors for 30 years.

Senator LUDLAM: Do you want to put on the record for us why that is the case?

Mr Davoren: It amounts to the inventory being quite small. ANSTO has about 400 cubic metres of intermediate-level waste. With the decommissioning of HIFAR, it will have another 500 and the arisings are only several cubic metres a year. For us to proceed to geologic disposal of that material would be rather excessive. We would be the only country with a projected inventory up to, say, the next 50 years of between 1,000 and 1,500 cubic metres to be taking that step. It is a very small inventory.

Senator LUDLAM: So in the meantime it is to be taken to wherever—to the national store. When we put this to ANSTO yesterday, they referred us quite emphatically to you: in the interim, who is doing the thinking about where this material will actually end up?

Mr Davoren: It will be stored for a long time until we have a sufficient quantity to warrant the effort of putting it into deep geologic disposal. At an increase of two cubic metres a year, that will be some time away.

Senator LUDLAM: When you are talking about nuclear waste, you have to be a bit careful about using phrases like 'a long time'. Are we talking centuries, or millennia or decades? What do you mean?

Mr Davoren: Certainly it depends a lot on our nuclear profile about future activities. But with two cubic metres a year it is a very small inventory, and indefinite storage is a very reasonable option. I do not think anyone internationally would disagree with that approach.

Senator LUDLAM: So we are not using the term 'interim'; it is 'indefinite'. It is just going there until whenever.

Mr Davoren: That is right.

Senator LUDLAM: That is very, very interesting. I will leave it there. I might come back later. Thank you, chair.

Senator CAMERON: Is the National Mine Safety Framework Steering Group still operational?

Ms Constable: Yes, it is.

Senator CAMERON: There has been a bit of publicity about the importation of labour into the mining industry from overseas to meet skill shortages. Is there any estimate of how much labour will be imported from overseas?

Ms Constable: It depends on the area you are talking about and the numbers related to individual projects. In the next few years, the shortages in the mining industry will be as high

as 75,000 people. The government at the moment is trying to make sure that there are as many programs as possible, including the latest approach by the National Resources Sector Taskforce report, which looked at skills specifically and a whole range of recommendations to ensure that we had the right professionals and tradespeople trained as much as we possibly could in Australia, before we went to overseas workers. But it is inevitable, because of the size of the projects and the magnitude of the boom we have, that we will draw in skills. But the first port of call is Australian workers—and then overseas workers.

Senator CAMERON: Yes, sure. That is fine. How many workers are we looking at importing on projects in the next 12 months?

Ms Constable: It is project by project. We would have to go to every single project around Australia and ask that question. This is a question that the department of immigration can help us with.

Senator CAMERON: Are you saying that you do not have any obligations to advise senators in relation to the importation of skilled labour in the mineral resources area?

Ms Constable: The visas themselves certainly sit with another department—

Senator CAMERON: I am not asking about visas; I am asking about raw numbers and about projects where people come in. Are you telling me that you do not have any—

Ms Constable: Companies would request that directly of the department of immigration.

Senator CAMERON: Don't you care? Are you not interested, or what?

Ms Constable: That is not what I said. We have been very intimately involved in the skills taskforce. We are represented on that skills taskforce.

Senator CAMERON: If you are intimately involved, let us talk detail. I do not want to get pushed off to the immigration department, because your department is responsible for safety in mining and your department is responsible for productivity in mining, and they are both linked to bringing in workers from overseas. So your department has not made any assessment as to the number of workers who will come to Australia in the next 12 months?

Ms Constable: The work that the taskforce has done is on a medium-growth scenario. I have figures out to 2015: 30,000 construction jobs on new resource projects in every year to 2015, peaking at around 45,000 between 2012-13. The numbers of jobs in mining and gas operations will grow, as I have said, 65,000 to 75,000, taking the sector's direct employment to around 250,000 people by 2015. So, as I said, there are skill shortages—but Australian workers first. We expect that there will be further vacancies in both mining and gas operations of around 10 per cent of employees, more than about 18,000 people, who leave the sector each year.

Senator CAMERON: I am happy to get all those global statistics.

Ms Constable: No; these are Australian statistics.

Senator CAMERON: Yes, but they are global Australian statistics; that is globally. I am interested in how many workers will be coming here in the next 12 months, and you cannot tell me.

Ms Constable: I would have to go back and get those numbers from companies, certainly.

Senator CAMERON: Is that something the department normally does?

Ms Constable: We do not collect numbers of workers coming in. As I have said, that sits with another portfolio; it sits with the Department of employment and workplace relations and the department of immigration. But certainly, to be helpful, we can take that on notice and provide that information.

Senator CAMERON: Your department is responsible for productivity and safety; is that correct?

Ms Constable: We are certainly responsible for mine safety and every department has a responsibility for productivity.

Senator CAMERON: I have read some reports of increasing problems in relation to language and communications on some of the sites by workers coming in who do not have basic English. Has the department heard of these reports? Have you come across them?

Ms Constable: That is certainly a problem that the mining sector has faced for a very long time. Companies do have language and literacy programs in place. They work with the individual states in which they are located, and also with the department of employment and workplace relations in relation to education programs so—

Senator CAMERON: So, if Rio Tinto want to expand and build a mine and they want to use overseas labour and the project is a 12-month project, are you saying that they have language programs within that project?

Ms Constable: They outsource. If there are issues with language, one needs to be very careful about just stating that there is a language problem with overseas workers. As part of any sort of immigration policy—

Senator CAMERON: Thanks for telling me to be careful. I will be careful.

Ms Constable: As I said, each of the companies will source their labour from people with appropriate qualifications from countries around the world. In the first instance they will try to source those professional skills from countries that have the English language, because Australia is an English-speaking country. They will further look for workers in countries where appropriate skills might be available. But, importantly, they will seek to make sure that people have English in order to be able to do the work. That is part and parcel of being able to work in Australia on oil, gas and mining projects.

Senator CAMERON: Has some sort of procedure been agreed between the department and the mining companies that deals with this process you have just outlined?

Mr Stamford: Matters relating to the use of English on mine sites are the direct regulatory responsibility of the individual states concerned. A minimum English requirement is a fundamental part of the safety requirement of any person operating on a mine site. The state regulators will be looking at that as part of the overall mine site safety approach by individual companies.

Senator CAMERON: What is the steering group doing in the ministerial council? They have no role in this; is that what you are saying?

Mr Stamford: The National Mine Safety Framework Steering Committee, which I think you are referring to, is responsible for developing a consistent set of regulations across Australia in relation to mine safety. It is not responsible directly for the administration of mine safety in any single jurisdiction. That is a matter for jurisdictions.

Senator CAMERON: Your department have got a responsibility for safety, have you not?

Mr Stamford: In the case of the National Mine Safety Framework we form the secretariat for that committee. We take instruction from the relevant ministerial council.

Senator CAMERON: Can you provide details to me of the numbers of foreign workers who will be brought to Australia to assist in either building or operating mine sites or resource projects around the country? Let us say 'resource projects'; that is a wider net. I would like to know how many are coming in. I would like to know what the department is doing to ensure the safety of those workers and whether any processes are being implemented with state governments on a formal basis in relation to safety. Could you give me the numbers that you expect of overseas workers on each project that is underway in the minerals sector, and could you advise me as to whether there have been any notified injuries or deaths of workers generally in the industry or deaths or injuries of workers who have been brought in here to do temporary work. Could you also give us the detail of the countries of origin of the workers who are coming in. What are the skills of those workers and what checks are in place as to whether they have the skills that are required? Is this all part of your responsibility?

Ms Constable: We can certainly provide that information. My understanding is that the number of people coming into Australia where there might have been deaths is zero. In terms of country of origin, we can certainly provide that information to you. In respect of individuals, people need to be appropriately qualified. The mining industry is very conscious of safety conditions. The unions in each of the states certainly make sure that every single individual is appropriately ticketed to be able to work on mine sites.

Senator CAMERON: That is not true. How do they do that?

Ms Constable: General inspections occur, and legislation is in place on mining in all of the states. In fact, we are working between the three big mine states right now on core mine safety legislation.

Senator CAMERON: Can you take this on notice: can you then provide me details of how unions can access these workers that are coming in? Does the department see any impediments to unions having free and available access to these workers to make sure that the skills are available and these workers are being treated fairly and reasonably? It would be appreciated if you could provide that. That is part of your responsibility, I would assume, if you have raised it with me, the issue of unions?

Ms Constable: Safety is our responsibility but employment and workplace relations issues sit with that department.

Senator CAMERON: You have raised the issue of unions so I would like you to provide details. You have said that the unions are in there making sure that the skills are right.

Ms Constable: The company and unions. The company has a responsibility first and foremost.

Senator CAMERON: We will come to the company later. You raised the issue of unions. I am interested to know what processes are in place to make sure that the unions have got access to these sites and how your department can facilitate access to these sites where foreign workers are coming in. Could you also advise as to whether there are any

impediments to unions actually achieving what your department says they should be able to achieve.

Ms Constable: Certainly.

Senator CAMERON: I may have some further questions on notice that I will put in writing on these issues once I have had a look at the *Hansard* on this. The other issue is local content. Is this part of your portfolio?

Ms Constable: Yes, it is.

Senator CAMERON: What is the total spend of the mining industry on investment in Australia in the next four years? Have you got a figure that is easy to check? Do you do it on a yearly basis, five-yearly or what? If you do not have the figure, I am happy for you to take it on notice.

Ms Constable: I have got figures. Your question was around investment occurring?

Senator CAMERON: Investment in the minerals sector. I do not know whether you do it on a 12-monthly basis or a two-yearly basis or what. What figures can you give me about investment in the resources sector?

Ms Constable: At the moment there are 72 projects on hand in their advanced stages. That equals about \$170 billion worth of projects that are in their advanced stages.

Senator CAMERON: Is there any strategy in place to lever off this \$170 billion worth of investment to widen the skills base in Queensland and Western Australia?

Ms Constable: Every state has programs in place to address skills. The Commonwealth government has put into place a whole program to look at skills. The companies are working very closely with all of the governments to ensure that they enhance their skills base, both in the trades area and in professional skills. Yes, there is a considerable amount of work being done.

Senator CAMERON: You are aware that Treasury have indicated they think there will be a crowding out of employment in manufacturing and tourism because of the mining boom?

Ms Constable: Yes, I was aware of that.

Senator CAMERON: What are the implications if you crowd out the manufacturing sector that provides the bulk of the engineering skills for the industry? Is any analysis being done on that? Are there any papers available by the department that have looked at this and that I could have a look at?

Ms Constable: We certainly have not done any work on this. The Department of the Treasury look at macro-economic issues more generally and certainly they have done some work. That is a question that needs to be referred to them more generally.

Senator CAMERON: I do not think so, with great respect. It is not a macro-economic issue, it is a skills issue. It is availability of skills for the industry, which you have responsibility for. I would ask you to provide me with any details of any discussions you have had with the mining companies in relation to their capacity to underpin the engineering industry in this country, given the crowding out theory that is on there, and the practical crowding out that takes place with this \$170 billion worth of investment.

Ms Constable: The companies have relationships with many of the tertiary institutions around Australia. In Western Australia, Queensland, New South Wales, and certainly in South Australia, every company has a relationship with their tertiary institutions to provide a program and requests on ensuring that they bring the appropriate skills through those tertiary institutions so that they are available to come on line at appropriate times for projects. There is certainly a lot of work being done by the companies themselves.

Senator CAMERON: So there is a lot of work being done. How many apprentices are being employed by the mining companies?

Ms Constable: Every year?

Senator CAMERON: You can take that on notice—if you can give me some advice on the number of apprentices over the last five years, and company projections into the next five years, if that is possible, on their direct employment of apprentices. In relation to the \$170 billion worth of investment, are there any figures for engineering projects being built within Australia and what the value of those projects is? I am not talking about projects actually building the mine but about suppliers—steel supplies, engineering supplies—to the companies. This is basically the downstream manufacturing capacity for the mining industry. Is there a figure on that?

Ms Constable: We can certainly get you those figures. The mining companies, in particular, source most of their local content from Australia as it relates to engineering activities. Thinking about a company yesterday talking about a specific new project, it can be as high as 85 per cent of their project; the local content is going to come from Australia. That is not unique in the mining industry per se. It is quite common for a large proportion of it—

Senator CAMERON: You know there is a bit of a trick in these figures—85 per cent can mean earthworks; it does not mean to say that the engineering technology is 85 per cent. You are not telling me it is 85 per cent engineering, are you?

Ms Constable: Certainly not specifically on engineering.

Senator CAMERON: So it is a bit of a trick saying that 85 per cent is being done. Can you find out how much of the engineering, of that \$170 billion, will be in engineering workshops in Australia? That would be an interesting figure. Last week I spoke to Dave Oliver, the Secretary of the AMWU, who addressed the AGM of, is it the AMMI? There was a survey done at that meeting. Something like 68 per cent of those attending that meeting felt there was a need for an industry approach to skills. You spoke about the silos that are there—companies are talking to individual TAFEs; companies are giving work here. There does not seem to be any overall coordination of the skills issue within Australia. These mining companies said to the union that they believe there should be a national overview on skills. Is there any national overview where we bring all the companies together, we bring the unions in, we bring engineers in and we talk about how we can coordinate the skill requirements within Australia?

Ms Constable: The National Resources Sector Employment Taskforce was whole of government and certainly was done in consultation with the mining and oil and gas sectors to look at a coordinated approach across a whole range of areas of skills. That was, and still is, a very specifically coordinated and integrated approach to mining skills management in Australia.

Senator CAMERON: Are the unions involved in that task force?

Ms Constable: Yes they were.

Senator CAMERON: You keep saying 'were' and 'was'; what has happened?

Ms Constable: The task force has completed its work. It is now in an implementation phase. Yes, I said 'were'. The task force has completed its work. We are moving on to implementation. The recommendations are spelt out in terms of lead agencies, most of which sits with employment and workplace relations. As a lead agency, that agency will be required to consult with a broad range of people, but importantly they will work with the Minerals Council of Australia and the Australian Petroleum Production Exploration Association and all of its members, individual companies, to make sure that the report's recommendations are implemented in full.

Senator CAMERON: Are you saying that the view of the AMMI people who were there, who say they want a coordinated approach, is that it should be done through the task force recommendations?

Ms Constable: Absolutely.

Senator CAMERON: Thanks.

Senator LUDLAM: I have a couple of questions about the EITI, the Extractive Industry Transparency Initiative, which is getting a bit of traction here in Australia. That requires mining, oil and gas companies operating in Australia to make public any payments made to state and territory governments and, in turn, the government will publish what it receives. It is part of a broader initiative that is making a bit of ground around the world. I understand that the Minerals Council is proposing to pilot an EITI program here in Australia with most departments behind it. Can you update us on the progress, if you are aware of it, of the pilot program?

Ms Constable: I chair an IDC made up of the relevant government departments. We have looked at the International Extractive Industry Transparency Initiative and the work that is being done in the secretariat at an international level. We have been provided with a paper by the Minerals Council of Australia on a proposal to conduct a pilot in Australia. We have been considering whether it is appropriate to conduct a pilot. That is now being considered by relevant ministers before we make a final decision.

Senator LUDLAM: So you do not have a go-ahead yet on a pilot. Who are the relevant ministers in this case? Who is on the committee that you chair?

Ms Constable: At the moment it sits with the Department of Resources, Energy and Tourism and the Department of Foreign Affairs and Trade; so the two ministers there. The Treasurer is the other minister who is responsible.

Senator LUDLAM: My next question was going to be when we could expect the pilot to begin. Is it too early to be putting a question like that?

Ms Constable: A decision has not been made yet.

Senator LUDLAM: When are you anticipating that you will have an outcome?

Ms Constable: I would hope that a decision would be made very shortly.

Senator LUDLAM: That term gets used a bit loosely in here. Can you give us some idea what that means?

Ms Constable: It is under active consideration.

Senator LUDLAM: So does that one. That tells me less. Days or weeks?

Ms Constable: I cannot give you an exact date. Ministers will certainly make decisions in their own time. As I said, it is under consideration. We are looking at it right now.

Senator LUDLAM: From what I know of it, it looks like an extremely valuable initiative. The Minerals Council should be congratulated for bringing it forward, because I understand that is where it initiated. We look forward to an update. Thank you; and thank you, Chair.

CHAIR: I thank the officers for their appearance here this morning.

Tourism Australia

[11:22 am]

CHAIR: I welcome officers from the tourism division of the department and from Tourism Australia. If there are no opening statements we will go straight to questions.

Senator EGGLESTON: I welcome Tourism Australia here. Tourism is a very exciting activity in Australia. To go back to our last lot of estimates, I asked Mr Le Loux whether you owned any land or buildings. At the time I was told the answer was no. Yet the budget papers say, on page 146 for DRET, that the tourism portfolio has lands and buildings worth \$1.416 million; property, plant and equipment at \$578,000; intangibles at \$6,871,000; and 'other' at \$977,000. Perhaps you could explain what those things are.

Mr Le Loux: I am just trying to find the detail. I can confirm that we do not own any land and buildings. It is most likely to be about fit-outs of leased premises. I will confirm that.

Senator EGGLESTON: Perhaps if you take it on notice and clear up the inconsistency for the shadow minister and me. The shadow minister, Mr Baldwin, asked a question in the House of Representatives on 25 November, 2010 about what corporate cost savings initiatives were identified but were not, and will not, be implemented. He eventually asked five questions. The last one was about the efficiency dividend, which I have just referred to, and it says 'nil'. Is there no efficiency dividend within your department—corporate cost savings initiatives?

Mr McEvoy: There is an efficiency dividend as part of the budget. It amounts to \$674,000.

Senator EGGLESTON: Thank you; that is a very clear and direct answer. I have some general questions about the state of tourism. Given the high dollar and recent weather events in this country and in other countries such as Japan, is it fair to say that the tourism sector is under pressure at this time?

Mr McEvoy: The numbers are going up overall. That is probably buoyed by Asia at the moment—so China, Korea, Indonesia, Malaysia and Singapore are all growing for Australia. Certainly the UK and Europe, and probably the Americas, have not fully recovered out of the global financial crisis and are sluggish; they are slightly down. The dollar is interesting. We have done a bit of work on the dollar. It is not the No. 1 reason why people pick a destination. They still pick it based on destination appeal. Our numbers are still up, but I do think visitors

are potentially leaving a little less value in the country because their dollar is not going as far when they get to Australia.

Senator EGGLESTON: The Australian dollar is 107c to the US dollar.

Mr McEvoy: Yes, it is amazing.

Senator EGGLESTON: It is amazing, yes. You do not think that is having such a big impact?

Mr McEvoy: I do think in this work Australians are probably looking at overseas holidays as a bigger opportunity because our currency is strong. But certainly, as I said, our numbers got to record levels last year and have continued this year, and it is not the No. 1 reason why people would not come, but it does mean that they leave a little less value behind when they do travel.

Senator EGGLESTON: You have mentioned China. What has happened—

Senator Sherry: I am sorry, Senator; there is just one point to make about the dollar. The value of the Australian dollar is obviously a recognition of the value of the Australian economy, which is strong vis-a-vis the US dollar, but it is also just as much an evaluation of the weakness of the US economy. I think we have to understand that US vis-a-vis Australia. It is quite a complex story because you have, by and large, weaker European economies vis-a-vis Australia, but that is not the case in respect of Asia for example, where broadly—there are some exceptions—you have stronger economies vis-a-vis North America and Europe. So it is not a simple picture of 107c Australian versus the US dollar; it is quite a complex pattern.

Senator EGGLESTON: I think they are good comments to make; I do understand that. It is a very broad picture.

Senator Sherry: The other point I would make is that, to the extent that tourism numbers are reduced by unemployment from foreign markets, there is obviously an impact. The extent of the detail can be analysed and shown, but there is obviously an impact. Again, Europe and North America are generally weaker than Asia.

Mr McEvoy: The Deloitte research backs the senator up, in that, over the long term, income growth has the greatest influence on demand—income growth and consumer confidence. The dollar is but one factor—more one when they arrive and think: 'What does my dollar buy? I've got a budget. I'll spend that budget. It's perhaps not going as far at the moment in Australia.'

Senator EGGLESTON: I agree. It is a very complex picture. I spent three months in the US at the end of last year and I was very pleased about the exchange rate, but I have American relatives who have been here in the past and have been very pleased about the exchange rate which existed then. Their dollars certainly went further. But it is a very complex picture, especially as far as—

Senator Sherry: It was a great time for you to be in the US for two months, Senator.

Senator EGGLESTON: It was.

Senator Sherry: I know that you were there for work, but it was a great time to be there.

Senator EGGLESTON: I was very pleased at the value I got for my dollars, I must say. But it must have some impact, even if it is a little hard to pin down. You mentioned China. I would ask you about the growth of tourism from China to Australia.

Mr McEvoy: It is very good. For the year ended March, visitor arrivals were up to 488,000. It will get beyond 500,000 arrivals. That is plus 30 per cent year on year. So it is going very well. I have made the point in the media recently and I have been speaking with my colleague Jane Madden. It is being reported a lot at the moment, which is terrific, but it has taken more than a decade to become that overnight success. I think Tourism Australia and the department, working with the CNTA, the China National Tourism Administration—the first Western country along with New Zealand to get approved destination status in 1999—have built a distribution of more than 2,000 Aussie specialist travel agents throughout China in 13 cities. They have done a lot of marketing with key airline partners, states and territories and the Australian industry for more than a decade. We are seeing the signs that that is bearing fruit, with a lot more air capacity. We are upping the ante in terms of our consumer marketing effort. Next week both Minister Ferguson and Senator Sherry will be up in Cairns for the Australia-China Tourism Summit, where we will look at the next decade and how we can continue to grow. Jane, do you want to add anything to that?

Ms Madden: No, thank you.

Senator Sherry: I would just say two other quick things. I went to China myself before Easter for a visit. It was overwhelmingly focused on tourism. Secondly, after the summit in Cairns, there will be a specialist one-day investment seminar—China investment into Australia tourism hospitality. There is a lot of focus and a lot of work going on, Senator.

Senator EGGLESTON: Yes, I do understand that in a general way. I just wonder what Australian cities are now served by direct air links to China, apart from, obviously, Sydney.

Mr McEvoy: The aviation capacity is always complex, but certainly Qantas services Shanghai out of Sydney. Air China and China Eastern also go into Beijing and Shanghai. China Southern flies Sydney-Guangzhou in the south, Melbourne-Guangzhou and Brisbane-Guangzhou, and just recently signed an agreement to start services to Perth at some time in the future. It is likely, perhaps at the end of this year, to service Perth also. The cities with direct services out of China are Melbourne, Sydney, Brisbane and soon to be Perth. A number of other cities, including Cairns and Adelaide, are talking to the airlines about direct capacity.

Senator EGGLESTON: I was going to ask you about the China Southern-Perth air link and when it might begin, but you have mentioned that already. That is just to Guangzhou and not to Shanghai, is it?

Mr McEvoy: Yes, it is into Guangzhou. But China Southern have onward connection to 63 destinations. They have made sure that, with every service they have introduced in Australia, the time on the ground between cities is very compact. It is a very efficient airport in Guangzhou. They have en-route connection not only to places like Beijing and Shanghai but also to a bunch of other cities in China. They also have other regional connections. They are also up into Europe now—into France and the UK—and they are looking further into Europe. So it is a new hub, I guess, for Australia, connecting Europe and connecting the region.

Senator EGGLESTON: That is very interesting, I must say. I am aware of those links of China Southern. There is also some talk about a Geraldton to Bali air link. Do you have any knowledge of that?

Mr McEvoy: No, I do not.

Senator EGGLESTON: There is one from Port Hedland to Bali, but Geraldton now wants to have a similar air link perhaps serviced by Skywest.

Mr McEvoy: I was not aware of that, no.

Senator EGGLESTON: So it has not progressed very far?

Senator Sherry: What about Devonport to China? Could I make a bid?

Senator EGGLESTON: I am not sure what the market in Devonport is for transport to China.

Senator Sherry: Or at least to Hobart.

Mr McEvoy: I think we get some charters into Hobart with the Chinese New Year.

Senator EGGLESTON: That is very interesting. Certainly the Pilbara-Bali air links have been going since 1977. They are not very frequent—only once or twice a week—but they are very successful. I would like to come back to your funding. What is the funding level for Tourism Australia? It is about \$140 million, I believe.

Mr McEvoy: We will give you those numbers. I will ask my colleague Mr Le Loux to give you the detail.

Mr Le Loux: The actual appropriation for the 2011-12 year is \$132,821,000. Comparing that to the current financial year of \$126,920,000, that is an increase of just under \$6 million. One of the major reasons for that is the \$9 million that was brought forward from the current financial year from 2009-10. It is reflected in the fact that now the appropriation for next year reflects the normalised amount of that so that we are effectively getting the \$9 million back next year that was brought forward from this year to the prior year. Offsetting that is the fact that this year Tourism Australia received an extra \$4 million relating to the Queensland tourism package. When you take the \$9 million and the \$4 million, it nets off to the \$5 million. That is the bulk of the increase in appropriation for the next financial year.

Mr McEvoy: On top of that, there would be \$24 million in other sources' revenue that goes on top of the amounts that Mr Le Loux mentioned.

Senator EGGLESTON: I will just come back to those figures in a minute. What are the other sources of revenue?

Mr McEvoy: Cooperative partnerships. We do a lot with airlines, the states and territories, international wholesalers and agents and the Australian travel industry. We run events, as you know, such as the Australian Tourism Exchange. This year coming up we have a big business event called Dreamtime, which is coming up into the next fiscal year. A mix of cooperative marketing and events tends to make up the bulk of the additional revenue.

Senator EGGLESTON: How successful was the ATE this year?

Mr McEvoy: Very successful. I think we have seen the top-line results. It was highly rated. There was a better feeling on the floor. The previous year was in the middle of the global financial crisis. It was the first time back in Sydney for 11 years since 2000, so that was exciting. The great news is that we head to Perth for 2012. It will be there, I am pretty sure, in May, but I will get the exact dates. It was very good. I think many more wholesalers and agents globally are focusing on Australia as a very good, high-yield opportunity. With these increased air links out of Asia in particular, we are seeing great interest out of places like China and other parts of Asia.

Senator EGGLESTON: That is very encouraging. Just coming back to your budget figures, your actual funding has increased by \$4 million over the forward estimates, but real funding will decline by 6.1. You have also been levied with an efficiency dividend. What does the efficiency dividend, in fact, amount to?

Mr Le Loux: The additional efficiency dividend was \$674,000.

Senator EGGLESTON: In effect, there has been a bit of a funding cut. How will this affect the operation of Tourism Australia?

Mr McEvoy: Our budget is stronger than it was last year. The money is going directly into marketing to those consumers that we want to target. You will notice that there is an increase in revenue also. We are in a good position, I would argue. The double-edged sword of currency potentially going against us or back the other way means that we are in a stronger position to buy media and advertising offshore, so we will also gain some effect there.

Senator EGGLESTON: So you are not going to cut programs?

Mr McEvoy: No.

Senator EGGLESTON: You are not going to cut staff?

Mr McEvoy: No.

Senator EGGLESTON: That is very good; thank you very much. What about passenger movement charges? How much revenue does the government collect from passenger movement charges?

Ms Madden: As you would be aware, the passenger movement charge is levied on international passengers departing Australia. There was no increase in the budget of the PMC. It was last increased in 2008-09 from \$38 to \$47. This is a matter that is handled by the Treasury. I do not have at my fingertips what the total accumulated revenue amount is. I might check with my colleague.

Ms Cox: My understanding is that the passenger movement charge currently collects in the region of \$800 million a year. I will check that.

Senator EGGLESTON: Thank you.

Senator Sherry: Senator, I might be able to help you when we get to revenue. I do not know whether you will be here.

Senator EGGLESTON: I will be here. We might come back to that. The reason I am asking these questions is that there was a report entitled *The impacts of the passenger movement charge on tourism output and the economy*, 15 March 2011, which is on Tourism Research Australia's website. It states:

... the increase of the PMC ... positive for the Australian economy by \$49 million (in terms of GNI), but has a negative impact on Australian tourism output of around \$7 million.

It seems that this idea has been discussed. I wonder whether we could ask some questions about that at this point, or would you prefer them asked elsewhere?

Ms Madden: I am aware of that report. Tourism Research Australia is under the Tourism Division and the general manager, who can answer any specific details, is here. But that project is a report that was discussed by TRA with state and territory governments following the increase some time ago in the PMC. It looks at some modelling impacts, as you correctly

surmised, and what the impact is on both the tourism sector of the economy and the overall economy. The report is available for public viewing on the website.

Senator EGGLESTON: Did you ever consider increasing the passenger movement charge, or PMC, by 20 per cent? Was that the figure considered?

Ms Madden: To my knowledge, no. But, as I have said, when the passenger movement charge was increased in the 2007-08 budget, there was a lot of discussion about the impact of that increase on tourism and on the economy more generally. So that work was done in collaboration with state and territory governments just to evaluate and get more information through a modelling process on what the consequent impacts could be.

Senator EGGLESTON: Who commissioned the report released by Tourism Research Australia on the economic impact to the economy of increasing the PMC by 20 per cent?

Ms Madden: Tourism Research Australia discusses a number of projects with the state and territory research managers, and this was one of four projects as part of TRA's cooperative work program with state and territory governments.

Senator EGGLESTON: Did you discuss the implications of such an increase with the industry, or is this purely a hypothetical question?

Mr Calder: It was just a theoretical modelling exercise. How it eventuated was that, under the previous funding arrangements for the Sustainable Tourism Cooperative Research Centre, the CRC built state tourism satellite accounts on behalf of each of the states and territories. When the rebid for funding for the CRC failed and that work was no longer going to be taken forward, TRA, in collaboration with the states and territories, offered to manage the contracts with the universities for not only the provision of the state tourism satellite accounts but also a number of other projects utilising the state computable general equilibrium modelling that had been developed through the CRC process. So it was just one of a number of processes. It was an academic modelling exercise. It had been discussed in the context of the tourism research committee, which is a meeting of TRA and each of the state and territory research managers, as a project which would be interesting to get some further information on. It was simply a modelling exercise using that suite of models.

Senator EGGLESTON: Thank you for that. How much did the report cost to produce, as a matter of interest?

Mr Calder: The total funding for the suite of product that we put together for that—so it is the state satellite accounts plus the PMC and a number of other reports—was \$435,000 in cash, of which the states and territories contributed \$400,000. So TRA put in \$35,000 in direct contribution.

Senator EGGLESTON: Thank you very much. That is interesting and I thank you for that. I like trawling through the newspapers to find articles for some of the areas that we deal with in these estimates.

Senator Sherry: As long as you are a bit sceptical about some of what you read, Senator, as we all know.

Senator EGGLESTON: I always have a healthy scepticism about what journalists write. In the *Age* on 7 May, James Packer was quoted as saying that your advertisements in the US are not doing Australia any favours. I just wondered whether you would like to comment on

your current international tourism campaigns compared to some of those in the past, such as 'Where the bloody hell are you?', the movie *Australia* promotion and whether or not you feel that James Packer's critical comments are valid. He also said that Australia needs to become more sophisticated in its advertising. I would appreciate your comments in general on his remarks.

Mr McEvoy: Just going to the campaign, 'There's nothing like Australia' is our campaign which we launched in 2010. So it is a bit more than a year old now. It started very, very well. I have some numbers here for you. It has been well received by the industry, so airline partners are joining in with it and putting money in cooperatively. That is a pretty good sign. A number of Australian industries and states and territories are partnering up, so that is a good beginning.

Most important, though, is what the consumer doing and how they are reacting to the campaign. Research shows that, in China, 97 per cent of people who see our advertising do something about it—they visit a website, talk to a friend or relative or go and see an agent. That is incredible. Seventy per cent of Chinese people recognise the advertising, and that is a very high number in the ad world. In markets like Malaysia, it is 92 per cent; the UK, 34 per cent; France, 58 per cent; and New Zealand, 57 per cent. So after a year they are pretty strong numbers. People have seen the ads, they recognise the ads and they are motivated to do something, such as click to a website, talk to someone about it or go to an agent.

The USA particularly has been a tough market in recent times, but I would argue that it is not our image that is the problem; our image is strong. If Americans closed their eyes and time and money and distance were no object, the place they would want to wake up in is Australia. The idea of Australia is still very strong. We are in the top three destinations in terms of appeal.

So to Mr Packer's comments, I would argue that our image is not the issue. As Senator Sherry has said, the US is still struggling out of the global financial crisis. There is still high unemployment. Consumer confidence is not yet at the point where they are travelling in great numbers outbound. That is changing, and I think we will see the benefit of our campaign 'There's nothing like Australia'. The Oprah Winfrey show came to Australia and generated great interest and is being spoken about.

Again, I would go back to the point that the image of Australia as a free-spirited country, with big skies, big smiles, great contemporary cities, great beaches and great animals that are different is a great image for our country globally and is sought after by the consumer, and it is not our issue. The things that we have to address, which the National Long-Term Tourism Strategy looks at, are things like access, aviation and capacity and tourism infrastructure, which Senator Sherry spoke about a moment ago. Then it is up to the economies of those countries: are they willing and able to travel outbound?

Senator EGGLESTON: Tourism infrastructure is a big issue. What plans do you have to assist in the development of more tourism infrastructure, perhaps in some of the more remote parts of Australia which, nevertheless, are of interest to visitors, like the north of Australia and so on?

Mr McEvoy: There is a lot of discussion around that at the moment and people like Senator Sherry and Minister Martin Ferguson are getting very involved. The National Long-

Term Tourism Strategy launched in December 2009 in Perth is a supply-side strategy that is looking at what the barriers to investment. My colleague Jane Madden might add to this, but there are great working groups doing fantastic work about: what is the issue; what is getting in the way of tourism investment? We are in discussions with people like Austrade about proactively seeking out new investors. There are things like the China investment summit, which Senator Sherry will chair in a couple of weeks time. We are now looking at what are the projects in Australia that need funding and help, including regionally. Where will that capital come from and how can we join the dots? But, as I have said, the National Long-Term Tourism Strategy is a supply-side focused strategy and there are working groups working on that. Jane?

Ms Madden: To elaborate, with the strategy, senators, you will remember, that there were initially 41 actions that the ministerial council asked for. A couple of them specifically addressed the issue that you are asking about—infrastructure. Some of those actions have been completed. Others are going back to ministerial council later in the year for decision and taking forward in terms of regulatory reform.

If I can just elaborate on investment, a review of regulatory barriers has been completed. A report has been advanced and is being finalised looking at whether tourism investment, over and above other forms of investment, faces regulatory barriers and what practical actions can be taken at a whole range of levels to address this, and also looking at whether the role of tourism investment can be facilitated by both industry and government more effectively. Those last two pieces of work are advancing. Victoria is the chair of that working group. It reported on some very useful progress at the recent ministerial council, including the launch of a national tourism planning guide. But there is some further work with some decisions coming forward for ministers later this year.

Mr McEvoy: Just going to your question about regional Australia, particularly regional Western Australia and the national landscapes program with Parks Australia and Tourism Australia. Two new national landscapes were declared this year, one being the Great South West Edge, obviously including Margaret River, and also Ningaloo and Shark Bay. A big part of national landscapes is planning for infrastructure development, keeping in mind the need to conserve and preserve these areas. I think those areas in particular are well ahead of the game in thinking about what we need into the future.

Senator EGGLESTON: I certainly think the south-west is—I agree with that—the Margaret River-Busselton area is. Some of the other areas are a bit more difficult to get investment in. There is a Novotel, I think, now at Exmouth, which is a good development. Would you consider promoting co-development with, say, Chinese interests or American interests?

Senator Sherry: Bear in mind that we are in a capitalist market economy. Governments have to be rightly—

Senator EGGLESTON: I am not suggesting that the government should be involved, but private investors.

Senator Sherry: I was just going to mention, to a very limited extent, the TQUAL grants, for example. I was in the south-west of WA and there were two projects there that I opened that were recipients of TQUAL grants. There are numerous other examples of that—

modest—in regional areas, in particular, around Australia. One of the objectives of the China investment summit in a couple of weeks time, or is it next week?

Ms Madden: Next week, Friday week.

Senator Sherry: You forget time when you are in estimates day and night; it all seems to blur together. One of the objectives of that investment summit is to be more aware of where investment is required—the connection potentially to China's investors to a greater extent than we have at the present time. There are a range of other issues and Ms Madden has touched on some of them. There is a lot being done. I think the bottom line, in terms of investment, though, is that you have to get a return on your investment. That is the bottom line. It is a commercial reality. There are a whole set of issues, some of which can be addressed directly and indirectly by government. But the bottom line is return on investment.

Senator EGGLESTON: Yes, that is true; I understand that. Where is this China investment summit being held?

Senator Sherry: In Sydney. It is the day after the Cairns two-day Australia-China Tourism Summit.

Senator EGGLESTON: That sounds very interesting. I would like to ask you some questions about the carbon tax and the tourist industry. Has Tourism Research Australia been asked to model the impacts of a carbon tax on the tourism industry?

Ms Madden: No, it has not. Some of the work, though, by the resilience working group, under the National Long-Term Tourism Strategy, looks at climate change and possible impacts. That work has not been finalised yet. It was awarded to an economic consultancy, Frontier Economics, through a competitive tendering process. When that work is finalised, it will be forwarded through to the ministerial council. It is our intention to publish the research on the website in due course.

Senator EGGLESTON: A major impact may be to recommend that hotels are built further up the hill, if they are in coastal areas. Let us come back to the carbon tax. Has the minister ever consulted with the department on the impact of a carbon tax at all on your industry?

Ms Madden: It was almost two years ago when Minister Ferguson conducted a range of industry consultation events in Parliament House over the proposed Carbon Pollution Reduction Scheme. There was a dedicated session with the tourism industry at that time.

Senator EGGLESTON: Are you able to tell us what were considered to be the impacts on the tourism industry potentially at that time from the CPRS?

Ms Madden: It was a different model and, as I have said, there was a recognition that more work needed to be done to look at the impact. The Sustainable Tourism Cooperative Research Centre had some early analysis on what is the carbon footprint of the tourism industry in Australia generally, and that research is available publicly. It is something that is being taken forward, as I mentioned, through the strategy's resilience working group and the specific consultancy that is being done by Frontier Economics on behalf of the ministerial council. That work is still underway and not yet finalised.

Senator EGGLESTON: When do you expect it to be finalised?

Ms Madden: Within the next few months. It will certainly be going forward to the next ministerial council meeting, which is scheduled for Canberra in October.

Senator EGGLESTON: So we might be able to ask you some questions about this at the next round of estimates in November?

Ms Madden: Yes, I would expect so.

Senator EGGLESTON: But Tourism Australia itself has not done any modelling on the impact of a carbon tax on the sector; it has only contracted it out to Frontier Economics?

Mr McEvoy: No. I think it is with the department.

Senator EGGLESTON: So you have not done any modelling yourself.

Mr McEvoy: No.

Senator EGGLESTON: Are you concerned about the impact of a carbon tax on tourism operations in this country?

Mr McEvoy: I will wait for the report and consider it at that point.

Senator EGGLESTON: Have you had any representations from the industry about the possible impact of a carbon tax on the tourism industry?

Mr McEvoy: No representations, as such. I think it gets discussed, but no representations.

Senator EGGLESTON: No formal approaches to you?

Mr McEvoy: No.

Senator Sherry: It is of obvious interest in the media and in the community. I have people raise with it me every day.

Senator BUSHBY: In what sense do they raise it with you, Minister, and also with you, Mr McEvoy? Are they raising it because they believe that the tax might have a negative impact on their ability to operate or compete?

Senator Sherry: Certainly, from my part, people raise the issue in all manner of ways.

Senator BUSHBY: Including that they might have some concerns about what impact it will have on their business?

Senator Sherry: Of course.

Senator BUSHBY: Mr McEvoy, in the discussions that you have had with industry, have they been with people who are actually at the coalface operating tourism?

Mr McEvoy: It is more just about getting an understanding of it and then, to your point, what the impacts will be. So, first, it is understanding and then, beyond that, the impacts. We will look forward to the report.

Ms Madden: Perhaps I can just clarify: that report commissioned by the resilience working group is about the economic impacts of climate change on the tourism industry. It is not specifically about a carbon tax; it is about economic impacts of climate change potentially on the tourism industry.

Senator EGGLESTON: But a carbon tax might well be part of that broader picture, I would have thought.

Senator Sherry: It would become part of the study for the purpose of the study.

Senator BUSHBY: Ms Madden, in that sense, they are being commissioned to look at the impacts of climate change. Is that on the assumption that it is unabated? What assumptions are built into what they are looking at? Are they looking at various scenarios of no action taken to try to mitigate carbon dioxide and similar gasses, or is it on the basis that there is action taken and the consequences then?

Ms Madden: I do not have the request for tender and the scope of the work in front of me, so I would have to take that on notice.

Senator EGGLESTON: Is it possible to have those terms on notice?

Ms Madden: Certainly.

Senator BUSHBY: Does it look at the consequences also of action taken to mitigate climate change?

Ms Madden: As I have said, I will take the detailed questions on this study on notice; thank you.

Senator BUSHBY: Thank you.

Senator EGGLESTON: That is all I have. Thank you very much.

CHAIR: Senator Pratt.

Senator PRATT: I appreciate the structural separation that exists, but I wonder what engagement the department and Tourism Australia have had with Norfolk Island of late?

Ms Madden: Norfolk Island has observer status in the peak leadership forum, the tourism ministerial council and the Australian Standing Committee on Tourism. We liaise quite closely with Norfolk Island. They have had the opportunity to come to some key meetings. They also participated in Tourism Australia's recent Australian Tourism Exchange. Representatives from Norfolk Island, for example, will be attending the China summit next week in Cairns. So there is a range of engagement with Norfolk Island and the representatives there.

Mr McEvoy: They came to the Australian Tourism Exchange and presented to about 700 international delegates from 40 countries. They were welcomed into that, from an Australian tourism opportunity point of view.

Senator PRATT: Are any of you aware of when, I suppose, the last strategic review in terms of a holistic look at the situation of tourism at Norfolk Island was actually done?

Ms Cox: I understand that—I do not have all the details, so we might have to take some of this on notice—in Norfolk Island at the moment they have such a review underway and they have been in contact with us for factual information. I cannot tell you when the last one was; it would be some years ago.

Senator PRATT: I am aware of what is currently being undertaken; I am more interested in the last one. I suppose my concern is that no-one has really taken stock of it ever since probably the GST was introduced and the luxury taxes came off a whole lot of goods. That meant that people no longer had the same kinds of incentives to travel there and, at the same time, regional tourism in Australia was getting much more sophisticated. During all of that time Norfolk Island still did not make a decision to travel through a domestic airport. It would seem fairly extraordinary, when its tax competitiveness on many of those questions was lost

some 10 years ago, that none of those kinds of issues have been properly thought through or addressed.

Ms Madden: We liaise with Attorney-General's, which has the oversight policy responsibility for Norfolk Island and some of the matters that you have raised. As my colleague has said, we have provided factual information in relation to tourism and the prospects for further tourism development in Norfolk Island as part of their current review.

Senator PRATT: Does the department or Tourism Australia have a view about the current airline arrangements at Norfolk Island—Norfolk Air?

Mr McEvoy: Not really. My colleague there, Wayne Emery, is obviously like all of us; like our regional ports in Australia, capacity is key. When you are an island nation and they are an island off an island, it is really key. I know that is the big area that they are working on—trying to improve access. But I do not have a real view beyond that.

Senator PRATT: It struck me, for example, that things like the flight to Norfolk Island going through an international airport, then through Newcastle before even getting to Norfolk Island, with a \$170 tax on top of the fare—a fare that is three times as expensive as getting to a place like Bali—make it a not particularly viable tourist destination.

Senator Sherry: Senator, I did not realise that people from Norfolk Island went through the international airport—in Brisbane, presumably.

Senator PRATT: And Sydney.

Senator Sherry: And Sydney, yes. There was a long discussion at the territories estimates—it went for about an hour, as I recall—about a whole raft of issues facing Norfolk Island, including the tourism sector. Obviously I am not on the committee that has been looking at these issues of Norfolk Island's sustainability, but it is news to me that they go through an international terminal. There are obvious disadvantages there, and I do not think we are in a position to have to negotiate landing rights or all the other complex—

Senator PRATT: I think it is a question that Norfolk Island has historically liked to retain its own immigration status. But, frankly, these are questions that should have been dealt with some time ago in terms of really seeing where that tourism market was headed.

Senator Sherry: But, to be fair, most, if not all, of these issues are in the remit of the Norfolk Island legislature.

Senator PRATT: I do appreciate that.

Senator Sherry: They have adopted a position and policies, some of which you have touched on, that they have determined. I know, from the previous discussion and being the representative minister for territories and obviously the legislation around Norfolk Island, there are some very significant issues that it has to deal with pretty quickly.

Senator PRATT: Yes. I think they have become increasingly vulnerable in a sense because there is now a reform process going on to look at structural reform. I would expect that in a sense, at some point, Tourism Australia and the department will have a new role in engaging with them in a more direct way, hopefully on par with perhaps our relationships with states, as opposed to their exercising both sets of responsibilities, I guess.

Mr Clarke: As my colleagues have said, with their participation in our Standing Committee on Tourism, their talking to and engaging with the states and territories, and with

what the Commonwealth is doing in marketing, talking on the policy side, and what we are doing in terms of the supply side, they are clearly engaging with the Australian tourism community—if I can call it that—to get on top of these issues.

Senator PRATT: I do not expect necessarily that you will have this, but in the process of looking at what reform means for Norfolk Island, it means that they need to come into our tax system. That means that all of the small-scale tourism operators really have no idea what that looks like for them. I would like to know whether that is on your radar yet and really whether you might have to do some quite unique work with them to educate them about, for example, what paying company tax means, on one hand, and how you can actually use tax deductions to invest in your tourism product—one of the problems being that some of the tourism product is quite tired and, in part, that is because their economy has fallen away, they have not had the incentives to reinvest and, in part, they do not have structural tax advantages to fix those problems.

Senator Sherry: As I understand from my representational responsibilities with Minister Crean and the discussion that we had in estimates last week, that tax mix is currently under discussion and debate on the island itself about whether to introduce a range of taxes.

Senator PRATT: Yes, that is very much the case.

Senator Sherry: Certainly, the department and Tourism Australia, I am sure, are very willing to provide advice on tourism related issues. But ultimately the tax issues, the tax base and the future of Norfolk Island will be determined separately. It will obviously have some impact. Once that is determined or there is a direction and a time frame about what the tax base will be on Norfolk Island, that then become a relevant consideration for Tourism Australia or the department on those tourism issues.

Senator PRATT: I largely agree with you, apart from the fact that, because so much of their economy is defined by tourism, in order to come to terms with the bigger picture questions of what their tax system looks like, they need to have an understanding of what tax means to tourism, in a sense.

Mr Clarke: Just on that, I guess that in Australia, when those issues arise for Australian industry, it is often the industry groups like the Australian Tourism Export Council, the National Tourism Alliance and even the Tourism and Transport Forum that provide that sort of advice in an industry-to-industry peer way. It might be something that we can again—as the senator said—provide some advice around where they might get that sort of engagement.

Senator PRATT: Yes; I am sure that would be welcome. Turning to other vulnerable regional tourism markets, I saw the report on tourism's economic importance in different regions. Specifically, I am thinking of the Coral Coast, and we have had some mention of Exmouth. I note that tourism rates at only about 6.9 in its economic significance to the region. But I did note that, within that region, there are some highly vulnerable communities that are extraordinarily dependent on tourism, and that would not necessarily be reflected in the overall characterisation of that region. Is my assumption correct there? I am really thinking about places like Shark Bay and other very small coastal communities.

Ms Madden: Perhaps I can say that I think that, to us, that would seem correct. The report that you refer to is actually the first time that we have even gone to the level of the local tourism regions partly to capture the fact and investigate further what is the impact of 46c in

every tourist dollar being spent in regional Australia. So, while there is further granularity that would be welcomed, the report represents an important milestone in the government, specifically in Tourism Research Australia, doing some work to investigate what the economic importance, region by region, across Australia's 84 tourism regions is and where are the most vulnerable communities and regions to shocks and pressures.

Senator PRATT: Can you unpick for me which regions like our coral coast in WA have that diversity within them that means there are pockets of communities that are extremely dependent?

Mr Calder: What we are trying to do with this report is build proxy measures for the size of the regional economy and the size of the regional tourism economy. So it is an issue in terms of drilling down to a subregional focus within that. Broadly speaking, the greater the percentage of the contribution of the regional economy that comes from tourism, the greater their dependence is. If tourism fell away, their regional economy is far more dependent on tourism. So—

Senator PRATT: I understand that point. It is more that within a region you do have some quite isolated communities. I am really trying to unpick, I suppose, what the next steps might be. I commend you for drilling down this far but there are some particularly vulnerable communities in WA.

Mr Calder: The issue we confront is trying to get robust data down to that subregional basis to make any valid conclusions. To try to get these measures, we have had to go to devising measures of consumption as a proportion of state economies and then apportioning that across regions. We have had to use personal income tax data as an indication of the economic value of regions. Trying to pull that data down to very localised levels presents just another order of difficulty in coming up with reliable numbers.

In any one region there will always be parts of it which are more dependent upon tourism than other parts. Somewhere like Sydney is, in an aggregate sense, a very important region for Australian tourism. But because of the diversity of its economy, tourism is a very small proportion of its total economy. Within Sydney there will be areas such as Manly which are very dependent upon tourism, compared to other regions.

Senator PRATT: Can I ask: what work has been done? Clearly there are some tourism regions that seem to be moving ahead quite successfully, despite the strength of the Australian dollar that is pushing more tourists overseas. You have the south-west of WA or Daylesford and a bunch of places that seem to be marketing themselves and moving forward. On the other hand, I think there are a number of communities that are not quite well connected enough and are feeling the pinch a bit more than others. What is the strategic thinking on where to for those communities?

Mr McEvoy: From a Tourism Australia point of view, the conduit for us is the state tourism organisation. Having been someone who ran one of those, in South Australia, you are very connected to the regions and you work on intrastate marketing with them, how they can be part of the national picture and, where relevant, how they can become part of the international picture. If you look, Wayne and TRA have done a good job on this. There is a great understanding now where the regions are, to the point of what is within them, but also what are their assets? What do consumers want within that? It is a bit like a gym membership.

They get out of it what they put in. Some are better organised and better at it than others. I guess we cannot help with all of that. The networks and the links are good. We work through the states to help them. We really think about the consumer, who is the end-user. The coral coast is a great example. They have got the nutrients and stuff that we want to tell the world about.

Senator PRATT: Absolutely.

Mr McEvoy: Then it is really up to the local community to be organised to see this value and to really put a lot of effort in.

Senator PRATT: How good are state organisations, do you think? Norfolk Island is a good example. Without someone there, you can fall quite far before you have really come to terms with the broad breadth of strategic issues that you then have to catch up on.

Mr McEvoy: I think there is a greater focus on destination planning. Again, through the National Long-Term Tourism Strategy, there is a working group around that. If they get their house in order, who are the players? Where are we now? Where do we want to be? How do we get there? Infrastructure, access, marketing distribution—they will all do better. I think that framework is well tried and it is true.

Senator PRATT: I would agree.

Mr McEvoy: And the more that people want to jump on board with that. I would argue that people should take a really big interest in the National Long-Term Tourism Strategy, the work being done around things like national landscapes, destination development plans. TRA, I think, have a couple of pilots in the market with certain destinations to look at that. I think the work is there. Again, it will be up to the local community to grab it and make it relevant for them.

Ms Madden: Senator, perhaps also to address your question, you could say it is one of the reasons why, in developing and rolling out the National Long-Term Tourism Strategy, from the Commonwealth point of view, we were very concerned to ensure that we had a lot of consultation and buy-in from each and every state and territory government so that, as Andrew said, there are good collaborative relationships that exist with the STOs, with small operators, because not only is the industry characterised by great regional dispersal but also it is characterised by a predominance of very small businesses. Working with the STOs, working with the local tourism organisations, making sure that what we are doing nationally can be picked up by each and every region, to the extent that it is appropriate to them, has been one of the hallmarks of the strategy and one of the reasons why we worked for a long time to ensure that every state and territory minister and the jurisdictions were part of it and, as you know, are leading the majority of some of the working groups which are delivering results for the industry.

Senator PRATT: Thank you. Thank you, Chair.

CHAIR: Senator Bushby.

Senator BUSHBY: Thank you, Chair. I want to follow up on a couple of things that Senator Eggleston asked earlier. One of them was the efficiency dividend. I believe you mentioned that it was going to have an impact of about \$600,000. Is that correct?

Mr McEvoy: \$674,000 additional.

Senator BUSHBY: That is over the forward estimates, is it?

Mr McEvoy: Per annum.

Senator BUSHBY: That is per annum.

Mr McEvoy: For year one.

Senator BUSHBY: For year one. What impact will it have on the other lines using forward estimates?

Mr McEvoy: We will get that for you, Senator. We might take it on notice. In year two, it is \$1.428 million. In year three, 2013-14, it is \$1.859 million and in 2014-15 it is \$2.299 million.

Senator BUSHBY: And \$0.674 million for the first year?

Mr McEvoy: In that budget paper it says \$0.670 million. I am not sure of the discrepancy.

Senator BUSHBY: That is roughly about \$6.2 million over the forward estimates?

Senator Sherry: Page 126.

Senator BUSHBY: So \$6.2 million over forward estimates. That is a fair amount of money from your budget. How are you intending to address that loss?

Mr McEvoy: As I said earlier to Senator Eggleston, we take account of that in our forward estimates in the way we allocate money. We are doing a lot more partnership work. We are getting a lot more of the Australian industry—the airlines, the international wholesalers and agents—on board. It is a much bigger, more collaborative approach to make sure that we are still having an impact nationally and globally.

Senator BUSHBY: You take account of it in your forward allocations?

Mr McEvoy: Yes.

Senator BUSHBY: Does that mean that in your forward allocations you are budgeting to spend less in certain areas? Or are you saying that your partnerships with private industry will completely make up for the loss of income that will come from—

Mr McEvoy: I think the good thing about any efficiency saving is that you look to be more efficient. That is step one for us, how can we be more efficient.

Senator BUSHBY: You have had a series of efficiency dividends over the years. That is not to say you cannot become more efficient, but it becomes harder as each one comes on.

Mr McEvoy: Step one is: how do we continue to become more efficient? As you know, there are a lot of ways now through technology and other things that can hopefully make you more efficient. Secondly, to your point, who are the partners we can get on board to help us continue to have that impact and that effort? You will notice, in the revenue line, the revenue line for Tourism Australia will go up this year because our partnerships are getting stronger. I think the Australian industry is very much in the mood to work together with us and the states and territories to do a better job globally and push one message out there. That is what we have to continue to foster.

Senator BUSHBY: You mentioned your forward allocation. You raised that. In those forward allocations, are you assuming that you will be spending less on certain things or are you forecasting that you will have additional money from the partnerships to not have to cut anything?

Mr McEvoy: We can only work with surety, which is our appropriation.

Senator BUSHBY: That is right.

Mr McEvoy: We will work within the budget allocation. The aim will be to continue to garner good partnerships.

Senator BUSHBY: What are you looking at cutting in your forward allocations?

Mr McEvoy: Next year we are not cutting any programs. As I said, if you look at our total budget, it is an increase or improvement on last year. We will spend more money in the markets, which is good news for Australian tourism. Secondly as we said, given that our dollar is strong, we are buying better overseas, so we can make the dollar go further.

Senator BUSHBY: As I recall—I do not recall exactly where or when—Minister Ferguson last year answered a question in which he indicated that there were no corporate cost savings to be available at Tourism Australia. Do you recall that statement? I cannot recall the exact details of it. I remember something like that being said.

Senator Sherry: I do not recall it, Senator. It might have been before my time in this area.

Senator BUSHBY: You say you have an improvement in your budget for next year. How does that compare with your historical budget, particularly since the last year of the Coalition government, say 2007? Are you back to where you were?

Mr McEvoy: I think we have taken this one on notice before. I might take it on notice and give you the answer, looking back to 2007 onwards.

Senator Sherry: That is a long time ago.

Senator BUSHBY: It was a long time ago but the value of the dollar—

Senator Sherry: A lot of estimates ago too.

Senator BUSHBY: The value of the dollar today is almost certainly less than it was in 2007. I suspect you may have had a higher budget, even in 2007 dollars, than you do now. If you could take that on notice.

Mr McEvoy: I do not have that before me. I would be happy, on notice, to provide that.

Senator BUSHBY: Moving on to something else that Senator Eggleston also raised, the Passenger Movement Charge. There is a report titled *The impacts of the Passenger Movement Charge on tourism output and the economy*, dated 15 March 2011, on the Tourism Research Australia site. Are you aware of that report?

Ms Madden: Yes. We just had some questions about that.

Senator BUSHBY: I know. You are aware of that. You just had a discussion about that. What date was that report commissioned?

Mr Calder: Senator, I would have to check the exact date. That report was commissioned probably six to eight months before it was released.

Senator BUSHBY: So six to eight months before 15 March 2011?

Mr Calder: Yes.

Senator Sherry: We should take that on notice.

Senator BUSHBY: If you can find an exact date. That gives me an indication. How long did the report take to complete? Was it the six to eight month period between—

Mr Calder: Yes.

Senator BUSHBY: What was the reason why it was commissioned? What was the intention to find out by commissioning that report?

Mr Calder: As I think I stated before, it was one of a suite of products that we contracted with a consortia of universities on behalf of the states and territories. This all came about because the Sustainable Tourism Cooperative Research Centre had built a suite of state computable general equilibrium models which they undertook and developed the state tourism satellite accounts with. When the CRC rebid for funding failed, the states were left in a position where they were not going to be able to access the state tourism satellite accounts. TRA offered to take over the, I guess, management of the contract for the delivery of the state tourism satellite accounts, as well as a number of other products which were jointly agreed between the states and territories and ourselves in the Tourism Research Committee structure, which is the research managers for each of the states and territories and TRA.

Senator BUSHBY: That explains the overall reason why TRA was conducting that. It does not explain why this particular issue was looked at, i.e., the impacts of the Passenger Movement Charge on tourism output on the economy, and why that was commissioned some eight to 10 months ago, when the decision to impose the Passenger Movement Charge was some two years ago. What was the motivation in commissioning research on that particular issue when it was in relation to something that happened two years earlier?

Mr Calder: It was not in relation to any particular issue. It was more a discussion within the Tourism Research Committee about what use we could make of the state based CGE models and what were the types of projects we could do. It was worked out—

Senator BUSHBY: It was a bit more of an exercise, was it?

Mr Calder: It was a hypothetical modelling exercise. It was not a live question. This was something that the research managers from the states and territories and ourselves thought would be an interesting modelling exercise to undertake.

Senator BUSHBY: What did it cost?

Mr Calder: The total funding for the whole range of projects that we undertook with the universities was \$435,000. The states and territories provided \$400,000 of that funding.

Senator BUSHBY: Given that this particular point that has been researched was a theoretical exercise, which presumably related to a decision that was made some two years earlier, were any of the other issues that were investigated theoretical exercises that really were not necessarily highly relevant to decisions that might be made looking forward?

Mr Calder: For the projects, there were the state tourism satellite accounts for 2008-09. The universities also are going to deliver the state tourism satellite accounts for 2009-10 as part of that project. Looking at the scoping paper on the disaggregation of tourism employment, how we might utilise those state based models to get a more detailed breakdown of tourism employment through the states by each individual industry which comprises tourism. The report on return on investment in tourism marketing is looking at how the states and territories get a return on their investment that they undertake for tourism marketing. There is a bit of development work in terms of looking at what sort of labour constraints, what sort of labour pool scenarios, might be useful for the tourism industry to consider in the

context of the current labour environment and the current state of the economy. It is going to be trying to build some scenarios that would be useful to develop.

Senator BUSHBY: Mr Calder, all of those other areas of research, at least on face value, sound like they could be quite useful things to know and very useful for forward planning and how you might approach issues in the tourism area. Why would you include this other one, the one about the Passenger Movement Charge, which relates to a decision which was made two years later, unless you were also including that for a purpose that might help assist with planning, like maybe adjustments to the Passenger Movement Charge or increases in the future?

Mr Clarke: Senator, if I could jump in. The project, as Mr Calder has said, has to be seen in the context of all of the other things that TRA is doing. TRA's research plan is a product of what the Commonwealth thinks might be valuable, and what the states, territories and industry and academia think are valuable and are capable of being done.

Senator BUSHBY: So is this included because the Commonwealth thought it was valuable, or the states?

Mr Clarke: This was a product that came out of the joint discussion between the Commonwealth, as I am hearing it, and the states. This is the sort of research that we always intended TRA to be undertaking to look at labour, investment, taxation, whatever issues are relevant to policy making in the tourism sector. My sense is you are looking to draw a link between this piece of research and an actual policy question that government may or may not be taking.

Senator BUSHBY: One would hope that when we spend money on research there is a link between actual policy and potential policy.

Mr Clarke: Correct. And so taxation—

Senator BUSHBY: We want to be spending money on useful things.

Mr Clarke: The Passenger Movement Charge is an issue that is always alive in the industry and is debated. This piece of research will help inform that debate as to an analysis of what it does and does not achieve.

Senator Sherry: Senator, as you would be aware, because I know you take an interest in the Treasury revenue and the ATO, there are often analyses and reports done some time, even years, after an increase or introduction of some new tax or charge. That is not unusual. I have lost count of the number of reports on the impact of the GST over the years. We are still looking at elements of the GST. It is perfectly legitimate—

Senator BUSHBY: Just not at the tax summit.

Senator Sherry: It is perfectly legitimate to look at the impact of an increase in an existing tax or charge or the introduction of a new tax or charge. It has been going on for a long time.

Senator BUSHBY: Let me ask: who made the decision to model a \$20 increase?

Mr Calder: It was not a \$20 increase. It was a 20 per cent increase.

Senator BUSHBY: A 20 per cent increase, sorry.

Mr Calder: That was really a decision of the modelling team which involved the University of Queensland, the University of New South Wales and Monash University. This comes back to the fact that this is a theoretical construct. They were looking at the size of a shock that would generate a response within the model so that they could have something to measure as an output.

Senator BUSHBY: I am happy with that. Thank you.

Senator EGGLESTON: I would like to ask some additional questions regarding the tourism ministers' progress on the National Long-Term Tourism Strategy. I understand there was a conference held in 2010 in which the TMC committed \$2.2 million to implement a number of measures over the next 18 months, which now includes this year. They were, among other things, seeking inclusion of chefs on the skilled occupations migration list, improving labour mobility by seeking support for national uniformity for responsible service of alcohol qualifications, removing barriers to investment by seeking inclusion of tourism in the Commonwealth Enterprise Connect Program, improving destination management planning, particularly through undertaking pilot projects and identifying gaps in research and dissemination, building stronger links with tourism planning through restructuring the National Tourism and Aviation Advisory Committee, supporting industry resilience by releasing the *Study of economic impacts of climate change on tourism* and enhancing Indigenous employment through identifying tourism gaps and scoping out opportunities for inclusion of tourism in existing programs across governments. Martin Ferguson, the minister, said:

This is a historic partnership between the Commonwealth and the States and Territories. Today's outcome, on top of my recent announcement of Australia's new \$150 million global marketing campaign plus the ongoing commitment to tourism marketing by States and Territories, means that Australia has now an integrated tourism policy which addresses both supply and demand.

I just wondered how far we had gone down the track to implementing that program and whether you would like to comment on that.

Mr Clarke: The document you are referring to was, in essence, the launch document or the first public statement by the state, territory and Commonwealth ministers, about starting to flesh out the detail on the long-term tourism strategy, which of course itself was a product of Margaret Jackson's committee's work.

Since that commencement document, the most recent document I would refer you to is the communique of the last meeting of the Tourism Ministers Council on 15 April this year, in which a progress report and an outlook on the next steps in all of those areas was presented. We could use the time now to take you through all of them or I could simply refer you to the most recent public statement on all those.

Senator EGGLESTON: I might ask you some questions about some of the things that were on that list so that you could assist us.

Mr Clarke: Sure.

Senator EGGLESTON: For example, beginning with skilled occupations migration list, as at 30 April 2011 have chefs been included on the skilled occupations migration list?

Ms Madden: No. But a case has been made to Skills Australia which has been supported by the Ministerial Council so that the minister responsible for migration can consider the case.

Senator EGGLESTON: Consider the case for having chefs included? Do we have a deficiency in the number of chefs in Australia? Are we not training enough or not of sufficient sophistication to meet the demands of the tourist industry?

Ms Madden: The business case clearly shows that there are shortages with chefs across most jurisdictions. In fact, the business case also highlights clearly that chefs are included in nearly all of the state based migration plans.

Senator EGGLESTON: Are there areas where chefs are particularly short on service? Are some parts of Australia more deficient in chefs than others?

Ms Madden: Yes.

Mr Clarke: This is a really interesting point. It relates, I think in part, to the question that Senator Pratt was asking earlier, that you have to drill down to a more local level to understand what the issues are. In fact, as part of this work, there is currently a survey that is being undertaken inside this strategy of businesses right across the country to get that better understanding of what are the labour and skills shortages at a location level rather than at a macro, whole-of-Australia level. When the strategy was launched last year, chefs was one of those that every jurisdiction said there was an issue with; hence it was given the first priority.

Senator EGGLESTON: There is not scope for increasing the numbers of chefs in training in Australia as part of a solution to this problem?

Ms Madden: Yes.

Mr Clarke: Oh, yes. It is not that the only solution is migration. This was about identifying what was the hot spot where flexibility in international labour coming into Australia would be desirable.

Senator EGGLESTON: What would the demand be for more chefs in this country? Is it 200, 2,000, 5,000?

Mr Clarke: We did that research as part of presenting the business case for the change. We are happy to take that one on notice and provide you with that data.

Senator EGGLESTON: If you would, that would be interesting. Also going to 30 April 2011 again, is there national uniformity for responsible service of alcohol qualifications across the country? Have you achieved that goal?

Ms Madden: I am happy to say very good progress—

Senator Sherry: As yet, no, but considerable progress. There is a lot of work being done. If I can put my deregulation hat on, as Minister Assisting on Deregulation, we are slowly—and I have to say it is a slow process—obtaining recognition in areas such as training units, prior learning, prior training, prior skills across states and territories. It is happening, but it is happening gradually.

Senator EGGLESTON: Who trains people in alcohol services? Is it done by technical schools, technical training schools, or is it done within the industry? Is there a certificate of responsible service of alcohol that you can put on the wall sort of thing?

Ms Madden: There is responsible service of alcohol certification and the training is provided by a range of service providers, vocational and educational institutes like schools of tourism and hospitality, as well as specialist training providers.

Mr Clarke: The issue that this project is targeted at, though, is mobility so that someone who is trained and certified in one state can easily go and work anywhere else in Australia in this industry. It is an occupation in which there is a degree of casual and mobile labour. This is very much just an efficiency issue, a seamless national economy construct that we are applying to this. Again, when tourism ministers met last year and signed off on this strategy, chefs and responsible service of alcohol and responsible service around gaming were some of the hot spots that they identified where tourism and hospitality businesses were under pressure or had more demand for labour than they could satisfy.

Senator Sherry: Senator, let us take the responsible service of alcohol. It is not just Australians moving around in a mobile workforce. You have international backpackers who obviously need some knowledge about alcohol service and the Liquor Licensing Act in one state who might then move on to another state where there is obviously a different Liquor Licensing Act. They are the sorts of complexities which are gradually being overcome.

Senator EGGLESTON: That is very good. Has tourism been included in the Commonwealth Enterprise Connect Program?

Ms Madden: I am happy to advise that Enterprise Connect is being extended to Queensland tourism businesses with effect from earlier this month. That is occurring under part of the Commonwealth's \$12 million assistance package to the Queensland tourism industry in the wake of the floods and cyclones. On the basis of this 12-month program that, as I said, takes effect from this month, we will be looking at the feasibility of rolling out Enterprise Connect nationally, taking into account the lessons learned from this Queensland experience.

Senator EGGLESTON: Thank you. What destination management planning pilot projects have been undertaken between 30 April 2010 and 30 April 2011?

Ms Madden: I am happy to advise that the Great Ocean Road pilot was completed and some further work is underway on a number of other destinations. I might get my colleague to answer.

Ms Stevenson: There have been two pilots that have been underway but not yet completed. The first one was actually for the Flinders Ranges and that was looking at how you could apply destination management planning, particularly in a geographically isolated area with a large Indigenous population. The other one that is underway is the Cairns-Townsville area. That is looking at what we can learn from destination management planning in the context of an urban area where you have a lot of other land uses around. Neither of those is yet completed.

Senator EGGLESTON: Thank you very much. What about tourism transport planning over the same period? Have you any details of where you are with that?

Ms Madden: There has been a range of work done on tourism transport planning. It is led by Senator Sherry in the form of a Tourism Access Working Group. The next meeting will be held in the margins of the Kent summit next week. There has been some good progress on a range of priority projects there that will be discussed and announced next week.

Senator EGGLESTON: Coming back to some of the questions I asked earlier, has the *Study of economic impacts of climate change on tourism* been released at this stage?

Ms Madden: No.

Mr Clarke: That is the study we talked about earlier in the session.

Senator EGGLESTON: We would like to have a copy when it is, of course. How many Indigenous Australians are employed in the tourist industry at this stage or have been employed over the year in question, from April 2010 to April 2011?

Mr Clarke: Senator, I mentioned earlier the most recent meeting of the tourism ministers reviewing progress on this plan on 15 April and this question about tracking Indigenous employment—in an economic sense, Indigenous product development, Indigenous tourism businesses, but that drills down of course to employment and all of the other social indicators—was one of the things that ministers discussed. They noted that the development at Yallara Resort, which will be an Indigenous tourism training facility, when that deal is completed, is an important milestone in this. Ministers actually asked officials, they asked us—and this will go back down into TRA—to increase our effort to track the statistics, the understanding of the Indigenous tourism sector. We are pretty light on in that area at the moment.

Senator EGGLESTON: I could imagine it would be difficult because Indigenous people come and go in employment and it is a bit hard to follow them.

Mr Clarke: The indicator that they asked us to focus on initially was the creation of new tourism businesses and their lifecycle. We all know that small businesses come and go. But to be tracking the success rate over time and the building of a larger number of businesses whose product is an Indigenous tourism experience—

Mr McEvoy: In Tourism Australia, with the help of former Senator Aden Ridgeway, we had the Indigenous Champions Program, which is about Drew's point. It is about those businesses to get to the point of being international market-ready. We have 50 of those businesses now who are doing real business internationally. They are getting a lot of travel bookings and they are doing quite well out of it. That is a good program to demonstrate what success looks like. There are another two I would mention. I think there are two companies in Australia who are tourism related companies who have a really good focus on this. They are Qantas and Accor, the hotel group. They have strong Indigenous training programs and strong efforts to get greater employment in the Indigenous communities. I agree with Drew that the Indigenous Land Council, ILC, taking over Uluru is a big opportunity for further employment.

Mr Clarke: This work stream around Indigenous people is one of these beautiful things where there are lots of co-benefits in terms of the whole Closing the Gap agenda. The research that we would be happy to talk to you about indicates that one of the motivations for international visitors coming to Australia is to have an Indigenous experience.

Senator EGGLESTON: Yes, that is true.

Mr Clarke: There are good tourism economic reasons to develop this sector as well as the good social reasons to focus on it. It is an area that we are going to be ramping up our research work and product development work on.

Senator EGGLESTON: There are great benefits, I agree, and there is quite a lot of product out there. I have been to an Indigenous tourism conference in the south-west of Western Australia. I was very surprised by the number of operations that there were. I just

wondered, lastly, whether you could give us any indication of how many new Indigenous tourism products have been created over the last year. Do you keep track of them?

Mr Clarke: This is a good example of where our statistical information base, our tracking, is not where it needs to be to manage this sector. No, I do not think we can answer that question. It is exactly the sort of issue that ministers ask us to build our capacity in.

Senator EGGLESTON: Yes, obviously it is very important to do so. Having said that, I wonder whether, under all of these headings that I have just asked questions about, you can, on notice, provide a breakdown of the range of products under each heading.

Mr Clarke: This is across the whole of the NLTTs?

Senator EGGLESTON: Yes, if you could.

Mr Clarke: I do refer you to the communique from the 15 April meeting. I think it does that. I will look at that in the context of the *Hansard* record and see whether that is a sufficient response. I will have to take that on notice.

Ms Madden: We have a copy of that communique here we can table which summarises, as my secretary has said, the key outcomes.

Senator EGGLESTON: We would be quite happy to accept that. But also if you could provide additional information, that would be appreciated.

Mr Clarke: Of course.

Senator EGGLESTON: That is all I have.

CHAIR: Thank you. Any further questions for Tourism Australia or the department? No. In that case, thank you to both those bodies for coming in today and assisting us.

Proceedings suspended from 12:53 to 14:00

Geoscience Australia

CHAIR: Good afternoon. The committee will recommence the Resources, Energy and Tourism portfolio. We have Geoscience Australia with us. Welcome. Do you have an opening statement you would like to make, Dr Pigram?

Dr Pigram: We do not have an opening statement, thank you.

CHAIR: We will go straight to questions, then.

Senator COLBECK: I want to go back to last estimates, where we had a discussion about the impacts of seismic testing in Bass Strait on a number of scallop areas. Are you aware of any further work that has been done post the research that was being undertaken? I cannot think of the name of the company that you told me last time did some work. Are you aware of any further work being done post that work that we discussed last time?

Dr Pigram: No.

Senator COLBECK: What about any conversations with the scallop fishery about the impacts of seismic testing in those regions and any work that they might be doing?

Dr Pigram: They have not approached us.

Senator COLBECK: They have not approached you?

Dr Pigram: No, not directly to Geoscience Australia.

Senator COLBECK: Have you had any conversations with GeoScience Victoria about their operations and the potential impacts that they might be having?

Dr Pigram: I would have to take that on notice. I am not aware of GA conversing with GeoScience Victoria on that topic.

Senator COLBECK: How would you engage in one of these circumstances? Can you give us an oversight of your role in this process? Obviously you are looking at getting that basic exploration data and making it available. That would be your specific role. But what about interactions in any of the downstream work that goes on subsequent to that?

Dr Pigram: In this case we were involved in consultations with GeoScience Victoria about the design of the survey, as I think we discussed last time. They then managed and undertook the work program. On the issue that you raised with us last time, we expected to hear from several sources about that.

Senator COLBECK: Send them the *Hansard* of this and give them the expectation that they should respond.

Dr Pigram: So it has not been raised with us in that sense. Basically, I cannot add any more other than that we really have not had further conversations on the topic.

Senator COLBECK: Do you undertake any monitoring of the science or the research that might be undertaken with respect to the potential impacts of this sort of survey work on the marine environment?

Dr Pigram: We are always interested in the issue. You will appreciate that whenever anyone does any seismic work there are concerns more broadly about the impacts on the marine environment. We are always interested in what the current understanding is in that space. So we monitor it in that sense because we operate all around Australia and there are different issues in different locations.

Senator COLBECK: Are you aware of the research that came out of The Technical University of Catalonia, in Barcelona, relating to squid and octopus and the seismic impacts on them?

Dr Pigram: I am not aware of that, no.

Senator COLBECK: What is your process for maintaining your interest, then? How do you actually do that? Do you need someone to send you the research or do you have some sort of process where you keep an eye on what the potential impacts of seismic testing or the work that you are involved in might be?

Dr Pigram: I will just check with my colleague. Do we have a process for monitoring developments?

Dr Foster: We are part of the environmental assessors forum—the group of people in the department. The Petroleum and Marine Division go along to APPEA meetings and so on, so they are engaged in that activity.

Senator COLBECK: So who sits around the table at that forum?

Dr Foster: For Geoscience Australia, specialists from the Petroleum and Marine Division—the group leader, for example, in that area.

Senator COLBECK: Who would bring expertise in marine science to that forum? These people, I assume, largely have expertise in the science of exploration.

Dr Foster: No, they are marine scientists in their own right. For example, we have benthic ecologists who work in Geoscience Australia in the marine group.

Senator COLBECK: Is it an established, formal group or is it a group that is brought together on an as-needs basis?

Dr Foster: In what connection is the question, Senator? Are you talking about the environmental aspect?

Senator COLBECK: The environmental aspect to maintain your connection with the latest science such as the paper I just discussed, for example.

Dr Foster: The Catalonia—

Senator COLBECK: The Technical University of Catalonia, in Barcelona.

Dr Foster: The group meet regularly, and they meet with APPEA and the department as well.

Senator COLBECK: Has there been any discussion within that forum on the concerns about the scallop deaths in Bass Strait?

Dr Foster: Not that I am aware of. I will take that on notice.

Senator COLBECK: You might have to do this on notice too. I understand that. Is it a formal membership that comes together or is it brought together on an as needs basis, this discussion group?

Dr Foster: They are formal meetings, but I think the best thing is to take that on notice.

Senator COLBECK: Again on notice, could you give me advice as to the membership of the group and how it is made up?

Dr Foster: Yes.

Senator COLBECK: So you have not had any contact from any party associated with that work in Bass Strait about the concerns other than the ones that I raised with you at the last estimates?

Dr Pigram: Certainly not from the fishermen directly. We have not had any further discussion with GSV.

Senator COLBECK: Nothing has come back through any of those forums that you were talking about?

Dr Pigram: No.

Senator COLBECK: You are obviously not aware of additional research that has been done in conjunction with the fishing community that goes forward a little bit further. I have your answer to a question on notice here, so I will take note of that.

Dr Pigram: No, nothing further.

Senator COLBECK: What about that work that was being done for AFMA—the work by Harrington?

Dr Pigram: Was that by AFMA?

Senator COLBECK: No, this is to a different department. There is some work that AFMA has commissioned. Would you engage with the Australian Fisheries Management Authority as part of your technical process?

Dr Foster: You have asked already for the membership of that group, so that will be included in the answer.

Senator COLBECK: That is fine. There are some proposals for testing to be done in the Great Australian Bight for BP. Does Geoscience Australia have any direct involvement in that process?

Dr Pigram: No. That work will be undertaken under the offshore acreage process. This is part of the permit that BP have to explore the offshore acreage in the Great Australian Bight. The work that will be carried out will be subject to the normal environmental requirements under the regulator.

Senator COLBECK: I notice an EPBC Act referral to do that work.

Dr Pigram: Correct.

Senator COLBECK: The concern being raised with me by the tuna industry is that they do not have an issue with the research taking place; it is just the timing of it.

Dr Pigram: That is always a consideration, as I understand it—the timing.

Senator COLBECK: So that would be part of the approval process?

Dr Pigram: Correct.

Senator COLBECK: And what role do you play in oversight of that?

Dr Foster: It is actually in conformity with the EPBC Act, which is not administered by our department—

Senator COLBECK: I understand that.

Dr Foster: and compliance with the Offshore Petroleum and Greenhouse Gas Storage Act or any component of that which relates to the environment.

Senator COLBECK: And you have oversight of that act?

Dr Foster: No, Geoscience Australia does not.

Dr Pigram: We do not have oversight, but we might be asked to provide technical advice as to the process. So we may provide an input.

Senator COLBECK: So the offshore petroleum act is managed by?

Dr Foster: By RET.

Dr Pigram: By the department.

Senator COLBECK: Again by environment?

Dr Pigram: No, by this department—by Resources, Energy and Tourism.

Senator COLBECK: Okay. In a broader sense, Mr Clarke, what role might the department play in the process as far as the concerns that have been expressed go? My understanding is that November to April is the period that BP has applied for, which is the critical period for the tuna industry.

Mr Clarke: I will quickly canvass how all the pieces fit together.

Senator COLBECK: Okay.

Mr Clarke: The acreage release is managed by the department under the offshore act with geoscience input from GA. We have awarded exploration licences. The environmental approvals for those, though, come from the environment department, under the EPBC Act. So the environment department will have to take into account the claims of the fishing industry about the optimum times. Their minister will ultimately make the decision and oversight the implementation of that. Again, they might come back to GA for technical advice about the seismic work plan and so on, but that is GA as a science adviser, not a regulator.

Senator COLBECK: So the only role that you might play in that might be providing some advice to Environment?

Mr Clarke: GA provides the science advice. The department's role was the awarding of the exploration permit. In essence, I am referring you to the environment department. It is an EPBC matter.

Senator COLBECK: That is fine. I am a regular visitor to them, so they are familiar with these sorts of things as well.

Senator JOYCE: I would like to go to coal seam gas. There was a report by Dr MA Habermehl entitled *Summary of advice in relation to the potential impacts of extraction of coal seam gas in the Surat and Bowen Basins, Queensland*. It was mentioned in that report that the modelling results require further work. Has that work been done?

Dr Pigram: The report you refer to was not done just by Dr Habermehl. It was Dr Habermehl and Geoscience Australia. We wrote the report.

Senator JOYCE: Okay. Good stuff.

Dr Pigram: The reference to further work relates to the fact that we were asked to examine each of the individual company applications for coal seam gas development. The further work that we referred to was that there was not sufficient information available at the time to be able to look at the cumulative impacts. Rather, we were looking at individual company impacts in terms of their permits. The capacity to put the whole thing together and look at the impact on the entire basin required additional work to be done. That work has not been done at this time.

Senator JOYCE: Do you anticipate when that work will be done? Is there anything in the pipeline for that work to be done?

Dr Pigram: Not at this stage, but we are in discussion with SEWPAC around the possibility of that work being progressed.

Senator JOYCE: You can understand how the cumulative impact across the aquifer could be quite substantial if you get it wrong.

Dr Pigram: We pointed that out in the report and we recommended that additional work could be done so that that could be understood.

Senator JOYCE: How much water will the coal seam gas projects currently underway remove from the Great Artesian Basin?

Dr Pigram: I would have to take that on notice to get you a number.

Senator JOYCE: The water group in the department of the environment said that it could be up to 45,000 gigalitres.

Dr Pigram: It may well be. I would have to take that on notice to give you an exact number.

Senator JOYCE: What do you see as being the major threats from coal seam gas? Do you see any potential threats from coal seam gas?

Dr Pigram: What were you thinking of in particular?

Senator JOYCE: The interruption of aquifers, cross-contamination between aquifers, the removal of water from aquifers in such a way that it drops the level and reduces the capacity of other people in the surrounding areas to get access to water for stock and domestic use, interference with the aquifers and how they interplay with the Murray-Darling Basin.

Dr Pigram: We were asked to comment on all of those issues. The report, if you read through it, is actually very conservative in the recommendations of requirements to be placed on industry. The primary recommendation in relation to the management of water was that, unless it could be otherwise demonstrated that there were no major impacts, it had to be reinjected. It had to be put back underground so that these effects could be minimised, if not removed altogether.

Senator JOYCE: Are they reinjecting water at the moment?

Dr Pigram: I am not aware that they are reinjecting water at the moment.

Senator JOYCE: So we are talking about something that nobody does.

Dr Pigram: Reinjection of water is done in other locations. It is not being done in that region at the moment.

Senator JOYCE: Whereabouts, Dr Pigram?

Dr Pigram: Let me take that on notice and I will provide you with some information. I am not aware of it happening in the area that you are talking about, in the Surat and Bowen basins.

Senator JOYCE: Are you aware of it happening in Australia?

Dr Pigram: Elsewhere in Australia? I will take that on notice.

Senator JOYCE: When do you anticipate doing a study that takes into account the cumulative effect?

Dr Pigram: That is a decision for the department of the environment.

Senator JOYCE: Do you take the problem seriously?

Dr Pigram: Very.

Senator JOYCE: Have you had discussions about doing a cumulative study?

Dr Pigram: We have.

Senator JOYCE: Has anybody put any sort of time frame on it at all?

Dr Pigram: Not at this time.

Senator JOYCE: That is not a very serious way to treat a serious problem.

Dr Pigram: The Queensland government has begun a study. What we would like to see happen is a study of the entire system, extending down into New South Wales. That is a

discussion that is underway. I can only assure you that we take it very seriously. For time frames you need to talk to the department of the environment about when they would like to see that happen.

Senator JOYCE: I understand that, Dr Pigram. 'Serious' is a word that is better encountered as an action. People want to see serious equal action equal a study that looks at the cumulative effects. I imagine it will start at Coonabarabran and work its way up to Emerald?

Dr Pigram: We understand the issue, but we are the technical advisers on this matter. We provide input. We do not initiate the studies and we only carry the work out if we are asked to do so.

Senator JOYCE: Where is coal seam gas?

Dr Pigram: I do not understand your question.

Senator JOYCE: What part of Australia? What is the range of it?

Dr Pigram: it is through the Bowen and the Surat and down into the Hunter, the basins that come down through New South Wales into the Sydney Basin area. That is the east coast extent.

Senator JOYCE: And up the coast as well, around Lismore?

Dr Pigram: Potentially around Lismore, yes, correct.

Senator JOYCE: How far north does it go? What is the northernmost part of the range?

Dr Pigram: I would have to have a look at a map. That is a good question.

Dr Foster: I think to the top of the Bowen Basin.

Dr Pigram: I think it is probably as far north as Emerald, at the top end of the Bowen Basin.

Senator JOYCE: What is the southernmost part of the range?

Dr Pigram: Probably Wollongong and areas inland from Wollongong.

Senator JOYCE: If I am reading your report correctly, water from aquifers is likely to flow into coal seam measures. How much water, and what risk does this pose to the contamination of the aquifer?

Dr Pigram: It depends on which aquifer you are talking about. With the aquifer in which the coal seam gas is being extracted there is not a problem with contamination because that water is the lowest quality water in the system. If water were to flow from aquifers above or below the coal seam it would actually be better quality water flowing into lower quality aquifers.

Senator JOYCE: That could be quite possible, couldn't it?

Dr Pigram: It is possible, yes.

Senator JOYCE: In the past, Dr Pigram, we have had water bores put down from place to place. But now we have a multiplicity of entry points into the aquifer—in fact, some literally within hundreds of metres of one another and in the hundreds. So what is happening now is completely different to what has happened in the past. Would you agree with that?

Dr Pigram: I would agree with that.

Senator JOYCE: Just for the record, how old is some of the water in some of those aquifers?

Dr Pigram: My understanding is that the maximum age of the water in Great Artesian Basin is about 1½ million years. The area where the activity is taking place is the younger part of the basin because it is close to the recharge bed, so it would be younger than that but I do not know the exact age. It is not yesterday's water.

Senator JOYCE: Does water travel from one area to the other area, like from the Condamine alluviums, from a recharge area, right out west?

Dr Pigram: The Great Artesian Basin extends from that area that has been drilled for coal seam gas right out a long way to the west. That is correct.

Senator JOYCE: So the potential area of effect is massive.

Dr Pigram: Potentially, yes.

Senator JOYCE: So it would make good sense to do a cumulative study as quickly as possible, wouldn't it?

Dr Pigram: And indeed that is our recommendation.

Senator JOYCE: Good stuff.

CHAIR: Senator Joyce, our time for this session has expired. Do you have a last question you want to ask?

Senator JOYCE: I am going to have to put a lot of questions on notice. Your report states that all proponents have been adequately assessed, and any potential risks associated with fracking activities, and that you have proposed appropriate monitoring and mitigating measures. What are those measures?

Dr Pigram: The primary mitigating measure for fracking is concerned with the chemicals that are used, to ensure that the chemicals and the technology that are used are not deleterious to the environment. As part of the mitigating measures there is an ongoing expert panel to monitor the activities of the industry in this space.

Senator JOYCE: You recommend a comprehensive regional ground water simulation model to be developed using all available data. To your knowledge, is that being undertaken?

Dr Pigram: Not at this time.

Senator JOYCE: Why not?

CHAIR: Senator Joyce, we are going to have to finish it there because I am sure there are a lot of questions for the next area as well. I thank Dr Pigram and Dr Foster for their attendance this afternoon.

National Offshore Petroleum Safety Authority

[14:23]

CHAIR: Welcome. Do you wish to make an opening statement?

Ms Cutler: I do not have an opening statement, thank you.

Senator EGGLESTON: You are in charge of offshore petroleum safety, beyond the three-mile limit—oil and gas platforms and so on?

Ms Cutler: Yes.

Senator EGGLESTON: I understand that you have a joint agreement with the Western Australian government over these sorts of things.

Ms Cutler: The arrangements are such that NOPSA's jurisdiction is in Commonwealth waters and in state waters where the state governments have conferred powers on us for health and safety associated with the offshore petroleum facilities.

Senator EGGLESTON: And you are concerned with safety issues in general, aren't you?

Ms Cutler: Yes, health and safety issues in general. From 29 April 2011 for Commonwealth waters the question of well integrity, or the safety of wells, has been included in NOPSA's functions.

Senator EGGLESTON: What, for example, would that have meant for the Montara oil spill? What difference would that have made?

Ms Cutler: At the time, the Northern Territory designated authority was the regulator responsible for well integrity of that particular well. For wells drilled in Commonwealth waters today NOPSA is the regulator responsible for regulating the integrity of those wells.

Senator EGGLESTON: So even though this well was in Commonwealth waters, well beyond the three-mile limit, the Northern Territory was still responsible for the safety of the well. Is that the case?

Ms Cutler: Yes, the integrity of the well.

Senator EGGLESTON: What will be the impact of this new regulation, where you will be in charge of well integrity in Commonwealth waters?

Ms Cutler: What that means is that in Commonwealth waters there will be a consistent national approach. We are able to bring together a core of people with expertise and experience in well integrity. We have looked overseas and around Australia at the best practice approaches to the regulation of well integrity. The approach that NOPSA uses is to undertake inspections to verify that titleholders are in fact discharging their duties with respect to well integrity. In other words, we verify that the people responsible are in fact doing what they said they would do in order to ensure that their wells have high integrity.

Senator EGGLESTON: Has this arrangement applied in other states which have offshore wells, like Victoria or Western Australia?

Ms Cutler: Since 29 April, when the new regulations came into effect, for Commonwealth waters around Australia NOPSA is now the regulator of well integrity.

Senator EGGLESTON: What was the situation prior to the 29th? Did Western Australia and Victoria control safety or have responsibility for wells in what are Commonwealth waters?

Ms Cutler: That is correct, and they still have responsibility for the integrity of wells drilled in coastal waters at this point in time.

Senator EGGLESTON: Yes, out to the three-mile limit.

Ms Cutler: Correct.

Senator EGGLESTON: Why has this change been put in place? If the state governments have regulatory authority or safety authority in their own waters and have had in the past, was there some deficiency in the way the Northern Territory managed the safety of the well off the

Northern Territory coast? I presume there must have been to have caused it to be thought necessary to change these regulations.

Senator Sherry: I might start answering that question because the questions you are raising are essentially policy questions about the design of the offshore safety and regulatory regime.

Senator EGGLESTON: I am just looking for reasons. I agree they probably are policy, but it is post the event now.

Senator Sherry: I am not dodging; I am just explaining the context in which I am stepping in. This transfer of well integrity regulation from the state authorities in Commonwealth waters to the national authority is one part of a much larger reform program in offshore petroleum regulation more generally. That in turn arose from various reviews, including by the Productivity Commission, and supported by the findings of the Montara Commission of Inquiry, about moving towards a single, national, well-resourced, expert regulatory body. I am saying that without prejudice to the competence of the various state and territory authorities. In essence, the finding was that a large, single, expert body was going to give us a better regulatory outcome. This process is not complete. There is further regulatory reform underway to give more powers to Ms Cutler's organisation. The proposal is that it will become the National Offshore Petroleum Safety and Environmental Management Authority. It will pick up some additional environmental regulatory roles. Minister Ferguson is working with the states and territories on roles in coastal waters as well.

Senator EGGLESTON: Yes, I know that. What were the findings of the Montara inquiry, in brief, that led to the feeling that the safety of rigs would be better managed under a national body?

Mr Clarke: The commission of inquiry into the Montara incident made a number of findings about the regulation of that well by the Northern Territory regulator. As a headline, they were not favourable. The commissioner felt that this added weight to the existing proposal from the Productivity Commission that these regulatory functions should be vested in a single national body.

Senator EGGLESTON: I see. For a long time there has been joint management of Western Australian waters—

Mr Clarke: And every other jurisdiction's waters as well. I am sorry to interrupt, Senator, but it is important to clarify this. The situation that existed in the Northern Territory was not unique to the Northern Territory. The regulatory regime, the joint authorities and so on, were the same right around the coast.

Senator EGGLESTON: But I am told around 86 per cent of the gas and oil rigs around the Australian coast are off the Western Australian coastline. Is that not the case?

Mr Clarke: It is something of that order. It is 70 or 80 per cent—it is of that order of magnitude, yes.

Senator EGGLESTON: And for a long time there has been a joint arrangement between Western Australia and the Commonwealth over these matters which has worked quite well.

Senator PRATT: Varanus Island has been a particular concern.

Senator EGGLESTON: Varanus was an explosion which could have happened anywhere.

Senator PRATT: It was on the shoreline between two different jurisdictions.

Senator EGGLESTON: I do not want to engage in a side discussion.

Senator PRATT: I beg your pardon.

Senator EGGLESTON: The Western Australian government is not particularly well disposed to accepting these changes, as I understand it, because they believe that the joint authority has worked well. It also, I understand, is implicit in the changes that the Commonwealth will make decisions about oil leases and the states will not be further involved, yet with most of these developments there is an on-shore component. So oil or gas can be brought in by a pipeline but then it crosses into state waters and there is a requirement for on-shore infrastructure. Western Australia makes an important point that these decisions should be joint decisions. Do you have any response to that?

Mr Clarke: Yes, thank you. We need to unpack this a bit. There are two classes of regulatory activity here: one in relation to safety, environment and well integrity; and the other in regard to acreage release, production licensing and all the rest of it.

Senator EGGLESTON: Yes, I agree.

Mr Clarke: They are quite distinct and indeed best practice, we understand—and I think this was also exemplified in the Gulf of Mexico incident—is that these functions are kept separate. Ms Cutler's organisation is the safety, environment and well integrity organisation. Several inquiries have come to the finding that a single national safety regulator—I use 'safety' to cover all of that—is the preferred approach in this country. In title administration, which is the awarding of exploration and production licences and so on—that is where the joint authority works. That is retained in the Commonwealth's proposed new legislation. The very point you make, that developments in Commonwealth waters have a huge relationship to what happens on state coastlines and adjacent land is very well understood and appreciated. That is one of the reasons why the model that is on the table retains the JA.

Senator EGGLESTON: So we are retaining joint agreements over title?

Mr Clarke: No; this is regulatory decision making.

Senator EGGLESTON: Regulatory decision making—all right.

Mr Clarke: The joint authority structure for regulatory decision making in regard to titles will continue in the Commonwealth legislation. But the legislation will vest the safety—in its broadest sense—regulatory responsibility entirely in the national body. This is in Commonwealth waters.

Senator EGGLESTON: So the states will still be responsible for safety issues within their own territorial waters—is that what you are saying?

Mr Clarke: The situation in regard to state waters is currently being discussed. Most jurisdictions have indicated their support for the safety administration inside state waters to be conferred and taken by NOPSA, to become NOPSEMA. WA has not agreed to do that. So the two ministers, my minister and Minister Moore, are currently at a very advanced stage of finalising an agreement as to the regime that will apply each side of the three-mile line around the Western Australian coast.

Ms Cutler: Since 2005, when NOPSA was established, the states have over a period of time conferred powers for safety to NOPSA for—

Senator EGGLESTON: In Commonwealth waters?

Ms Cutler: No, for coastal waters—the state waters.

Senator EGGLESTON: And does that include Western Australia having done that?

Ms Cutler: Yes—for the coastal waters but not for inland waters.

Senator EGGLESTON: What do we mean by inland waters—rivers?

Ms Cutler: Those inside the baseline, which in most areas of Australia runs around the coastline but in parts of Western Australia—for example north of the Exmouth Peninsula—runs some distance from the coast. That line defines—

Senator EGGLESTON: Is this the continental shelf?

Mr Clarke: No. There are a number of boundaries that come into play in this sort of regulatory regime. The baseline is a geographic construct the design of which is determined under the international law of the sea. It is essentially the coastline and a few lines across bays. There are rules that define that. The three-mile zone for state waters is then constructed off that baseline, and then the Commonwealth waters beyond the three miles. So there are different legal regimes that can apply as you cross each of those lines.

Ms Cutler: To come back your question, Senator, the Western Australian government has previously conferred powers for health and safety on NOPSA for the coastal waters but not for inland waters.

Senator EGGLESTON: Very good, thank you. This is in fact very much a Western Australian issue though, isn't it, because, as we have said, 70 or 80 per cent of the oil and gas wells in Australia—I think it is 86 per cent—are off the Western Australian coast?

Mr Clarke: I understand the number is of the order of 70 per cent—but of that order of magnitude, yes. WA is the largest state. It is not the only state. The Bass Strait fields are important. The new fields off South Australia are important. The Northern Territory—but Western Australia is the largest jurisdiction in this regime, correct.

Senator EGGLESTON: Are there any financial implications?

Mr Clarke: The safety, in its broadest sense, regulation is funded by industry under a cost recovery regime. So as the scope of the national regulator changes so does the scope and nature of its fundraising activities.

Senator EGGLESTON: What does that mean?

Ms Cutler: We have levy arrangements for health and safety where the operators of facilities undertaking work are liable for levies. With well integrity the responsibility for levies is with the titleholders and, again, relates to wells being drilled or wells under production or not abandoned. Moving forward into the environment management area, the actual structure of the environment management levies is still to be the subject of a cost recovery impact statement, so it still has to be finalised.

Senator EGGLESTON: I see. Thank you. As I understand it, the Western Australian government's view is that the joint arrangements have had no problems over the years, and

since this is very much a Western Australian industry by and large they do not really see the need to change the arrangements. Would you agree that that is their position?

Mr Clarke: In broad terms, yes. But there is an implication in the way you frame that, which is that the joint authority for title administration is about to change, and it is not.

Senator EGGLESTON: I understand that.

Mr Clarke: The JA arrangement in regard to title administration is not changed by the Commonwealth's proposed new regime.

Senator EGGLESTON: All right. Thank you very much for that information.

CHAIR: Thank you, Ms Cutler, for coming along this afternoon. We will now move to the Australian Solar Institute.

Australian Solar Institute

[14:40]

CHAIR: Welcome. Do you have an opening statement you would like to make?

Ms Goddard: No, we have no opening statement.

Senator EGGLESTON: I have some questions about the progress towards establishing effective and cheap solar power in Australia. They seem to be doing this very well in California. Perhaps you could comment on the state of art in terms of solar power and its application to Australia.

Mr Twiddell: If I understand correctly, you are just interested in the general state of the cost of the technologies and progress.

Senator EGGLESTON: Yes—where Australia is at.

Mr Twiddell: The first point I would make is that the solar industry is one of a global nature and the majority of the cost base is driven by global as opposed to local factors. There are two main technologies which the Australian Solar Institute are fostering. One is photovoltaics and the other is concentrated solar thermal. Photovoltaic technologies are growing internationally at the rate of about 50 per cent per annum, driven by supportive policy settings in a number of jurisdictions, including California, which you mentioned. Solar technologies to be financed at large scale would typically require something in the region of \$200 to \$250 per megawatt hour today in order for the project finance to proceed. That is about twice the cost of wind generation technology. Therefore the primary barrier that the Australian Solar Institute is focusing on is research and development into technologies which take solar down that cost curve. We do have a number of exciting projects in our portfolio, and if you care I can give you a couple of examples.

Senator EGGLESTON: Yes, if you could, just quickly.

Mr Twiddell: We have a project at the Australian National University in Canberra led by researcher Dr Kylie Catchpole. She is looking at the application of nanotechnology to apply coatings on the surface of solar cells to increase the light capture and thereby raise the efficiency by something in the region of 30 per cent without adding any material cost at all to the process. If that could be done then we would have an increasing efficiency. That means either that a solar plant can generate more power or that the area required for a fixed amount

of power is reduced because the efficiency is increased, thereby reducing the cost of land, metals et cetera.

Also on the concentrated solar thermal technologies we have a project that we are funding with the CSIRO in Newcastle looking at the generation of electricity directly from heat—mirrors reflecting onto a central receiver. Instead of using water, as is traditional, to generate steam, they are looking at the direct heating of compressed air into air turbines which will result in electricity being able to be generated without the need for water. That has particular application in some of the desert areas. We are very keen to see that technology move into deployment potentially in some areas of Western Australia where mining communities might be currently working on diesel generation, with diesel costs appreciating. The potential for solar energy directly from the sun without water looks very good and promising.

Senator EGGLESTON: That is very interesting. We hear about DC transmission. What potential is there for the use of DC transmission to carry power generated from solar panels in remote areas to more heavily populated areas such as south-eastern Australia or the south-west?

Mr Clarke: Senator, your question is outside the scope of the ASI but I am happy to take it because there is an obvious linkage. The general proposition that many—not all but many—of our best renewable energy resources in Australia are a long way from the grid raises the question of the economics of bringing that power into the grid. As you say, DC transmission lines are one of the technologies that are available to do it. That, of course, is the technology that currently connects Tasmania to the grid under Bass Strait. One of the programs that we are currently working on is the Connecting Renewables Initiative—a \$1 billion program that was announced in the lead-up to last year's election. We are now working through the implementation of that. It is looking at the policy, regulatory or financial hurdles to connecting renewables into the grid and the way in which we can best address that using that \$1 billion of funding and the various regulatory levels. It is a very prospective area of both policy work and technical work.

Senator EGGLESTON: Thank you very much. That is very interesting.

Senator PRATT: I have some further questions about the Connecting Renewables Initiative, particularly as it relates to the mid-west. There are particular challenges currently with energy infrastructure in order to maximise the use of things like solar thermal there—and indeed even their current wind power potential et cetera. How would you characterise that challenge specifically?

Mr Clarke: You are right. We have these large resource precincts that are operating quite sophisticated power systems in many respects, if you look at it on a world scale, but which are not part of either the SWIS—the south-west system—or the national grid. Mt Isa, the Pilbara and the Kimberley are examples of this. The economics of this are quite interesting because they are already higher cost areas to provide electricity to. So the issue of renewables competing with the lowest cost energy, which is Victorian brown coal—they are not competing with that low-cost energy; they are competing with high-cost remote, often diesel powered energy. So the economics of renewables making a contribution in those regions is really quite potentially favourable. That is exactly the sort of reform that we are currently looking at: how we can bring more renewables into the mix in those off-grid or mini-grid areas.

Senator PRATT: And I think the mid-west would be kind of a mini-grid in that there is a connection to the SWIS but it is—

Mr Clarke: It is long and thin, yes.

Senator PRATT: Long and thin—that is the non-technical term for it. I cannot remember what the voltages—whatever the word is that you are supposed to use.

Mr Clarke: We just call them skinny: it is a skinny connection.

Senator PRATT: Okay, I will remember that. As I understand it, that is the connection that would need to come from Geraldton to Perth but then prospectively, ideally, there would be a bunch of connections between potential mining developments as well as some of the potential solar thermal energy in the region.

Mr Clarke: That is right. There are a number of things happening. The market operators—the grid operators—do their strategic planning to postulate where it might be efficient, economic, to extend or strengthen the grid. In eastern Australia that is the Energy Market Operator. It is a separate arrangement, obviously, for the SWIS in Western Australia. On top of that, the Commonwealth has come in with this Connecting Renewables Initiative that asks how we can accelerate this work and bias it towards renewables in particular rather than just economic efficiency in the broad, which tends to drive it absent that bias. That is what we are currently working on.

Senator PRATT: Is it clear in relation to the relative viability of different potential regions for making that kind of infrastructure investment where the mid-west sits?

Mr Clarke: No. It is too early for me to give you any advice on that. But those edge-of-grid or skinny connections out to a remote area are the sorts of geographies that this program is designed to look at.

Senator PRATT: I would have thought, given the level of industrial development that is proposed for the area but not yet in place, that part of making that industrial development viable will be, by necessity, actually getting a grid happening so that you do not have isolated industrial development off the grid where they are not able to balance the energy needs out.

Mr Clarke: Yes—with trucked-in diesel. The area that you are talking about, Cooper Basin and the new minerals provinces in northern Queensland are all potential areas for that—and indeed much of the Northern Territory as well. If the answer is not grid connection or grid strengthening then the answer is often a hybrid where rather than 100 per cent diesel you use solar thermal, geothermal and wind in conjunction with diesel or gas as a firming capacity. That sort of integrated technologies is the other area that we are looking at.

Senator PRATT: I doubt this was a program through ASI but one of the application forms for solar thermal investment talked about connection to the national—being Western Australian I am not that familiar with the language—

Mr Clarke: The NEM, yes. The National Electricity Market—but national does not include WA.

Senator PRATT: Yes, it is not very national to me. And in a sense there were proponents from WA trying to participate in that but not being on the NEM. Do you find that implicit biases in terms of a misunderstanding of what a national electricity market is pop up very often?

Mr Clarke: Yes. Whenever I talk about it publicly I preface it with 'so-called national' and point this out. The numbers are pretty brutal though. Something over 90 per cent of electricity is in the NEM. But I am not discounting the general point you are making. The guidelines—

Senator PRATT: Ninety per cent of electricity on the grid—

Mr Clarke: Ninety per cent of electricity in the country is through the NEM.

Senator PRATT: Would that include the standalone energy use for big industrial developments?

Mr Clarke: Yes. But, to go directly to your point on the program—it was the Solar Flagships Program—

Senator PRATT: That is right.

Mr Clarke: the program guidelines were amended to explicitly pick up Western Australian participation, and there was at least one, that I know of, Western Australian proposal that came in and is currently in the assessment mix.

Senator PRATT: Thank you.

Senator BUSHBY: Thank you for coming in to assist us today. This is budget estimates—what is your budget?

Mr Twiddell: We are working from a funding agreement that runs over five financial years with a total amount of the order of \$100 million.

Senator BUSHBY: That is over five years, is it?

Mr Twiddell: So our annual budget on average therefore is something in the region of \$20 million. It is actually slightly more in the early years in the program, and at the end of last year and included in this current budget there was an additional \$50 million of funding for a United States – Australian solar energy collaboration program.

Senator BUSHBY: That is quite a lot of money. That is fully funded by the federal government—\$100 million plus the additional \$50 million this year over the five-year period. How many staff do you employ?

Mr Twiddell: Seven.

Senator BUSHBY: Obviously you are not spending \$20 million a year on staff salaries. So the way you work is to use the money that you are given to help facilitate development of solar technologies?

Mr Twiddell: Yes. Our organisational expenses are something in the region of \$2 million a year, of which about \$1.3 million is employee benefits and the rest is other suppliers associated with the administration and operation of the business. The bulk of the funding for the next three to four years is for outflows in the region of \$15 million to \$25 million of R&D grant funding to Australian industry and universities that apply through a competitive grant process.

Senator BUSHBY: The outcome notes that cost-effective developments is one of your criteria. How do you ensure that what you are helping to enhance and facilitate is cost-effective?

Mr Twiddell: We have a number of merit criteria which proponents need to address. A key one of those is the ability for the application to address the key cost barrier of solar

technologies. We also encourage industry and state contributions through financial leverage. The contribution of industry funding towards a project is always a good indication of commercial potential. So assessing the commercial potential and the ability of the technology to reduce cost are key assessment criteria when it comes to the award of grants.

Senator BUSHBY: That is how you approach the cost-effectiveness up front. How do you assess the success or otherwise—what evaluation mechanisms do you have in place to go back and look the taxpayers' money that has been spent in this regard to make sure that it is actually delivering outcomes?

Mr Twiddell: First of all we structure the projects on a milestone basis. As the project progresses there are points of review and points of potential exit if projects are not progressing against their original criteria. Another point I would make is that in our portfolio of 27 projects the average age of the project is probably four to six months into a three-year period, so we are early on in the program. We do have an independent research advisory committee that reviews the proposals as they come in and also the performance of the portfolio as it goes through the program.

Senator BUSHBY: So it is a bit too early yet to see whether you are getting any commercial technology out of it that is going to change things.

Mr Twiddell: As a board we are developing a monitoring and evaluation strategy and are in discussions about what the relevant investment should be in terms of monitoring and evaluating the proposal precisely—

Senator BUSHBY: Presumably it is a competitive grant process. Were you oversubscribed for this year? Did you have the luxury of a wide range of possible applicants which ensured that you could then pick projects to provide grants to that were actually potentially successful in the end? I would be concerned if basically you have \$15 million to spend this year and you just give it to the ones you have. How will you ensure that they are only those possible projects that might actually deliver the outcomes that you are supposed to?

Mr Twiddell: We have completed two funding rounds to date since we were established in August 2009. In those two funding rounds we had approximately 190 applications, of which we have 27 projects. So our success rate is something in the region of just under 20 per cent. So it is a highly competitive process.

Senator BUSHBY: On the cost-effective development in solar energy technology, you do not have any input or advice role or any relationship with the government in respect of other solar programs that might be occurring in other areas of government?

Mr Clarke: Senator, we have engaged the Solar Institute to play a key role in the Solar Flagships Program, which is for our large-scale grid-connected—including the SWIS—photovoltaic and solar thermal projects. When the government has processed the assessment of those applications and makes its announcement and we get into the project construction stage, the institute will be our agent in capturing the science, engineering and commercial/economic learnings out of those projects and publishing them in a way that is of value to the investment community and the solar industry in general, without breaching commercial-in-confidence areas. They will be our knowledge agent in leveraging the information that we get out of those projects.

Senator BUSHBY: So that provides the knowledge agent and ensures that you capture the benefit of what is happening with the Solar Flagship Program in terms of technological developments in the area. Do they put money into that as well?

Mr Clarke: Are we paying you to do that, Mark?

Mr Twiddell: Yes.

Senator BUSHBY: The department pays the Solar Institute? I missed what you meant there.

Mr Clarke: Yes. I am just going to confirm that. I should add, though, to draw this link—this is a very important linkage—Mr Twiddell is a member of the council that is assisting us, advising us and ultimately advising the government in the selection of projects for the Solar Flagships Program. Mark, how is that is funded?

Mr Twiddell: There is both funding from the department and funding to the successful Solar Flagship applicant, whoever that may be when it is announced. There is a significant amount of public information that will be of interest that arises from the project. We have plans to invest a relatively small amount of money—in the region of \$1½ million dollars over the lifetime of the program—to fund research over and above the commercial interests of the successful proponents so that information can come in to the public domain on the lessons that arise, mainly of a technical and economic nature.

Senator BUSHBY: In terms of the grants that you look at, are you limited to Australian developed technology or do you look at anywhere around the world?

Mr Twiddell: We certainly encourage international collaboration. Our guidelines are that 90 per cent of the funding should be spent on Australian domiciled research. Where there is equipment that is not available for the research that has to be purchased from overseas, we will review that on a case-by-case basis.

Senator BUSHBY: Thank you.

CHAIR: That concludes the evidence of the Australian Solar Institute and also of the Resources, Energy and Tourism portfolio. Thank you, Minister, Mr Clarke and the officers of the department.

Proceedings suspended from 15:01 to 15:15

TREASURY PORTFOLIO

In Attendance

Senator Sherry, Minister for Small Business

Senator Wong, Minister for Finance and Deregulation

Department of the Treasury

Dr Martin Parkinson, Secretary

Outcome 1—Informed decisions on the development and implementation of policies to improve the wellbeing of the Australian people, including by achieving strong, sustainable economic growth, through the provision of advice to government and the sufficient administration of federal financial relations

1.1—Macroeconomic Group

Dr David Gruen, Executive Director, Domestic

Mr Tony McDonald, General Manager, Macroeconomic Policy Division

Mr Steve Morling, General Manager, Domestic Economy Division

Mr Simon Duggan, Principal Adviser, Forecasting, Domestic Economy Division

Mr Patrick Colmer, General Manager, International Finance and Development Division

Mr Bill Brummitt, General Manager, International and G20 Division

Mr Steve French, General Manager, Corporate Services Group

Mr Rob Donnelly, General Manager, Financial and Facilities Management Division

Ms Pamela Henderson, General Manager, Human Resources Division

2.1—Revenue Group

Mr Rob Heferen, Executive Director

Ms Brenda Berkeley General Manager, Indirect Tax Division

Mr Michael Willcock, General Manager, Personal and Retirement Income Division

Mr Trevor Thomas, Principal Adviser, Personal and Retirement Income Division

Mr Paul McCullough, General Manager, Business Tax Division

Mr Geoff Francis, Manager, Resource Tax Unit

Mr Hector Thompson, Manager, Industry Tax Policy Unit

Mr Tony Regan, Manager, Company Tax Unit

Mr Tom Reid, Chief Adviser, Business Tax Division

Mr Paul Tilley, Chief Adviser, Tax Systems Division

Mr Mike Rawstron, General Manager, International Tax and Treaties Division

Mr Gerry Antioch, General Manager, Tax Systems Division

Ms Maryanne Mrakovcic, General Manager, Tax Analysis Division

Mr Phil Gallagher, Manager, Retirement and Intergenerational Modelling and Analysis Unit

Mr Colin Brown, Manager, Costing and Quantitative Analysis Unit

Mr Marty Robinson, Manager, Household Modelling and Analysis Unit

Mr Jyoti Rahman, Manager, Revenue Analysis Unit.

Mr Phil Bignell, Senior Adviser, Indirect Tax Division

3.1—Fiscal Group

Dr Martin Parkinson, Secretary

Mr Nigel Ray, Executive Director

Dr David Guren, Executive Director Macroeconomic Group

Ms Peta Furnell, General Manager, Social Policy Division

Mr Peter Robinson, Principal Adviser, Social Policy Division

Mr Chris Foster, Principal Adviser, Social Policy Division

Mr Damien White, Principal Adviser, Social Policy Division

Ms Luise McCulloch, General Manager, Industry Environment and Defence Division

Mr Rob Raether, Principal Adviser, Industry, Environment and Defence Division

Ms Meghan Quinn, General Manager, Macroeconomic Modelling Division

Ms Jan Harris, General Manager, Budget Policy Division

Mr Russ Campbell, Principal Adviser, Budget Policy Division

Mr David Woods, Principal Adviser, Budget Policy Division

Ms Angela Baum, Manager, Budget Estimates and Analysis Unit, Budget Policy Division

Mr Matthew Quilinan, Manager, Budget Priorities and Reporting Unit, Budget Policy Division

Ms Elizabeth Clegg, Manager, Assets and Liabilities Analysis Unit, Budget Policy Division

Ms Sue Vroombout, General Manager, Commonwealth-State Relations Division

Mr Steve French, General Manager, Corporate Services Group

Mr Rob Donnelly, General Manager, Financial and Facilities Management Division

4.1—Markets Group

Mr Richard Murray, Executive Director

Ms Sue Vroombout, General Manager, Retail Investor Division

Mr Geoff Miller, Principal Adviser, Markets Group

Mr Andrew Sellars, Manager, Financial Services Unit, Retail Investor Division

Dr Richard Sandlant, Manager, Financial Advice Reform Unit, Retail Investor Division

Mr Christian Mikula, Consumer Credit Unit, Retail Investor Division

Mr James Chisholm, General Manager, Corporations and Capital Markets Division

Mr Daniel McAuliffe, Analyst, Governance and Insolvency Unit, Corporations and Capital Markets Division

Mr Ronita Ram, Analyst, Corporate Reporting and Accountability Unit, Corporations and Capital Markets Division

Ms Alix Gallo, Manager, Financial Markets Unit, Corporations and Capital Markets Division

Mr John Lonsdale, General Manager, Financial System Division

Mr Justin Douglas, Principal Adviser–Banking

Mr Ian Beckett, Principal Adviser–Banking

Mr Jonathan Rollings, Principal Adviser–Superannuation

Ms Kanwaljit Kaur, Manager and Principal Adviser–Insurance

Mr Jerome Davidson, Senior Adviser–Insurance

Mr Paul McBride, General Manager, Competition and Consumer Infrastructure, Competition and Consumer Division

Mr Bruce Paine, Principal Advisor, Competition and Consumer Infrastructure, Competition and Consumer Division

Mr Brenton Thomas, Principal Advisor, Infrastructure, Infrastructure, Competition and Consumer Division

Mr Angela Woo, Principal Advisor, Cities, Housing and Planning Unit, Infrastructure, Competition and Consumer Division

Mr Simon Writer, Manager, Consumer Policy Framework Unit, Infrastructure, Competition and Consumer Division

Mr Andrew Deitz, Manager, Competition Law and Policy Unit, Infrastructure, Competition and Consumer Division

Foreign Investment and Trade Policy Division

Mr Jim Murphy, Executive Director, Markets Group

Ms Deidre Gerathy, General Manager, Foreign Investment and Trade Policy Division

Mr Frank Di Giorgio, Principal Advisor, Foreign Investment and Trade Policy Division

Mr John Hill, Senior Advisor, Investment Review Unit, Foreign Investment and Trade Policy Division

Ms Biljana Waldron, Manager, Investment Review Unit, Foreign Investment and Trade Policy Division

Mr Mike Rosser, Senior Advisor, Foreign Investment and Trade Policy Division

Mr Michael Parkes, Manager, Compliance and Real Estate Screening Unit, Foreign Investment and Trade Policy Division

Ms Angela McGrath, Manager, International Investment and Trade Policy Unit, Foreign Investment and Trade Policy Division

Mr Nhon Tran, Senior Advisor, Foreign Investment and Trade Policy Division

Standard Business Reporting Management Group

Mr Greg Divall, General Manager, Standard Business Reporting

Australian Government Actuary

Mr Peter Martin, General Manager, Australian Government Actuary

Mr Michael Burt, Senior Advisor, Australian Government Actuary

National Competition Council

Mr John Feil, Executive Director, National Competition Council

Takeovers Panel

Mr Allan Bulman, Director, Takeovers Panel

Mr Alan Shaw, Counsel, Takeovers Panel

Corporations and Markets Advisory Committee

Mr John Kluver, Executive Director, CAMAC

AASB

Mr Kevin Stevenson

Mr Angus Thomson

AUASB

Mr Merran Kelsall

Superannuation Complaints Tribunal

Ms Jocelyn Furlan, Chairperson, SCT

Ms Fiona Power, Director, SCT

Australian Bureau of Statistics

Mr Brian Pink, Australian Statistician

Mr Peter Harper, Deputy Australian Statistician, Population, Labour, Industry and Environment Statistics Group

Mr Trevor Sutton, Deputy Australian Statistician, Social Statistics Group

Mr Ian Ewing, Deputy Australian Statistician, Macroeconomics and Integration Group

Mr Denis Farrell, Acting Deputy Australian Statistician, Chief Operating Officer

Ms Jill Charker, Acting First Assistant Statistician, Population, Labour, Industry and Environment Statistics Group

Mr Michael Belcher, Chief Financial Officer

Mr Paul Lowe, Assistant Statistician, Population Census Branch

Ms Denise Carlton, Acting Assistant Statistician, Office of the Statistician

Australian Competition and Consumer Commission

Mr Graeme Samuel, Chair

Mr Brian Cassidy, Chief Executive Officer

Mr Scott Gregson, Group General Manager, Enforcement Operations Group

Mr Nigel Ridgway, Group General Manager, Compliance Operations Group

Mr Marcus Bezzi, Executive General Manager, Enforcement and Compliance Division

Mr Mark Pearson, Deputy Chief Executive Officer, Regulation

Ms Rayne de Gruchy, Deputy Chief Executive Officer, Competition and Consumer

Mr Adrian Brocklehurst, Chief Finance Officer

Mr Tim Grimwade, Executive General Manager, Mergers and Acquisitions Group

Mr Richard Chadwick, General Manager, Adjudication

Mr Richard Home, General Manager, NBN Engagement and Group Coordination Branch

Ms Michelle Groves, Chief Executive Officer, Australian Energy Regulator

Ms Michelle Patterson, General Manager, People Services and Management

Australian Office of Financial Management

Mr Rob Nicholl, Chief Executive Officer

Mr Michael Bath, Director, Financial Risk

Mr Pat Raccosta, Chief Financial Officer

Mr Andrew Johnson, Head of Reporting and IT

Mr Gerald Dodgson, Head of Treasury Services

Australian Prudential Regulation Authority

Dr John Laker, Chairman

Mr Ross Jones, Deputy Chairman

Mr Ian Laughlin, APRA Member

Mr Charles Littrell, Executive General Manager, Policy, Research and Statistics

Mr Keith Chapman, Executive General Manager, Supervisory Support

Australian Taxation Office

Mr Michael D'Ascenzo, Commissioner of Taxation

Mr David Butler, Second Commissioner

Ms Jennie Granger, Second Commissioner

Mr Bruce Quigley, Second Commissioner

Ms Francis Cawthra, Acting Chief Operating Officer

Mr Neil Oleson, Deputy Commissioner, Superannuation

Australian Securities and Investment Commission

Mr Greg Medcraft, Chairman

Ms Belinda Gibson, Deputy Chairman

Mr Shane Tregillis, Commissioner

Mr Peter Boxall, Commissioner

Mr Michael Dwyer, Commissioner

Mr John Price, Senior Executive Leader

Mr Warren Day, Regional Commissioner

Inspector-General of Taxation

Mr Ali Noroozi, Inspector-General of Taxation

Mr Andrew McLoughlin, Deputy Inspector-General of Taxation

Mr David Pengilley, Principal Adviser

Commonwealth Grants Commission

Mr John Spasojevic, Secretary

Mr Phil Parkins, Corporate Services

Productivity Commission

Mr Bernie Wonder, Head of Office

Dr Michael Kirby, First Assistant Commissioner

Mr Terry O'Brien, First Assistant Commissioner

Dr Ralph Lattimore, Assistant Commissioner

[15:15]

CHAIR (Senator HURLEY): I declare open this public hearing of the Senate Economics Legislation Committee. The Senate has referred to the committee the particulars of proposed expenditure for 2010-11 and related documents for the Treasury portfolio. The committee must report to the Senate on 21 June 2011 and it has set 22 July 2011 as the date by which answers to questions on notice are to be returned. Under standing order 26, the committee must take all evidence in public session. This includes answers to questions on notice. Officers and senators are familiar with the rules of the Senate covering estimates hearings. If you need assistance, the secretariat has a copy of the rules. I particularly draw the attention of witnesses to an order of the Senate of 13 May 2009 specifying the process by which a claim of public interest immunity should be raised and which I now incorporate into Hansard.

The extract read as follows—

Public interest immunity claims

That the Senate—

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

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

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

(1) If:

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

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

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

(3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to

the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.

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

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

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

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

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

(Extract, Senate Standing Orders, pp 124-125)

Australian Securities and Investments Commission

[15:16]

CHAIR: The committee will begin consideration of the Treasury portfolio with questions for the Australian Securities and Investments Commission. It will then follow the order as set out in the circulated program. I welcome the Assistant Treasurer, Senator Sherry, and officers of ASIC, particularly Mr Greg Medcraft, who is the new head of ASIC. We welcome him today. Do you have an opening statement you would like to make?

Mr Medcraft: I would like to make a brief opening statement. First of all, I would like to pay tribute to our outgoing chairman, Tony D'Aloisio. Over the past four years, Mr D'Aloisio has led ASIC through an enormous period of change and challenge. Under his leadership, ASIC underwent a major strategic review that ensured that the organisation was more stakeholder-orientated, better informed about the market and focused on achieving specific outcomes. As well, he expanded the size of the commission, with the government bringing in commissioners Peter Boxall, Michael Dwyer, Shane Tregillis and me. There has been the impact of the GFC and the effect that had on financial markets and products and companies. Under Mr D'Aloisio ASIC helped to manage the fallout of the GFC, particularly through the regulation of short selling, and by introducing measures to help investors to withdraw investments from frozen funds on the grounds of financial hardship. Mr D'Aloisio has also seen expansion of ASIC's role, particularly credit licensing last year and the transfer of market supervision from the ASX and now competition in equity markets. He initiated a focus on using ASIC's enforcement powers to seek compensation for retail investors as part of ASIC's overall strategy in investigations. ASIC has also been, as you know, heavily involved in consumer education initiatives under Mr D'Aloisio's tenure, such as the outstanding MoneySmart website.

With Mr D'Aloisio at the helm, ASIC has undertaken major deterrence cases. These matters were complex and not without risk. But Mr D'Aloisio showed consistently his willingness to make tough calls to pursue these cases in the name of the public interest—cases such as *Westpoint*, *James Hardie*, *Opes Prime*, *AWB*, *Fortescue* and *Storm* to name just a few. These cases were not all wins, but ASIC's preparedness to take them on, no matter the difficulty, has had a deterrence on potential wrongdoing.

Internationally, I must also mention that Mr D'Aloisio's leadership extended beyond Australia with his chairmanship of the joint forum—a role that reflects the respect that ASIC has in the international regulatory community.

Madam Chair, I am honoured and excited to be appointed as ASIC's chairman. I would now like to comment on the priorities I see for ASIC going forward. I will emphasise three areas. The first priority, and I think it goes to our legislative mandate, is to make sure that investors are confident and informed—that is, investors and financial consumers. What I hope to do is have an emphasis firstly on education. I have mentioned our MoneySmart website. Since we launched it in March, it has had over a quarter of a million visitors. I believe that senators and MPs have been promoting it to constituents, and we are very pleased with that.

The other initiative that I think is very important in the longer term is helping kids to understand finance. That is embedding in the national curriculum in the 10,000 schools around the country the actual use of financial literacy and also using innovative technologies, particularly new media—things like YouTube et cetera—to better communicate with the Australian population. Secondly, I think gatekeepers are important in our system. Gatekeepers actually form a cornerstone of the system. Making sure they are held to account is actually quite important. I include in that accountants, advisers, product manufacturers and distributors and also lawyers—even though we do not regulate them, they are advisers to key participants in the system.

In that respect I think self-regulation has an important role to play. I mean by that that we are going to work with industry groups to ensure that they apply standards to help meet the needs of investors and financial consumers. Thirdly in this investor and financial consumer objective is consumer behaviour. I think it is important that we recognise how investors and consumers make decisions, particularly looking at things like how product distributors can use new media to better help investors to understand risks.

The second priority will be fair and efficient financial markets. I am continuing the work we are doing there in market competition and market supervision. Our third priority is continuing to focus on delivering an efficient and cost-effective registry and licensing system with a particular focus on small business. Again, the key drivers that I see in terms of achieving the three priorities or outcomes are first making sure that we continue to effectively engage with industry and stakeholders; secondly, undertaking surveillance; thirdly, guiding the market where we see issues; fourthly, education, which, as I said, I believe to be a very important driver; fifthly, deterrence—we will continue to take on the big cases and pursue wrongdoers wherever they are and whoever they might be. But, as I said, there are those other drivers that I think are also important in terms of how we achieve our outcomes. If all of that fails, then, clearly, giving policy advice to government is very important in terms of achieving the outcomes that we have set ourselves. Thank you, Chair, for the welcome today. We are ready to take your questions.

Senator CORMANN: Welcome, Mr Medcraft. Can we perhaps ask you to table that opening statement so that we might have a copy? You read from a prepared statement, didn't you?

Mr Medcraft: Sure.

Senator CORMANN: That would be great. Minister, I would like to start off by asking some questions about the selection process, if that is okay.

Senator Sherry: I am sorry?

Senator CORMANN: The selection process.

Senator Sherry: Of what?

Senator CORMANN: For the chair. Is that all right?

Senator Sherry: Yes, go for it.

Senator CORMANN: You seem—

Senator Sherry: No, I did not hear what you said. I thought you said 'election process'. I thought: 'What on earth are you asking me about my election process for?' I did not get the 's'. That is why I was somewhat surprised.

Senator CORMANN: Obviously my accent is getting the better of me again, Minister. I was just making sure. The chair referred to you as the Assistant Treasurer. There has not been a reshuffle, has there, that we have missed?

Senator Sherry: No, there has not. I represent the Assistant Treasurer.

Senator CORMANN: Can you talk us through the selection process that was undertaken to determine the new chairman of ASIC, Minister?

Senator Sherry: It is a cabinet appointment.

Senator CORMANN: What is the position—

Senator Sherry: I was not involved, so I would have to take that on notice to get you any more details than that. It was a cabinet appointment. Beyond that, I was not involved, so I have no personal knowledge. I would have to refer it to the Treasurer.

Senator CORMANN: These are the first estimates since the appointment was made. You are saying that we cannot essentially ask any questions about the selection process?

Senator Sherry: You can ask what you like. All I can do is answer to the best of my ability. I was not involved in the process. I have no knowledge of the process other than that it was a cabinet appointment. Beyond that I cannot help you. If you wanted more detail than that and if you had let us know beforehand, I could have obtained information for you.

Senator CORMANN: You are not able to tell us whether the position was publicly advertised?

Senator Sherry: I do not have any advice. Unless anyone at the table is aware of whether it was publicly advertised—

Senator CORMANN: Maybe someone from the commission may be able to assist us on whether the position was publicly advertised.

CHAIR: As I understand it, it is a government matter within the executive. I do not think the—

Senator Sherry: I assume it was, Senator, but, as I have no knowledge of the ad, I would not want to go on the record as saying it was advertised.

Senator CORMANN: Is there going to be an opportunity for us to talk about the selection process during these estimates?

Mr Medcraft: I do not believe it was advertised.

Senator CORMANN: I do not believe it was either. Was there a formal process for the consideration of a number of candidates?

Senator Sherry: I have just indicated that I do not know anything about the process other than that it would have been a cabinet appointment—I am sure of that. The Treasurer would have made the recommendation to cabinet. Beyond that, I cannot give you any information.

Senator CORMANN: Mr Medcraft was able to assist us to say that it was not publicly advertised. That is presumably on advice from somebody at the table. Will somebody be able to confirm for us whether one or a number of candidates were considered for the position?

CHAIR: I think the minister has undertaken to take it on notice.

Senator Sherry: I will take it on notice, Senator.

Senator CORMANN: I refer you to the media release by the then minister, Senator John Faulkner, on 5 February 2008: ‘The government has decided to strengthen transparency and merit by selection of and appointment of senior public servants. Under the new arrangements, all relevant positions will be advertised’ and there is a whole series of other elements to it. ‘The new arrangements, which meet an election commitment, will come into effect immediately and will be fully implemented by 1 July this year’, which was in 2008. Then there is a long list of agencies it applies to, including ASIC. Not only have you not followed that process and not only is there now a broken election commitment; also, you are actually not even prepared to answer questions about it at estimates.

Senator Sherry: Senator, that is not what I said. I said—

Senator CORMANN: You are not—

Senator Sherry: Hang on. Chair, if a question is asked, I am entitled to answer it. Senator Cormann loves to talk over. I will not be talked over. I have already told you that I have no knowledge of the process. I do not know what process was followed, other than that I am sure it would have gone to cabinet. I cannot add anything more. I have said once and I will say again that I will take your questions on notice. I cannot tell you what I do not know. I am a representing minister. I am not the responsible minister in this area; I am a representing minister. I cannot tell you what I do not know. I will take it on notice, as is the courtesy, and see what I can find out for you.

Senator CORMANN: There is a whole series of questions in relation to this.

Senator Sherry: Then put your questions on notice.

Senator CORMANN: It is quite unsatisfactory that nobody is able to deal with them during these Senate estimates, which are the first estimates after the appointment was made. I think it is a pretty obvious area for questioning, Minister—in particular, in the context of the election commitment that you made and the announcement by Minister Faulkner.

Senator Sherry: You have a lot of questions. I have already indicated that I cannot answer any, unfortunately, and no-one else at the table can, so—

Senator CORMANN: Let me quickly put them all on notice.

Senator Sherry: Chair, I was finishing my answer.

CHAIR: Yes, Senator Sherry.

Senator Sherry: Thank you. I cannot add anything further. All I can suggest is that, if you have further questions, put them on notice. That is not an unusual circumstance, particularly where an officer or the minister does not have any knowledge of what has taken place.

Senator CORMANN: So, Minister, I will run through those questions and perhaps you might be able to—

CHAIR: Senator Cormann, there is a procedure for giving written questions on notice to the secretariat.

Senator CORMANN: You do not want me to go through the questions?

CHAIR: There are a number of senators who have already advised me that they are interested in asking questions here. I would suggest that, in the interests of time and under normal practice, those written questions can be submitted to the secretariat.

Senator CORMANN: So you do not want me to go through my questions now?

CHAIR: No, I do not.

Senator BUSHBY: I take a point of order on that. The minister has indicated that he is unable to answer the questions that have been asked so far, but he does not know what questions Senator Cormann is going to ask. There may well be an ability to answer those questions. So I think in the interests of exploring that possibility Senator Cormann should be entitled to ask those questions. Then the minister can indicate whether they need to be taken on notice.

CHAIR: I will rule on that point of order, Senator. You are perfectly correct. Senator Cormann is entitled to go through his questions if he believes that they will be answered. His indication was that he was going to just read through the questions without seeking an answer. If he chooses to spend his time reading through and getting an answer from the minister that it will be taken on notice, that is perfectly in order.

Senator Sherry: Chair, Senator Cormann can do what he likes; it is his question time to waste. But I point out that Senator Cormann has indicated that the questions he is going to go through relate to an appointment process of which I have no knowledge and no-one else at the table has any knowledge. It is frankly silly but if he wants to take up the time of the estimates, so be it. I will indicate what I can answer but, as I have said, I do not believe I can help him.

Senator CORMANN: I will assist the committee, Madam Chair. Clearly the promised new era of openness and transparency was just that: a promise. It is an empty promise. The commitment that was made by Senator Faulkner on 5 February 2008 was clearly not complied with. I will now go to some other questions. Mr Medcraft, budget paper No. 1, statement 673, talks about ASIC staff levels being reduced by 155 people over the next financial year. That is 7.6 per cent of all staff. Can you talk us through the reasons why that is happening?

Mr Medcraft: The reduction mentioned in there is made up of two portions. One is related to achieving reductions over a three-year period, an efficiency reduction, to fund the increases in salaries of three per cent per annum that we are currently negotiating with the unions—that is the EA agreement.

Senator CORMANN: You say there are two aspects. One is the efficiency dividend and the other one—

Mr Medcraft: There are two aspects. The first part is to achieve efficiencies to fund the efficiency dividend over the next three years. The efficiencies amount to 87 staff. The remaining portion is that, in our budget, an additional \$10 million was identified that is part of the funding review that ASIC is subject to. That is in two parts. The first part is looking at our business processes, how we allocate resources and priorities, and providing that to the department of finance. That will be done by the end of this week and then the department of finance will review that and come back later in the year. As part of that review, the government will determine whether that remaining \$10 million is given to ASIC. That is reflected in the remaining portion of the cuts.

Senator CORMANN: And what was the part that was there to fund the increase in staffing costs?

Mr Medcraft: That is the 87 that I mentioned. That is the efficiency reduction to fund the salary increases under the EA agreement over the next three years. That agreement will be going to a vote of our staff on 1 July.

Senator CORMANN: So that is quite separate from the efficiency dividend that is applied across the whole of government?

Mr Medcraft: No. The efficiency dividend is how we fund the increases.

Senator CORMANN: Are there any forced redundancies involved as part of that process?

Mr Medcraft: Yes. They will basically all be in place by around July. We have already had around 25 or 30 staff leave as part of that. Staff will be looking to see whether they can identify other positions in ASIC; and, if not, they will accept a redundancy payout.

Senator CORMANN: So the 25 to 30 were voluntary separations?

Mr Medcraft: They have actually left. They have taken a voluntary redundancy.

Senator CORMANN: So now you have to find another 57 to 63—

Mr Medcraft: They have been identified.

Senator CORMANN: The people have been identified?

Mr Medcraft: Yes. And if they cannot find another position within ASIC then they will be made redundant—involuntary redundancy.

Senator CORMANN: So that is 87, which only takes you just over halfway there. Then there is another 68 on top of that.

Mr Medcraft: Which will be, depending on the outcome of the funding review—

Senator CORMANN: So 68 is the upper limit, is it?

Mr Medcraft: Yes. It represents \$10 million. ASIC's labour costs are around 60 per cent of funding, so it is roughly 60 people.

Senator CORMANN: So is it possible that the 68 will all stay?

Mr Medcraft: It depends on the outcome of the funding review.

Senator CORMANN: Sure. But at this stage in the budget it is 155.

Mr Medcraft: Subject to—that \$10 million is really contingent on the funding review.

Senator CORMANN: Sure, but I was just quoting the budget paper, which says 155.

Mr Medcraft: Sure. It was put in prospectively.

Senator CORMANN: How will that staff decrease—the 87 plus potentially up to another 68—impact on your operational ability to do your statutory duties?

Mr Medcraft: It was an efficiency review. That 87 was split between the deterrence and real economy areas. I will ask the deputy chairman to comment but basically we reorganised the deterrence with a focus more on some of the regional commissioners, and we believe we will end up with a more efficient outcome. The second part of it was in real economy—sorry, in shared services. We had PricewaterhouseCoopers undertake a review a number of years ago. We have been implementing the recommendations of that over a number of years, and that was continuing essentially to implement that. So it is really focused on efficiency and I do not believe that there will be any effect on service delivery.

Ms Gibson: The deterrence review looked at how we organise ourselves. It looked at the cases we have on hand, the cases we will be undertaking and our team structures and ascertained that we could make some adjustments over time—recognising that the review we had done in 2008 did not really deal so much with the deterrence side of things at the start of the GFC. So we think we have identified a better way to structure ourselves with some optional people but a limited impact on the overall deterrent capability.

Senator CORMANN: Just to clarify—have there been any redundancies in ASIC over the past 12 months?

Mr Medcraft: There have not been, I believe, in the last 12 months but—

Ms Gibson: There would have been a number, both within the ones we have just been talking about in deterrence and shared services and in other sections of ASIC, in the last 12 months.

Senator CORMANN: Can you put a number on it?

Ms Gibson: I cannot at this point.

Senator CORMANN: Is it five, 10, 15, 20—is it a handful or is it—

Mr Medcraft: We can come back to you on that. But when we talk about redundancies what we are really talking about and what we are in the process of at the moment is prospectively the ones that I mentioned, either voluntary redundancies or involuntary redundancies. The bulk of any redundancies are in that. But we will come back to you to clarify that further. I think that is probably the best way to do that.

Ms Gibson: It is in isolated sections.

Mr Medcraft: There could have been somebody wanting to have a voluntary redundancy in an area that I am not aware of, so I would rather give you an absolutely clear answer on this.

Senator CORMANN: Could you give us the numbers over the last 12 months—how many redundancies there were, how many forced and how many voluntary, and then what your expectations are over the next three years in terms of redundancies, forced and voluntary, and what the total cost has been in payouts for those redundancies.

Mr Medcraft: I am happy to take that on notice.

Senator CORMANN: Great. Are you able to tell us today how many of the 87 and the 68 and the people who have left come out of the front-line enforcement teams? I think you call them deterrence teams, don't you?

Mr Medcraft: Yes.

Senator CORMANN: How many of the people who were or are to be made redundant are coming out of the deterrence teams?

Ms Gibson: At the present time 57 would be out of the deterrence teams.

Senator CORMANN: Out of how many in total?

Ms Gibson: Two hundred plus.

Senator CORMANN: So it is 57 out of 200. That is a pretty sizeable chunk, isn't it?

Ms Gibson: Two hundred plus. And front-line deterrence means those who are issuing notices. There is a substantive force behind them that adds to that. There are the people in our chief legal offices. There is a very substantial number in what we call our shared services that do a lot of the back-up. So it appears on the face of it a substantial decrease but 200 is a subset of the number of people who are committed to deterrence activities within ASIC.

Senator CORMANN: Sure, but out of the 200 people who were part of your deterrence teams there were 57 who were surplus to requirements, were there?

Ms Gibson: Senator, can I backtrack—can I confirm the number of 200? It may be that it is 200 afterwards.

Senator CORMANN: Let us say it is 300.

Ms Gibson: If it is 300, yes, that would be right.

Senator CORMANN: Let us say it is somewhere between 200 and 300. Fifty-seven is still a fairly sizeable chunk. What were they doing if they were surplus to requirements?

Ms Gibson: They have been working on some investigations that others will be able to pick up from them. We are satisfied the others will be able to pick up that work.

Senator CORMANN: So others will now pick up all of the work, the work of those 57 will be spread across the remaining however many?

Ms Gibson: That is correct.

Senator CORMANN: That is a pretty significant spread, I would have thought. So would you not say, Mr Medcraft, that you have a resourcing or a funding problem?

Mr Medcraft: My view is that the funding of ASIC is a matter for government. We are funded from the appropriation. We will look to deliver the outcomes to the best of our ability with the resources we are given. That is very much going to be my approach as chairman.

Senator CORMANN: So you will do the best you can with the resources you are given—

Mr Medcraft: To achieve the outcomes that I have outlined and set priorities within that. I have always had a philosophy that you have to live within your means. The government allocates us those means and then we have to leverage those resources in the most efficient way possible. It is like whatever you are running: you should live within your means and do your best with what you have.

Senator CORMANN: That is not really a ringing endorsement of the level of resourcing that ASIC has. In terms of fulfilling your statutory obligations, are you able to do the job as well as you think you should be doing with the resources you have?

Mr Medcraft: As I said, with whatever we are given by government we will look to do the best job we can to deliver the outcomes that have been established for us. In allocating priorities, the first priority for us is meeting our statutory responsibilities.

Senator CORMANN: That is not really a yes, is it?

Mr Medcraft: Basically our objectives and the resources we are given—as I said, it is a matter for government as to the resources that are allocated to ASIC.

Senator CORMANN: How many positions over the past 12 months have been designated as SES positions?

Mr Medcraft: I will take that on notice. I do not have that information.

Senator CORMANN: You do not know that information?

Mr Medcraft: I do not have it on hand.

Mr Day: Information about how many SES officers we have is contained in ASIC's annual report. I believe it is around 50.

Senator CORMANN: I am not asking you how many you have; I am asking how many were designated as SES officers over the last 12 months. Ms Gibson might be able to assist.

Ms Gibson: I do not have those numbers to hand.

Senator CORMANN: Would you be able to tell us how many people have resigned from SES positions in ASIC in the last 12 months?

Mr Medcraft: Again, we do not have the information to hand but we would be very happy to give it to you.

Senator CORMANN: How many SES positions do you have—50?

Mr Medcraft: Roughly.

Senator CORMANN: But you do not know how many would have left over the last 12 months?

Mr Medcraft: Not offhand, no.

Senator CORMANN: I have a few questions in relation to FoFA.

CHAIR: Senator Williams, Senator Cameron and Senator Bushby have questions as well, so—

Senator CORMANN: I am keen to work in with the committee as long I can get the call back at some point.

CHAIR: Well, we will see how we go.

Senator BUSHBY: I am quite interested in funding. I have asked about this before. First of all, what is the total budget allocation that you have in the coming year?

Mr Medcraft: It is \$360 million I think.

Senator BUSHBY: And how does that compare with the current financial year—the one that we are in now?

Mr Medcraft: The total budget for 2011-12 is \$323.565 million and for 2010-11 it was \$325.567 million. That is the appropriation funding. With our unsourced revenue it is \$346 million for 2011-12 versus \$360 million for 2010-11.

Senator BUSHBY: What is your unsourced revenue?

Mr Medcraft: I mentioned before this that it was \$10 million. It is \$350 million versus \$360 million—my apologies.

Senator BUSHBY: Incidentally, I should have congratulated you on your position before I started asking questions. Welcome to ASIC.

Mr Medcraft: Thank you, Senator. Basically the number for this year in the budget statement is roughly \$350 million. Last year it was \$360 million. And I mentioned the \$10 million difference, which is subject to the funding review.

Senator BUSHBY: I have asked this question before but I would like an updated figure. What is the total value of all the fees, charges, fines et cetera that are raised through the activities of ASIC?

Mr Medcraft: Mr Day, are you aware of that number?

Mr Day: Fines are not something I can talk about but fees and charges are about \$550 million.

Senator BUSHBY: And that is about \$200 million more than the allocation that is available to ASIC to conduct its operations?

Mr Day: Yes.

Senator BUSHBY: In that sense it is effectively a taxation arm of government; it raises money. And that money—just for further clarification and for the record—goes to consolidated revenue?

Senator Sherry: As you may or may not be aware, that is the situation that has existed going back to, I think, the 1980s. That approach is at least 20 or 25 years old.

Senator BUSHBY: That may well be the case, but I am interested in exploring an issue on this. So you raise \$550 million and it goes into consolidated revenue. ASIC then has to go cap in hand to the government as part of the budget process—which is getting increasingly competitive as the government takes us further and further into debt—to justify the budget that you get and to make your case. Are you aware that in other comparative jurisdictions like the United States of America and the United Kingdom your equivalents are entirely self-funded from their own fees? They set their fees at a level to cover their costs plus a bit more—maybe it is for future capital investment. If they overcharge, a surplus for the SEC goes into a fund which is used to compensate people who have lost money. Are you aware of those different funding models that occur in other comparable jurisdictions?

Mr Medcraft: Clearly the way ASIC is funded is a matter of policy for government.

Senator BUSHBY: It is, and I will ask the minister a question too in a minute.

Mr Medcraft: But yes, we are aware of those other models. Given that I have worked in Europe and America I am aware of them. Mr Price may like to comment on funding models.

Mr Price: We have looked at funding models in overseas jurisdictions—in particular, the United States, the United Kingdom and the regulators in Hong Kong. We have done that as part of the funding review process.

Mr Medcraft: On Mr Price's point, the model part of the funding review is one of the aspects that will be looked at. I do believe that it was actually raised in the Wallis inquiry a number of years ago.

Mr Price: That is correct. There was also a discussion in the Wallis inquiry about the funding model for what was to become both ASIC and APRA.

Mr Medcraft: And also in the FSAP review.

Mr Price: That is correct. The IMF does a review of various jurisdictions' regulatory arrangements from time to time. One of the things they are often interested in assessing is how regulators are funded.

Senator BUSHBY: There is the obvious issue, which I have already raised, of the fact that ASIC is acting as a taxation arm of the government, which has consequences for the businesses that are paying the charges and fees. But the primary argument for the SEC and the Financial Services Authority in the UK being self-funded is an issue of transparency and independence from government so that they are not subject to that annual cap-in-hand approach to government and they can make their own decisions and go about their job properly and independently of government. I am not suggesting at all that ASIC is in any way compromised by the current situation, but the potential for that, or a perception of it, exists. So, Minister, I would be interested in your views. Do you think that there would be increased transparency and confidence in the financial and business markets if ASIC's funding was entirely independent from decisions of government?

Senator Sherry: I think it is important to understand at least some of the history in this area. As I recall, the additional moneys that were collected were passed back to the states. That arrangement went back for at least 20 years and I think had, at least initially, something to do with the introduction of the Corporations Act. In any financial regulatory system it is not quite as simple as just comparing, say, the UK or the US. There are different circumstances and different history. The UK is a highly centralised model, subject to the European jurisdiction of course. The US model is byzantine in its complexity of federal and state. I think you would have to look at the relevant state regulators and how their fees and charges apply. So I do not think it is quite as simple as that.

Senator BUSHBY: I was asking about the principle. The FSA, in the UK, only moved to this model in the early 2000s. The FSA actually went to the extent of commercially borrowing the funds it needed to operate for its first year or two, rather than the government providing it, to underline the advantages of the FSA remaining independent of government in terms of its funding. This was not because of any history or the way that it was set up. It was because of that principle of the advantage in the delivery of the services that the FSA provides—and in this case ASIC—by maintaining funding independence.

Senator Sherry: I understand the FSA model is being changed substantially.

Senator BUSHBY: They are retaining that aspect.

Senator Sherry: Fine. But beyond that I cannot make any further observation or comment. I am the representative minister. I can occasionally refer to my past knowledge and experience but beyond that I would have to take it on notice.

Senator BUSHBY: I will leave it at that. Those are my questions on funding. I do have other questions.

Senator WILLIAMS: Welcome, Mr Medcraft. I wish you well in your new position.

Mr Medcraft: Thanks very much, Senator, I look forward to it.

Senator WILLIAMS: In April ASIC announced that it was increasing its surveillance of liquidators. ASIC has conducted 183 reviews of liquidators over the past year, compared with just 179 over the previous 3½ years. ASIC's outgoing chairman, Tony D'Aloisio—this was in the media—admitted that he did not move as fast as he would have liked to rein in this industry. In those extra reviews you are carrying out have you discovered anything? Mr Dwyer might be able to answer. With all that research into so many, is there any consistent sign in the industry?

Mr Dwyer: I think the consistent sign is that there are clearly a number of registered liquidators who sail very close to the wind. I would have to say that it would be a handful, or perhaps two handfuls, that need to be very closely watched. You saw—

Senator WILLIAMS: In relation to going broke, you mean?

Mr Dwyer: No, no.

Senator WILLIAMS: You say they are 'sailing close to the wind'. Can you just clarify that?

Mr Dwyer: I am talking about ensuring that they comply with their obligations as a registered liquidator in terms of being fit and proper. We have increased surveillance very significantly since I came on board in 2009. Those statistics you have bear that out. There is a troublesome number of liquidators that we are a long way down the track in terms of investigating. Some of them are nearing further deterrence action and enforcement action.

Senator WILLIAMS: Good. I wish you well with that. How were the 183 reviews of liquidators over the past year conducted? Did you go in and research their books? How did you actually carry out the reviews?

Mr Dwyer: We have firstly a risk based surveillance. We select registered liquidators that we think, either from market intelligence or what we see in their own lodgements, may be at risk of not complying with the law. We also conduct what we call transactional reviews, which are a response to complaints et cetera received. We conducted 183 risk based surveillance reviews and, in response to complaints and queries, a further 100 transactional reviews.

Senator WILLIAMS: Are you still getting many complaints? When we had our Senate inquiry one of the complaints was that people were contacting ASIC and getting a generic email in reply. Of probably 100 submissions, at a guess 70 per cent were complaining about that. Do you still get many complaints about that?

Mr Dwyer: At the time of our submission there were 1,653 complaints, which represented 3½ per cent of total complaints. In the six months to December 2010 that figure was three per cent. So it has not increased significantly; in fact it has decreased.

Senator WILLIAMS: What are the general complaints about? Are they all over the shop or is there any particular pattern?

Mr Dwyer: I think they mainly stem from a lack of information that a creditor or an affected party may have. We do have that information on our websites and we do communicate as well as we can but, when an affected party wants an answer very quickly rather than perhaps seeking that out through their own advice, they will ring us. So there is a lot of clarification work that we do through our complaints handling. I would say 70 per cent of those matters are handled reasonably quickly in terms of providing them with appropriate information or contacting the liquidator ourselves and perhaps getting the information that those inquirers need.

Senator WILLIAMS: So would you say that in the last 12 months there has been a marked improvement in the response from ASIC to complaints in this area?

Mr Dwyer: I would, yes.

Senator WILLIAMS: With confidence?

Mr Dwyer: Yes.

Senator WILLIAMS: Good. A complaint came to me—and this is no secret; it has been through the media:

Melbourne based Paul Pattison has agreed to give up his practice as a liquidator of 104 companies after ASIC launched legal action in the Victorian Supreme Court to bar him from practising after his firm sank into liquidation last year.

Does ASIC have much to do with ITSA? Do you correspond with ITSA?

Mr Dwyer: ITSA, as you know, looks after registered trustees; we look after registered liquidators. In the past, we have had liaison meetings with ITSA. We have covered topics of interest between the two of us. Where there has been a complaint against a registered trustee who is also a registered liquidator, we would touch base to see whether there is common ground in terms of those complaints.

Senator WILLIAMS: Have you done that in relation to Mr Pattison? The reason I ask that I believe evidence was sworn by affidavit to a recent court case where I think Mr Pattison was in control of at least 354 trustees in bankruptcy.

Mr Dwyer: Administration.

Senator WILLIAMS: The point I make is that ASIC has obviously put the pressure on him where he has put the white flag up with regard to being a registered liquidator, but he still goes on to practise as a trustee of the bankruptcies.

Mr Dwyer: I think that is really a function of our powers as against those of ITSA.

Senator WILLIAMS: Can you expand on that? What are your powers in regard to ITSA?

Mr Dwyer: As distinct from ITSA?

Senator WILLIAMS: Yes.

Mr Dwyer: Under the Corporations Act we are able to make an application for an official liquidator, as distinct from a registered liquidator, to be removed. We had that power in relation to Mr Pattison. We would not use that power lightly. It would only really be where we thought there were assets in jeopardy or there was a chance, perhaps, if we did not act quickly enough in relation to that official liquidator, that creditors might be detrimentally affected. So, in relation to that liquidation, we sought to bring that action. We then had discussions with Mr Pattison and he handed in both of his tickets until such time as he can satisfy us that he is appropriate in relation to his fit and proper requirements.

Senator WILLIAMS: Did you have complaints last year about this particular liquidator?

Mr Dwyer: We had a number of small complaints, but it basically related to him setting up a new practice and taking over those administrations. Our concern was whether he had adequate capacity to be able to manage those administrations in his new structure.

Senator WILLIAMS: Well done. I commend you for that. I just want to touch on another couple of issues. This is highly different—perhaps Mr Medcraft might be able to help me here. We often hear about a case where a business or company may be trading insolvent. If a company does forward 12-month projections and it looks like they are going to lose a heap of money but they continue to trade, knowing that they are going to make a loss, would that be a case of trading insolvent or does it depend on assets and whether they can borrow against those assets et cetera?

Mr Dwyer: Trading whilst insolvent relates to the ability to pay your debts as and when they fall due. The insolvent trading laws are designed to protect creditors where a director may not have reasonable grounds to suspect that he is going to be able to pay a debt. If he did not have that ground and if he incurred that debt, that director may be guilty of an offence. If a company, for instance, projects forward that they are going to lose \$500,000 over the next 12 months, they have to have a cash flow that shows how they are going to fund that. Just to say that they were going to incur losses does not necessarily mean that they will have debts that will make them insolvent. They may have arrangements in place for further finance or they may have arrangements in place with particular creditors that are deferred out past that date. Insolvent trading only relates to a point in time. The laws are designed to protect creditors from directors, if they can be seen to be insolvent, incurring debts after that time.

Senator WILLIAMS: Just looking forward, if we are to get a carbon tax and if \$25 a tonne is placed on the coal-fired generators, for example, they will raise the price of electricity to the retailers. But the retailers have their price fixed under IPART, for example, in New South Wales, where it is regulated. So obviously they would have to —

Senator CAMERON: This is a good try.

Senator WILLIAMS: At least in the process we woke Senator Cameron. I am seriously looking at where you have a fixed retail price controlled and regulated but the costs are out of control coming towards them as they buy the electricity. That was the reason I raised it.

Mr Dwyer: I am sure those providers will have their own financial advice and determine what is appropriate.

Senator WILLIAMS: Obviously, there are some movements on behalf the regulator as well. You would not be able to give me much detail on Storm Financial, but it is progressing through the courts—I suppose that is all you can say?

Mr Medcraft: As you know, there are basically three aspects to Storm. There is the case against the Cassimatises, which is currently in front of the courts. There is the Doyle case, which is unconscionable conduct and breach of the Trade Practices Act.

Senator WILLIAMS: Who is that against?

Mr Medcraft: There is the Doyle case, which is the test case on individuals that is in front of the courts. The grounds upon which we are actually suing the banks is for unconscionable conduct in terms of their loans and also under the Trade Practices Act. The third aspect is the unregistered MIS case against the banks. All three are in front of the courts. At the present time, basically, the parties are looking to or are debating striking out or not of our particular claims. That is where it currently stands.

Senator WILLIAMS: I realise that the wheels of courts spin very slowly.

Mr Medcraft: Just on that point: in June, most of this looking at striking out claims should actually come to an end.

Senator WILLIAMS: So that it is going to be struck out or not. But, if the cases proceed, that could go on for a further 18 months or two years or who knows however long? I am looking for when we might see a result. June will give us some indication of whether it is proceeding or not. Then, of course, it could be some time after that, Mr Medcraft, before a judge makes a decision on the various cases?

Mr Medcraft: That is correct. I cannot comment on how long a court process will take, but there is a great deal of resources devoted to actually prosecuting those cases. We are very cognisant and we are keeping in touch with the actual investors, obviously, whose lives were dramatically altered. In fact, I plan to actually meet with them in the near future with representatives. I believe that is next week.

Senator WILLIAMS: I met with one last week in a mediation with one of the banks. There are some very sad stories involved. Just looking at that Storm Financial product that was the sale, we have regulators, for example, if you are going to manufacture a car. You have to have handbrakes, safety equipment and all of this sort of thing. Is it ASIC's job to see that, when these financial products are on the market, only safe products are out there? Do you actually monitor what financial products are on the market for investors?

Mr Medcraft: We have a very free market. If you go back to the Wallis inquiry, we have a system which really does rely on conduct and disclosure. We are not there to approve or disapprove of any financial product. That is the nature of our system. It results in obviously a very innovative system because it is actually free. ASIC's role in the system is that there are conduct and disclosure obligations. I regard it as a three-cornered stall, if you want. You have ASIC, which is really there for conduct and disclosure; you have the Corporations Act, which sets out requirements for parties; and, as I have mentioned before, you have the gatekeepers in the system. They are very important because it is a pretty free system. What is quite important is that the gatekeepers actually do the job that is expected of them in the system for investors and consumers and that they do think about the way in which they make decisions or how they allow products to go through to the market. I think it is important that investors properly disclose the risks of a product. But also, one of the things we have been highlighting is that distributors need to think about things like suitability—is this really being inappropriately

targeted? I think my general philosophy is that we have a system and it is all about trying to make it work better for financial consumers and investors.

Senator WILLIAMS: My question was basically asking what we can do to see that we do not have another Storm, but I guess that is asking the impossible.

Mr Medcraft: At the end of the day, I think being proactive is very important. It all goes to a resilient financial system. I think the last crisis showed that Australia has a pretty resilient financial system, given what happened elsewhere in the world. I think that it is being proactive and trying to identify, perhaps, emerging issue. One of the things we approved last week at the commission was an emerging risk committee. This is something that I have been pretty keen on for a while.

Senator WILLIAMS: An emerging risk committee—will that committee be there to study products of risk et cetera?

Mr Medcraft: It is to identify where we see on the horizon, across particular industries, we see systemic or higher risk emerging or even systemic risk emerging. We try and basically look to connect the dots between our various teams.

Senator WILLIAMS: Between the schemes or whatever.

Mr Medcraft: One of the priorities in terms of where we allocate resources is actually risk—what we consider to be areas of high risk. Maybe I will just ask Mr Price if he wants to comment on that.

Mr Price: The idea behind an emerging risk committee in part comes out of some work by IOSCO, which is the International Organisation of Securities Commissions. Recently IOSCO, in response to the global financial crisis, suggested that securities regulators should do more to focus on systemic risk. When I say ‘systemic risk’, I am talking about risk that might pervade the entire financial system. So, where there is a collapse, that might have knock-on consequences, as you saw with the freezing of credit markets through the GFC. One of the roles of the emerging risk committee within ASIC, with the input of people who have the benefit of understanding what is happening overseas and also some of our economists, will be to look at where these emerging risks might be. It should also have probably a secondary function, which is to focus on regulatory or thematic risk. That is really something less than systemic risk. It is risk of a lesser order but nonetheless risk that might pervade a particular sector or a particular type of product. We think that consolidating ASIC’s risk framework in this way to assist people who have expertise in these particular areas and taking a whole-of-organisation look at what a risk might mean right across the system is the way that we can try to ameliorate threats to the Australian economy going forward.

Mr Medcraft: Just to add to that, what we have already identified is probably higher risk. The MIS space is a very free space. It is where clearly we had issues with the GFC and the frozen funds sector—\$22 billion was frozen and, for agricultural schemes, \$4 billion went under there. So MIS is actually a very free system. As you know, in a number of subsectors there—the ag schemes, mortgage trusts, unlisted trusts, infrastructure—we have sought to improve disclosure to investors over the last 12 months. An area that I think we are going to focus on more is the retail derivative space. I think already we have been focused on contracts for difference as an area. I think there is the area of synthetic ETFs. Perhaps a lot of people think of the ETF generally, but we think the synthetic ETF—exchange traded funds—is an

area that we need to think about a bit more. Another area of derivatives is capital guaranteed products, which are basically embedded derivatives in deposit products. That is one where already we have been coming out and saying, 'Look, there is a need to be careful about where you are targeting and how you disclose'. So it is a matter of just keeping a close watch on the market.

Senator WILLIAMS: My last question is in relation to branding. We have been through this with Senator Sherry before. We know that there were debenture-issuing companies that issued debenture to themselves. They were commercial developers and they were risky and they were clamped down on. But there has been some progress made, I believe, with secured companies that are not ADIs. Has there been any progress on that? Recent figures show that, prior to the GFC, the non-bank industry had 13.6 per cent of the mortgage market and now they are down to 1.9 per cent. Obviously, a lot of that was brought about because the government did not guarantee the deposits. They were little businesses, but they did the big end of town and there has been a flow-on effect et cetera. Has any progress been made on a different labelling or a different category for those secured investors with real security, land et cetera?

Ms Gibson: We released a consultation paper I think at the end of last month which proposed a new branding for secured debentures, as it were.

Senator WILLIAMS: Yes, secured notes.

Ms Gibson: Secured notes. With it were some amendments to the benchmarks that are in place. We also sought to consult on whether the guidance we had issued on advertising, which required effectively that you say that your product is not safe, was a bridge too far, as it were. We are collating the sum of that consultation. I gather that there are some in favour of the changes and quite a number that are against the changes. So we are trying to work our way through that soon. We will be looking to announce something probably in July.

Senator WILLIAMS: Thank you.

Senator CORMANN: I am interested to explore ASIC's engagement as part of the FOFA round of consultations. I assume that you have been actively involved? That is a fair assumption isn't it?

Mr Medcraft: It is a fair assumption.

Senator CORMANN: Can you talk us through ASIC's role in enforcing compliance with things like the proposed opt-in requirement and other parts of the FOFA changes that are being proposed if the legislation gets through the parliament?

Mr Medcraft: Sure. In relation to surveillance, there are two aspects to our surveillance. First, as we have announced previously, we are in the process of launching a shadow shopping surveillance. It is not a surveillance; it is a shadow shopping exercise. That will commence fairly soon. We are going to focus on retirement advice as part of that shadow shopping exercise. It is actually meant to be a constructive in that we do not intend to name or shame any parties that may be delivering inappropriate advice. We will obviously refer them if there is inappropriate advice. We are actually looking at putting it out to a sample and not picking any particular adviser. We are actually looking to focus on those people who are over 50, given that it is pre-retirement and retirement. We have an expert advisory panel made up of people in the advisory industry that is actually advising us on what would constitute advice

for a number of examples of different types of groups in the population. The individuals that will be selected to get advice will actually provide us with that advice and we will compare it with the benchmark that we have established. Then, really, the objective is to come out with a report giving the outcome of that. The whole objective is a positive one. It is to try to get a measure on how the advice industry is going in terms of delivering advice and, where, in fact, we identify gaps, to let them know about it. So that is the shadow shopping exercise.

We also have our risk based surveillance, which is something that was done last year. We actually ask for feedback from the 20 top licensees. We gather that information, again looking at some of the risks that we had identified. We have already met with eight of those licensees and provided them with feedback as part of that project, which has been constructive. We are going to provide a further six licensees with their feedback reports in meetings over the next month. For the remaining six licensees out of that 20, due to our current surveillance and regulatory outcomes, we are going to give them letters outlining the risks we have identified in their businesses. Then what we intend to do is actually produce a report on our findings on that project. That is on the top 20. The focus on this is really about whether basically there has been inappropriate advice delivered. It is all focused on inappropriate advice.

Senator CORMANN: Sure. But everything you have run me through now is what you would do as business as usual now. It is all obviously important stuff and I hear what you are saying. But my question was about ASIC's involvement in enforcing compliance with the new requirements that are proposed under FOFA—for example, for advisers and their clients to resign contracts on a regular basis. I think the proposal now is every two years and it was supposed to be every year. Will ASIC play a role in enforcing compliance with that requirement?

Mr Medcraft: If that becomes the law then, as with all law, we will look to do surveillance on compliance with the law. But we will do it on a risk-based approach. We will look at the risks in the financial advice space, just like we do now. Generally, the key risk in the advice space is whether in fact inappropriate advice has been delivered. I cannot comment specifically on whether the issue you have highlighted will be one that we surveil. We will look at where we think the risks are in the system and determine our surveillance approach accordingly. But I think we have to get to the point where the law is changed before we determine what we do.

Senator CORMANN: But surely any government—and this is not a partisan statement—that is pursuing reform also looks at the resource implications of it. I assume that, in that context, you would have had to give some thought to how you are going to approach your part of enforcing compliance with what is proposed—for example, the so-called opt-in requirement.

Mr Medcraft: I think that, if you look at the approach we have taken to date on surveillance, for the firms we have selected we have virtually looked at their internal controls they have in place in their business to deliver appropriate advice under the new law. If there ends up being a requirement to opt in, you would expect that the business would have internal controls in place to ensure that opt-in. If we consider that the lack of opt-in contributes to inappropriate advice, we identify that as a high risk. Clearly, we would include that as part of surveillance.

Senator CORMANN: Just out of interest in that context, are there any plans for ASIC to collate centrally copies of all statements of advice?

Mr Medcraft: The statements of advice that people receive?

Senator CORMANN: Yes. It seems odd to me, but a number of advisers have told me that they have been at conferences where this was discussed. It might just be a rumour that you can now dispel once and for all.

Mr Medcraft: It is absolutely news to me.

Senator CORMANN: I am pleased to hear that. That is great. I certainly did not think that that was possibly on the agenda. I am pleased to hear it. You talk about risk-based surveillance. In that context I am keen to get a bit of a sense of how you identify your areas of risk. Can you talk us through that?

Mr Medcraft: Sure. It is something that I have been very keen on since I arrived at ASIC because I think it is a very rational way to allocate resources. What we use is ISO 31000, which is the risk management international standard. It is actually commonsense. Basically, you look at your regulated perimeter, you look at what the potential risks are in that perimeter and then you look at potentially the likelihood of something occurring in that perimeter or the risk, then also what the severity of that risk is or the probability of it occurring and, if it occurs, the severity of the impact within the perimeter. That is used in many different areas. Once we have done that risk-based assessment of the regulated area, of the areas that we have identified as high risk, we then develop a surveillance plan that sets out what we are going to do and when we are going to do it. Generally, there is a review mechanism back to the commission—an interim report and a final report. Then as well we contemplate what outcomes we are looking to get out of the surveillance—whether we need to provide more guidance to the market or more education, which comes back to the drivers. Mr Price, do you want to comment? One of the things is also making sure that we are consistent in our surveillance approach.

Senator CORMANN: I guess what I am keen to understand is the areas of the market that you are currently targeting because you have identified them as higher risk or comparatively higher risk.

Mr Price: As the chairman has indicated, ASIC, in accordance with international standards, uses a probability impact model in assessing risk. It is not just across particular sectors or particular products—you might look at particular activities as well. Really, that risk we are weighting will change from time to time. But, in the end, I suppose that, as the chairman has remarked earlier today, surveillance is one of the key regulatory tools we use along with engagement with industry, education, guidance and deterrence and so forth. It is a very key part of what we do. It is also important to bear in mind that our surveillance activities can be both proactive—that is, applying this probability impact model—and also reactive so that we can make good use of information that comes to us through complaints, for example, which would come to my colleague Mr Warren Day, or, alternatively, through self-reporting of breaches. That might actually come to us from people in industry when they realise they may have made an error.

Senator CORMANN: Are you confident, then, that your current risk management system is adequate to prevent another Storm Financial or Westpoint?

Mr Medcraft: I said before that it is important to have a resilient financial system that can mitigate a future crisis. I think we are all commonly trying to get to that point. Certainly, our first objective is obviously to make sure that investors are confident and informed. Therefore, a part of that is to make sure that we are looking at things like risk-based surveillance. But it is not just that. I think it is the range of things that we have to achieve that outcome, which is, as I said, engagement, guidance, education and deterrence. Mr Price, do you want to comment?

Mr Price: The nature of capitalism assumes business failure. When you talk about failures, I think it is really important to be quite precise about what sort of risk you are talking about—market risk, regulatory risk or business risk.

Senator CORMANN: That is an interesting observation you make. So the answer to my question is no? What you are saying is that you can have the best and most outstanding regulatory regime in place, but you will not be able to prevent any failure of a business from here on in, can you?

Mr Price: That is the nature of capitalism.

Senator CORMANN: Sure, but it is still always important to remind ourselves of that, I guess. Would the proposed requirement to force people to resign contracts with their financial advisers have prevented the collapse of Storm Financial or Westpoint?

Mr Medcraft: I cannot comment on that. The government has proposed that—

Senator CORMANN: I am not asking you to comment on the government proposal.

Senator Sherry: I think you were. I think you were asking him to comment on the policy that has been announced and will be reflected in legislation.

Senator CORMANN: I am asking about the impact of the policy, given everything we know about—

Senator Sherry: But you went beyond that.

Senator CORMANN: the collapse of Storm and so on. In relation to Westpoint, Minister, you have done a great job. You have actually done something that will address the issue of the promissory notes by bringing it in as a financial product under the Corporations Act. That was a sensible thing to do that actually helped to address a particular issue. But I think I am quite entitled to ask the question.

Senator Sherry: I will take the question. For example, margin lending was a state regulated and supervised product. We moved that from state to federal. So that clearly has implications in terms of supervising entities like Storm Financial. One of the factors in Storm Financial was commission based selling. There is no doubt about that. The commission tap was turned on that is generally not turned off. But, on the opt-in provision that you have referred to, there are a number of reasons—one that you have touched on. One of the fundamental objectives of the future of financial advice, aside from improving supervision and safety, is to reduce price—to introduce real and effective competition into a marketplace. You do not have real and effective competition if consumers are not effectively able to turn off the commission tap once it is turned on. A commission tap is uncompetitive. It is not compatible with capitalism. It is anticompetitive, Senator. They are some of the reasons. I know that my colleague Assistant Treasurer and Minister for Financial Services and

Superannuation Mr Shorten has outlined some of these issues and others on many occasions. They were well studied. They were well examined. They have been issues of contention for goodness knows how long in this system. It goes back well before my time, and that is 20-plus years. Ongoing commission based selling is currently under examination in the US. They are major policy issues of contention. I know, too, that the retail providers themselves announced about two years ago, maybe a shade less, that they were going to end commission based selling as well. There are a lot of issues and arguments here, Senator.

Senator CORMANN: He made a whole series of assertions in relation to this issue.

CHAIR: All right, just quickly.

Senator CORMANN: Commission based selling has nothing to do with opt-in, Minister. Turning off the tap can of course be achieved by opting out.

Senator Sherry: With due respect, Senator, it has everything to do with it.

Senator CORMANN: Obviously you should be able to opt out.

Senator Sherry: Even planners would admit that commissions and turning on and off has a very—

Senator CORMANN: But the argument is around the requirement to re-sign contracts—

CHAIR: I do think this is a good discussion but other senators have questions and I think we will need to go to them.

Senator CAMERON: Mr Medcraft, my office got a call from your office—Mr Pascal, I think—

Mr Medcraft: Yes.

Senator CAMERON: asking whether there were any issues. We did indicate that we had an issue with LKM Capital; Sandhurst Trustees, who are a subsidiary of the Bendigo and Adelaide Bank, and BRI Ferrier. Who do I ask the questions?

Mr Medcraft: Mr Day is going to handle that.

Senator CAMERON: Mr Day has been doing the reading, has he?

Mr Medcraft: Yes—we are a team.

Senator CAMERON: That is good. On the broad issue, can I just say that we are not really a free market; we are a country that actually does try to regulate the market, and that is why we did not end up the same as the US and the UK, thankfully. I am interested to see that you rely on conduct and disclosure at ASIC. This is a story of information asymmetry—lack of information to some of the more exposed people in our community. This might be an issue for your emerging risks committee to try to join the dots, because there are lots of dots out there and we do not really know what this looks like until the dots are joined up. So I am happy that you have raised those points.

Mr Day, LKM Capital has 1,100 debenture holders, mainly elderly retirees in the Coffs Harbour area; approximately \$63 million in assets; and two directors, lawyers, a Rolf Koops and a Sandra Martin. They went into receivership in August 2008. The trustee was Sandhurst Trustees. It went to BRI Ferrier. There is real concern amongst these 1,100 debenture holders that BRI Ferrier are just feeding off the carcass of this company. I think we need to have a close look at this. The issues I want to raise with you are the effectiveness of the continuous

disclosure regime for ASIC, your regulatory guides, the obligation you have to report and get rid of information asymmetry, the view that ASIC seems to have that retail investors, who are mainly, in this case, elderly investors, should satisfy themselves that their investment is okay—and it just seems to me that once these companies go into receivership it becomes open-ended and unregulated. This is the range of issues. I will ask you to be as succinct as you possibly can because I have lots of questions.

Mr Day: Certainly.

Senator CAMERON: ASIC's letter to Mr Di Suvero of 29 March 2011 advised that while the trustee—Sandhurst—has an obligation under chapter 2L of the Corporations Act to notify ASIC of breaches by LKM under that act, neither the trustee or ASIC has an obligation to notify debenture holders of these breaches. Do ASIC take steps to ensure that debenture holders are aware of debenture issuers' breaches of the act?

Mr Day: The regulatory guide sets out ASIC's view about the requirements in regard to those disclosures. The disclosures are ones that we say the debenture offeror and the trustee need to be making. ASIC under its regulatory guide identifies that it will pay attention and sees that it wants certain disclosures at certain times in regard to those. When those disclosures have not been made, those are matters that ASIC is interested in terms of the proper conduct of the trustee and the debenture offerors. That is the way ASIC goes about monitoring those.

Senator CAMERON: In this case it seems to me that the debenture holders are effectively kept in the dark. If you are an elderly retiree without a computer or access to the internet and you have made an investment, you have no hope of understanding what is going on. It really could be seen, as some have said to me, like a conspiracy of silence between the trustee and ASIC.

Mr Day: I do not necessarily agree with that, Senator. The position I would put is that there are requirements, as I said, on the offeror and the trustee in terms of the disclosures they are required to make. If they do not make those, our regulatory guide is clear that ASIC is concerned about that and would look at that, and would either push to ensure that those disclosures are made or, alternatively, if there is some breach would then look at what action ASIC needs to take.

Senator CAMERON: It seems to me then that information asymmetry is rife here. These investors are in the dark. They will not know what you have got on your website. They will not know what the company has said to ASIC. Then they go and roll over. This company, LKM, actually did disclose that there were problems and then these retirees were actively rolling over their investment while ASIC knew there were problems.

Mr Day: On what basis do you say ASIC knew, Senator?

Senator CAMERON: Because LKM reported to you that there were problems.

Mr Day: LKM made—

Senator CAMERON: They had breached—

Mr Day: They made disclosure notifications at the relevant times under the regulatory guides. We understood that that was something that, not long after, the trustee, as the primary party, was taking up with the disclosure offerors. That is something that I understand has been

the subject of litigation between the trustee and the debenture offerer. I have been informed that there is potential that that litigation has been settled in the last days. I am not aware of the details of that settlement. We would need to look at that. If there is anything left over after that that we think we need to look after, ASIC will review it and consider whether it needs to take further action.

Senator CAMERON: So on this litigation ASIC is a reactionary organisation. You do not go in and try to be proactive?

Mr Day: Not at all. In terms of the disclosure notices that are provided to us and any breach reports, we review them as they are provided to us. Outside that we also look at any information provided to us by the trustee. Then we consider that in real time as they come through.

Senator CAMERON: So in the legal action that has been taken there is a settlement. Are the debenture holders aware of this settlement?

Mr Day: My understanding is that they understand that there has been a settlement but they are not aware of the details, much as we are not at the moment either. Once we know more about that, we can make educated decisions about what we want to do at that point.

Senator CAMERON: What was the nature of the alleged breaches of the Corporations Act committed by LKM directors that led ASIC to apply for orders for the surrender of the directors' passports?

Mr Day: That is an operational matter. I do not really want to get into specifics about that.

Senator CAMERON: So the cloak comes down over LKM again.

Mr Day: No, I do not think that is the case. I think that is an unfair categorisation of it.

Senator CAMERON: I think it is accurate. You have said to me, 'It's an operational matter; we're not telling you.'

Mr Day: No—

Senator CAMERON: So the debenture holders are not told, parliament cannot be told, estimates cannot be told and that is all fine?

Mr Day: No, that is not—

Mr Medcraft: Mr Day, perhaps you should explain why we do not comment on operational matters. I think it is important.

Mr Day: There is a whole range of restrictions upon ASIC about what we are unable to comment on. Some of those restrictions are under own act, the ASIC Act, under section 127 about release of information where we have used powers. Some of those are about privacy principles. Clearly we have to be careful, where there are allegations made and investigations on foot, about people's reputations—certainly where they are only at that time investigations and allegations and not necessarily confirmed outcomes by courts. So ASIC is reluctant at that point, for good reason—for personal reputation and principles such as innocent until proven guilty—to say that. So it is not really a shroud of secrecy.

Senator CAMERON: So these two operators of LKM, these two solicitors, their reputation is more important than \$63 million of assets of retirees in the Coffs Harbour district?

Mr Day: It depends whether you believe in innocent until proven guilty, Senator.

Mr Medcraft: Senator, on your point, one of the things that I have asked strategy to look at is communicating better why often we cannot disclose what we are doing on operational matters—to explain the reason why. Secondly—

Senator CAMERON: That will be a real comfort for people in Coffs Harbour—that you explain why you cannot tell them anything.

Mr Medcraft: Actually the second thing I was going to say is to see, in terms of our current approach, what room we have to disclose more than we currently do.

Senator CAMERON: I will come back to you on that. Next time you are here I will be asking you what you have done.

Mr Medcraft: I just wanted to highlight that it is something we have discussed, because we do appreciate the frustration. I have asked that we have a look at it.

Mr Day: The other thing I would say is that it is something ASIC is monitoring quite closely, has been watching very closely and has not turned its eyes away from.

Senator CAMERON: I do not know that that will be great comfort either. We will wait and see what the outcome is. If you can tell me at the next estimates—take it on notice—what your monitoring has delivered, that would be good.

Mr Medcraft: We will take that on notice.

Senator CAMERON: Did ASIC shortly afterwards consent to the directors' passports being returned to them?

Mr Day: I refer to my previous answer, Senator.

Senator CAMERON: So again the cloak of darkness comes over this?

Mr Day: I am not completely over the detail about the circumstances of the passports but the other thing I would say is, again, I do not really want to descend into complete detail about operational matters.

Senator CAMERON: That is a great comfort for those pensioners in Coffs Harbour. Did ASIC pursue the proceedings against the LKM directors relating to possible breaches of the Corporations Act.

Mr Day: ASIC does not have those types of proceedings on foot, as far as I know. As I said, there has been litigation between the trustee—

Senator CAMERON: That is not what I am asking. You have put that on the record. Can you advise me—you can take this on notice as well—if you have not taken proceedings, why you did not take proceedings? Can you advise the committee of the truthfulness or otherwise of the statement made by LKM Capital on page 4 of its continuous disclosure notice of 30 June 2008 to the effect that it had notified debenture holders of the existence of its continuous disclosure notice dated 29 February 2008?

Mr Day: I am aware of the notice you refer to. The accuracy of those statements is something we are reviewing at the moment.

Senator CAMERON: Can you provide the committee with any documents that would verify the truthfulness of that statement?

Mr Day: I do not have any such documents to be able to provide today but I could take that on notice.

Senator CAMERON: Thanks. Did LKM Capital or the trustee, Sandhurst Trustees, have any obligation to advise debenture holders promptly of the continuous disclosure notice of 29 February. If so, why has ASIC shown no interest in LKM's and Sandhurst's failure to carry out their obligations prior to 1 August 2008, when receivers were appointed?

Mr Day: There are obligations, as I said at the outset. The statement in your question about ASIC's lack of interest is—as I said, this is something ASIC is monitoring and reviewing, so I do not think it is true to say that there is a lack of interest on ASIC's part.

Senator CAMERON: At the next estimates we might have another discussion about how interested you were and what you have done. So could you take that on notice as well.

Mr Day: Very good, Senator.

Senator CAMERON: For the purposes of paragraph 69, point 110 of regulatory guide 69, what is the period of time within which a trustee would be considered by ASIC to have advised investors promptly?

Mr Day: I do not know that regulatory guide 69, or certainly paragraph 110, actually provides the relevant period of time. That is something that would have to be judged given the nature of disclosure and the events that the disclosure relates to.

Senator CAMERON: What is your definition of 'properly'?

Mr Day: That is what I am saying; I do not have a—are you asking for a strict time frame?

Senator CAMERON: I am asking what you consider 'properly'.

Mr Day: It depends on the circumstances of the information being disclosed, the time in which they were aware of the information they need to disclose, and any other factors that impact on that. We would have to take that into account.

Senator CAMERON: Could you provide this committee with examples of how 'promptly' is operationally dealt with?

Mr Day: In what form would you like those examples?

Senator CAMERON: In terms of how prompt 'prompt' is in some practical areas that you have dealt with.

Mr Day: We can take that on notice.

Senator CAMERON: What are the parameters in the Corporations Act against which ASIC will judge whether an issuer or trustee has notified investors and ASIC promptly of any material adverse to the financial position or performance of an issuer?

Mr Day: I will take that on notice.

Senator CAMERON: Thanks. Is it ASIC's position that it only recommends but does not require trustees having knowledge of adverse changes to the financial position of an issuer to promptly notify ASIC and retail investors of that information?

Mr Day: I will take that on notice.

Senator CAMERON: If ASIC only recommends, does ASIC believe that retail investors in debentures should be made aware of this so that they may be aware that the obligations placed on trustees and issuers under regulatory guides 69 and 198 are not really obligations at all?

Mr Day: Again, I will take that on notice.

Senator CAMERON: We are not getting very far. Is it the case that ASIC is concerned that disclosure might cause a run on the bank and that avoiding a run on the bank is a higher priority than ensuring that investors are in possession of all relevant information and protect their financial interests?

Mr Day: I will take that on notice.

Senator CAMERON: Does ASIC believe there is sufficient protection in expecting often elderly retail investors to conduct their own searches on the ASIC website and subsequently purchase the necessary documents to carry out their own due diligence?

Mr Day: Is this in relation to debentures or more generally?

Senator CAMERON: Both.

Mr Day: In relation to the debentures I will take that on notice. In relation to more generally, ASIC has done a lot of work recently in relation to assisting retirees about financial options available to them and how they can maximise their financial wellbeing. We have done a lot of work in relation to the development of our new MoneySmart website. We have developed a number of specific publications about products such as reverse mortgages, which are often relied on in this day and age by retirees. We have also produced our 'investing between the flags' campaign, with booklets and seminars. Those seminars are also the subject of a piece of work with Centrelink which we are looking to deliver, with the assistance of Centrelink's financial information services staff, about that 'investing between the flags' process. In relation to the other searches that we would say retirees need to do, the vast majority of those are free on our website—without cost.

Mr Medcraft: Senator, there was a reference to 'bank'. Where was the bank involved?

Mr Day: That is why I am taking it on notice. I am not aware of the run on the bank issue.

Senator CAMERON: That is what is coming back to me from these debenture holders—that ASIC is more concerned that people, instead of getting the proper advice on what happening, ASIC is of the view, right or wrong, of these investors, taking the view that a run on the debentures, a 'run on the bank', is more important—

Mr Medcraft: Debenture issuers are not banks.

Senator CAMERON: I understand that.

Mr Medcraft: But I understand what you are saying.

Senator CAMERON: It is colloquial. That is what they are saying.

Mr Medcraft: You are saying because they are a bit like a shadow bank?

Senator CAMERON: I am just using 'a run on the bank'—

Mr Medcraft: Yes, all right.

Senator CAMERON: I know other senators have issues. I have a range of other questions. I will place them on notice. But I am determined to try to get these dots all joined

up on this, because I do not think, quite frankly, that these companies, Sandhurst, BRI Ferrier and LKM Capital can take any credit out of this. Can I also ask you—I have tried to find documents on BRI Ferrier's website on this. Every time you click on 'LKM' the documents are removed. Can you explain to me why those documents have been removed off BRI Ferrier's website and whether there is a regulatory issue involved?

Mr Medcraft: We will look into that.

Senator CAMERON: I have some questions on another matter that I might just quickly put on notice for you.

CHAIR: Could you give them to the secretariat.

Senator CAMERON: Okay.

Senator XENOPHON: In relation to fees and fines, page 94 of ASIC's 2009-10 report states that income from Corporations Act fees and fines amounts to \$581 million. How much of that comes from fees for providing digital copies of documents and extracts? Is that the approximately \$51 million in note 16 at page 127 under 'Information broker fees and other fees'?

Mr Day: Do you mean in terms of payments that are made to other brokers?

Senator XENOPHON: Yes.

Mr Day: The revenue—\$341 million of collected revenue is about the annual review fees, \$52 million is collected annually through late fees and the remainder is from brokers in the types of searches you are talking about.

Senator XENOPHON: Why are Australians required to go through third-party agents to obtain documents and extracts? Has ASIC costed a transition to a direct digital provision model?

Mr Day: It is a very good question, Senator. ASIC is about to launch what it calls ASIC Connect, which is an online search service so that effectively if people—ASIC is just finalising the material required for the launch of what we call ASIC Connect, which is an ability for people to go online and do those searches that at moment they do through third parties. That will be online 24 hours a day.

Senator XENOPHON: So at my office when we have to do a search we can do it directly?

Mr Day: Directly online, with the use of a credit card, effectively like a shopping cart model. Those types of things at the moment—

Senator XENOPHON: When is that likely to be launched?

Mr Day: June 2012, so the middle of next year, at the latest.

Senator XENOPHON: I will look forward to that. I want to ask another line of questions in relation to ASIC's details. There was a report in the media in April 2010 that ASIC had moved to stop rates betting, that ASIC wrote to Centrebet saying, 'It has come to the attention of the Australian Securities and Investments Commission that you may be carrying on financial services without holding a financial services licence.' This was Centrebet offering bets on interest rate rises and also the ASX 200 share index—that they might be derivatives. A bit over a year later the same journalist, Peter Martin, wrote: 'Fourteen months after

threatening directors of the betting agency Centrebet with fines and potential prison terms they continue to offer bets on Reserve Bank interest rate hikes, it has quietly relented.' What has happened in that 13 months?

Mr Price: I understand that that media report was printed in error. Claims that ASIC had approved Centrebet's interest rate bets were inaccurate. In fact Centrebet had not spoken to ASIC; it had spoken to the Northern Territory betting authority.

Senator XENOPHON: They got the two confused—ASIC and the Northern Territory betting authority?

Mr Price: Yes.

Senator XENOPHON: So ASIC's concerns expressed in their correspondence to Centrebet back in April 2010 are maintained?

Mr Price: We are concerned where there is the marketing of financial products, and there will always be a fine matter of judgment whether some of these products are financial products. You need to make an assessment, for example, about whether the purpose of these arrangements is making a financial investment or managing a financial risk. You also need to make an assessment about whether someone in accepting these bets is carrying on a business of doing that activity. When we come across these situations we bring our concerns to the attention of the parties involved and indicate that the law requires them to make an assessment about whether they are in compliance with the act. If we have remaining concerns after we have looked at those issues then it is open for us to take further action.

Senator XENOPHON: So at this stage it is not on for Centrebet to offer bets on interest rate rises or the ASX 200?

Mr Price: What I have just said is that it is really a matter of judgment about whether these things are a financial product. But clearly when there was that media report saying that ASIC had somehow approved or endorsed the issue of these products, that media report was incorrect.

Senator XENOPHON: You say it is a matter of judgment. What is the current judgment? Can Centrebet offer bets on interest rate rises or the ASX 200?

Mr Price: Well, are those products being offered with the purpose of making a financial investment or managing a financial risk? These are issues that—

Senator XENOPHON: I am asking you. Can they offer it or not? It is a simple question.

Mr Price: The rhetorical question I posed to you is simply to indicate that—

Senator XENOPHON: I do not have time for rhetorical questions, sorry.

Mr Price: I understand what you are saying. But to make it clear, we would need to understand what the position is in answer to those questions before I could answer your question. I cannot answer your question at the moment. So I am happy to take it on notice.

Senator XENOPHON: It is just a simple question: are Centrebet allowed to offer bets on interest rate rises and on the ASX 200. I do not think it is a very difficult question.

Ms Gibson: Senator, what Mr Price was trying to say is that you need to look at context. One of the contexts is the volume of the bets. If it appears as a genuine bet—for instance someone wants to bet \$500 on the increase or decrease—then probably that is a bet and in that

fine matter of judgment we might say we would not persist in insisting on a licence. If the nature of the transaction is that the person is engaging in it for a financial investment purpose—for instance they want to hedge a position—then we would say that is closer to where the issuer, the betting company in this instance, is providing a financial business.

Senator XENOPHON: How would you prove that though?

Ms Gibson: You would look at the volume of the bets that have been taken and the volume of—

Senator XENOPHON: So if it is under a few grand that is okay and if it is over a few grand it is not?

Ms Gibson: We would look at the customers that are involved, we would look at the number of bets, we would look at volume and we would look at marketing and questions that are relevant to that. Hence we write to these institutions to say that they need to look into the question of whether they need a licence.

Mr Medcraft: I think it is an interesting question and I will ask Mr Price. Contracts for difference—basically betting—

Senator XENOPHON: What is the difference between a contract for difference on a referenced item and what is happening here?

Mr Medcraft: Contract for difference is clearly a financial product and we regulate them. I am just curious, given the senator's question, how do the two differ?

Mr Price: It really comes back to the purpose. Are these things for a financial purpose or are they for a betting purpose? I understand the senator's question, which is asking where we stand on a particular issue, but the point I was trying to make inarticulately was that you really have to have regard to all the circumstances when you make that judgment.

Mr Medcraft: A contract for difference, because it is actually an investment product, clearly is a financial product, and this is not. There is not a contract being entered into, for example, here in relation to—

Senator XENOPHON: Just finally on this, because I am running out of time. This begs a question about any leaks of information, because it is sensitive market information. Does ASIC have any authority to look behind any bet laid on Centrebet or whomever as to whether there was anything suspect about that bet, or is that another agency?

Ms Gibson: We only have authority over financial products. As we were explaining, it is questionable whether a bet is a financial product or a derivative. That involves some sort of assessment vis-a-vis a commentary on a rate or a value. For instance whether a horse is going to win or whether a football team is going to win would not be a derivative and would not be within our purview.

Senator XENOPHON: So, if there is insider trading, that has to be looked at with the general law, whether it is the police or—

Ms Gibson: Insider trading related to financial products is ours. Anything else would be a question for the Attorney-General.

Senator XENOPHON: So that means that, if somebody has some inside knowledge about an interest rate rise, if this is classified as a bet and it is not seen as a financial product, you do not have jurisdiction? That is the consequence of what you said?

Ms Gibson: That is an interesting point. I would need to get some advice. It is tied into whether it is a financial product and whether the issuer—in this case, the betting house—is carrying on a financial business.

Senator XENOPHON: But if it is not a financial product and somebody has made a quid out of it because they have some inside information, ASIC cannot do anything about it?

Ms Gibson: I would need to take that question on notice with the lawyers, but we will do that.

Mr Day: Can I just correct something. I said to Senator Xenophon in terms of timing that it was next year for the online search. It is actually intended to go live in August this year.

Senator EGGLESTON: I have some questions on a general topic—that is, ASIC's relationship with small business. This committee did quite an extensive inquiry into liquidators and that whole industry. Senator Williams, in fact, was the principal person behind that inquiry. There were frequent complaints that we received that ASIC, with its broad scope, really did not address the problems of small business particularly well or respond quickly enough to complaints from small business. That came through in this inquiry. I wondered, Mr Medcraft, what your general approach to small business is—this does come under the umbrella of ASIC—and whether or not you feel that some sort of broader approach is necessary, or even a different agency, to look after the interests of small business.

Mr Medcraft: I will ask Commissioner Dwyer to comment, but one of the things I highlighted in my opening comments was that we will focus on small business. What I have asked for is for us to do a stocktake of exactly where we currently touch small business—and this is clearly often in our liquidator area and in the misconduct and breach reporting, as we get a lot of complaints from small business—and, secondly, what we could do to perhaps improve what we are doing with small business. So that is actually what I have asked to be done. Commissioner Dwyer, do you want to add to that?

Mr Dwyer: For ASIC I think this is about more appropriate communication with the small business sector and particularly the micro business sector, where it is really the mums-and-dads directors and people that we are dealing with and they do not have perhaps the knowledge or resources to be able to effectively engage with ASIC. So we do spend a lot of our time, particularly in the real economy section headed by Warren and his colleagues in the complaints area, dealing with small business complaints and it is up to us to engage more appropriately with them and communicate what work we are doing. The project that I have taken on at the request of the previous chairman is to really look across ASIC rather than in our stakeholder teams directly to see what resources we are applying to small business and then to appropriately communicate those messages to small business. We have engaged with small business and we know what they want from us. They want less regulatory red tape. They want more online services. They want to have a point of contact that is prepared to listen to them. So those messages have clearly got through to us. We are working towards providing better communication and better services to that sector.

Senator EGGLESTON: During the insolvency inquiry we heard about people who used online services and emailed in a complaint about some sort of issue but did not have a response for two years. They would be told that there would be a response and there was not. It raises the issue of resourcing and where your focus should be. Small business is what it is—

small business—and the people are not necessarily very sophisticated. It really does raise the issue of whether you are well enough resourced, whether your real focus is not on necessarily a different level of business and whether or not we need perhaps a different agency to deal with the problems of small business or whether ASIC needs quite substantial increases in its resources to set up a dedicated subsection focusing only on small business and its problems. You have bigger fish to deal with in reality.

Mr Dwyer: As I said, we have set up this focus group to focus on small businesses. In relation to the Senate inquiry into insolvency and response to complaints, we did respond to that, both here and publicly through an opinion piece that the previous chairman put out. The issue in terms of responding to complaints and keeping complainants informed is a complex one and we talked about it earlier today. It is a question of natural justice and of ensuring that our investigations are not prejudiced. Combining those two objectives with a proper communication to creditors is the challenge and it is one that we are aware of and we are attempting to address.

Senator EGGLESTON: I am sure you are doing that in good faith. I just wonder whether that is really—

Mr Dwyer: I do not think it is a question of—

Senator EGGLESTON: a bit too much for you with inadequate resources.

Mr Dwyer: inadequate resources, which was your question.

Senator EGGLESTON: That is what I considered it to be.

Mr Medcraft: As I highlighted both here and in speeches already, we are going to focus on what we are doing with small business. I appreciate that there are 1.2 million I think small businesses employing less than a certain number—micro or small businesses. So it is a very important part of the economy and I recognise that. On what Commissioner Dwyer was saying, in setting our strategy, I have actually asked that we do focus and look across ASIC to see where we are touching small business and then identify issues where perhaps there are ones like the ones you have highlighted and then see what we can do. But I do want to have a very clear strategy that we can outline on small business and what we are doing. That is something that hopefully I will be able to provide further information to you on the next time we meet.

Senator EGGLESTON: I am absolutely sure that you have the highest motivations and you are acting in the best of faith. But I just wonder, having thought a lot about the small business side of it since that insolvency inquiry and belonging to some chambers of commerce myself in various parts of Western Australia, whether there is not a case for a separate body to deal with the problems of small business under a certain level of turnover. Your brief seems to me to be too wide to cope with the entire spectrum without quite substantial increases in resources.

Mr Medcraft: I cannot comment specifically on the actual question. I think that is a matter of policy the government in terms of—

Senator EGGLESTON: Yes, it is, but I am just making the comment.

Mr Medcraft: But, as I say, I have highlighted that the focus on small business is actually going to be an important priority for us. I have said that and we are developing a strategy.

Mr Dwyer: Can I add that we are getting positive feedback from industry associations, including COSBOA, that the increased focus on small business is working. I think there was recent press in a *Lateline* interview that Peter Strong of COSBOA gave where he mentioned that additional resources were being put into small business from ASIC and he acknowledged that we were doing a better job.

Senator EGGLESTON: I am sure you are. As I said, I do not doubt your good intentions. I just raise this issue as a broad one about whether you can really do this. Thank you.

Senator BUSHBY: There are lots of things I would like to ask, but I am not going to have time to. At the last estimates, in answer to question on notice AET 128, Mr D'Aloisio noted that ASIC had commenced a review of early exit fees involving contacting the top 20 lenders to assess how exit fees had changed in response to ASIC regulatory guide 220. Where is that review currently at and do you have any results from that review yet?

Mr Medcraft: I am delighted that there is something for Mr Kirk.

Mr Kirk: The review is under way. We got data from all of those 20 lenders and analysed it. Because of different business models that different lenders had, that has led to some further questions. So we have gone back to a number of them for more data. That is in the process of coming in and being analysed. We would expect to have all of the information and do the analysis by July and probably get a report out soon after that.

Senator BUSHBY: From the preliminary findings that you have received, is it looking like lenders are changing their attitudes to exit fees in response to the regulatory guide?

Mr Kirk: Certainly there has been very significant changes to exit fees. Whether or not that is in response to the regulatory guide is a difficult question because, parallel to the regulatory guide, there has been the subsequent ban on exit fees. That is not in place, but in light of the fact that that is coming, an increasing number of lenders have gotten rid of their exit fees already. So it is very hard for us to say whether we caused or whether the coming ban has caused it.

Senator BUSHBY: The regulatory guide, though, applies to existing situations whereas the ban will only apply to new contracts entered into after 1 July, assuming it is all—

Mr Kirk: That is correct.

Senator BUSHBY: And that will be a ban, whereas this imposes fair contract terms, essentially, onto the use of exit fees. So there could be a different response by a financial institution to how it deals with those exit fees that will be ongoing and those exit fees from 1 July. Have you seen any evidence of that?

Mr Kirk: It is certainly open to institutions to have a different response for existing contracts as opposed to new contracts after July. At the moment, I do not know enough about the detail of the material we have had back to say whether they are making that distinction or whether, when lenders are getting rid of their exit fees, they are getting rid of them across the board.

Senator BUSHBY: I will ask more questions about that next time. In answer to question on notice AET 128, you noted that you had, up until 28 February of this year, received 65 complaints about exit fees. Can you update that number today?

Mr Kirk: I am not in a position to update that figure. I suspect, based on my own observations—and I would become aware of most of the complaints we get in that area—that has not greatly increased. We have not been getting large numbers.

Senator BUSHBY: Can you take it on notice and give me the actual figure?

Mr Kirk: I am happy to do that.

Senator BUSHBY: In respect of the 65 and any subsequent ones, what actions have you taken in respect of those complaints?

Mr Kirk: Primarily in terms of getting an outcome for the individual, they are referred to internal dispute resolution and then, if needed, external dispute resolution with their lender. Now all lenders are compelled to be members of external dispute resolution schemes. So they can go and have their individual complaint dealt with. Largely, we use that source of complaints to target our other surveillance work and find out what is going on.

Senator BUSHBY: Do you look at the exit fees that have been charged in the context of RG 220 to see whether they comply for those complaints?

Mr Kirk: We do not take the complaint and make an individual judgment on it. We leave that for the external dispute resolution scheme that can make binding orders. But where there are complaints and where fees are apparently high, perhaps we should target our surveillance and they should become one of the lenders included in that surveillance—that is really the use we make of those complaints and that information that comes in.

Senator BUSHBY: Where is the enforcement special account currently at? How much has been spent this year and on what? What is the current balance? Is there any likelihood of a need to bring forward any money from next year's \$30 million to be able to meet your obligations from this year?

Ms Gibson: For the ESA this year we will come close to using our full account availability for the year.

Senator BUSHBY: You are looking that way in February.

Ms Gibson: But we would not be going over this year.

Senator BUSHBY: You will not be going over?

Ms Gibson: I do not have that impression, Senator.

Senator BUSHBY: How much has been spent since February and on what?

Ms Gibson: I cannot give you those numbers exactly.

Senator BUSHBY: Can you take that on notice?

Ms Gibson: Yes.

Senator BUSHBY: Thank you. Has ASIC published a report on its 2011 summer school?

Ms Gibson: Yes, we have.

Mr Medcraft: We have.

Senator BUSHBY: Would you be able to provide the committee with a copy of that, not necessarily now but—

Ms Gibson: Certainly.

Mr Medcraft: With pleasure. We are actually happy to provide you with some MoneySmart stuff as well, if you would like.

Senator BUSHBY: If you feel that way inclined, we will certainly take it. But I am interested in the outcomes of the summer school.

Mr Medcraft: We will do both, if you like, because we are trying to push it out there.

Senator BUSHBY: But I am particularly interested in the summer school report.

Mr Medcraft: I am told that the summary of our summer school is on the website. But we will provide you with a copy.

Senator BUSHBY: Does the report include all of the materials that were presented at the conference sessions, both plenary and non-plenary?

Mr Price: My recollection is that it covers the plenary sessions but not the non-plenary sessions. That is in keeping with our longstanding practice in operating the summer school.

Senator BUSHBY: That is fine. What was the cost of the summer school and were any profits made by ASIC?

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

Senator BUSHBY: Regarding the new information-gathering powers that were conferred on ASIC earlier this year, can you confirm that these powers now have operational force?

Ms Gibson: That is correct. They have operational force. I do not believe they have been used.

Senator BUSHBY: They have not been used?

Mr Medcraft: No.

Senator BUSHBY: Okay. Finally, when will ASIC post on its website its policy statement on the use of its coercive powers to bring it into line with other regulators such as the ATO and the ACCC and also in line with the 2008 ARC report?

Ms Gibson: That is in the course of being drafted and optimistically that would be the end of June, but I would think it would be by the end of July.

Senator BUSHBY: Thank you.

Senator HEFFERNAN: Is the obligation of directors to ensure that superannuation, child support and taxation is paid a matter that you take an interest in?

Mr Medcraft: I would think that is a matter for the ATO or the child support agency.

Senator HEFFERNAN: There is a company—a mob called Rutley's transport; I have raised this before and I have the companies here—that pays their employees out of a \$2 company. There is one character owed \$40,000 since 2001 in super payments that have never been paid—then they simply put the company into liquidation. Here is the liquidator's unsecured creditors: Deputy Commissioner of Taxation, \$8,306,000; Office of State Revenue \$300,000,056 et cetera. Where that becomes a pattern of activity, with the same directors just moving to a new company and leaving all of the debt and shit behind, you do not take an interest in that?

Mr Medcraft: I think that is a phoenix activity.

Mr Dwyer: Yes, we do take an interest in something that would have those earmarks.

Senator HEFFERNAN: I have a letter here just to give you the tone of this. I am happy to provide you with the details. It reads: 'Dear Senator Heffernan, thank you for agreeing to receive this documentation.' The name shall remain out of it; this is from a crowd called Superannuation Recovery Action Group. It goes on: 'After our viewing of the attached documentation, you may appreciate this is a very serious problem that all employees of Rutley's are facing. There have been many attempts by individuals over many years to rectify this problem and they inevitably fail and they are forced to move onto other employment without receiving unpaid super payments due to them by Rutley's.' This also includes the divorce stuff. 'We have started a register of all persons who are current and past employees of Rutley's and their associated shelf companies. They are owed superannuation payments and I have enclosed a few samples for you to view. Having been in contact with many past and present employees, we envisage that we will eventually collect hundreds of these statements and they will tell the same story of non-payment. While being engaged in the pursuit of unpaid super, we have become aware of a second and perhaps more serious problem—the problem facing the failure of Rutley's to pass on child support payments that have been deducted from some employees' wages to their ex-wives and dependent children. Both of these matters are of great concern', and so it goes on. Would you be—

CHAIR: Senator Heffernan, can you table that letter?

Mr Dwyer: Senator, has that company gone into liquidation? Have any of those companies—

Senator HEFFERNAN: Yes, that is the pattern. They put them into liquidation and the employees are told to go and chase their own tails.

Mr Day: If you will provide us with that information, we will have a look at it. If it more appropriately belongs to the ATO, we are more than happy to refer that material.

Senator HEFFERNAN: Madam Chair, can I table, with some appropriate advice, some material related to this?

CHAIR: Yes.

Senator HEFFERNAN: I think I should take a bit of advice before I do it. These people are obviously very distressed. Can I go to the ASIC obligation of directors. Today in the Riverina there was a vote by shareholders of a company called SunRice not to sell the company on the recommendation of the directors to sell the company. The shareholders, who are the rice growers, decided that it was not a good idea—and it was a vote where they needed 76 per cent of the vote and they did not get it—to sell the company to a foreign Spanish company which is at the moment a co-operative company and to include in the sale to the Spanish company, with the largesse provided by the New South Wales Rice Marketing Board, the actual monopoly rights to the sale of the Australian crop. This would obviously generate a global cartel in non-tropical, winter rainfall premium rice. There are a couple of issues, but I just wanted to go to the issue of the interests of the growers of the company—that is, the shareholders in its present A&B form—and the direction by the directors of the company that it was in the best interest to do something that I think is dubious. Obviously, today the shareholders reflected some of that. The New South Wales Rice Marketing Board, with a further authority to be the sole exporter of rice, is actually handing to a foreign company the sole marketing rights—

CHAIR: Senator Heffernan, do we have a question?

Senator HEFFERNAN: Yes, I do, but it is a bit complicated. It is under section 51A of the New South Wales Rice Marketing Act to actually gift the rights of selling Australia's rice crop to a company in Spain that admits it has a stranglehold on the global market. Is there anything that you blokes take an interest in regarding the behaviour of the directors of that company in allowing an arrangement to take place where we include in the sale a statutory right to the marketing rights gifted to the company under a New South Wales act of parliament? Isn't that bizarre?

Ms Gibson: Our interest in these sorts of schemes of arrangement is the best interest of shareholders. It would be a question of disclosure and of financial assessment of the merits. The issue of the rights of the company as granted under the rice marketing legislation would be a matter for, I presume, the New South Wales parliament. It may be that the ACCC would have an interest if there was a question of a monopoly in this market. But, in the ordinary course, ASIC is concerned with the obligation of directors to act and advise on the best interests just of the shareholders concerned.

Senator HEFFERNAN: So if one or two of the directors—and I am not making any allegations of impropriety, by the way—who are the major shareholders in the company are getting old and tired like me—but still up for an arm wrestle—and decided to sell the company as the easy way out, but the attraction for the Spanish company was not only the vertical integration of the whole of the entire rice industry in Australia but also the entire global marketing rights to that rice, and if you had a look at the major shareholders of the company and found that some of those were the directors of the company, is it something that we can have you investigate?

Ms Gibson: I do not want to comment on the specifics, but from what you were saying we would expect the valuers of the company and the directors, when they make their recommendations, to take into account in the evaluation the impact on the global scale of giving that side of the market. Last month or two months ago we issued a paper on related party transactions. If there was any suggestion that directors were getting any sort of additional benefit out of that deal with others then of course that would bite. But you are not making that suggestion.

Senator HEFFERNAN: I am not making allegations of impropriety. It is just that, in the package of the sale, there does not seem to be any consideration given by the directors to where the Australian rice industry will be in five years time if they hand the sole marketing rights, allowing no competition into the international market by anyone else, to a Spanish company that already has a stranglehold globally on the rice market. I was really just looking for directions.

Ms Gibson: For our purview, we would expect that to be taken up in evaluation proposition and in the recommendation. You would not look to the impact on the rice industry as a whole. That would not be within our purview.

Senator HEFFERNAN: I guess I could take it up with the Foreign Investment Review Board too.

Ms Gibson: That sounds like a possible place.

Senator Sherry: Or the ACCC.

Senator HEFFERNAN: Anyhow, that will be my problem. I think I will leave the rest. I am very grateful for my five minutes. I would be happy to table some documents for advice on the pattern of activity of the company.

Mr Medcraft: We will follow that up—it will be either us or the ATO.

Senator CORMANN: I am interested to read in the business section of the *Australian* a couple of days ago some comments about ‘ASIC warns super funds in a hurry to merge’. You would be aware of that story. It is an issue I am interested in. I am just wondering whether you could advise the committee what ASIC’s level of involvement is at present in the context of super fund mergers, given that there is a bit of a trend down that path.

Mr Medcraft: Basically, what we were doing was reminding super funds that, if they are doing mergers, they need to make sure that their members are properly notified; that, if investors are being rolled into a new fund, PDSs are appropriately modified; and that what comes out of the merger, if it does have impacts in terms of disclosure, is properly disclosed. It is reminding them of the rules of the game and what their obligations are.

Senator CORMANN: It is important for members to have appropriate levels of information, but those members will not ultimately have a say either in favour or against the merger, will they? As much as they can be informed, they will not get a say either in favour or against a particular merger—that decision is exclusively up to the trustees, isn’t it?

Mr Medcraft: I believe so, yes. Mr Price, do you want to comment on that?

Mr Price: I believe that is the case, but I am not entirely sure.

Mr Medcraft: We will come back to you, but I believe that is the case.

Senator Sherry: Some of these issues cross to APRA as well.

Senator CORMANN: Sure, and I will ask some of these questions of APRA as well. ASIC obviously raised the issue.

Mr Medcraft: If it is a regulated fund, as the minister said, then it is really an APRA issue. Our issue in that is what I was saying—to just make sure that there is proper disclosure to the members about whatever is going to occur and that there are PDS implications.

Senator CORMANN: And that is very good that proactively you remind people of that.

Mr Medcraft: As you say, we did. I think on 9 May or something we issued an advice on that.

Senator CORMANN: The question then is: how do you ensure compliance? It is one thing to give a general statement and it is another thing, on a case-by-case basis as these mergers—

Mr Medcraft: The one that we did identify was Vision Super. We are engaging with them to make sure that they are complying with their obligations. It is again back to what we said earlier. It is important to make sure that you do not just warn but that you also engage to make sure that, where you have identified a particular issue, those parties actually meet their obligations.

Senator CORMANN: So they were not meeting their obligations and you reminded them of the need to do it?

Mr Medcraft: We sent out to the sector—because obviously super funds are looking at merging—a general advisory reminding them of their obligations. And in relation to a particular one that has been identified, Vision Super, we have engaged with them to make sure that their obligations—

Senator CORMANN: Is that unique or is that something that happens from time to time?

Mr Medcraft: That is part of doing our job in terms of surveillance and engagement.

Senator CORMANN: Sure, but is it unique? You mentioned Vision Super. Are there other circumstances over the last 12 or 18 months where there would have been similar communications with other funds that are pursuing mergers?

Mr Medcraft: I cannot tell you offhand. I am happy to take that on notice and come back to you on it. If we believe there may be an issue in terms of the way the disclosure has been alerted to us, then certainly—but we will come back to you on that.

Senator CORMANN: Thank you. Beyond ensuring the things that you have outlined—that appropriate information is provided to members—does ASIC provide any other oversight in the context of super fund mergers, either in terms of making sure that it is in the best interests of members or—

Mr Medcraft: The area of regulated super funds is very much an area predominantly for APRA.

Senator CORMANN: So the answer is no?

Mr Medcraft: Well—

Senator CORMANN: I am not meaning to be tricky.

Mr Medcraft: I appreciate that. In relation to regulated super funds, APRA is the primary oversight agency. It is a bit like with banks: where we come in is where they actually deal with the consumer, to make sure that the consumer is properly disclosed what is happening. We work very closely with APRA.

Senator CORMANN: I will pursue this with APRA as well—don't you worry. Thank you.

CHAIR: Thank you, Mr Medcraft and ASIC members, for coming along today.

Mr Medcraft: Thank you. We look forward to seeing you next time.

Australian Bureau of Statistics

[17:32]

CHAIR: Welcome. Mr Pink, do you have an opening statement you would like to make?

Mr Pink: I think it would be remiss of me not to acknowledge that we are now nine weeks away from 100 years of national censuses in Australia. We have done all of the hard yards. We have everything in place to run a successful census, with the exception of the enumerator workforce, and we are right in the field at the moment looking for the 29,000-odd folk that are going to help us undertake the census. In most parts of Australia we have had a very good response to the advertisements for temporary staff. There are some areas—not surprisingly, the areas that are significantly involved in the resources sector where it is more difficult to find people who are waiting around looking for short-term opportunities to work. In the planning for the census we recognised that there were probably going to be challenges for us

in those areas and we have worked very closely with key stakeholders like the state and local governments, NGOs et cetera, and we are now talking to them to help us find the staff that we need in those areas to run a successful census. That is just by way of introduction, to give the committee confidence that we are ready to go with the census. Of course this time we will be encouraging very strongly the Australian community to fill their census in online. It was a low-key approach in 2006 and we had about 9 per cent of the population. This time we would hope that certainly above 30 per cent and perhaps up to 40 per cent might take the opportunity to complete the census online, which we think would be very good for the respondents themselves, and also there are some operational benefits and efficiencies to come from online completion.

CHAIR: Thank you, Mr Pink. It is very interesting. We all wish you well on the census and look forward to the end results.

Senator CORMANN: There is an article in the *Australian* today that I am sure you are aware of that states that Treasury officials are so concerned that ABS figures for GDP and other key industries have so many discrepancies that they are completely unreliable. Would you care to comment on your perspective in relation to that report?

Mr Pink: The ABS back in the period through 2009 had some very significant challenges in the compilation of the quarterly GDP to which some of those comments refer. I said, and I think it is actually reported in that article, that with the benefit of hindsight we were confronted with a perfect storm. We had been working for a number of years planning to introduce a range of new international standards into our macroeconomic statistics programme in the September quarter 2009. That by itself was a very significant workload involving the back-casting of thousands of series over some 50 years and many other changes that had to be made to accommodate that. Unfortunately the quarter that we chose to implement those new international standards—and that process had been in train for, as I said, some years—was the same quarter, as it turned out, when the most significant impacts of the GFC were seen in the data series that supports the national accounts. As a consequence of those two combining and that perfect storm, as I described it, we did have quality problems with the national accounts in that period. That is what that article refers to. Since then we have established a set of mechanisms to discuss with Treasury and the Reserve Bank each quarter any issues that they have with that quarterly release. In fact in the lead-up to the compilation of the accounts each quarter, some weeks before we complete that work we meet with Treasury and the Reserve Bank to talk about areas where they will have particular policy interest in the upcoming accounts, and some of the reasons why. That gives us some guidance as well in compiling the accounts on areas to take into account in our quality assurance processes. At our advisory committee meeting today David Gruen, the head of macroeconomic statistics at the Treasury, assured the ASAC members that the ABS, the bank and the Treasury had been working together to deal with any of the issues there and that they were very confident that these issues were now behind us.

Senator CORMANN: I am pleased to hear that there is that level of confidence that the issues are now behind us. But—I am quoting from the paper 'GDP doesn't actually up add up: Inconsistencies in the national accounts', where Treasury officials stated that 'after 2006-07 the discrepancies become quite large'. On that basis how can we be certain that the GDP

figures that the ABS provides are accurate and really reflect what is going on in the Australian economy?

Mr Pink: The process of benchmarking the national accounts each year is an annual process, and because of all of the other work that we had to do in implementing the new international standards through the period post 2006 through to the 2009 September quarter, we took a decision to defer the annual re-benchmarking of the accounts that in fact deals with the inconsistencies in the three different measures that we have of GDP. We could provide you with background information on the strengths and weaknesses of each of those. We had deferred for a period that annual benchmarking because of all of the other work we were doing in bringing those new standards through and then in dealing with some of the complications that were occurring in the series through the impacts of the GFC and the government's policy response. That led to that discrepancy growing over that period. They have now been re-benchmarked in the 2009-10 period and that discrepancy has been reduced again significantly. So with hindsight it was a decision that we would not take again. But it was a decision in all of the pressures that we were under that we did take and that led to that growing discrepancy. Again, both the bank and the Treasury are aware of the reasons why that occurred and have seen that discrepancy come back as a result of the re-benchmarking that we have done with the most recent annual release.

Senator CORMANN: You mentioned all the pressures you were under. Is there an issue of under-resourcing, lack of expertise or lack of appropriate IT support? What sort of—

Mr Pink: I think we have indicated to the committee previously that we did have a lot of pressures around capability through that period. Of course one of the things that we and a number of the other agencies in the economic sphere had was that most of our staff had never actually worked in the national accounts area during a period of economic downturn, which is what we saw with the GFC. So there were some challenges there. But to answer your question in a positive sense, we took some of the issues we had both in capability and in GFC-exposed weaknesses in some of the source data to the government and in the last budget we received additional funding to address both the capability issues that we had and some of the source data problems that we identified as part of that period of compilation.

Senator CORMANN: And that additional funding is adequate?

Mr Pink: Yes it is.

Senator CORMANN: The same report also says that the ABS actually stopped collecting monthly data from Queensland around the time of the floods.

Mr Pink: That is not correct.

Senator CORMANN: Here is an opportunity for you to correct it.

Mr Pink: That is what has been put in the article.

Senator CORMANN: That is what why I am asking you.

Mr Pink: What happened was that in areas such as the labour force data we deferred collection of the data for a period during the floods. And with businesses in some of our indicator series we also deferred the collection of the data. But in fact the impact in the final analysis was marginal because we were able to collect most of the data subsequently.

Senator CORMANN: So it has not created a discrepancy which makes the March 2011 quarterly GDP figures more unreliable?

Mr Pink: The March figures will be released on tomorrow.

Senator CORMANN: I am quite aware of that. I am not asking you to make the announcement now.

Mr Pink: I am saying that I will not be, Senator.

Senator CORMANN: No, of course not. But are you essentially confident that whatever deferrals happened in collection of data out of Queensland in the context of the floods will not affect the reliability of the data?

Mr Pink: Our assessment is that it is a marginal impact. And of course a lot of the indicator series that are used in the compilation of the national accounts have been released over recent times, and all of those have been accepted by the market as good estimates.

Senator CORMANN: Treasury has expressed concerns, and you mentioned the Reserve Bank. Are there any other external bodies that have expressed similar concerns around figures as a consequence of what you have described as a perfect storm?

Mr Pink: Over that period there were comments coming from some of the business economists as well raising questions about some of what they saw as the inconsistencies. What I would say is that their comments mirrored some of the concerns that were being expressed by Treasury and the central bank.

Senator CORMANN: Thank you for that. At the February estimates I asked a number of questions around the possibility of moving from a quarterly CPI index to a monthly CPI index. You said then that there was significant demand for such a series and that Australia was probably the only industrialised country that does not report CPI on a monthly basis. Has there been any movement on that front?

Mr Pink: In the 16th series review that came out at the end of last year, one of the recommendations was that the government consider the introduction of a monthly CPI. That initiative has not been taken up by the government.

Senator CORMANN: You costed that particular measure, didn't you?

Mr Pink: Pink yes, we did. I might ask Mr Ewing—

Mr Ewing: There was an initial up-front cost of \$6 million followed by an additional ongoing cost of \$15 million a year to produce a monthly CPI of the same quality as the current quarterly CPI.

Senator CORMANN: Thank you very much. Another issue that I explored with you during the February estimates was around the ABS involvement and assistance in relation to APRA superannuation data series. Can you talk us through what further work has been done since February in making sure that there is an improvement in the quality of the data and the reporting round all of that?

Mr Ewing: The data reported by APRA is about individual superannuation funds. The ABS does not produce information about individual funds. We use some of the information that APRA collect in compiling financial statistics. Our engagement with APRA is really around the quality of the information on the stocks and flows that arise from the economic activity of the financial sector. It is not our job to publish information about individual firms

or individual funds. In fact our legislation would stop us from doing that. So we really do not have any particular views on the robustness or otherwise of the numbers that APRA is producing about performance of individual funds.

Senator CORMANN: No but your role is in relation to going through the quality of the data? You have a role in terms of assessing the way the data is collected, the quality of the data and how is it processed—is that a fair way of summarising what your involvement is?

Mr Ewing: We are not involved actively in the day-to-day work of assuring the quality of individual superannuation funds. That work is undertaken by APRA. We receive the supply of aggregate information from APRA and on occasions we may have queries about its coherence or consistency. In those cases we relay those concerns back to APRA who in turn follow them up with the individual funds concerned. But the ABS is not an active partner in the process of quality assuring individual returns of superannuation funds.

Senator CORMANN: So you do not play a role to make sure that the way data is collected and used is consistent across all funds to make sure that apples are compared with apples? You do not play a role in relation to that at all?

Mr Ewing: Only to the extent that we look at the aggregate information that they give us across all funds and we check its consistency with other financial information that the ABS may have on hand, or with other components of the financial accounts, or with past reports where we seek changes from one quarter to another in the data, and if it looks out of line with expectations then we will get back to them and query the data. We also outline in advance in discussion with APRA the sorts of standards of quality we expect to see in the aggregate data. So to that extent we influence the quality assurance processes that they carry out. Also from time to time they may seek some expertise from the ABS on quality assurance and we cooperate with them in providing that expertise.

Senator CORMANN: Would the ABS, as our premier data collection agency, have the capability to collect superannuation return data using representative sampling techniques and then providing information which is consistently comparable across all funds? Is that something the ABS would have the capability of doing?

Mr Ewing: The ABS would have the capability of collecting information in the way you describe but it would not publish that information at the level of the individual fund. Likewise, if we did collect it, we could not provide it to APRA on an individual fund basis for them to carry out their prudential regulation responsibilities.

Senator CORMANN: What would prevent you from doing it? There is privacy legislation—

Mr Ewing: The statistics legislation which requires us to keep confidential any information we collect from individual businesses.

Senator CORMANN: Sure, but you could provide in a de-identified way—using a sampling technique you could essentially provide information about benchmarks and things—

Mr Ewing: At an aggregate level or an abstract level but not information that would allow the identification either directly or indirectly of any individual superannuation fund.

Senator CORMANN: What sort of resourcing would be required for the ABS to do that sort of job?

Mr Ewing: I would have to take that on notice and get back to you with that information.

Senator CORMANN: Thank you.

Mr Pink: In the end it is a sample survey and it would depend on the range of data that was required and the level of accuracy that was required as well, because there is sampling error of course associated with sample data. The only other comment I would make there is that when the changes to financial regulation occurred there was an agreed process whereby the ABS, the Reserve Bank, APRA and ASIC looked at who was the most appropriate institution to collect data for particular purposes. In many cases both the bank and the ABS agreed that it would be the recipient of data that was collected by those other institutions rather than collect the data in duplicate, in effect, from the same respondents.

Senator CORMANN: You would not want to duplicate it; it that is for sure.

Mr Pink: No. Which would be the case if we ran a—

Senator CORMANN: But the thing is there could well be some adjustments as to who does what without ending up duplicating.

Senator Sherry: Senator, APRA has to collect a set of reports from individual funds for prudential reasons. So it has the data.

Senator CORMANN: I understand that.

Senator PRATT: I want to ask, with respect to the census, about the arrangements being made for remote Indigenous populations. I notice that you have particular programs that cover that. I do note that they have been particularly challenging in the past, so I am keen to know that everything is on track.

Mr Pink: I will ask Mr Lowe to answer that. Mr Lowe has responsibility for the 2011 census and we have been putting a lot of effort into the remote Indigenous communities.

Mr Lowe: I am pleased to report that the progress to date with both the engagement and recruiting people in remote areas for remote discrete communities has gone extremely well. A key focus for us over the last couple of years has been close engagement with Indigenous communities, building statistical literacy within those communities through our engagement programs. What has been pleasing to me is that through that program we are now finding that the Indigenous communities themselves are starting to take ownership of the census in their communities. We are getting great buy-in. We have a range of different procedures we are putting in place this time to make sure that we get a quality outcome. It is a priority area for us. We are putting more resources into these areas. Overall I am very confident that we are going to get a great result.

Senator PRATT: Is there a greater appreciation in Indigenous communities about the significance of the census to community welfare in terms of collecting demographic information?

Mr Lowe: Certainly. I think through our statistical literacy programs and the engagement work we have been doing we are now seeing a lot of communities realising not only the benefits of fully participating in the census and getting a good outcome from the census for their communities but also the power of census data.

Senator PRATT: Demonstrating how many people are in a house overnight, for example?

Mr Lowe: Yes. They realise the power of census data and measuring overcrowding and the power of census data where they can put forward funding bids for health centres et cetera.

Senator PRATT: With non-remote communities there have also been some statistical challenges in places like the mid-west where more traditional methods have been used but they do still have significant numbers of Indigenous people who are often on the move through regional centres like that.

Mr Lowe: Again, some of the procedures in at that we have used in remote communities in the past and some of the assistance that we have offered those communities to participate in the census and get accurate outcomes—we have extended some of those to regional areas where there are large numbers of Indigenous people. We will be offering those households assistance through interview rather than just relying on self-enumeration. Again, I think in those areas we are going to get improved results.

Senator PRATT: And that will happen over the course of a period of time as opposed to just on census night, for example?

Mr Lowe: That is right. In 2006 it probably took us over two months to do the Indigenous communities. This time around, because of the additional resources that we have available, we will complete that in a four-week period. In regional areas we will start before census night and complete it in the normal census time.

Senator PRATT: Are any of those measures also being rolled out in the wheat belt in WA as well?

Mr Lowe: They certainly are. In the wheat belt area we have a range of different methods to deal with Indigenous communities. They range from having community coordinators and interpreters within the communities doing it largely themselves to other communities where we are going to be offering more assistance to the communities to conduct the census.

Senator PRATT: Thank you very much.

Senator ABETZ: I have a discrete bracket of questions in relation to your analysis of trade union membership. You provided an information sheets on 6 May in relation to that. Can you confirm to us that you get the data for this analysis from Fair Work Australia, or do you get it from a range of sources?

Mr Harper: We get that information from the household survey. It is a supplement to our monthly labour force survey.

Senator ABETZ: So you do not rely on that which is provided by Fair Work Australia?

Mr Harper: No.

Senator ABETZ: Thank you. I notice in your latest statement that for the public servants there is a 41 per cent membership and the figure is inversed when you get to the private sector membership of 14 per cent. This is why I was interested. You told us that two-thirds of trade union members had been a trade union member for five years or more, compared with 10 per cent who had been a trade union member for less than one year. I did not think you would find that out from the information that was supplied to Fair Work Australia by the unions. But of course you find that out from your household survey, so that explains that mystery to me. In the household survey do you inquire as to which unions people might be—

Mr Harper: I do not believe we do.

Senator ABETZ: Right. There has been a degree of boasting by a particular union that they have seen a growth of 30,000 in their membership, which is interesting, but in fairness to ABS I do not think you could necessarily shed any light on that. Would you consider somebody who said they were a non-financial member as a member? Do you go into that specificity or that detail?

Mr Harper: I would have to take that question on notice about the detail around whether we consider somebody to be a trade union member. But even if we collected information about membership of individual unions we would never be able to publish that information, because of our confidentiality requirements. We can only publish information in the aggregate.

Senator ABETZ: Yes. But if people were to say that they were a member of the—to pick a random example—Australian Workers Union you would then be able to tell us how many had indicated they were members of that union, without disclosing of course who those individuals are?

Mr Harper: We actually would ask the question, 'Are you a member of a trade union?' and we would get a yes or no answer to that. There would not be discussion.

Senator ABETZ: So you do not ask what particular union. The question is just whether they consider themselves to be a member, I would assume—you do not break it up into financial or non-financial?

Mr Harper: I would have to take that level of detail on notice.

Senator ABETZ: So if you could take the membership—

Mr Harper: We will get back to you with the specific definition that we use in the survey.

Senator ABETZ: Yes, of membership—because I understand that for example there has been a 300 per cent surge in non-financial members. I do not know how you get non-financial members in this bracket but that is what the Australian Workers Union told us, but then we find out that out of 55,000 members of the Queensland branch, 22,000 were non-financial. So I suppose you, Senator Sherry, and I could boost the membership of our parties considerably by referring to non-financial members that of course do not exist and are not on the books. That is not something that the ABS should intrude into. But it does make for interesting reading that against the trends which have seen the trade union membership decrease again, one union is bragging that it has growth rates that just do not seem to be right. I was wondering first of all whether you got your information from Fair Work Australia, and clearly you do not. Thank you for that.

Senator Sherry: The points you have been making, Senator Abetz, have absolutely nothing to do with the ABS.

Senator ABETZ: I am sorry, Senator Sherry—if you were across your brief and had listened rather than closing your eyes earlier on half asleep you would know that I did refer to the situation a that statement was issued by the ABS on 6 May 2011 headed 'Trade union membership decreases'. So clearly it is something to do with the ABS. I was just checking to ascertain where they got their information from. Unlike you, Minister, the officials have been very helpful.

CHAIR: Thank you again. We look forward to hearing a bit more about the census collection next round of estimates.

Proceedings suspended from 18:05 to 19:14

Australian Competition and Consumer Commission

CHAIR: We welcome officers of the ACCC. Mr Samuel, do you have an opening statement?

Mr Samuel: No. In fact, I notice a restriction has been imposed of five minutes, which one of my colleagues unkindly said was the Samuel restriction. Given that there is no way I can comply with the five-minute limit, I waive the right to an opening statement.

CHAIR: Thank you, Mr Samuel. We will go straight to questions then.

Senator CORMANN: Earlier I asked ASIC about the openness and transparency of the appointment process for its new chair and I ask the same about the process in appointing the new Chair of the ACCC. I gather that Mr Samuel may have an answer to this. I refer to Senator Faulkner's press release in February 2008 when he committed to the heads of a whole series of agencies being appointed through an open, transparent and merit based process and said that all the positions would be publicly advertised. Those new arrangements were to come into effect on 1 July 2008. Was the selection process for the new Chair of the ACCC advertised publicly?

Senator Sherry: I can respond to that and at the same time I can answer your earlier question about ASIC. No, it was not. Both the ACCC and ASIC are excluded from those arrangements and were excluded, as I am advised, after the initial press release was put out. In the case of ASIC, it is an unusual appointment process because it requires the agreement of the majority of the states, so it was deemed impractical to advertise in those circumstances. Looking through the list, the overwhelming majority of agency heads and statutory officers are subject to merit based selection. There are some that are not, but the vast majority are.

Senator CORMANN: Minister, I have the list of agency heads and statutory officers subject to merit based selection and for each portfolio there is a list of agencies that are included and a list of those that are excluded. There are a number that are excluded, but it does not—

Senator Sherry: Yes, it was amended later.

Senator CORMANN: When was that publicly released?

Senator Sherry: I do not have it.

Mr Cassidy: The press release that was put out by Senator Faulkner does indicate that the Prime Minister can agree to further exemptions. As the minister has indicated, it was decided soon after that press release was put out that, because of the two-stage process that operates with the states and territories for appointments to the commission, it simply was not practical to advertise those positions. Firstly, the states and territories have to be asked whether they have any nominations—people they want to put forward for appointment to the positions. The Commonwealth then has to decide who it wants to nominate and it has to go to the states and territories to seek their agreement. Under what is now the Competition and Consumer Act, a majority of the states and territories—that is, five out of eight—have to agree to the appointment before it can be made by the Governor-General. It was decided that, with the

process that is embodied in a Commonwealth-state agreement, the Conduct Code Agreement, it was not practical to be advertising the positions. The whole of the current commission has been appointed on that basis.

Senator CORMANN: Why can you not have a merit based selection process just because the states and territories have to agree to the appointment as well? I would not have thought that the fact that there is state involvement in making the decision would preclude merit based selection.

Mr Cassidy: Let me put a hypothetical. Supposing you advertised and out of the advertising process you decided John Smith was the best person of the people who had applied. Then the Commonwealth went to the states and territories and the states and territories said they did not like John Smith. How does the advertising mean anything?

Mr Samuel: I think, more importantly, what happened was that the government took the view that the nature of the process involving the two stages Ms Cassidy has outlined was sufficiently rigorous and sufficiently testing of the appropriateness of the appointee, be it the commission, a member of the commission or the chairman of the commission, that it would satisfy some of the transparency issues that are otherwise contemplated with other appointments under Senator Faulkner's original proposal.

Senator Sherry: Interestingly, I just noticed, in looking through the list attached to the press release, that it does not list the Chair of ASIC as included; it only lists the deputy chair and the member. It does not say it is excluded either. It does not list it at all.

Senator CORMANN: You must have a different list from me, Minister, because right at the top of the list is the Chairperson of the Australian Competition and Consumer Commission, the Chairperson of the Australian Securities and Investments Commission, the Chairperson of the Corporations and Markets Advisory Committee, the President of the National Competition Council and so on; so I am not sure what list you are looking at.

Mr Cassidy: We are looking at the same press release.

Senator Sherry: On the one I am looking at there is no chair.

Senator CORMANN: I am happy to give you my document.

Senator Sherry: It is on the previous page—sorry.

Mr Samuel: We have got it.

Senator CORMANN: So it does include the Chairperson of the ACCC.

Senator Sherry: Yes, it does. I am sorry, I was looking at the second page, not the first. But, anyway, it was subsequently amended.

Senator CORMANN: I would be interested to see any subsequent announcement because we certainly have not been able to source any subsequent announcement.

Senator Sherry: That is my advice. I have not got a copy of it, but we will see what we can track down.

Mr Cassidy: Of course, this is a government matter, but perhaps, as Treasury are appearing after us, that is something you could raise with Treasury, because they are the decision maker. It actually involves Treasury and Prime Minister and Cabinet and the departments' ministers.

Senator CORMANN: I fully appreciate that, but you have advanced the argument that the fact it involves decisions by both the Commonwealth and the states and territories somehow was the reason for making an exemption from this process, and I guess I am trying to understand why that would be the case. The context for wanting to understand that better is the fact that the Treasurer has made some comments recently in relation to the selection process of the Managing Director of the International Monetary Fund, which of course involves countries right around the world. He said that the new managing director should be appointed through an open, transparent and merit based process. If it is good for the International Monetary Fund and the managing director of that fund, which involves hundreds of countries around the world, then I do not understand why a process involving the Commonwealth and six states and two territories cannot be based on merit.

Senator Sherry: It is not an issue for Mr. Cassidy, who has been very helpful; it is a government decision.

Mr Cassidy: That is exactly what I was going to say. You are really starting to invite me to comment on statements made by the Treasurer. It is a government process and, ultimately, it is the government and departmental advisers.

Senator CORMANN: But you advanced the argument that the fact that states and territories are not involved in the decision-making process means that it is impractical to have a merit based process and to go through a process that Senator Faulkner outlined. Why is it the case? What makes that less appropriate?

Senator Sherry: I think it is obvious. It is more complex. You have got to consult—and Mr Samuel does not want to be reminded of the process he went through perhaps—

Mr Samuel: It was very transparent, I can tell you. Whether it was merit based, I am not sure, but it was certainly transparent.

Senator Sherry: It took a long time, and in that case it would have been impractical to advertise, but whether you accept their argument or not that is our position. I cannot really add any more than that.

Senator CORMANN: I would be interested to see a copy of that further announcement which reversed—

Senator Sherry: I have already said to you that is my advice. We will check and come back to you on notice, but that is my advice. That is all we can find for you.

Senator CORMANN: Thank you very much. I can see you do not want to answer too many questions in relation to why you have breached—

Senator Sherry: It is a bit hard to because I don't know.

Senator CORMANN: It was an election commitment, according to a press release, which was announced with much fanfare in February 2008. You say it was, behind closed doors, reversed a little while later. There is no public record of any announcement of that change, having after much fanfare announced that there would be new arrangements for merit and transparency in senior Public Service appointments. And, of course, in relation to ASIC and the ACCC you have not gone through that process in making recent appointments.

Senator Sherry: I am wondering if there is a question there. As I said earlier, I cannot tell you what I do not know. I am not the responsible minister. I am not a Treasury minister. I was

not involved in the appointments. I will take it on notice and see what I can find out for you. I will see if I can get a fuller and more detailed explanation for you.

Senator CORMANN: Thank you, Minister.

Senator RYAN: Has the ACCC raised any concerns about the proposed merger between Austar and Foxtel?

Mr Samuel: No, we have not raised concerns at this stage. We were notified about the matter in a formal sense just a few days ago. If you check our website you will note that it is now the subject of the appropriate review process with some time lines that are set out there. It is too early at this point in time to raise any issues. It has only gone into the very initial phase of an investigation process.

Mr Grimwade: The only thing to add to what Mr Samuel has said is that today we put on our website an interested parties letter which identifies a number of questions on which we will be soliciting information from the marketplace.

Senator RYAN: I have not been able to look at the website today. Mr Samuel mentioned it also gives the time lines.

Mr Samuel: It does.

Senator RYAN: In March of this year, there was some media coverage of Foster's withdrawing supply of beers—it was only beers—to various supermarkets they supplied. I believe they said something along the lines of not wanting their products sold below cost as loss leaders. Did the ACCC investigate what happened there, including the potential loss leading of liquor stores?

Mr Cassidy: We did and we still are. Under the Competition and Consumer Act there is a provision in the retail price maintenance provisions, section 98(2), which says that a firm may withhold supply of a product for up to 12 months where the product has or is going to be sold below cost. The rationale for that is that selling a product below cost can damage the reputation of the product. It can be seen as a cheap product, one lacking in quality and so forth. There are certain exceptions to that where there is agreement between the producer and the retailer to be selling below cost where it is a genuine clearance sale or end-of-season type sale. Foster's put to us that what they did was in accord with section 98(2). We are still in the process of talking to Foster's about it, but I would have to say that, on the face of what we have received from Foster's at the moment, we probably think that they are covered by that safe harbour provision, if I can call it that.

Senator RYAN: When do you envisage bringing that review or investigation—I am not sure of the best formal term—to a conclusion? You said it was ongoing.

Mr Cassidy: Yes, it is ongoing, but I think it will be fairly soon. We are still looking at some material that we have received recently in relation to the matter, but at least at this point, which is a fair way through looking at it, we cannot see that there is a breach of the law. We feel that section 98(2) probably does apply.

Senator RYAN: I do not mean to ask for a date, but by 'fairly soon' are you saying a fortnight, a month or a couple of months?

Mr Gregson: We would expect to have finalised that matter, subject to any further exchanges with the party, in June.

Senator RYAN: Will you place on your website a statement about that? What do you normally do so that people can find out that has been brought to a conclusion?

Mr Cassidy: In the normal course of events we would not. We do sometimes make statements about issues which have been very much in the public domain. We still have not made a judgment as to when this one falls into that sort of category.

Senator RYAN: There was reasonably substantial media commentary on this earlier in the year. If I thought about it, it would probably stop me ringing someone or writing letters to ask for an answer if a media statement went out just advising of the fact that it has been concluded.

Mr Cassidy: I will not be cheeky and say, 'Senator, of course, that is part of what these processes are about.' But, sure, I understand what you are saying.

Senator RYAN: I know we discussed some of this with respect to milk, but this is a bit different. When you are considering the price at which a product can be sold for a loss or otherwise, as a loss leader, do you consider in this case the cost of supply from, in this case, the brewer to the supermarket chain or the liquor chain? Is that the number you use? Do you just think of the purchase price?

Mr Gregson: It is unfortunately not a black-and-white issue. We look at a whole range of factors to determine whether something might be considered below cost. That is both for these provisions that we are talking about now and the predatory pricing provisions of the act. We would seek some assistance, I think, from economists as to which measure might be appropriate in any one circumstance. Many of these things are purposive in the sense that you do not apply a black-and-white rule to every single situation. You have to look at the rationale behind the provision and the circumstances of the matter. In this one, it is more likely to be the cost at which the retailer obtained the product from the supplier.

Mr Cassidy: In this one, I do not think there is any debate from either side.

Senator RYAN: In this one, it is fair to characterise it as generally the price at which Coles or Woolies and their chains paid Foster's. In the last estimates we had a discussion—it might have been late last year—about the franchising code of conduct. In one of your answers to questions on notice you said you are currently planning an audit for a number of franchisors for compliance with the franchise code. Have any audits been commenced since that answer was provided?

Mr Ridgway: The commission is in the process of finalising its audit program. A number of audits are planned for June as the first of a series of audits to be rolled out into the marketplace.

Senator RYAN: So none have commenced yet. You have settled on—I do not want to use the term 'target'—particular franchisors?

Mr Ridgway: We have identified a number of traders; that is correct.

Senator RYAN: What sort of criteria did you use to choose those particular ones?

Mr Ridgway: We have used a number of criteria. Three of the relevant criteria that come to mind include franchisors who have a history of concerns being raised about their conduct and their disclosure regime and traders who are in a sector where there has been a large volume of concern raised about the particular industry sector that has a number of franchise

systems within it. They are the two that come to mind at the moment. The third is where we have franchisors who have given undertakings in the past to improve their behaviour, where they have been taken to task for wrong conduct, to ensure that they have maintained the high standard they committed to.

Senator RYAN: Thank you. That is very helpful. In outlining your audit program, how far in advance have you done it? You talked about June. Have you planned it out for the next quarter, the first half of the next financial year?

Mr Ridgway: We are forecasting through the first tranche for June. Then we have got a number of targets identified for the rest of the balance of the calendar year at this stage.

Senator RYAN: So is it possible for you to provide on notice how many franchisors you plan to audit over the course of the remainder of this financial year, given that none have commenced, as I understand it?

Mr Cassidy: Let us take that on notice.

Senator RYAN: Your second criteria was sectors with a long history of concern. I do not mean to misquote you, but it was something along those lines. Is it possible to provide which specific industry sectors have met this criteria? I would also be interested in, if possible, the geographic nature of that.

Mr Cassidy: I think on notice we can happily elaborate more on the criteria we use. You will perhaps understand if we do not particularly want to start identifying sectors that we are going to be auditing.

Senator RYAN: In advance.

Mr Cassidy: The way the audit power works, it all rests on documents that they are supposed to keep. If we send that sort of signal—

Senator RYAN: That is a fair answer, Mr Cassidy. I will come back in October and November and ask for it retrospectively, in that case.

Mr Cassidy: Yes. That might be a better way of doing it.

Mr Ridgway: With respect to geography, we are identifying individual firms in a range of states and territories so it is not focussed on a particular state or territory.

Senator RYAN: That is all I have on franchising. I am conscious of time given there are a number of other colleagues here. I am going through what I cannot put on notice. In an answer provided on 22 March, the ACCC stated that it had on hand four initial investigations and two in-depth investigations concerning allegations of predatory pricing. To the extent that you are able, can you outline the status of those four initial and two in-depth investigations? Would you describe them now as having been dismissed, looked at or that four of the initial ones have become four in-depth?

Mr Cassidy: I can say that at this point in time we still do have four predatory pricing allegations under in-depth investigation and one under initial investigation. Whether they are the same four I am not quite sure. I will hand over to Mr Bezzi.

Mr Bezzi: My figures are slightly different. Six alleged predatory pricing matters have now progressed to the initial investigation stage. In the third quarter, the most recent quarter, three predatory pricing complaints progressed to the in-depth phase, but we still only have

four predatory pricing in-depth investigations on hand. One is likely to reach a conclusion within the next few weeks and the others are continuing.

Senator RYAN: I will ask for some further details on notice, but I do not have any more verbal questions. Senator Xenophon, do you have something on that because, if not, I will move on to another issue?

Senator XENOPHON: No. I do not have anything on that for now.

Senator RYAN: I have a question on behalf of a constituent of a colleague. It may sound a touch obscure but I think it might become something that becomes more prevalent with the increasing use of computer tablets and things. It is a story whereby someone has a GPS system in their car, which is effectively like a mini tablet computer. It runs some third party software on it. These things are often automatically updated by either plugging them into the computer or running them on a network, like an iPad might. Subsequent to one of those automatic updates running, the third party software would not work any more. The owner of the device was not informed that this particular update which happens automatically may render particular software non-functional. This is happening more and more because people are using tablet computers like iPads that have apps. They are regularly updated and they regularly require further updates to software. There are examples now of some programs that have been purchased by Apple iTunes that do not work on the latest version of software because Apple has changed the terms. What particular rights does a consumer have under the Australian consumer law with respect to software they had on a tablet computer or a device like that that is subsequently rendered inoperable by an upgrade provided by the original provider of the tablet or software? Is this something that is coming to your attention more often or something you are looking into? That is my best attempt to explain it.

Mr Cassidy: We want to clarify something about the previous question. The four and one figure was in fact correct, but we will on notice—

Senator RYAN: What is that, sorry?

Mr Cassidy: The four and one figure I gave you previously.

Mr Samuel: Are in respect to the Birdsville issue.

Mr Cassidy: It was in fact correct. On notice, we will give you the story of what has happened since the last estimates.

Senator RYAN: That would be appreciated. It will save me writing it up.

Mr Gregson: Yes, we are seeing some material come to us of the kind you refer to. The circumstances and the matters brought to us differ, as you would expect. The issues that we might look at are whether representations made at the time of supply are false or misleading or, alternatively, whether the consumer guarantee provisions kick in in terms of providing that the goods were fit for the purpose provided or required. We have also had matters raised to us in a competition context in terms of the withholding of upgrades et cetera. I have to say that we have not identified an issue or an ongoing trend that we need to action at this stage. All the matters seem quite different, but it is an area that we are continuing to watch given the increasing prevalence of the products you refer to and the trend of the matters raised with us.

Senator RYAN: Sure. I do not think I can probably verbalise this as quickly as I would like. I will take some time to write up some longer questions for you on it. You raised the

issue of guarantees, which is a very nicely timed segue. I can provide this, actually. I do not want to mention the company's name because it is not something that I have personally been involved in, but it has been represented to me. It is a company website that says:

You may see—

insert company name—

equipment advertised online at discount prices through auction websites and other non-authorized dealer websites. Purchasing this equipment from non-authorized dealers will automatically void the product warranty.

That is the exact quote. I just have not used the company name. If you purchase a product that may be new from a non-authorized dealer, what are the obligations of the manufacturer with respect to fulfilling warranty obligations?

Mr Ridgway: The obligations of a manufacturer or supplier under those circumstances are those imposed by the Australian consumer law. The product warranty, I suspect, that is referred to is likely to be the express warranty of the manufacturer, which goes sometimes parallel and sometimes above and beyond that imposed upon them by the law.

Senator RYAN: Excuse my ignorance in this sense. It is not a particular area of the law I am intimately familiar with. But what are the rights of a consumer with respect to the Australian consumer law? What is the base level of right in that sense? I recall seeing such warnings.

Mr Ridgway: The base level of rights, as Mr Gregson has outlined, include that the products will be fit for the purpose and that they will be of acceptable quality. And there are certain other aspects, which I can provide.

Senator RYAN: Is the ACCC getting more inquiries from people who have purchased online maybe from non-traditional channels or non-authorized dealers? We have a growth in e-commerce generally. Are you seeing more inquiries in this and more disputes between consumers and manufacturers or providers?

Mr Ridgway: My understanding—I do not have figures with me this evening—is that there has been an increase in concerns being raised by consumers about transactions online that is not out of sync with the increase in the number of transactions that are occurring online.

Senator RYAN: Thank you. That is very helpful. I turn now to price signalling. It would not be estimates if we did not. Has the commission been consulted regarding the final form of the government's proposed price signalling bill?

Mr Cassidy: We were.

Senator RYAN: Are you satisfied that the changes from the exposure draft to the current draft responded to the concerns you raised?

Mr Cassidy: This came up a couple of times. It was in the House of Representatives economics committee when they were in fact looking at the bill introduced by Mr Billson, which I think predated the government releasing the revised version of its own bill. I said at the time that of the various objections and supposed problems that have been raised, the two that we thought perhaps had some substance were the joint venture funding type arrangements, where there is a need for discussion or exchange of information between

competitors, and a so-called loan reworks, where a firm gets into financial trouble and its respective lenders need to get together some way or other to sort out what the ongoing financing of the firm is going to be. We said at the time we thought they were about the only two specific instances that we could identify that perhaps the bill did not adequately cater for. Those two instances seem to us to have been addressed in the government's revised bill. So I think from our point of view, we would feel that the government's revised bill, particularly with the notification process that has been included as well, does adequately deal with what you might call the exceptional circumstances, where you might have a degree of price signalling occurring for legitimate reasons.

Senator RYAN: You mentioned what I might call micro issues. Is it fair to characterise the general position of the commission, though, as being that competition policy or law in as many instances as possible should be economy wide rather than sector specific?

Mr Cassidy: Senator, sorry for jumping around, but it is a bit the way it is these days. We seem to appear before a lot of committees. When we appeared before this committee's banking inquiry, we were asked a similar question. I think both the chairman and I indicated that the answer to your question would be basically yes.

Senator RYAN: Given that this government's bill does not work on that basis, has the commission started formulating processes for moving those price signalling provisions beyond the banking sector?

Mr Cassidy: No, we have not. The process envisaged is one that is being done by regulation, which of course will be tabled in both houses of parliament and would be a matter for government. So the process would be, as far as we are concerned, that we would need to advise the government through the Treasury that we thought there was a need for an extension. But whether that occurred or not would be a matter for the government and ultimately the parliament.

Senator RYAN: This is something that I think a senator rarely does: I am asking a question on behalf of a colleague who is a member of the House economics committee. Excuse me if you have already answered this, but now that they have a wider inquiry, which I understand is both into Mr Billson's bill as well as the government's bill, as amended, will you be making a submission into the House economics committee inquiry?

Mr Cassidy: As a matter of practice, we do not make submissions to parliamentary committees when they are inquiring into bills. That is just not something that we think is appropriate for a regulator and law enforcement agency. Of course, if we are asked to appear to answer any questions, then we will happily do so.

Senator RYAN: Sure. So it is fair to characterise it as not making a submission but if asked to appear, you will do so?

Mr Cassidy: Correct.

Senator CAMERON: Happily.

Mr Cassidy: Happily.

Senator RYAN: Given the number of times we see you at these committees, I assumed that it was not grudging. I want to move now to the issue I discussed last night with Senator

Sherry, which is the options paper about the resolution of small business disputes. Was the commission consulted on the preparation of that discussion paper?

Mr Cassidy: Yes, we have been involved in that.

Senator RYAN: Did that consultation involve advice from the commission with respect to how various of the four proposals of the minister will interact with the commission's existing processes and some of the codes of conduct?

Mr Ridgway: The commission has provided some information to departmental representatives of the department of innovation and industry with respect to the likely relationship between such a function and the commission's enforcement work and its awareness and education work in relation to the Competition and Consumer Act.

Mr Cassidy: We are on record—I will not try and recall which committee—

Senator RYAN: We lose track as well sometimes, Mr Cassidy.

Mr Cassidy: I suspect it is at least a couple of committees—as saying that we can see some role for some sort of small business ombudsman in that a lot of the small business complaints that come to us end up being more in the nature of contractual type disputes rather than breaches of our law. While we get involved in a certain amount of what you might call mediation type activity, that is really not something we have any legal remit to do. But we do feel that if there were some broader small business dispute resolution process, that would be of assistance both to small business in terms of sorting out a number of issues that come our way and, of course, from a self-interested point of view, us. We end up dealing with issues which, as I say, really we try to deal with in good spirit but we do not have any real legal basis for dealing with.

Senator RYAN: Did that consultation involve, or do you envisage surrendering any particular functions or funding if any of those four options were implemented?

Mr Cassidy: I think at this stage the paper has been released for discussion purposes. On the face of it, we cannot see that it would involve surrendering either any legal power or any resources. But on the other hand, that will depend a bit on just how the proposals evolve.

Mr Samuel: It is perhaps worth noting that the proposals generally involve the undertaking of processes which are not strictly within the remit of the ACCC. So they are processes of mediation or of dispute resolution which is not a role that is specifically conferred on the ACCC. We are there to do the prosecution of those who engage in misconduct under the law. So the mediation process would be a precursor to reference to us, for example, by a mediator matters that he or she felt clearly breach the Competition and Consumer Act and then would be handed over to us for investigation and potentially ultimate prosecution.

Mr Ridgway: A good analogy might be the relationship the commission has with the Office of Small Business Commissioner in Victoria. For some years, we have had a relationship such that that office will bring issues to us where it thinks that there is a useful role for the commission to play. A recent matter was Dukemaster, a retail tenancy matter involving unconscionable conduct by a landlord against a number of tenants. That is a good example of the relationship, where the Office of Small Business was engaged initially and unsuccessfully in an attempt to conciliate the issues in that matter. It identified that stronger measures were appropriate, and we agreed and took that action.

Mr Samuel: Indeed, there are officers or there are mediators provided for under the various codes of conduct—I think the horticulture code, the franchising code—where the mediators will undertake a mediation. But if they detect that there is evidence of a breach of the Competition and Consumer Act, it then will be referred to us for investigation and for dealing with under that act.

Senator RYAN: I will place the rest of my questions on notice but for one, except if you are not aware of it. Is the commission aware of the actions and statements of the European Union and competition officials with regard to fixing prices in container shipping? I will just read a statement. If you like, I can put these on notice. The commission in Europe said on 17 May:

The commission has reason to believe that the companies concerned may have violated the antitrust rules that prohibit cartels and restrictive business practice and/or abuse of a dominant market position.

There have been some various actions and raids over there. Are you aware of that?

Mr Gregson: Yes, we are aware.

Senator RYAN: Have you had any discussions with European antitrust or competition officials with regard to their concerns, given that we are a relatively shipping exposed country? If you prefer not to at any point, I am quite happy for you to say so.

Mr Gregson: I think that is best. As a general comment, I will say that we have regular contact with our counterparts overseas in a number of jurisdictions. They are held, for obvious reasons, in a degree of confidence.

Senator RYAN: Have you undertaken studies following whether or not it was independent of these events or otherwise, whether or not container shipping prices in Australia—I do not want to use the word ‘suspect’—reflect a competitive market? Have you undertaken work like that generally?

Mr Pearson: We do a regular stevedoring report, where we assess some of those points. But to benchmark them to the extent that you are referring would be a much deeper study than what we go to.

Mr Cassidy: I think the last time we looked at this, Senator, we had part X of the Competition and Consumer Act, which relates to international liner shipping and the liner shipping conferences. That was reviewed by the Productivity Commission a few years ago now. We made, I think, submissions to the Productivity Commission in the context of that review, which went to issues like the cost of shipping on conference lines versus non-conference lines and so forth. But I do not know that we have done any work on that specific issue since that review by the Productivity Commission.

CHAIR: Senator Ryan, I am going to have to wind you up.

Senator RYAN: This is the last issue. I do not want to ask you this because of the discussion we had earlier with respect to which sectors are being looked at. I assume the same issue with franchising would apply more generally. But we did also again have this discussion in the dairy inquiry. At what point and how do you determine that you are going to make a public statement on an issue? One of the frustrations that I think has been picked up, and I wrote about personally, is that for all the work that may or may not be undertaken, there needs to be, in my view, more public transparency about it. In fact, while work may have been undertaken, if the public has not seen nor heard of it, then it may not actually be getting the

credit it deserves and may not be generating the faith in the agency and in the operation of the market that it deserves. Are you considering within the law a more open process, being conscious of the risks that this may pose to your investigations, given that there is clearly public angst from various stakeholders at the moment about the lack of information about your activities out there as it happens in real-time rather than in an annual report?

Mr Samuel: Senator, I would like to think that, with the combination of the material we put out on a quarterly basis—for example, through what is called ACCCount, our website and various media releases, of which I think, and I stand corrected on this, there is over 300 put out each year—and public comments that are made by commissioners and me in speeches we give on a regular basis, our activities are very transparent. However, we have always adopted the principle that where matters are the subject of investigation or under consideration, we will not comment on those matters during the course of the investigation or the course of the examination until we have completed our inquiries. Then there will be one of two potential consequences. The first is that we determine that there is a matter that is appropriate to be dealt with under the Competition and Consumer Act. It may be a prosecution by way of litigation. It could be the obtaining of section 87B undertakings or the like. I think I can safely say that it is very, very rare indeed that the resolution of misconduct that is the subject of media releases is dealt with otherwise than in a fully transparent manner.

Now let me deal with the other side—that is, where matters may not be the subject of further action. In matters of public interest, as Mr Cassidy has indicated before, I think you can expect that comment and statements will be made by us to indicate the results of our findings, but after we have completed the examination.

Senator RYAN: I am not alleging there is not transparency. What I am putting to you, I suppose, Mr Samuel and Mr Cassidy, is that in those areas that might be subject to intense media attention, intense consumer attention and maybe even intense political attention, milk being the most obvious one, there is some discretion here for the ACCC when it decides to announce. You are obviously saying you have not reconsidered the view that whilst an investigation is being undertaken, occasionally there may be public interest in an announcement that your investigation is in fact happening.

Mr Samuel: But in fact we have done that. Let us take milk, for example. We have indicated—I have done so publicly in the media and Mr Cassidy has indicated, I think, in his appearance before the inquiry into the particular subject of milk—that the matter is the subject of examination. What we will not do, though—we do not think it is appropriate—is give an iterative or a stage-by-stage report about the process of the examination. But let me say to you where a matter, milk for example, is the subject of examination that is of clearly intense public interest, it could be reasonably expected that once that examination is completed, we will make a public statement as to our findings. Those findings will necessarily be largely focussed on whether or not there have been determined to be breaches of the Competition and Consumer Act, though they may well relate to some incidental or other relevant matters. That will occur once the—

Senator RYAN: With all due respect, I was at that inquiry. I have different views than some of my colleagues on the issue.

Senator CAMERON: A split in the coalition.

Senator RYAN: I put to you that it was not quite like drawing teeth but there did not seem to be a front foot approach from the commission to announce. It sort of had to be brought out. Maybe it is because you are thinking in a legal or regulatory sense.

Mr Samuel: Perhaps I can point this out. In an interview I gave on the *Perrett Report* on Sky News, which predated the Senate inquiry, I was asked by Janine Perrett what our position was on milk. I said that we were examining all aspects of the milk supply chain from the grower through the processor through the delivery chain through to the wholesalers, the retailers and the like but our primary concerns were—I am almost quoting myself verbatim—at the grower level and at the level of the consumer. There were some strong vested interests that were interposed in between. They were very powerful vested interests. In particular, I referred to both the retailers, the wholesalers and the processors. I thought that gave a fairly open answer to indicate that there was a lot that we are examining. I am not sure what Mr Cassidy did. Sometimes I find it difficult to draw things out of Mr Cassidy.

Senator RYAN: I take your point. I will cede to the chair.

Senator WILLIAMS: Mr Samuel, I want to touch on the Franklins issue, if I could, please. Is it a situation where the ACCC did not want Franklins to be taken over by Coles or Woolworths with the opinion that that would reduce competition?

Mr Samuel: Well, the matter is still before the court, Senator. Therefore, it would be perhaps inappropriate to be commenting on this.

Senator WILLIAMS: But the evidence has closed. The court has closed on it. There is no more evidence.

Mr Samuel: It is fair to say that it is inappropriate to be commenting on matters before the court. I will go on and say one particular thing, which is that the proposition of Coles or Woolworths acquiring Franklins was never really one that was put to us for examination. I might stand corrected by Mr Grimwade, but I do not think you will find that we have ever investigated them as potential acquisitions. Is that right? That is correct.

Senator WILLIAMS: I have been to about 80 Franklins stores. So Coles and Woolworths never showed interest in taking it on. Coles almost has the lion's share now—I think about 78 per cent of the grocery market or something—do they not?

Mr Samuel: But we are only concerned in the context of this particular matter—the one proposal before us, which was Metcash seeking to acquire Franklins. Some other proposals have come out in the court process in terms of the evidence of other parties that were interested in acquiring Franklins. But we never examined any potential acquisition by Coles or Woolworths because such a proposal was never put to us in any substantive form.

Senator WILLIAMS: Was SPAR one of the ones who had an interest in Franklins?

Mr Samuel: Well, that has come out in the evidence in the court, yes. There is a consortium of parties, I think, involving the Supabarn group and others that were also involved.

Senator WILLIAMS: Was there a case where you had a teleconference with Woolworths to discuss the issues of Franklins?

Mr Samuel: Again—

Mr Cassidy: Senator, it is before the court. You are right; the evidence is finished.

Senator WILLIAMS: The evidence is all there, yes.

Mr Cassidy: But, depending on the court's decision, there are further processes open either to us or to Metcash. It is also very difficult discussing these issues while the matter is still in the court. Some of what we may be discussing now, say in a fairly innocent sort of way, if I can put it like that, may in fact become possible issues of appeal by one side or the other when the judgement of the court is received. So it is difficult to be talking about it.

Senator WILLIAMS: But I will not have an opportunity to question Mr Samuel again, will I?

Mr Cassidy: I dare say there will be others of us here, Senator. We will be able to answer questions you give us.

Mr Samuel: I think there were five other executives present at the so-called teleconference, so you will be able to question each and every one of them, Senator.

Senator WILLIAMS: I have an interest in it. I have not got a financial interest in it, I can tell you. Just watching the evidence, no doubt that will be something I can address later. I am just concerned about some teleconferences and some options that were raised and some issues.

Mr Cassidy: I am not going to cut across what I have just said. It is something we would like to discuss, I suspect, at some point as well. But I am afraid now is just not the point, given it is still in the courts.

Senator WILLIAMS: I will take you to another issue—that is, the finance industry in Australia. I was alarmed to see statistics just recently that prior to the global financial crisis nonbank lenders had 13.6 per cent of the mortgage lending market. Now they are reduced to 1.9 per cent.

Mr Samuel: That is not surprising, Senator. If you either see statistics published by the Reserve Bank and I think countless speeches made by me on this subject, it would be evident that we have expressed our own concern at what I call the hibernation of the nonbank financial intermediaries, the NBFIs, in the home mortgage market, which we think has been the major impact on competition in the residential mortgage market. The Reserve Bank has issued statistics spanning over a number of years that have shown that in terms of interest rates and prior to the global financial crisis, the NBFIs were in fact the major price competitors to the major trading banks when it came to residential mortgage lending. Their standard variable rates were invariably lower than the standard variable rates of the major trading banks. They disappeared effectively as a result of the global financial crisis and the drying up of the securitisation funding that was available to them. As to how that competitive process will be reenergised, that is a matter that is going to take a period of time. It started to reenergise about a year, maybe 18 months, ago, but it is a long, slow process. It is not being assisted by the aftershocks of the global financial crisis that we are currently seeing occur in Europe.

Senator WILLIAMS: But what else would have helped dry up the smaller players was the fact that the government underwrote the deposits up to \$1 million in the ADIs but not in any of those non-ADIs. I think they covered them all in New Zealand. But, of course, at a time of panic, many people withdrew their money out of the deposits that were not guaranteed

and put them into the deposits that were guaranteed. Obviously that would have had an effect on the competition as well, would it not?

Mr Samuel: Look, it is not for us to comment upon the government policy other than to observe that the hibernation of the NBFIs did have a significant impact on competition, more so, we think, than probably any other element of what occurred both immediately prior to and post the impact of the global financial crisis in 2008.

Senator WILLIAMS: I will hand to Senator Xenophon. Sorry, Chair.

CHAIR: I will bow to you.

Senator CAMERON: I think this is the Nationals' party room.

Senator XENOPHON: I am not a member.

Senator CAMERON: You are not a member?

Senator XENOPHON: No. Absolutely not. Given my stand on live animal exports, the National Party would not have me as a member.

Senator CORMANN: You would be very welcome.

Senator XENOPHON: No, thank you. Mr Samuel, I want to go to the issue of mergers. A full merger between BHP and Rio Tinto apparently had the support of the ACCC, even though I always think there were overseas regulators who had a different view, whereas the subsequent scaled down version of that deal, a merger of the iron ore operations, was opposed. It is one of these mysteries of life I have never understood. Perhaps you can solve it for me.

Mr Samuel: Let me try to assist you with some explanation and then I will ask Mr Grimwade to come in behind me.

Senator XENOPHON: But you can understand what appears to be a contradiction.

Mr Samuel: Sure. You must remember that what we are dealing with under section 50 of the then Trade Practices Act is the potential for a merger to substantially lessen competition in a market in Australia. Let me underline the words 'in Australia'. In the context of the full merger that we were dealing with at the time of the BHP-Rio merger, we looked at markets in Australia that might be affected. We were doing so in the context of the pre-GFC sets of circumstances, pricing structures that were set in place, including benchmark pricing for iron ore. In effect, the only customer of BHP and Rio that could have been affected by iron ore pricing as a result of that merger was BlueScope Steel. One Steel had its own source of iron ore in the west. BlueScope Steel was the one customer. It raised no objections to the merger. It had, as it put it to us, locked in place a 20-year supply contract with BHP. As far as it was concerned, it had no concerns as a result of the merger.

Senator XENOPHON: So that was a key determinative factor?

Mr Samuel: Yes. That was a clear determinative factor. In fact, if you examined it in the context of the narrow jurisdiction we have, which is Australia and the market in Australia, now what happens? The global financial crisis occurs. Pricing strategies change significantly away from benchmark pricing to spot pricing. BlueScope Steel expresses some significant concerns to us, as it did publicly. Its 20-year contract turns out not to be quite as stable in terms of pricing as might otherwise have been thought. We also then started to focus on the

impact of the new pricing models that were coming through as a result of the global financial crisis on steelmakers, particularly overseas and Asia.

Senator XENOPHON: I am satisfied with that explanation.

Mr Samuel: So there was a reason.

Senator XENOPHON: I am satisfied with that. In the United States they are looking at having an ex-post merger review to look at the impact of mergers that have been approved. There seems to be a broad discussion, I think in the US Congress and amongst regulators, to look at that ex-post merger review. Is that something that you would support for the ACCC to do in the near future?

Mr Samuel: We do it in any event, Senator. Of course, this occurs, not the least because we are constantly having mergers put to us which will focus on previous transactions or previous mergers that have occurred in the same industry. It is not unusual, for example, that we will be looking at a merger today and we will be reflecting upon the impact on the market on mergers that might have taken place over the previous four or five years or whatever it might be.

Senator XENOPHON: Let us look at a couple of mergers in the banking sector. I have many issues and I only have a few minutes.

Mr Samuel: Sure.

Senator XENOPHON: We discussed this during the very comprehensive banking inquiry. In the banking sector, the ACCC approved the merger between the Commonwealth Bank and Bank West. Correct?

Mr Samuel: Yes.

Senator XENOPHON: There were concerns about the global financial crisis and the impact on Bank West if that were not approved. That was a factor?

Mr Samuel: Correct.

Senator XENOPHON: The ACCC approved the Westpac-St George merger. There were not the same concerns in relation to the GFC because it predated that. Correct?

Mr Samuel: Correct, yes.

Senator XENOPHON: When do you see competition reaching the same intensity in the banking sector as there was when Wizard and RAMS were in full flight and when St George and Bank West were in the marketplace? Do you concede that there is not the same level of intensity of competition?

Mr Samuel: Let me go back. This is almost repeating the same answer I think I gave to you in the banking inquiry, when we met with you in Melbourne, Senator. We have never resiled from the decisions that we made in either CBA-Bank West or St George and Westpac. CBA-Bank West, as I think you have indicated—

Senator XENOPHON: But that was not the question. I am not asking whether you resiled. Do you consider that competition is less intense now than it was several years ago before those mergers?

Mr Samuel: Less intense but not as a result of those mergers, and I think that is the important thing. I think this is very important, Senator, because you have asked me on a

couple of occasions and I have given the same answer. We believe that the complexity of competition in the banking market has a lot more to do with the role of the NBFIs, the role of the foreign banks, particularly in the corporate institutional banking market. Of course, as you know, many of them have withdrawn their lending bases in Australia to recapitalise for substantial losses that they incurred back in their home bases as a result of the GFC. If you asked me the question—it is often observed by some that the St George-Westpac merger and CBA-Bank West are the reason why we have significantly less competition in the banking market at the moment. I think if we had enough time, we could demonstrate to you and persuade you that they are probably almost completely irrelevant to the level of competition in the banking market today. It is superficially easy to say that those two mergers have significantly lessened competition in the market. I pointed this out in the banking inquiry—

Senator XENOPHON: You do not see any lowering of intensity of competition?

Mr Samuel: Sorry?

Senator XENOPHON: That was the question.

Mr Samuel: Let us get it absolutely clear. We have said, and I think in answer to Senator Williams' questions on the NBFIs, yes, of course, competition has lessened. But it has lessened for reasons that have nothing to do with the St George-Westpac merger or the CBA-Bank West merger. They have got to do with a whole range of factors. If you want to get a summary of those in a manner that is very easily readable, there is both work that has been put out by the Reserve Bank of Australia and a speech that was given by former Treasury secretary Ken Henry, which summarises a detailed paper that was presented by Treasury, with the assistance of the ACCC, to the OECD about a year ago or 18 months ago.

Senator XENOPHON: Let me get to the point. I understand your position. Let me put it to you a slightly different way. If there were to be any other mergers of any of the big four banks taking over a financial institution of the size of St George, Bank West, Wizard or RAMS, do you think that could have an impact on the intensity of competition in the financial sector?

Mr Samuel: I have indicated in the public arena, Senator, that the banking market is one of two markets at the moment about which we find very difficult to provide a prognosis into the foreseeable future. There is a very good reason for that. We are still, as I mentioned before to Senator Williams, seeing the aftershocks of the global financial crisis. We are seeing the impact of that rolling through Europe, through a number of nations that are obviously raising concerns in the banking arena. That has its ultimate flow-on effect in the Australian market. Let me just conclude. That, therefore, means that if we have a merger in the finance sector and we are required to look at whether the likely effect—I underline the word 'likely'—on competition is going to be substantial in terms of anticompetitive consequences, trying to assess the likely effect is very difficult indeed in the context of the financial markets that we are dealing with at the current time. Therefore, I think our view is to be very cautious indeed in assessing potential mergers in the finance sector broadly.

Senator XENOPHON: So as a result of the GFC, you would be very cautious about assessing any future mergers of financial institutions?

Mr Samuel: Well, yes. They would be subject to a very rigorous examination, I think is what I have indicated. Sometimes that has been interpreted as Graeme Samuel is suggesting that there will be no more approvals.

Senator XENOPHON: No. There would be a great degree of rigour in assessing the merger as a result of the fallout from the GFC.

Mr Samuel: The difficulty is trying to assess what the likely impact is. 'Likely' has to be seen in the context of the foreseeable future. The difficulty that I think we have in this area is actually understanding what the foreseeable future holds, not the least of which is, as I have mentioned, the aftershocks of the GFC in Europe, the impact of changing government policies in this area and the impact of policies in the broad global market—Basel and—

Senator XENOPHON: Without labouring this point, the ACCC, as a result of the fallout from the GFC, would be very cautious about assessing any future mergers in the financial sector?

Mr Samuel: We are always cautious. I think we would be very cautious about giving approvals to mergers because I think it is very difficult to be able to forecast what is likely to be the impact on competition in the market in the future. Let me give an example, Senator. We do not know what government policies may or may not take place as a consequence of the GFC or the unwinding of the GFC. We have no idea what might occur in Europe with the banking market and what impact that might have on the re-entry of the foreign banks into Australia. We do not know what might happen to the non bank financial intermediaries, the NBFIs, and how that might be affected by government policies or whatever. So there is a range of factors that are uncertain.

Senator XENOPHON: I want to go to a number of other issues. In relation to the issue of milk, the ACCC in Sydney on 9 March said that they were engaged with the parties involved. Can you advise whether the ACCC has used its investigative powers to obtain documents from Coles or Woolworths pursuant to section 155 of the act, which allows you to compel documents or evidence relating to a matter that is being investigated?

Mr Samuel: No, we have not because there has been no need to. We have been conducting, as I think I have indicated before, a reasonably wide-ranging investigation into this whole issue of milk pricing covering all aspects but not the least of which is the issue that has been in the public domain, which is the activities of the major retailers. We hope to complete that examination in the near future. When we do, we have determined that we will be making a public statement and a public comment on that.

Senator XENOPHON: I want to go to a complaint from a constituent. He does not want to be named or identified but he is a petrol retailer in a country town in South Australia. He says that the service station run by one of the supermarket chains in his town was selling petrol for a number of weeks between eight to 12 cents below the cost that he could buy it for at a wholesale level. That was causing him enormous harm. He was able to stay afloat by virtue of other operations—selling food and other things, non-petrol related—but he was bleeding. He had to reduce his prices below cost in order to try and compete with the major supermarket chain. He says that he referred this to his professional body, the MTA in South Australia, in November. This started in early October. He says that the MTA made a complaint, I understand, some time in November. There were subsequently newspaper reports

not identifying him but about this town and about a petrol price war and a complaint being made. Things seemed to change a little for this major supermarket chain, but he was still struggling. He finally got a response from the ACCC on 31 March. He received a response after a complaint was made in November. He got a call from the ACCC. He subsequently received some correspondence. He was asked a number of questions about that. Do you think a time delay of three to four months for a person who found real difficulties with an eight to 12 cents reduction wholesale is a satisfactory timeframe? I know you cannot comment on the individual case because I have not specified it. But as a general principle, would you find that satisfactory?

Mr Samuel: Well, I would need to know more details about when the complaint was lodged.

Senator XENOPHON: I think it was lodged in November. Assume it was lodged in November.

Mr Samuel: Lodged with the ACCC or lodged with the MTA?

Senator XENOPHON: No. Lodged with the ACCC. That is my understanding.

Mr Cassidy: Senator, could we take that on notice, because I do not want to mislead you?

Senator XENOPHON: Sure.

Mr Cassidy: The problem might have been that we were running an investigation not into that specific complaint but closely parallel conduct, if I can put it that way. The hold-up in responding to the particular complainant was that we did not want to respond until we had completed the investigation that we were running. Let us take it on notice.

Senator XENOPHON: I am happy to take it on notice. I just want to know what the policy is. He now has my number. If it happens again, I will—

Mr Cassidy: The straight answer would be we would normally respond quicker than that. But, as I say, if I got the right one, the delay was because we were in the process of an investigation of parallel conduct on a broader basis.

Senator XENOPHON: I will go to another specific matter before I ask some other questions. Last Friday night, the ABC on the local state version of 7.30 ran a story on SeaLink, the Kangaroo Island ferry operator, which I visited a few days ago with Associate Professor Zumbo as a result of complaints from residents.

Senator CAMERON: There is a story.

Senator XENOPHON: You are just jealous, Senator Cameron. The issue there was one of exclusive dealings potentially under section 47 whereby SeaLink could say, 'We'll give you a super discount fare to cross to the island'—it is basically the only way to get to the island—'if you buy an accommodation package with us.' The local accommodation provider said, 'We don't want to be charged 22, 25 or 27 per cent and a \$500 fee'—it is sometimes less, but it varies. When Simon Royal, the reporter or presenter of the program, interviewed the SeaLink senior executive, he apparently acknowledged he was surprised and said, notwithstanding these complaints were made a number of months ago to the ACCC, there was no contact to his knowledge between the ACCC and SeaLink. Can you indicate whether you would normally approach the company that is the subject of a number of complaints in

relation to that? I think the senior executive of SeaLink was genuinely surprised, as was the reporter, that there did not appear to be any contact between the ACCC and SeaLink.

Mr Samuel: Mr Gregson will deal with that.

Mr Gregson: Senator, I am familiar with the matters you raise, both in relation to past consideration—

Senator XENOPHON: It has been ongoing for a while, has it not?

Mr Gregson: But sporadically in terms of our engagement with individual complainants and, indeed, I think your office.

Senator XENOPHON: But it has been a while?

Mr Gregson: Well, that is right. Indeed, the ACCC correspondence some time ago indicated our position, but it sought further information if it was available, which had not been forthcoming. I have just lost your specific question.

Senator XENOPHON: There were a number of complaints made. Was SeaLink contacted by the ACCC? There may be a genuine misunderstanding on the part of the senior executive.

Mr Gregson: My understanding, Senator, is that in the course of the 2010 consideration we obtained a large amount of information, or at least information that was of assistance to our investigation. The precise source of that I would have to take on notice.

Senator XENOPHON: So you did not contact SeaLink? Could you take that on notice?

Mr Gregson: Well, the precise answer I will take on notice.

Senator XENOPHON: Mr Samuel, I go to your evidence at estimates on 21 October in relation to the DFO matter, where you indicated that you decided voluntarily to separate yourself from the day-to-day management of, and involvement in, activities of those financial interests in which your family had a financial involvement. Your evidence was very clear and very explicit that you did not want to have intimate knowledge about what is occurring in relation to DFO investments of this nature without raising questions on a continual basis. Your evidence before the estimates committee I think you are familiar with. You stand by that evidence?

Mr Samuel: I do.

Senator XENOPHON: Can you explain recent filings in the Victorian Supreme Court by your former business partners, Mr Goldberger and Mr Wieland, where they say that you received DFO briefings on a regular basis? This was done as a reply in court. It does appear to contradict that evidence. Could you assist this committee in terms of explaining that discrepancy between what others have said in the Victorian Supreme Court?

Mr Samuel: Well, as you have noted, there is currently before the Supreme Court of Victoria a commercial dispute involving myself and two of the principals of the DFO group, David Goldberger and David Wieland. This matter will be played out through the legal process. However, I think it is appropriate to note that in dealing with commercial disputes and litigation of this nature, there are significant consequences for public officials such as myself. As a public official, unlike private litigants, I can be required to comply with FOI requests designed in some instances to circumvent the normal court discovery processes where others are not. As a public official, unlike private litigants, I am subject to questioning

in the public domain and in Senate estimates and other hearings on matters that may prove relevant to the private litigation but others are not.

Importantly, in the context of the matter you have raised, as a public official, unlike private litigants, I am subject to the discipline, both reputational and legal, that statements I make, particularly in hearings of this committee, must be truthful. In the case of private litigants, claims made in unsworn documents filed in the court process are subject to no such disciplines. Indeed, private litigants can effectively make any claims that might serve their immediate purpose with the knowledge that the veracity of their claims will only ultimately be tested if and when sworn evidence is provided by them to the court. The result is that there is an asymmetry of disclosure.

I fully accept the nature of my public role and your rights and obligations to protect the public interest, but I would hope that you would understand and accept the constraints on my ability to deal with the matters that you have raised outside the normal processes of the court. I note, as you have mentioned, that I provided answers on a number of matters relating to these issues raised by this committee at the 2010 sittings of the committee. I stand by those answers.

Senator XENOPHON: And you could understand that it would have been remiss of me not to ask that, given what was recently said?

Mr Samuel: And I hope you will understand the difficulties that I am under, Senator.

Senator XENOPHON: I understand and appreciate your answer, Mr Samuel. I appreciate your answer. Finally, this is going to be your last appearance before estimates. I suppose this is a broad question; you can take it in that spirit. I suppose like the great Frank Sinatra, is it a case of regrets or too few to mention? What in hindsight do you think you would like to have done differently? What advice would you give to your successor in the context of competition law and consumer protection in this country?

Mr Samuel: Senator, let me say to you first of all that I have thoroughly enjoyed attendances at Senate estimates, which is an absolutely truthful statement. I do say it for a reason. I attend happily. I do so for a reason. As I have often said, if you have something to hide, you might as well start sweating a long time before attending. We have nothing to hide. I have to say to you I am extremely proud of the 800 colleagues I have in the ACCC. They are colleagues of immense integrity and unqualified integrity and of enormous intellectual rigour, and they are absolutely committed to the task that they perform. So I am very, very proud of them indeed. I do not have any regrets, Senator, I have to say to you. I am very proud of what my colleagues have been able to achieve. They have been an enormous strength to me through the past eight years. In terms of advice for my successor, I have none whatsoever. I am sure that if he wants my advice, he will ask for it and he will be given it in a very, very private fashion.

Senator XENOPHON: Thank you very much, Mr Samuel.

Senator NASH: Thanks for your indulgence. I am mindful that colleagues have more questions so I will be as brief as possible. I have some questions on the ACCC's decision to approve the acquisition of Agrium by Cargill. I take you to the document on the website. The reference is 44555, which is the informal review. Firstly, is that the only public information relating to the determination?

Mr Grimwade: If you are referring to our public register entry on the website, yes, that is correct.

Senator NASH: You say that ACCC noted that Cargill was a relatively small competitor. What is your definition of 'small competitor'? Obviously at the time Cargill had around 12 per cent of the market, but collectively with the purchase of Agrium ex AWB they are going to have around 39 per cent of the market. Could you really define that as a small competitor?

Mr Grimwade: Well, in making reference to Cargill being a small competitor, you have to have regard to the markets in which it operates. In terms of storage and handling, my understanding is that Cargill in New South Wales had, I think, around three storage facilities, AWB had around 10 and GrainCorp had around 150. So in terms of the market for storage and handling, Cargill was a relatively small player. I accept that in certain other markets it is a much bigger player. In terms of trading, I understand that Cargill's market share in New South Wales is around 10 per cent. So I think in answer to your question, we would consider that to be a relatively small market share. In fact, it is less than 10 per cent.

Senator NASH: I accept that. But once you add the 27 per cent roughly, give or take, from AWB, it ceases to be a small competitor. So that comment relates purely to Cargill before the acquisition?

Mr Grimwade: Yes. I do not have the entry before me, but I think the reference was to Cargill and not to the merged entity.

Senator NASH: Given that you have mentioned that Cargill, at around 10 or 11 per cent, is a small competitor, you go on to say in this document that Cargill will face competition from other grain traders. Given that the other grain traders have around 11 per cent or less, except perhaps CBH, whose strength is obviously in the west, not the eastern seaboard, is it not contradictory to say that Cargill is a small competitor themselves at around 10 per cent and yet you are expecting competition from other traders who traded around that same figure?

Mr Grimwade: I think you are probably putting too much emphasis on the meaning of 'small'. The size of the acquirer or the merged entity is not necessarily indicative of the market power it might wield. In terms of assessing the potential anticompetitive effects of the transaction, we have to have regard to competitive dynamics and the barriers to entry. In terms of grain trading, we were satisfied that there were sufficient competitors in the market to constrain the merged entity.

Senator NASH: I would say there are a lot of people who are not of the same view. I will put a lot of these on notice in deference to colleagues. I take you to the statement from the ACCC which says:

'The ACCC concluded that the proposed acquisition would be unlikely to substantially lessen competition as, post merger, Cargill would continue to face competition from a number of significant sources', ACCC chairman Graeme Samuel said.

Can you give us your definition of 'significant sources' and what they are?

Mr Grimwade: Which market are you referring to in this respect?

Senator NASH: The wheat market.

Mr Grimwade: We looked at a number of different markets. If you are talking about the wheat market, we were looking at Cargill's acquisition of AWB's interest in a joint venture with GrainCorp.

Senator NASH: No. That is something different entirely. I ask you to take on notice, if you refer to that statement, and provide for the committee what the definition 'of significant sources' is and what those sources were. If you could do that, that would assist the committee. There are about 22 sites that Cargill are obviously going to have from the old AWB sites. What obligation will Cargill have to post prices and take receivals for other grain traders?

Mr Grimwade: There is no obligation imposed by us in relation to that.

Senator NASH: Given that the ACCC has ticked off on the acquisition of Agrium by Cargill and in terms of ticking it off, being satisfied that the level of competition will be there, in your view, what assurance have you got that Cargill will post prices from other grain traders at their receival sites?

Mr Grimwade: Well, we are satisfied that there will be sufficient competition for—

Senator NASH: No. That is not my question. My question is: what assurance have you got that they will undertake to post a price for other traders?

Mr Grimwade: We do not have any specific assurance to that effect.

Senator NASH: So what about the situation, then, in the future when Cargill has the grain sites and they refuse to post a price from other traders? Then competition goes out the window. So what assurance have you got that they will post a price?

Mr Grimwade: My response to that is that we are relying on competition from other storage facilities to make themselves available to those who wish to store their grain at their other facilities. I mentioned before there were a very large number of those facilities and they are operating, as I understand it, well under capacity at the moment.

Senator NASH: Have you been out in the field and seen the distance that growers actually have to travel to these silos in a lot of instances and the fact that they are not on top of each other?

Mr Grimwade: No. I personally have not.

Senator NASH: Did that come into your consideration at all when you were making this determination?

Mr Grimwade: Yes. We would have had regard to the location of these facilities.

Senator NASH: So what you are saying, in essence, is that your determination was that there is no assurance that Cargill will post a price. According to the New South Wales farmers submission to the ACCC review in January, and I quote:

Cargill does not accept bids from other grain marketing companies at its receival sites in the US. Similarly, Cargill Australia does not accept bids from other grain marketing companies at its joint venture with BFB in Temora.

So taking into that into account, you are comfortable that if Cargill chooses not to post a price for other traders at any of their sites, the growers will simply choose to go to a GrainCorp site?

Mr Grimwade: Well, we were comfortable that the competitive pressure from other storage providers would make such behaviour unprofitable. We also noted that the excess capacity was a feature of the grain storage market and that would also constrain the merged entity.

Senator NASH: But you have no idea how far these silos are or how far growers are going to have to travel to deliver to these competitive silo sites?

Mr Grimwade: I basically cannot give you a response to that.

Senator NASH: But you should know that because that underpins your whole argument.

Mr Grimwade: The team that would have examined this and the report that went to the commission would have had regard to the impact on competition, as this would have had.

Senator NASH: I promise colleagues I will be only a couple of minutes. So you do not accept the situation in the future where Cargill, as has been stated by New South Wales farmers—I am only going on the veracity of their submission—could have 22 silo sites where they refuse to take receivables or post a price for other buyers. You think the competition provided by the other receival sites around the country will take care of that?

Mr Grimwade: That was our finding. I should say we did have regard to the New South Wales Farmer Association's concerns.

Senator NASH: Good lord is all I can say. I will very quickly turn to the issue—I will put the rest of them on notice—of the access undertaking at Melbourne port. I am trying to get an understanding at the moment. At the moment it is obviously outside any requirement for an access undertaking. Is that correct?

Mr Pearson: For the Melbourne port in general—

Senator NASH: For the grain export.

Mr Pearson: There are access arrangements. One has actually been brought forward just for the grain. We have three for GrainCorp, Viterra and CBH, of course. But there is one—

Senator NASH: I want to quote Mr Woods, WEA CEO. This is just from last week:

Melbourne port terminal is outside the access undertaking at the moment. Due to the way the port is operated and managed, they do not have an associated entity who is an accredited exporter. There is no need for them to have an access undertaking.

Is that correct?

Mr Pearson: Senator, I am happy to have a look. The ABA, the Australian Bulk Alliance, have lodged a proposed access undertaking with us.

Senator NASH: They have indeed. I will quickly take you to that. Correct me if I am wrong, but my understanding is that the ABA is a wholly owned subsidiary of Summit Grain Investments, which is part of the major Japanese conglomerate Sumitomo Corporation. That is correct?

Mr Pearson: Senator.

Senator NASH: Last March, Sumitomo bought 50 per cent ownership in Emerald, which is interesting given that Emerald is obviously a grain trader. How is that not an associated entity? That would have required an access undertaking from Sumitomo last March.

Mr Pearson: Senator, I am sorry, but I do not have any knowledge of that. I would have to take that on notice.

Senator NASH: Does anybody? No-one in the room has any idea? I ask you to take on notice, then, given that Mr Woods has indicated to the RRAT committee that the Melbourne port terminal is not required to have an access undertaking due to the fact that there is no

associated entity. Sumitomo, which obviously has a significant interest, bought 50 per cent ownership in Emerald, which is a grain trader-accumulator, last March. Why was there not a requirement at that point for Sumitomo to move to an access undertaking? I understand they did in December. But I am very interested in the time lag and why the requirement was not there. There seem to be a lot of mixed messages.

Mr Pearson: Senator, I will take that on notice.

Mr Samuel: These are not matters set by the ACCC. The ACCC has required and has obtained undertakings and is now reviewing the undertakings in respect of three ports. As Mr Pearson is indicating, CBH, Viterro, and GrainCorp are involved given that they control the ports and at the same time are wheat exporters to provide for access. These are matters, I think, that were covered under the wheat export act two years ago.

Senator NASH: They are indeed. But given that it is an ACCC determination, I would be very interested in your viewpoint as the watchdog as to whether an access undertaking should have been applied for earlier than last December. That is what I am trying to understand. In your role as watchdog, I think it is entirely within your purview to have a view on that and not flick it back to WEA, who have already provided us with the information. Chair, I will put the rest on notice.

Senator BUSHBY: I want to put on the record my personal appreciation to Mr Samuel for the work he has put in as chair of the ACCC and the interaction that we have had over the table at estimates. Thank you for everything you have done. I wish you the best in the future.

Mr Samuel: Thanks, Senator.

Senator BUSHBY: I listened with interest to the questions that Senator Xenophon was putting to you about issues and your comments about public officers and personal litigants. I have had a look on the ACCC website. There does not appear to be a code of ethics or conduct for the chair and commissioners and other senior officers in the ACCC that I could find. Am I correct in saying that there is not a written code that is available? I think something like that probably protects both the broader public, which the ACCC serves, and the chair and the commissioner in terms of making it clear how these things might work.

Mr Samuel: Of course, public officials are governed by the Australian Public Service code of conduct and the various aspects of that. But the issues I have raised, Senator, are issues that would not be dealt with in such a code of conduct. They relate to the asymmetry of information disclosure or the disparity of position that occurs with public officials in whatever position, be it the ACCC, ASIC, the ATO or in the Public Service generally in dealing with commercial disputes that are before the courts and dealing with the disparity between their position and that of private litigants.

Senator BUSHBY: I understand that distinct issue that you are raising. But the relevance of the comment is in the context of a broader debate that has occurred around some of your personal interests. That may well have been avoided if there had been in place an appropriate disclosure and code of conduct. I do not know. I hesitate to use you as an example because my question is more general. I know that APRA has a code of conduct in terms of personal potential conflicts and what staff may have interests in and what they may not, which they publish on their website. I think it is a good idea. The reason I was looking at the ACCC and I have looked in other agencies was not anything to do with you, Mr Samuel, but more to do

with the fact that I think it is nice to do those sorts of things in these agencies. Is that something that you have considered in a more general sense?

Mr Cassidy: Senator, we have a code of conduct for commissioners and associate commissioners. It is true it is not on our website. We are in the process of updating it at the moment and we may well put it on our website. Under that code, the chairman each year provides a statement of his interests—not only financial interests, which is what is required by the act, but any other interests relevant to his position. He provides a statement to the Treasurer. Individual commissioners provide similar statements to the chairman. There is no obligation on them to do so. But that is covered in the code. We are updating the code at the moment. I think the point you raise about putting it on our website is a good one.

Senator BUSHBY: Thank you. I have a further question on that. You would be aware that senators and members of parliament publish a register of pecuniary interests that they have. Is that something that ACCC could consider or has considered rather than just providing those details to the Treasurer? Would you make those public as well?

Mr Cassidy: Senator, I must confess it is not something we have given thought to.

Senator BUSHBY: I will leave it at that. It was a question of whether you had thought about it. I am not going to push that at this point. I want to move on to something different. The ACCC would no doubt be aware of the structure, role and powers of the competition regulators in the UK. From my examination, it appears to be very different to the way things operate here. Particularly what I see as very different—I may be getting the terminology completely wrong on this—is they seem to have far more of a remedy focus than a prohibition and regulate focus in how they approach things. Certainly the Competition Commissioner does. Am I reading that correctly when I look at how they deal with things there? There is a different fundamental philosophy in terms of how they approach competition issues and how to address them in particular compared to what we have in Australia?

Mr Cassidy: Senator, I do not think so. The Competition Commission is an unusual body. Indeed, the UK government has announced an intention to actually merge with the Office of Fair Trading.

Senator BUSHBY: But still retaining its roles and continuing the way it operates, particularly in terms of review.

Mr Cassidy: It is the old monopolies and mergers commission. Basically, the role of the Competition Commission is to review complex mergers. In a sense, just like when we are looking at mergers, if a merger causes us a problem, then we seek a remedy to that in terms of divestitures or some sort of undertakings. But in a more general competition broad context, the UK basically is subject to EC competition law and administers EC competition law. That is very much—for want of a better way of putting it—a penalty based regime. Indeed, if you look at the size of some of the financial penalties that are imposed both in Europe and in the UK, you run into hundreds of millions of euro. So I think, if you like, their system, in my view, is basically similar to ours. There is the Competition Commission. It is a bit of an unusual body, if I can put it that way.

Senator BUSHBY: When I raise the structure and role of the bodies over there, the Competition Commission is what I was particularly thinking of. You mentioned that it is primarily a merger body. As I understand it, and I have had some discussions with them, they

are able to accept referrals—they cannot off their own bat—on any competition issues. It might come from either the minister or from the Office of Fair Trading.

Mr Cassidy: That is correct.

Senator BUSHBY: It is not necessarily to do with mergers; it is to do with a market that appears at a prima facie level to have some competition issues. They have a period of up to two years to conduct a thorough examination of it, at the end of which they then impose remedies if they consider there are issues. Those remedies are not subject to ministerial approval or discretion. Those remedies may, for example, include—and I think they did it with a number of the airports around there—requiring the owner of a number of airports to divest one or more of those. Similarly, the Commission of Banking, which is partly run by the Competition Commission, has the power to require the divestiture of branches if they think there are competition issues even within a particular geographical area. The power that you have, as I understand it, with mergers is to look at it when the merger is going. You either approve it or you do not. You can approve it with some conditions. But once it is done, there are very limited powers to actually take action in terms of what might result. The Competition Commission in the UK seems to have, provided it is referred the issue, a power to impose remedies on situations where they find there are competition problems quite separate to the issue of mergers and thereby move things forward and fix problems. That does not appear to be a remedy that is available in Australia. Am I completely misreading this?

Mr Bezzi: One of the features of the UK system that is different to ours is that they have a capacity to conduct what they call market studies. I think your description is a description of a market study. That committee—

Senator BUSHBY: I may not have the terminology correct.

Mr Bezzi: That can be done either at the Competition Commission level or it can be done by the OFT.

Senator BUSHBY: They have a much shorter time period in which to do it and do not do it as in depth, I think.

Mr Bezzi: Yes. That is a difference. In many other respects, it is very similar. They also have, for example, the power to take criminal cartel proceedings similar to ours, although the elements of the offence are a little different. They are in fact reviewing that at the moment. The UK is reviewing that. I think the market power function is the key difference that you have identified.

Senator BUSHBY: With a lot of the issues that we have asked about tonight, be they about petrol, groceries, banks or whatever, you need to find evidence that particular sections have been breached whereas the Competition Commission, in a similar circumstance, could conduct a market study, find that there are competition issues within a particular geographic or particular area of the market in terms of product or whatever it might be, and they could then step in to fix that and resolve it. You do not appear to have the opportunity to do that.

Mr Bezzi: I should say we have in fact done what the UK would regard as some market studies. The grocery inquiry was certainly an example. When we described that to them, they recognised it as a market study.

Senator BUSHBY: Would you have the power, having conducted the grocery study, if you found there was a competition problem that was impacting on consumers in a certain suburb of Melbourne, to require divestiture, then, of some supermarkets?

Mr Samuel: The remedy area is where it is different. We can conduct market inquiries either with the approval of or at the direction of the responsible minister, which either would be the Treasurer or the parliamentary secretary. That is evidenced by the inquiry we conducted into petrol, which was done at our instance but with the approval of the Treasurer, and the inquiry into groceries, which was done at the direction of the Treasurer. So those inquiries under part 7A of the act can be conducted by the ACCC. They are full market inquiries, as is evidenced by those reports. I am not sure about this. I was not aware that the commission in the UK had the ability to unilaterally invoke certain policy determinations.

Senator BUSHBY: That is what they told me.

Mr Cassidy: I do not think that is right.

Mr Pearson: If I may, I have considered the airport action. They do have to face a court, so they cannot necessarily just impose unilaterally without any challenges.

Mr Samuel: I could be wrong. I stand corrected. I will perhaps take the question on notice, Senator. I did think that issues that were not already encompassed by the law as it stands were matters, then, that had to be dealt with by parliament. They could not necessarily just be unilaterally dealt with by the commission.

Senator BUSHBY: I would appreciate it if you could take that on notice for me. It certainly sounded like that at the remedy end there was a potential there for the Competition Commission to resolve issues in ways that in Australia appear to have festered not through any fault of the ACCC, within certain areas of the community for a long time and in ways that could be quite sophisticated in the way that you could deal with those issues and solve them.

Mr Samuel: For example, you will note that in the grocery inquiry we made certain recommendations, as we did in the petrol inquiry; we made certain recommendations. But ultimately they are matters that have to be determined by parliament under our law. I thought that was the case in the UK, but we will take that on notice.

Mr Cassidy: If you look at our grocery inquiry—I was just thinking about it—one of the recommendations was that there should be a code of conduct. But that had to be legislated in the UK. It came into effect in February last year. Another recommendation was that there should be someone to enforce the code of conduct. The OFT tried to get the major retailers to do that on a voluntary basis. They could not get them to agree so there is now a draft exposure bill being released by the UK government to further a body to enforce that code.

Senator BUSHBY: The Competition Commission, as Mr Samuel mentioned, is a funny body. What I was hearing was very different to what I was used to.

Mr Cassidy: They both operate with the same power with respect to the reviews. The OFT can do it or the Competition Commission can do it. So they have the same head of power. I am suggesting to you that we will take it on notice.

Senator BUSHBY: Take it on notice for me.

Mr Cassidy: I do not know if it is quite independent of the need for government involvement in legislation that you might be seeking. But let us take it on notice.

Mr Bezzi: You may also be thinking, Senator, of their role to be advocates. They have this function that is specifically stipulated that they are to take on, which is to be an advocate of competition. Perhaps that is what you have in mind or what they were discussing with you.

Senator BUSHBY: We did discuss that. But they were talking about remedies. I asked them. I discussed the extent to which there was oversight of how they impose those remedies, the appeal processes and so forth. It appeared to me that they had a significant degree of independence in terms of their ability to impose remedies. So I would be very interesting to hear on notice and receive your feedback. I will move on to a couple of other things. We have had some discussions about banking tonight. Obviously you have referred as well to the banking inquiry that we have had. I am not going to go over that in great detail at this point. But one of the things that we did recommend in our report was that the government direct the ACCC to conduct an examination of barriers to competition in the Australian payments system and to publicly report by the end of 2011. You are aware I am talking about the barriers to competition in the payments system. I think I asked this question during the inquiry. Since the inquiry, is it something that the ACCC has cast its corporate mind to?

Mr Samuel: Well, when we are asked to by the government. I do not think the government has responded to that report, so it is entirely a matter for government.

Senator BUSHBY: I just want to ask some questions about your new Sydney office. What process was gone through to select the new Sydney office?

Mr Cassidy: It is progressing.

Senator BUSHBY: How did you actually decide where you would locate?

Mr Cassidy: Well, we inspected quite a number of what we thought were suitable sites for our new office. We have requirements in terms of locality to the courts, locality to legal firms and the like. Basically, we inspected a number of sites, assessed them against our requirements and against the requirements that the government has in terms of buildings and accommodation for Commonwealth agencies. We decided on the site we have now moved into.

Senator BUSHBY: Given we are in budget estimates, I am curious to know how much the ACCC spent to fit out the new office in Sydney?

Mr Brocklehurst: The new office was fitted out for approximately \$4½ million.

Senator BUSHBY: That is for the fitout. And how many staff are in the new office?

Mr Brocklehurst: At the present stage there are approximately a bit over 100 officers.

Senator BUSHBY: One hundred officers stationed there?

Mr Brocklehurst: It varies. We have a lot of movement between offices in relation to—

Senator BUSHBY: What is the maximum that it is designed to take?

Mr Brocklehurst: With growth that we have coming on board in relation to NPPs, it can take up to approximately 150-odd staff.

Senator BUSHBY: What is the equivalent square metres of office space per staff member in the new Sydney office. Do you know that?

Mr Brocklehurst: I will have to take that on notice, Senator.

Senator BUSHBY: Are you aware whether it adheres to the government's occupational density target of 16 square metres of useable office per occupied work point?

Mr Brocklehurst: The new office space comprises both staff accommodation and specialist public hearing rooms that we have included in that office due to need. So it is a combination of both. When you take the total meterage of the space, it would be over 16 metres. However, we can take out the hearing space, reception areas and public spaces.

Senator BUSHBY: So in terms of the working areas, so to speak, it complies with the 16 square metres?

Mr Brocklehurst: It complies with the 16 in relation to the number of workstations.

Senator BUSHBY: And that is something you processed when you were working through that? There is an issue that that recommendation by the Department of Finance and Deregulation in respect of the 16 square metres is something that you are aware of when you were—

Mr Cassidy: Totally. As Mr Brocklehurst said, this Sydney office does have a number of dedicated rooms which, as I understand it, do not count in that particular calculation. I think the Sydney office is the most commonly used office in terms of our compulsory information gathering powers—interviewing people under oath and so forth. It also contains a fairly significant evidence room, which is one of the requirements we have for criminal prosecutions. We have to establish a so-called chain of evidence. So there are particular specialist requirements that we need to meet in that office that do not count in that calculation.

Senator BUSHBY: That is fine. Did the ACCC experience any problems with IT and computer systems at the new offices in Sydney?

Mr Cassidy: In the Sydney office?

Senator BUSHBY: Yes.

Mr Cassidy: Yes, we did, Senator.

Senator BUSHBY: What sort of problems were they? How extensive were they?

Mr Cassidy: The problem now, because it has become immediately obvious—I am not an IT person—is that basically we contracted for the high speed data links for the office that we require both to link up our computer systems and our video conferencing system. The high speed data links were not in place by the scheduled date. Indeed, they were not in place until quite a period after the scheduled date, which meant we had to do a number of workarounds. But the Sydney office was not fully functional from an IT point of view until about three or four weeks, from memory, after we moved in.

Senator BUSHBY: So what impact did that have on the ability of the officers to do their job?

Mr Cassidy: Look, it did have a fairly significant impact. As I say, we had to do various workarounds. Some people worked from home on particular projects. On some projects we had to shift through other offices, at least on a temporary basis. So there was a fair bit of inconvenience involved in it.

Senator BUSHBY: That presumably would have had a fair degree of impact on the ability of those officers to actually deliver the normal output that they would have delivered?

Mr Cassidy: The Sydney office was fairly significantly impacted, Senator.

Senator BUSHBY: Was the consequent lack of productivity raised as part of the contract negotiations with the IT provider?

Mr Cassidy: Senator, we have at this stage not made any payment to the particular contract provider. We have assessed the direct financial cost to us of their failure to deliver on time. I think we will certainly be looking to offset that direct financial cost against any contract payment that we make to them. Of course, the greater cost is in the inconvenience and dislocation in the work of the office, but that is very difficult to put a figure on.

Senator BUSHBY: Absolutely.

Mr Cassidy: Certainly we will be looking to recoup the direct financial costs.

Senator BUSHBY: I might leave it there, Chair.

Senator EGGLESTON: There are a few other issues. I think Senator Xenophon asked some of the questions I might have asked about predatory pricing and how you deal with that and about the Coles and Woolworths milk issue. The National Association of Retail Grocers of Australia has called for the reintroduction of section 49, which we know was rescinded after the Hilmer review in the 1990s. I understand the ACCC has not expressed an opinion for almost five or six years about the possible reintroduction of some sort of legislative provision like this. So do you think it is time that we had a debate about the reintroduction of something like section 59 that outlawed price discrimination or are you happy with the current state of the law?

Mr Cassidy: I do not know what the five or six years you refer to is. I think our view is quite clear. We agree with the position that the so-called Hilmer committee, the national competition policy review committee, reached. Really there is not much point in having a separate price discrimination provision such as section 49 of the act. The basic logic of the Hilmer committee was that if you look at anticompetitive price discrimination, whenever it is effective, it almost inevitably involves a firm with market power undertaking the anticompetitive price discrimination. Therefore, the Hilmer committee concluded and recommended that anticompetitive price discrimination should be seen as an abuse of market power and dealt with under section 46 along with other abuses of market power. That is certainly our view. So we cannot certainly see any particular reason or logic in reintroducing what was section 49.

Senator EGGLESTON: I know that is your point of view, but we have seen what appear to have been the use of market power to bring down prices in various areas from groceries to fuel and now to milk and various food commodities in the supermarkets. I think that is making people wonder about how effectively this issue of market power is being used by you to deal with these problems.

Mr Samuel: It depends, Senator, on what we are focussing on. Are we focussing on the fact that prices have been lowered for consumers or are we focussing on the abuse of market power by those who have got it for the purposes of destroying competitors or doing substantial damage to competition? If we are dealing with lower prices for consumers, I doubt there is anyone in this room that would be arguing against those sorts of propositions. If we are dealing with, on the other hand, corporations that have got substantial market power and are abusing that market power with the intent of damaging or destroying competition or

competitors, I think that is something that properly would be examined by the ACCC and properly would be urged upon us by parties such as yourself. But I think there sometimes seems to be a confusion between bringing about lower prices for consumers and dealing with the inherent evil of abuse of market power, which section 46, particularly following the amendments that were introduced both by the Howard government and subsequently by the Rudd government, have made that section now capable of being enforced, as is evidenced, for example, in cases that we have brought in more recent times, particularly the Cabcharge case.

Senator EGGLESTON: That is one. Then, of course, in this committee we have also looked into the question of supermarket petrol pricing, which has put a lot of small businesses out of business. The supermarkets use their market power to get the fuel at a cheaper price. We have seen that in the grocery arena. So there is some concern there. I know you talk about market power and not being abused, but the people who seem to be suffering are the small businesses. I just wonder where you see your brief in terms of the protection of small businesses who have very little market power in dealing with big conglomerates. In the present situation with the milk issue, it is the small corner stores and the dairy farmers who are vulnerable to the exercise of immense market power by the big supermarket chains. I think people do see that as a bit of a deficiency in the way you have operated.

Mr Samuel: Yes, I understand that. But I go back to my original proposition, Senator, that this goes back to a question of whether businesses are endeavouring to find means of providing cheaper products of an acceptable quality to consumers or whether or not they are undertaking transactions designed to substantially damage competition and destroy competitors in the marketplace. You may be assured that where we detect the latter case—that is, attempts to abuse market power with the intention of substantially damaging competition, whether it is in the short or the longer term, or to destroy competitors within the context of section 46 and section 46(1)AA, we can and we do act. I think you need to await the outcome of the examination that we are currently conducting into the milk pricing issue. We have said that once that is completed in the near future, we would be expecting to make some public comments in this area. But we do need to keep in mind the evidence that was provided and the conclusions of the multiparty committee which examined the application of the Trade Practices Act to small business and reported in 2004. I would perhaps direct you to the introductory comments made by that committee as to the purposes of the Trade Practices Act, now the Competition and Consumer Act, which reflected similar comments that were made by the Dawson committee and by the High Court of Australia as to the objectives of the law. We think that section 46 and section 46(1)AA are directed towards those objectives. We think that section 49 is perhaps directed in a contradictory fashion in relation to those objectives.

Senator EGGLESTON: Thank you, Mr Samuel. I understand your point of view. Nevertheless, in the fuel issue, the grocery issue and now with milk and the other issues, it does seem to be the small businessman that misses out. From your point of view and track record, competition seems to be favouring the big businesses and conglomerates. But I will just leave it at that. Do you think the current powers to deal with price signalling are strong enough to stop price signalling to competitors, particularly by supermarkets? For example, what will be the effect on commercial subscription based websites, such as the MotorMouth website, that have the specific intention of sharing prices among competitors? Does this price signalling issue concern you?

Mr Samuel: Well, price signalling obviously has concerned us ever since the days of the determination of the full Federal Court in the Ballarat petrol case, which was affirmed in its own way by the rejection of an application for leave to appeal to the High Court. In that context, we have long been concerned about a loophole in the anticartel laws of the Trade Practices Act, now the Competition and Consumer Act, which was addressed in both our petrol inquiry and has been addressed in a number of submissions and public comments and discussions that we have had on this subject for some period of time.

Although it is called price signalling, I think a better expression is information exchanged between competitors. In our view, you break up the issue of information exchange into two headings. There is that of a private nature for which we think there is no redeeming feature at all. It should be declared illegal because the private disclosure of information between competitors that can lead to a reduction in competition ought to be declared illegal, in our view. Public information should be subject to a competition test. That is the nature of the prohibitions that are contained in the legislation that the government has submitted and presented to parliament at the current time.

Senator EGGLESTON: Just quickly, both the government's price signalling bill and the opposition's private member's bill place the burden of proof on the accused signaller to provide evidence that they were not price signalling. What precedent in consumer law is there for the traditional burden of proof to be reversed? Does it undermine the principles of our judicial system? Does it assume a party accused of price signalling is guilty unless they can show otherwise?

Mr Samuel: Well, I am not sure that that is a correct interpretation, Senator, with respect, of the legislation that is currently before parliament. I think you may be referring to the per se prohibition on private information exchanges that is contained in the government's legislation. That per se prohibition is not unusual; of course, we already have per se prohibitions in respect of price fixing under the current Competition and Consumer Act. It is not a case of a party being guilty until he or she proves themselves innocent. What it says is that if you engage in certain transactions which under the current law include price fixing transactions or price fixing arrangements, they will be per se illegal. But it is still incumbent on the ACCC to be able to prove the existence of the implementation of those contract arrangements or understandings. Where the price signalling laws fill in a gap is that the concept of contract arrangement or understanding, as has been developed by the full Federal Court and affirmed by the High Court of Australia, requires an element of commitment between the parties which has enabled a loophole to be exploited by parties that engage in these sorts of anticompetitive activities. But I would have to say to you it is not contrary to any rule of natural justice or of the law in this country. Per se prohibitions have existed in many, many laws in the country, but the ACCC still bears the burden of proof to prove the existence of the transaction that will be per se illegal under the law.

Senator EGGLESTON: Thank you, Mr Samuel. I wish you well in your future. I thank you for what you have done in the time you have been with the ACCC.

Senator CORMANN: Congratulations to you, on behalf of the coalition members, for your work. We wish you well. I was also asked by Senator Brandis, a former chair of the economics committee, to associate himself with that. Of course, he is somebody who has taken a great interest in your work.

Mr Samuel: Thank you, Senators. I will miss Senate estimates, which will surprise many of you. I will miss it.

Senator CAMERON: Mr Samuel, my engagement with the ACCC in my current position is much better than it was in my previous position. I thank you for your work when I was in my previous job.

Mr Samuel: I suspect it is less to do with the change in personnel at the ACCC and much more to do with your change of position, Senator.

CHAIR: Good luck for the future, Mr Samuel. I thank the officers of the ACCC.

Proceedings suspended from 21.17 to 21.31

Australian Prudential Regulation Authority

CHAIR: We have with us APRA. Welcome, Dr Laker. Do you have an opening statement that you would like to make?

Dr Laker: Yes, thank you, Madam Chair. You will recall that our last appearance in February took place in the immediate aftermath of a spate of natural disasters in Australia and New Zealand. I provided the committee then with some preliminary indications of the impact of these natural disasters on the general insurance and deposit-taking industries regulated by APRA. Since then, the world has witnessed the catastrophe of the Japanese earthquake and natural disasters in other regions. In my opening remarks tonight, I would like to give the committee an update on the impact of recent natural disasters on these industries. We now have a more accurate picture, in particular, of the size of insured claims on the general insurance industry.

In February, preliminary indications put the gross insured claims from the natural disasters in Australia at around \$3 billion. That figure has risen to just over \$5.3 billion. Of this total, \$2.8 billion relates to the Brisbane flooding, a little less than \$1 billion to the flooding elsewhere in Queensland and a little less than \$500 million to the Victorian floods. A further \$1.1 billion relates to Tropical Cyclone Yasi and an amount of around \$35 million for the Perth bushfires. These are insured claims only. The actual economic and financial losses sustained by the Australian community from these events are, of course, much larger. Though the total is sizeable, a large amount of the claims is reinsured. Reinsurance recoverables are just over \$3.4 billion, leaving net incurred claims of \$1.9 billion to be met from the direct resources of the APRA-regulated insurers themselves.

In New Zealand, losses from the Christchurch earthquake placed additional strain on some of our insurers. Since access to the damaged city is still limited, claims estimates are tentative. At this point, gross insured claims on APRA-regulated insurers are estimated at around \$6.3 billion, of which around \$5 billion is reinsured. I would add that only some APRA regulated insurers underwrite business in New Zealand and that much of the earthquake cover was provided by a range of non-Australian entities. Our review of insurers affected by the Christchurch earthquake has been targeted primarily at ensuring that adequate claims provisions have been raised based on the limited knowledge to date and that appropriate reinsurance cover remains in place.

The Japanese earthquake has not raised any immediate concerns for our insurers. Some low-value incidental property claims are likely, but the larger exposure will be downstream claims from corporate clients related to shortages of parts, the need to find alternative markets

and possibly trade credit exposures. The nature of these claims means that a longer time frame will be needed before accurate quantification is possible.

The spate of natural disasters in Australia and New Zealand has, as I have illustrated, been felt most by the global reinsurance sector. To date, we have not observed any signs that reinsurers are withdrawing cover from Australian insurers. However, we are beginning to see signs of higher reinsurance costs being passed on to insurers and some changes in the structure of reinsurance programs, including increased retention of risk by the insurers themselves. Our immediate aim after recent events is to ensure that appropriate reinsurance reinstatements and additional reinsurance, where necessary, are in place so that insurers can withstand further major losses for the remainder of the year, should such events materialise.

The updated claims information has not changed the broad assessment I provided to the committee in February. To repeat that assessment, APRA does not expect that any general insurer it regulates will have difficulty continuing to operate in the face of the potential losses from recent natural disasters. We have remained confident in the capacity of the general insurance industry in Australia, which holds around \$30 billion in shareholder equity, to meet all of its claims obligations.

I would also mention that APRA has been providing input from a prudential perspective to the work of the Natural Disaster Insurance Review panel, which is chaired by a former APRA executive member, John Trowbridge. APRA has also continued to monitor the impact of recent natural disasters on authorised deposit-taking institutions, or ADIs, with activities and/or credit exposures in the affected areas. Clearly, the disasters created severe financial stresses for some customers. ADIs have responded with various hardship packages designed to provide customers who need it with breathing space. These stresses are now showing up in a pick-up in arrears on residential loan portfolios in Queensland. A number of ADIs have taken the prudent step of establishing provisions for potential loan losses. APRA is monitoring these estimates closely. To date, there have been no significant losses crystallising in ADI loan portfolios.

APRA has also been spending some time with ADIs on operational issues that emerged during the natural disasters. Overall, disaster planning and protocols work well, but there are always useful lessons to be learned. The New Zealand earthquake has not to this point had a significant impact on the loan portfolios of Australian ADIs operating in that country, in part because of the different disaster insurance arrangements in force there. One final point on prudential policy matters is that last week APRA delivered one of the elements of the global reform agenda to strengthen bank capital regulation being driven by the Basel Committee on Banking Supervision. APRA released a package of enhancements to the Basel II framework that inter alia increased capital requirements for higher risk trading activities. These enhancements are expected to have only a limited impact on ADIs in Australia, which largely shunned these activities. More fundamental reforms to strengthen capital and liquidity buffers, known as Basel III, will be the subject of consultation papers that APRA will release over coming months. We are now happy to take the committee's questions.

CHAIR: Thank you, Dr Laker.

Senator CORMANN: Dr Laker, I might just start with an issue that we discussed last time and which has become more topical since in relation to superannuation fund mergers.

Can you talk us through APRA's involvement in the process when two or more funds are exploring a possible merger process?

Dr Laker: I will ask my deputy chairman who handles superannuation matters to address that.

Mr Jones: The process is that, via the SIS regulation, there are protections for members regarding transfer without member consent. In the circumstances of mergers, the APRA expectation is that the various funds will look at whether or not that merger is appropriate and whether that merger is in the best interests of members.

Senator CORMANN: Transfer without member consent. How would members give consent or otherwise for the merger to go ahead or not go ahead?

Mr Jones: In the case of a merger, that is an exception. Because the trustee directors are acting in the best interests of the members, should the two funds agree to merge, APRA will look at the circumstances regarding that merger as well.

Senator CORMANN: Do you mean to say that is because they are required to act in the best interests of members?

Mr Jones: Correct.

Senator CORMANN: You cannot make the assertion that they necessarily always would. There have to be some checks and balances in the system. I guess that is what I am wanting to explore today. You are referring to the requirement to act in the best interests of members?

Mr Jones: Yes.

Senator CORMANN: Do you have any regulatory powers to examine whether superannuation fund trustees are acting in the best interests of members in the context of merger considerations?

Mr Jones: We do not have specific powers in the context of mergers, but we have powers to look at whether or not funds are operating in the best interests of members. That is our primary function in looking at superannuation.

Senator CORMANN: We have a bit of a case study. As I said, since we discussed it last time, it has become a bit more topical. We have this case in Victoria where the mooted merger between Vision Super and Equisuper collapsed. I am just quoting from an article:

... after union backed trustees demanded the new board abandon democratic elections and guarantee union nominations positions.

On the face of it, that was not based on the 'best interests of members' considerations, was it?

Mr Jones: It is hard to say. We have information that is not necessarily the same as the article in the newspaper you are referring to. But, under the circumstances, it is up to the trustees of the fund to decide whether or not they believe the merger is appropriate in the first instance.

Senator CORMANN: You say it is hard to say. You said it is your role to preserve that trustees are acting in the best interests of members. Then you say it is the role of the trustees to act in the best interests of members. What have you done to assure yourself that, in making a decision to proceed or, as it happens in this circumstance, not to proceed with a merger, trustees in those funds are actually acting in the best interests of members?

Mr Jones: It is not our role to determine whether or not the merger should go ahead.

Senator CORMANN: No. That was not my question. My question is: what have you done to satisfy yourself that the trustees in this particular circumstance have acted in the best interests of members in making decisions—in this case not to go ahead with the merger?

Mr Jones: First of all, in each circumstance, our supervisors would talk to the directors of the relevant funds and talk about their motivations for the mergers, the due diligence that they had done, any types of investigation that they have done, and how they reached a decision as to whether or not it was in the best interests of the merger parties. We would have the expectation that the trustees of the funds had done the appropriate research in terms of determining whether or not it was in the interests of members. We would expect to see the appropriate levels of documentation associated with that decision, the same as any other decision. Decisions on investments and certain other decisions would be the equivalent.

Senator CORMANN: You say that is what you expect to happen. Have you gone through that process on this occasion? Have you satisfied yourself that the trustees of those relevant superannuation funds did act in the best interests of members?

Mr Jones: Senator, it is fairly difficult to speak about the specific circumstances of a particular merger without breaching various types of confidentiality requirements imposed upon us. So I can speak in a general—

Senator CORMANN: Without even going into the detail, (1) have you investigated it and (2) are you satisfied that all of the trustees on the relevant boards have acted in the best interests of members? They are very simple questions with very simple answers. I do not want you to divulge any confidences at all. They are just threshold questions. Have you investigated what has happened? Are you satisfied that all of the trustees have acted in the best interests of members as they are required to do?

Mr Jones: We have investigated whether or not the trustees of the funds did the appropriate level of due diligence associated with the transaction. We reached the conclusion that the trustees had in fact done the appropriate tasks.

Senator CAMERON: On this point—

Senator CORMANN: I have not finished yet. You have said that you are satisfied that they have gone through the appropriate due diligence and the appropriate process, but that was not my question. My question goes back to what you said at the beginning. There is a requirement for trustees to act in the best interests of members. That is one of your core reasons for being, in the context of superannuation. So my very simple question is: are you satisfied that all of the trustees involved in the two superannuation funds concerned have acted in the best interests of members in the way that they have conducted themselves in the conduct of this mooted merger?

Mr Jones: When we do our investigation, we look at the motivation for the merger and we look at the impact it has upon the members. If we believe that there was any detriment to the members as a consequence of the mergers, we would have a view. In circumstances where mergers go ahead, we like to ensure that we do not have a circumstance where, on balance, members are worse off. So we were comfortable with this merger.

Senator CORMANN: So you were comfortable with the merger. But, as it turns out, the merger is not going ahead because a number of trustees, for reasons that are described in the *Financial Review*, believed:

... union backed trustees demanded the new board abandon democratic elections and guarantee union nominated positions.

Because that did not happen, the merger collapsed. Have you investigated that aspect of what happened? Are you satisfied that the trustees of those funds, in conducting themselves in this way as described in the paper, acted in the best interests of members? If you are saying that it was in the members' best interests for the merger to go ahead and now it is not going ahead, on the face of what you are saying, they did not act in the best interests of members, because now the merger has collapsed.

Mr Jones: No. We did not say that it was in the best interests of the members that the merger go ahead. What we said is that members in general would not be worse off as a consequence of the merger.

Senator CORMANN: So you do not actually assess whether trustees are acting in the best interests of members?

Mr Jones: We do look at whether trustees are acting in the best interests of members.

Senator CORMANN: Everything that you have just said now was trying not to be pinned down as to whether you are satisfied that these trustees have at all times acted in the best interests of members. I will ask again. Are you satisfied that all of the trustees in those two funds in the context of this merger have at all times acted in the best interests of members?

Mr Jones: It is very difficult to say without going into the specifics of this particular circumstance.

Senator CORMANN: If it is difficult to say, it is certainly not a yes.

Mr Jones: It is difficult to say publicly what we have and have not done in the context of an investigation of a particular merger.

Senator CORMANN: Sorry, I really do not want you to give the detail. I understand that there are some confidentiality issues. I am not wanting you to reveal any confidences. I want you to say whether—yes or no—you are satisfied that all of the trustees of those funds have at all times acted in the best interests of members.

Senator CAMERON: They should be as alert to some of the rip-offs that go on in business as you are every time unions are involved in a super fund. It is an absolute joke.

Mr Jones: Senator, when we have a look at the merger in this particular circumstance or any circumstances in general, we would look at whether on balance we believe that the trustees have operated in the interests of members. We have a look at a transaction such as this. It is not simply to say, 'Yes, this is better,' or, 'No, this is not better.' It is a case of whether it appears from the information that we have and from the work that has been done by the trustees, generally speaking, that this is not contrary to the interests of members.

Senator CORMANN: Do you think a decision not to go ahead with a merger that has otherwise been assessed as being beneficial for members on the basis of a demand for democratic elections to the board and a refusal to guarantee union nominated positions is

based on the best interests of member considerations, or are there other considerations driving this that are not focused on the best interests of members?

Mr Jones: I probably cannot give a specific answer to that. What I can say is that what APRA would need to do as a consequence of a particular transaction such as this would be to look at what the outcome is as a consequence of a decision not to merge when there previously had been a decision to merge.

Senator CORMANN: But will you look at that at some point?

Mr Jones: Of course we will.

Senator CORMANN: You have not yet, but you will, will you?

Mr Jones: I would prefer not to say exactly what we have done in the past week.

Senator CORMANN: So you prefer not to say what you have done. This is an active investigation—is that what you are saying?

Mr Jones: Once again, I will talk in a more general sense.

Senator CORMANN: Talk in a general sense.

Mr Jones: If we were aware of a circumstance where there was a proposed merger between two funds and then at the very last minute those two funds did not merge, would we look at the circumstances? The answer is: of course we would.

Senator CORMANN: In a general sense, leaving the special case study aside, does APRA have any power to determine whether a proposed merger is in the best interests of fund members? That is a generic question now.

Mr Jones: Do we have the power to determine?

Senator CORMANN: Whether the proposed merger is in the best interests.

Mr Jones: We would certainly look at whether or not it is in the best interests of members, yes.

Senator CORMANN: Do you require the relevant superannuation entities that are considering a merger to report to you regularly on the status of their merger talks and the likelihood of the proposed merger proceeding?

Mr Jones: We certainly would talk to them on a regular basis about the approaches that they have taken. We look at the motivations for the merger. We look at the consequences for the merger. We look at what the arrangements may be for members in the merged fund. We particularly look at circumstances, for example, to ensure that, where there is a transfer, members have at least equivalent rights to what they had in the original fund and so on.

Senator CORMANN: So how do you use that information that you obtain through that regular contact?

Mr Jones: That would have a huge impact upon the supervisory stance that we would take towards that particular institution.

Senator CORMANN: What do you mean it would have a huge impact on the stance? What would happen?

Mr Jones: The supervisory stance that we take with regard to our funds depends upon a whole set of factors that we would investigate. We would look at, for example, the nature of

the appropriate levels of diligence that had been done by the trustees with regard to the merger. We would look at the processes that had been undertaken by the management of the fund. We would look at whether we had some concerns about process, whether we had some concerns about potential outcomes, or whether we had some concerns about something as simple as whether the IT structure in the new fund would be sufficient to ensure that members had continuity in terms of information. We would look at a very large number of factors in determining whether or not we believed the funds had the appropriate skills to undertake the merger. We would also look at the consequences of the merger. Quite often there is a period, as we discussed last time, where there are a large number of mergers going on. Our activities in these areas are always heightened by mergers because in various circumstances you can have cases where things can go wrong.

Senator CORMANN: Exactly: things can go wrong. I want to go back to the specific case. I am going to things that are on the public record, incidentally, so this is not private and confidential stuff; it is on the public record. I read in that article in the *Financial Review* that one of the trustees of Vision Super referred his concerns about the post merger to APRA. What was the nature of that complaint?

Mr Jones: Senator, now you are talking about a very specific piece of information there.

Senator CORMANN: But it says in the report you filed that there was nothing wrong with the proposed merger. Is that correct?

Dr Laker: We cannot answer questions as specific as that.

Senator CORMANN: Somebody obviously told the *Financial Review* about it. Why can you not tell us?

Dr Laker: That is their right. But we cannot disclose our dealings on a particular institution, be it superannuation or any industry.

Mr Jones: We cannot even confirm the accuracy of every piece of information in that article.

Senator CORMANN: But you understand, though?

Mr Jones: Yes.

Senator CORMANN: I am not meaning to pick on anyone. In the context of this trend towards more super fund mergers, I think it has exposed some issues around the regulatory framework and the regulatory oversight. I am sorry if it is the case that it pops up now, but that is what we have got.

Mr Jones: I will make one comment on that. There are words in that article that said that APRA had given—these are the literal words—the go-ahead. That is in fact incorrect. That is not what APRA does.

Senator CORMANN: Because you do not actually give a tick of approval?

Mr Jones: Correct.

Senator CORMANN: You just check whether certain processes are followed?

Mr Jones: That is correct.

Senator CORMANN: I guess what surprises me is that you are not prepared to be firmer in a statement saying that you are satisfied that all trustees acted in the best interests of

members at all times. I have given you the opportunity a couple of times to give that assurance that you are satisfied. You have not been prepared to do it. So does that lead me legitimately to a conclusion that you have concerns in relation to the conduct of some of the trustees?

Mr Jones: Senator, I do not think it is up to me to second-guess what you are concerned about.

Senator CORMANN: No, I am not asking you to second-guess. I am asking you why you are not prepared to say that you are satisfied that all of the trustees have at all times acted in the best interests of members.

Mr Jones: I think the fact that I am not prepared to say that probably answers your question.

Senator CORMANN: That is interesting. Does APRA monitor the costs involved in superannuation fund mergers, including due diligence and other costs in the lead-up to a merger?

Mr Jones: We would not monitor it, but it would be information we would collect as part of the process, of course.

Senator CORMANN: You are able to identify the costs relating to mergers that have been concluded and those mergers which do not proceed?

Mr Jones: I do not know that we would be that specific in being able to identify the costs of a merger not proceeding in the sense that quite often that is a hypothetical.

Senator CORMANN: Sure.

Mr Jones: There are certain costs that you could easily identify. A fund would say, 'We spent \$2 million on legal fees up to this point.' So you can certainly identify certain costs. In terms of being able to identify the cost of not proceeding with an acquisition, that is more of a hypothetical. It is a little more difficult.

Senator CORMANN: Maybe. Does APRA undertake any reviews to determine whether the superannuation mergers that did occur and that have been completed have achieved the outcomes promised to members as a result of the mergers? Is there any after-the-event review to test it?

Mr Jones: Yes. That is a very valid question because it is the same with any mergers. It is the same sort of question that I think would be asked of—

Senator CORMANN: Except that these are APRA-regulated funds.

Mr Jones: I understand that. I had the same issue when I was a commissioner at the ACCC. It is the same principle. What happens? Do you test the consequences of the merger? For example, in the instance here, if there is a claim that there are going to be substantial economies of scale from the various mergers that are going on, what is the consequence? The answer is that we would look at that as we go. Quite often in the case of these sorts of transactions you may find an initial increase in costs associated with putting together two different systems and so on. But you would like to think that, if the funds were of the view that there were long-term cost savings, you would see that further down the line.

Senator CORMANN: But the thing is that further down the line you cannot unscramble the egg, quite frankly.

Mr Jones: That is true.

Senator CORMANN: I am asking whether APRA has a view, based on mergers that have happened successfully so far, on whether the stated benefits of scale and so on actually do ultimately get realised. The reason I am asking is obviously that there are some policy considerations there.

Mr Jones: It is a very difficult one because it is often very difficult to compare the circumstance in terms of what costs would have been had a merger not occurred with the costs associated with the post merger. So it is often very difficult to do those sorts of comparisons. What will often happen is that post merger the merger parties will say, 'Well, there were additional costs that we didn't realise were going to be imposed upon the institution when we first made the proposal.' You sometimes hear that.

Senator CORMANN: Some smaller funds would argue very assertively that they consistently outperform larger funds and that scale is not necessarily the be-all and end-all.

Mr Jones: Yes.

Senator CORMANN: I guess I am just trying to get a sense of how these sorts of dynamics are captured and whether there is any quasi-scientific assessment post event.

Mr Jones: We may be able to pick up some of this in our statistical collections. The difficulty, though, is that, as you say, there is no overwhelming and conclusive evidence that the largest funds are in fact the lowest cost funds.

Senator CORMANN: Just out of interest—again, this is generic; this is not specific—at what point would APRA intervene with merger talks? What is the trigger point that would get APRA involved to ensure the proposed merger is in the best interests of members of all entities involved?

Mr Jones: In the first instance, APRA would expect that the relevant funds would be talking to APRA long before there was any public information available about a potential merger. APRA would expect that we would be informed about the processes all the way through. So we would always have the expectation that these mergers are not made public before APRA has had a chance. Further, in some circumstances, APRA may receive complaints from members, who read about a proposed merger and have insufficient information or have some concerns. Sometimes APRA may decide it appropriate to investigate the concerns that have been brought to it.

Senator CORMANN: On the end of the scale, does APRA investigate as a matter of course the reasons for the failure of any merger to be completed?

Mr Jones: No.

Senator CORMANN: You do not?

Mr Jones: As a matter of course we do not. It is actually fairly rare for mergers not to be completed at a very late stage.

Senator CORMANN: Based on the data you have available so far, are there any trends as to why particular superannuation mergers have been considered completed, for example, because of common directors between entities? Are there trends in how these entities are usually structured post merger?

Mr Jones: There seems to be a fairly universal view here and globally that bigger is better. There seems to be a view that the larger funds will be able to achieve better scale and lower unit costs in a variety of areas, including investments and administration costs and so on. There is not a huge amount of evidence to support that, but there seems to be a fairly universal view that that is the case.

Senator CORMANN: So there is not a lot of evidence to support that?

Mr Jones: We have not seen a lot of evidence that supports that.

Senator CORMANN: Is it a mandatory requirement under APRA regulation that every super fund regulated by APRA must have a conflict of interest policy to manage conflicts of its trustees and senior officers?

Mr Jones: Yes.

Senator CORMANN: And how do you go about monitoring whether that is complied with? Is it like a risk management approach?

Mr Jones: It would be part of the normal supervision process. We would ask boards, for example, for minutes of meetings. We would look at the conflict of interest policy. We would look at if particular directors had expressed conflict of interest with regard to particular matters—how they behaved, what the policy is in advance and whether or not they adhered to the policy. APRA does not determine what the conflict of interest policy should be. APRA will determine whether or not they adhered to their conflict of interest policy.

Senator CORMANN: Are you satisfied that all super funds have adequate conflict of interest policies in place?

Mr Jones: I think you can often be satisfied that they have adequate policies in place. You cannot always be satisfied that they follow those policies.

Senator CORMANN: Have you got concerns in relation to specific circumstances at present around conflict of interest policies and adherence to them?

Mr Jones: Is this a specific or a general question? At times there are various circumstances where we have concerns about conflicts of interest.

Senator CORMANN: You do not want to be more specific than that, I suspect?

Mr Jones: Not if you are asking me which funds we have the greater concerns about.

Senator CORMANN: So what do you do when you have concerns? What happens as a consequence?

Mr Jones: If we had concerns about the inadequacy of the conflict of interest policy, we would talk to the trustees about improving the policy. If we had concerns about the implementation of the policy, that may affect our stance in terms of the way in which we do further investigation of the fund. It may in the worst case scenario lead us to looking at the fitness and propriety of individual trustee directors and so on. So there would be an escalation process, according to the nature of the issue.

Senator CORMANN: If you have a super fund trustee, one that sits as a trustee on a super fund and, as well, on the board of two companies which provide the fund with financial services, that would be a significant conflict of interest, would it not?

Mr Jones: It could be a significant conflict of interest. It would depend. Merely sitting on the board may not necessarily be the conflict. It may well be that you would look at the way in which they handle that conflict. Do they have a policy whereby that particular director exempts himself or herself from particular decision-making processes and so on? With many superannuation funds, I agree with you completely that there are related party transactions. The consequence of some of those transactions are things that we would want to look at fairly carefully in any circumstances.

Senator CORMANN: You mentioned earlier that you are satisfied that they all have policies but you are not necessarily satisfied that they all adhere to them properly. Without going into specifics, how widespread are issues of concern in terms of inadequate management of conflicts of interest?

Mr Jones: It is very difficult to say in the sense that you cannot quantify. What would happen is that you would look at the particular circumstances. Sometimes you may, for example, have a large number of concerns about a particular fund. Quite often if you find that you had general governance issues with regard to a fund, those governance issues may come across a whole range of areas, including conflicts of interest, including fitness and propriety and a whole lot of other factors. So it is often very difficult to say the extent to which it would occur across the industry.

Senator CORMANN: But you would not be concerned in itself if a super fund trustee also sits on two boards of companies providing financial services as long as the conflict is appropriately managed?

Mr Jones: Well, precisely. As long as it is properly managed, and that is a fairly critical thing.

Senator CORMANN: And what does proper management involve from APRA's point of view?

Mr Jones: First of all, it is not up to APRA to determine what the conflict of interest policy is.

Senator CORMANN: Sure.

Mr Jones: In the first instance, we would ask the fund how they deal with their conflicts of interest: 'What is your conflict of interest policy? Show us the way in which you have identified the potential for conflicts of interest? What have you done in real-world circumstances when you have been faced with a conflict of interest? What have you done?'

Senator CAMERON: Mr Jones, does ASIC have the power to force amalgamations or mergers of funds?

Mr Jones: Does APRA—sorry?

Senator CAMERON: Does APRA have the power to force a merger between two superannuation funds?

Mr Jones: No.

Senator CAMERON: I did not think you had. So it in terms of a board of a superannuation fund acting in the best interests of its members. It is in the context of the membership of the existing fund and provided they are operating in a prudent manner; that is, they are operating in the best interests of their members.

Mr Jones: That would be part of it. That would certainly be part of the thing. But we would look beyond that.

Senator CAMERON: I have been involved in a number of mergers of superannuation funds. The issue is not simply about bringing the two funds together for greater economies of scale. It is not as simple as that in many mergers, is it?

Mr Jones: No. That is correct.

Senator CAMERON: The merged fund has to have a board that can operate effectively and trustees that can operate effectively and cohesively. That is part of the issue?

Mr Jones: That is correct.

Senator CAMERON: If two funds start talking about a merger, aren't there value judgments made about what is in the best interests of members of either fund?

Mr Jones: It is certainly not black and white in the sense that it is often very difficult in terms of the development of the views of both sides.

Senator CAMERON: There is a value judgment. I was involved in making value judgments as a trustee of STA in relation to mergers.

Mr Jones: Yes.

Senator CAMERON: But that is not an uncommon thing, is it?

Mr Jones: It is not.

Senator CAMERON: You make value judgments about these things. APRA cannot measure value judgments, can you?

Mr Jones: We cannot. But we like to think that they could go beyond simply a value judgment, in the sense that we would also like to be confident that there are well-recognised and identified processes that the trustees had gone through in reaching that decision. If a trustee simply said, 'Trust me; this is my value judgment', I think the answer there would be, 'No, we can't.'

Senator CAMERON: So there are procedures to go through?

Mr Jones: Yes.

Senator CAMERON: And within those procedures value judgments are made. If that judgment is, 'We don't want to merge', and that is the majority view of the trustees and the board, you cannot force a merger, can you?

Mr Jones: I think that is the case. You cannot.

Senator CAMERON: And you would not want to, would you?

Mr Jones: It is not within our power.

Senator CAMERON: That is right.

Mr Jones: And you cannot quantify every single element associated with a merger decision. But you would like to think that the trustees had done the appropriate level of analysis to reach what we can then see as being an appropriate decision.

Senator CAMERON: Say hypothetically they do not prefer these judgments?

Mr Jones: Yes.

Senator CAMERON: That is not on the basis of a deliberate position to try to destroy a merger, but where the processes of checks and balances just do not work out. That happens in companies. It can happen in superannuation funds. The judgment is, 'Well, we're not doing that.' If APRA then says, 'Well, we don't think you've gone through these processes', so what? You cannot force them to merge, can you?

Mr Jones: We cannot force them to merge, but there is another side as well. There is another proviso inside this. If we had severe concerns about the long-term viability of a fund, we would certainly be encouraging that fund to look for a merger partner.

Senator CAMERON: What if there were no viability issues?

Mr Jones: If there are no viability issues, our concern is whether if the merger goes ahead members' interests are protected. Also, if the merger does not go ahead, are members' interests still protected?

Senator CAMERON: That is right. It is only a matter of members' interests being protected. You cannot make a value judgment, as the regulating authority, that it is in the interests of one group of fund members that a merger will give them better returns or more efficiency. You cannot do that. It is not your job, is it?

Mr Jones: We cannot be confident that that will be the outcome anyway.

Senator CAMERON: That is right. It is those value judgments in all these things.

Mr Jones: Correct.

Senator CAMERON: I just do not know where this has been going. Let us come back to the issue of Vision Super and Equisuper. Because there is some union involvement, it has become an issue for the Liberal Party. It is not unusual for the Liberal Party to have a problem with union involvement in superannuation funds. Senator Cormann mentioned the *Financial Review* article of 27 May. Have you looked at that article?

Mr Jones: Yes.

Senator CAMERON: Have you come to a view that the article is accurate?

Mr Jones: The article is not totally accurate.

Senator CAMERON: True. Have you seen the response to the *Financial Review* article by Vision Super?

Mr Jones: No. I have not.

Senator CAMERON: Let me take you to it. This is a public statement that they have made on their website to their membership. It is headed: 'Response to the 27 May 2011 Financial Review article.' It says:

You may be aware that Vision Super has been in ongoing negotiations with Equisuper for some time to agree on a proposal to merge by 2013.

A front page article in today's *Financial Review* suggests that the merger with Equisuper has collapsed and that this could have serious financial ramifications for members of Vision Super, because the bulk of its assets are in a defined benefit fund that has already come under pressure as members retire.

The *Financial Review's* assessment is factually incorrect and while the merger discussions this week have identified a number of unresolved matters, Vision Super remains confident that negotiations towards agreeing on the terms of a merger will continue. Vision Super wishes to reaffirm that while

merger negotiations continue, the Fund and benefits for members and pensioners are secure and continue to be managed in a prudent manner.

Senator CORMANN: Is there a question?

Senator CAMERON: There is a question on it, but I have to get this on the record. I cannot hand it out. It continues:

In relation to the other key issues raised in the Financial Review article, it is important to understand that—

then they go to a couple of dot points—

- The assets of the Defined Benefit Plan represent a third of total assets (approximately \$1.6 billion out of over \$4.7 billion of Vision Super's total assets). They are not the bulk of our assets. Membership of the accumulation component of the Fund is growing, while membership of the Defined Benefit Plan continues to decline.
- Defined Benefit assets are already managed separately to the assets held on behalf of our accumulation members. Equisuper assets would likewise be separated from our defined benefit assets if merger occurred.

Vision Super will continue negotiations with Equisuper to realise this important opportunity to harness our collective resources and expertise to improve our industry competitiveness and expand our services and benefits to you in the most cost-effective manner.

For more information, please contact:

Rob Brooks

Chief Executive Officer

I can give you the phone number if you want to phone him. It seems to me that the beat-up has been going on here from Senator Cormann.

Senator CORMANN: Senator Cameron, unlike you, I was actually asking questions.

Senator CAMERON: This happens when a union official has been involved in a super fund. They are super funds that you guys have never wanted to have them on.

Senator CORMANN: They are refusing to go ahead with the merger in the members' interests because they cannot protect their little jobs.

Senator CAMERON: You are just an absolute disgrace, Senator Cormann.

CHAIR: We are now getting more into discussions across the table rather than asking questions. Can you conclude your questions, Senator Cameron.

Senator CAMERON: So on the basis of—

Senator Sherry: Did that all get on the *Hansard* record?

Senator CORMANN: You can send this to your preselectors, Senator Cameron, and you will get another six years in the Senate.

Senator CAMERON: I am sure you will get more money off big tobacco with your attitude this week.

CHAIR: Senator Cameron, ask your questions.

Senator CAMERON: In relation to this, does that response more accurately reflect, from your knowledge of Vision Super, the facts than the so-called facts in the *Financial Review* article?

Mr Jones: I will just go back one step as well. I was aware of that being on the website. I misunderstood your question. I thought you were asking me if had I seen that in the *Financial Review*.

Senator CAMERON: That is fine.

Mr Jones: We certainly were aware of the response on the website. Given what you have just read out, there are a large number of facts there that I would prefer not to comment on specifically. But I would say that if APRA had considerable concerns about a merger that did not go ahead, APRA would have responded in particular ways. In other words, APRA is not concerned about the integrity of funds as a consequence of a failure of a merger in particular circumstances.

Senator CAMERON: So Vision Super can stay as it is and be a prudently run fund?

Mr Jones: It can.

Senator CAMERON: So you have got no power to force a merger?

Mr Jones: We do not.

Senator CAMERON: That is fine. That will do me.

CHAIR: We will return to Senator Cormann.

Senator CORMANN: Thank you, Madam Chair. Mr Jones, you are not prepared to make a statement that you are satisfied that all of the trustees of the relevant superannuation boards involved in the issue that you have just discussed did at all times act in the best interests of members. You are not prepared to make that statement?

Mr Jones: Again, I will go back almost to answer a question in a hypothetical circumstance. It is unusual for a circumstance whereby two funds appear to be merging, APRA goes along and has a look at the appropriate processes and is confident in the processes and then at the very last minute that merger does not go ahead.

Senator CORMANN: So that is unusual?

Mr Jones: That is unusual. Does APRA do something in response? Yes, of course, APRA would do something in response.

Senator CORMANN: And this is still active essentially, from what you were saying earlier?

Mr Jones: Sorry, your question was?

Senator CORMANN: This is still active as we speak? APRA is involved in what we have just discussed? It is still active?

Mr Jones: Yes.

Senator CORMANN: I will go to the banks for a moment. Is the Moody's downgrade of major banks of concern to APRA?

Dr Laker: No. The banks have themselves acknowledged that they will still have assured access to global funding markets. They remain amongst a small group of banks still with AA ratings. Ratings are adjusted as circumstances change. We do our own rating of institutions. We do not rely on Moody's or Standard and Poor's to tell us about how our institutions are travelling. We will cross-reference it against those ratings, but we do our own separate ratings.

Senator CORMANN: Will that restructuring or that rewriting affect the availability of cost of funds for those major banks, though? Is that something that you might be concerned about or monitoring?

Dr Laker: Well, we are guided by what the banks tell us. And they have commented that they affect pricing but they will not, in their judgment, affect availability or access to funding.

Senator CORMANN: Is there anything from a regulatory perspective that could or should be done to improve the rating of Australia's ADIs?

Dr Laker: Considering our banking system weathered the global financial crisis, it is an unusual question to put to us. We think we have regulated our institutions very intensively before, during and after the crisis. The global reforms will underpin their capital and liquidity, which will give us stronger banks and stronger deposit-taking institutions more generally. We are continuing with quite intensive oversight of all of our deposit-taking institutions because while the crisis might be receding there are still a number of uncertainties ahead. The environment is one of slow credit growth and household and business caution. So it does require careful navigating. For that reason, we are as active in our oversight today as we have been over the last few years. All of that together helps to provide confidence in the strength of our financial system.

Senator CORMANN: Could you advise us on discussions regarding the need for ADIs to hold Commonwealth government securities in light of the Basel III liquidity requirements and the new liquidity facility that has been established by the RBA and APRA in order to meet those new global liquidity standards?

Dr Laker: I am happy to. I can also refer you to, I think, the previous *Hansard*, where this was discussed in the committee. We faced as Australia a unique set of circumstances in approaching liquidity buffers. The global regulatory community wants those buffers to be in assured high-quality liquid assets. Generally speaking, the highest quality are sovereign assets. There is no credit risk concern in general with higher quality assets, although you might want to get into a debate about current circumstances in some countries. But we do not in Australia have large volumes of Commonwealth government securities for the very good reason that successive governments have been fiscally very prudent. So we were not, on its face, able to meet the general framework that was being developed for the liquidity coverage ratio. But in our discussions with the Basel committee they recognised that we and a couple of other countries had unique positive circumstances. We were able to agree on a broader framework in which Australia can meet the intent and the spirit of that LCR ratio through the committed secured facility with the Reserve Bank. But before our larger ADIs access that, they will be thoroughly vetted by APRA to make sure that they are doing everything they can otherwise to meet the requirements.

Senator CORMANN: But in that context, are you able to confirm that the amount of Australian government debt on issue would not need to be increased in order to enable ADIs to meet the new Basel III liquidity requirements?

Dr Laker: It will not. There is no link between the Commonwealth government's funding needs and the LCR requirement. There will not be under any set of imaginal circumstances enough Commonwealth government debt to meet that requirement in any circumstances that we could envisage. In addition, we do not want an arrangement which locks up

Commonwealth government securities in bank balance sheets. We want that market to remain liquid by definition. So the facility with the Reserve Bank will then close that gap.

Senator CORMANN: Do you have any concerns about the issuing of covered bonds by Australian ADIs given that these will for the first time in Australia place depositors behind some other creditors—namely, covered bondholders—in their entitlement to assets of a failed ADI?

Dr Laker: We have, and I have said this to this committee, taken the view that the current Banking Act precludes covered bonds because it makes clear that depositors rank ahead of other creditors in any wind-up. But we have also said that the issue of how the interests of depositors are weighed up against the interests of investors and other parties is a matter for the parliament, not a matter for APRA. The government has made proposals to introduce covered bonds in Australia. We have been working with the Treasury and other members of the Council of Financial Regulators on the consultation paper and on the draft legislation. That is then a matter for the parliament.

Senator CORMANN: I might just leave it here. I will put the rest on notice.

Senator BUSHBY: I have questions on the covered bonds issue. The perceived advantage of covered bonds is that ADIs are able to attract investors in with sufficiently large offerings to their covered bond processes. The securities they are using are higher quality in terms of being covered. That will hopefully attract more funds at a lower cost. So more money will be available to on-loan and so on. But the argument is that that will particularly attract lower costs. Is that something that you think is likely to happen—that the ADIs using covered bonds will have a lower average cost of funds, or is that likely to flow through to the remainder of their securities?

Dr Laker: I think that issue has been discussed publicly by the Reserve Bank in its financial stability review in March. I think they set out the arguments quite clearly in an attachment there, which I encourage you to read, if you have not already.

Senator BUSHBY: I am aware of that. I am interested in APRA's views on it.

Dr Laker: In principle, we do not know, which is the short answer, how it will play out on average costs of funds. The cover pool is generally a pool of high-quality mortgages. That provides security for the lenders. Rating agencies rate that paper highly but they rate it in the most recent methodologies from the starting point of what the institution's own credit rating is. So not all institutions will be able to secure a AAA rating for a covered bond. There is still a risk that the institution can fail, but there is security if the institution were to do so. So they start with the creditworthiness of the institution. The paper itself will attract a class of investors who either choose or are mandated to invest only in AAA paper. That is where you would expect to see a lower funding cost because of the quality of the paper. On the other hand, the covered bond by its nature has subjugated the interests of depositors and other creditors to the covered bondholder. So whereas they might have been higher in the queue, they are now not as high in the queue. What we do not know yet, because these instruments have not been issued in Australia, is what premium those creditors will look for by being displaced in the queue. So it is hard to know at this point. It depends very much on how the creditors who were previously first in the queue feel about the risks that they have taken on now that they are behind covered bondholders. So you have to balance up those two different

pressures on average costs. They go different ways. It is too early to tell how that will play out.

Senator BUSHBY: Covered bonds are issued elsewhere. Are there any similar experiences we can look at to see how the market treated the introduction of covered bonds in those markets?

Dr Laker: No. In that particular article, the Reserve Bank did note that there was some repricing of subordinated debt when covered bonds became more active after the crisis. But it was hard to tell whether it was due to the change in the priority in default or whether it was due to concerns about regulatory changes sub-debt instruments. So it is very hard to disentangle the effects.

Senator BUSHBY: Is the eight per cent figure that has been nominated, a figure that has been nominated to try to achieve that balance? Is there any science behind that? If so, is the issue of trying to maintain a balance between subordinated debt and covered bonds part of that science?

Dr Laker: This is an issue for the parliament. But the reason why there is a limit in not only our case but in most other countries is that there are conflicting interests. We have said, in our input into the discussions on that, that we would be very interested in how the government was going to balance the interests of depositors with the interests of investors and other stakeholders. Is there great science in it? No. But it is not a figure that was plucked out of the air. It is a question of how other jurisdictions have handled that issue. It is a question of what capacity there is in the market to absorb certain volumes of covered bonds. This is a market that will begin slowly and will be generally limited to not a large number of issuers. That is the number that has been put out for consultation.

Senator BUSHBY: Senator Cormann asked about the issues of Commonwealth government securities and the amount required under Basel III liquidity requirements. You mentioned that the amount of Commonwealth government securities on issue is not likely to reach the amount that is needed for those requirements. What is your estimate of the value of liquidity with the ADIs that would be needed? What is the total value that would need to be covered?

Dr Laker: It is premature to give you an answer to that because that is only part of the equation. The other part of the equation is what sort of outflows the liquidity buffer needs to meet, and that is a function of the duration of the liabilities of the institution and how they are structured between deposits and short-term and long-term debt. We will be collecting information about the LCR requirement from the beginning of next year. There will be a formal global observation period in the year before 2015, when it comes into effect, to have a look at the consequences of this ratio not just in Australia but globally. We need to look at those numbers. We need to look at the risk that institutions could hoard Commonwealth government paper. Its attraction is that it is a highly liquid asset. It was a highly liquid asset all through the crisis. It would not be if, for some reason, we were requiring our institutions to hang onto it in large amounts. So we need to balance that liquidity requirement with the desire of our institutions to hold those assets, and that is something we will be talking to the industry about in the consultation process. I would not like to give you a number at this stage.

Senator BUSHBY: So you do not know where it is at, at the moment. You can tell though that, even though there is close to \$200 billion of Commonwealth government securities out there plus probably another \$60 billion in state—and the Commonwealth is going to go up to \$250 billion—that will be insufficient. You know enough to know that it is more than that but you are not prepared or not able to put a figure on it at this point.

Dr Laker: Not until we have done the hard numbers. The banks themselves and the other ADIs will go through behavioural changes in their approach to liquidity risk management and we are seeing that already. They are moving, in a quite pronounced way, away from a bias towards short-term funding towards greater use of longer term maturities, which is exactly what the LCR requirement intended to encourage and what we think is prudent liquidity risk management. That process is under way. When we put out our consultation paper and we firm-up the details that process will go further. While that is under way it is very hard to blow the whistle and stop at a point and say 'Well, if that's the maturity structure of your liabilities this is what you need for your liquidity buffer.' These are numbers that we will work with the industry to firm up.

Senator BUSHBY: You mentioned the importance of Commonwealth government securities being liquid and maintaining that. There is a need for an ongoing liquidity pool as a normal course of business, anyway, is there not, quite apart from it? Even if we are in surplus it is advisable to have some Commonwealth government securities out there.

Dr Laker: It has been the decision of successive governments that Commonwealth government securities are an important benchmark for determining long-term risk-free rates. In previous governments the decision was to ensure there was a minimum turnover in those markets.

Senator BUSHBY: When Costello was Treasurer it was around about \$60 billion.

Dr Laker: That was the sort of figure. I thought it was \$50 or \$60 billion—around that figure, as a minimum.

Senator BUSHBY: You are more likely to be right than I am.

Dr Laker: That number is not something I have been particularly close to. ADIs are not the only institutions that are attracted to hold Commonwealth government paper. International investors are, so are many superannuation funds and others. There is quite a demand for high-quality liquid assets, high-quality safe paper. We have to see what the LCR requirements are and what those impose on the market as a whole.

Senator BUSHBY: I turn to the Future of Financial Advice reforms and their potential impact on life insurance. Do you have an opinion on this?

Dr Laker: We have an expert on life insurance, but I am not sure we have an opinion on that subject.

Senator BUSHBY: In relation to the FoFA reforms, has APRA been in contact with life insurers regarding the potential impact of reduced risk coverage post the banning of life insurance commissions within superannuation funds?

Mr Laughlin: No.

Senator BUSHBY: Is that something you think could have an impact?

Mr Laughlin: Are you talking about the volume of risk business being written in the marketplace? Is that the concern?

Senator BUSHBY: If the legislation goes through, there is going to be a banning of commissions, which is going to distort, to some extent, the amount of policies that are written and the way they are written. Is that something APRA has had a look at in terms of what potential impact that will have on insurance companies?

Mr Laughlin: No, it is unlikely to have any prudential impact. It is just a volume issue.

Senator BUSHBY: Okay. My papers have got all out of order and I have lost what I was going to ask you next. While I organise myself, does anybody else have some questions?

Senator PRATT: Yes. Has current analysis determined whether non-regulated entities require regulation? I know some work was done a few years ago on unregulated mutual funds. It took me a little while to work out what they are.

Dr Laker: Discretionary mutual funds or DMFs.

Senator PRATT: Yes, that is the one. There has been some analysis of the extent to which they may require regulation. What is the current thinking on that?

Mr Laughlin: I do not think that we have done any recent analysis. We have gathered quite a bit of information and made it available to Treasury, but we have not done any analysis about undergoing further regulation.

Senator PRATT: The work I looked at was done as far back as 2007, I think.

Mr Laughlin: There is more recent analysis.

Dr Laker: We were asked to collect information on discretionary mutual funds to provide a factual basis for government to make a decision about whether or not those funds needed to be regulated and whether or not the nature of their offering was an insurance product.

Senator PRATT: Yes, that is what I was intrigued by.

Dr Laker: We have collected that information and provided it to government, but it is not our call as to whether or not the entities should be brought into our fold.

Mr Laughlin: I think the next step is that we agreed with the government and the Treasury that we would do another round of data gathering.

Senator PRATT: I appreciate it is not your call, that there needs to be analysis and then the regulations need to be put before you, but what is the current understanding of fields of investment and areas that might require regulation that have not been brought into the fold?

Dr Laker: That is difficult for us to answer. The boundaries of the regulated industries are determined by parliament and the respective industry acts. The boundaries were drawn in the context of the Wallis inquiry. Those boundaries have been, in a sense, intact from that point. There are four major industries that we regulate; the other industries we do not. There was a reason for that boundary line. If in the future government were to take the view that they wanted either to widen or to narrow the boundary, that is entirely a call for the government and the parliament of the day.

Senator PRATT: Provided the government and the parliament of the day are keeping up with the general scope of activity and the kinds of investments that people redefine and make

and the new institutional arrangements that people make. I have no reason to think they are not.

Dr Laker: There certainly is a global focus on what is called the shadow banking sector and a desire to see a light on that shadow banking sector in whatever form it might take so that it is not in the shadow and, if there were systemically important institutions in the shadow banking sector, that they be brought under some kind of supervisory reach. That is the global position.

Senator PRATT: Please describe what shadow banking is.

Dr Laker: In simple terms it is banking type activities that take place through institutions which are not prudentially regulated. It has not been a major issue in this country, but it has been in other countries.

Mr Laughlin: It is worth distinguishing, too, between prudentially regulated organisations and other regulated organisations or investments. Non-prudentially-regulated investments might be caught by ASIC, so they would be regulated in a different way.

Senator PRATT: I think we have an understanding of what a religious charitable development fund might look like, but I can understand that such a fund, depending on the ethos of the organisation, could take on some quite dynamic forms and that if it were to expand in certain ways it might at some point require closer attention and closer regulation.

Dr Laker: We have looked at that particular set of issues in the past because there was a concern that some such funds were doing quasi-banking business without an authority. We have looked very closely at and worked with various religious bodies on that issue. There is currently an exemption from the coverage of the Banking Act for those kinds of activity, provided the activities are carefully circumscribed and they are focused on the religious objectives of the fund. That issue is one that we have had quite a degree of involvement in.

Senator PRATT: Are there non-religious organisations that have access to the same kinds of arrangements? If you look at the ethical and philosophical underpinnings of such funds, although they are defined as being required to be religious institutions, as a matter of principle there is not necessarily a reason for charitable investments to be channelled in such a way.

Dr Laker: As a prudential regulator I would be very happy to avoid getting into moral judgments about particular religious institutions or charitable institutions and what their ethical and moral values are. What we are concerned about is their activities, whether those activities are banking type activities and, if they are, why they are not in some way being covered by us.

Senator PRATT: To get back to your previous point, it is up to legislators to choose how to define a religious or charitable development fund.

Mr Littrell: There is one non-religious fund that is operating under the class order exemption. Currently there are a few dozen institutions that have a Banking Act exemption to do this sort of work. Those exemptions run out in the middle of this year and we have written to them suggesting that we extend the exemption for another couple of years, during which time we will probably review the whole issue.

Senator PRATT: Of all religious charitable development funds?

Mr Littrell: Yes. Given the press of other issues in the world it is not particularly high on our priority list, but it is something that needs to be looked at at some point.

Senator PRATT: There is not any reason why organisations like that would not be able to facilitate investment through other means and would necessarily need these kinds of exemptions, is there?

Mr Littrell: The issue of investment differs. The Banking Act exemption turns on whether an institution is taking deposits and making loans. If an institution wishes to engage in investment business outside deposits, that is a matter for ASIC regulation.

Senator PRATT: What is the nature of the organisation that is not religious, in that context?

Mr Littrell: I have to confess I would take that on notice.

Senator PRATT: I would be very interested to know. I have never quite understood why, in tax or within this APRA regulation, there are distinctions between the charitable purposes of religious and other organisations.

Dr Laker: We have not wanted to impose that distinction, which is why there is a charity that approached us and sought that exemption. We granted it on the basis that we could not ourselves see a difference. We need to make a distinction between what the purpose was.

Senator PRATT: So there is not anything in the legislation itself; there is no test about the religiosity of a development fund.

Senator Sherry: I just want to say, very briefly, that charities are state regulated in this country at the moment to the extent that they are regulated. One of the reasons is that we have announced a national charities commission-type body. The other issue is tax concessions that apply to charities, and there are some at a federal level and they are significant. That is oversighted by the ATO, for obvious reasons.

Senator PRATT: That is right. But it is my understanding that there are organisations which can undertake banking-type activities without being regulated by APRA, because they are exempt under the religious charitable development criteria.

Dr Laker: Religious or charitable, I think, would be the way I would describe it.

Senator PRATT: Good, thank you. That clarifies it for me.

Senator CAMERON: Mr Jones, are you aware of the SuperRatings awards?

Mr Jones: I have seen them, yes.

Senator CAMERON: I want to come back to Vision Super, who have been under some spotlight here tonight. They won the Rising Star award in 2006. They have won the SuperRatings platinum award every year since 2006. The platinum award means they are in the top 15 per cent of super funds. In 2009 they were the Fund of the Year. Fund of the Year says they provided the 'highest value for money to members in Australia.' It says:

Funds are assessed on over 400 criteria including fees; investments; insurance; service delivery; member education; financial planning facilities; employer support; and Fund Governance.

So they were the best fund in the country in 2009. They won the 5-Year Platinum Performance award in 2010, were a Best New Innovation finalist in 2010-11 and won

SuperRatings platinum again in 2011. Is there any evidence that this fund might not be acting in the best interest of its members?

Mr Jones: I do not know, and all that I can say is in response to the previous thing. In circumstances where you have what appears to be a highly publicised merger that falls apart, would APRA have a look at that? Yes. Does APRA have a judgment at this stage? No.

Senator CAMERON: Are you saying it is falling apart? That is not what the funds are saying?

Mr Jones: I said that the merger had fallen apart. I did not say the fund had fallen apart.

Senator CAMERON: The fund is not saying that. That is not what the fund is saying. I went through that and will not go through it again. The fund did not say the merger had fallen apart. So you are investigating the falling apart of the merger when the funds are saying the merger has not fallen apart.

Mr Jones: When we see information that suggests that an activity that was going in a particular direction suddenly ceases to go in that direction, do we have a look at it? The answer is yes.

Senator CAMERON: So have you spoken to Vision Super, Equisuper, on this issue?

Mr Jones: Once again, we would prefer not to talk about who we have spoken to.

Senator CAMERON: I know you would prefer not to, but I am interested in whether you have.

Mr Jones: The answer then is: of course we would have.

Senator CAMERON: I suppose then you have got the information that is up on the website about them continuing to operate in the best interests of their members.

Mr Jones: Yes.

Senator CAMERON: Thank you.

Senator BUSHBY: One of the findings of the banking review committee was that there would be some advantage in having a whole-of-financial system Wallis-type review. Is that something that APRA would have a view on at all?

Dr Laker: That is a recommendation that you put to the government. We will defer to the government's decision on whether it wants to conduct a review or not.

Senator BUSHBY: If the government decided to hold such a review, do you see that there could be any negative or positive consequences that could arise out of such a review?

Dr Laker: If the government wished to conduct a review, we would cooperate with it fully and provide whatever input was required on a particular issue. As I said, we are extremely busy at the moment with a range of other pressing matters and they will get immediate priority. We have a Basel reform program, a Stronger Super reform program, and reforms in general and life insurance, so we are very heavily booked at the moment. But, if the government wished to have an inquiry, of course we would contribute to it.

Senator BUSHBY: I am conscious of the time and I am just trying to mop up a few bits and pieces, so I am going to jump around a little bit. Does APRA agree with the Cooper review findings that super funds should publish both gross and net returns for each of their investment options based on a common reporting standard?

Mr Jones: We are still looking at the appropriate reporting standard. There is a consultation process that has gone on post Cooper, conducted by Paul Costello, which has met over the past few months. Our general view is, yes, we would support that sort of approach. In recognition of some of the comments that have been made in the past about the types of statistics that we publish, we are obviously very eager to publish a wider range of statistics. That is something that we will be doing post 2012.

Senator BUSHBY: I think the discussions we have had in the past suggest that you need then to get a few years under your belt to be able to make sense of it.

Mr Jones: Correct. We tend to focus on the longer term performance rather than the short term—the best-performing funds over the past three months or whatever.

Senator BUSHBY: So, acknowledging that you have not yet finalised what the common reporting standard might be, what sorts of options are you examining?

Mr Jones: Our preference has always been to go down to the investment option level and publish those statistics. That would have been our preference five years ago, and it is still our preference. I do not know that we would do every single option, because it may well be that it imposes too great a burden on the funds, but I imagine we would do the top X number of options, which would cover the majority of funds under management and those sorts of things. I hope that we will be able to start the collection in 2012.

Senator BUSHBY: When would you start reporting it? Would you not report at all until you actually had a few years under your belt or would you report ahead with some qualifications?

Mr Jones: It is something that we will have to give some thought to. We might publish after the first year but have it heavily qualified. I think there will be a lot of interest, but we would have reservations about the quality of the information until we had a trend.

Senator BUSHBY: And the potential for people to misinterpret it.

Mr Jones: Yes. I think that is a possibility.

Mr Chapman: Just on that one, though, I think the recommendation you read out was about funds publishing too. As well as doing the consultation process, we are also talking to ASIC about this, because we want there to be alignment between what ASIC requires funds to publish and what APRA collects and publishes in an aggregate sense as well.

Senator BUSHBY: Theoretically, I presume that the funds would publish a lot of this now if they were so minded or so required.

Mr Jones: A lot of funds do not, at this stage.

Senator BUSHBY: They would not have the ability to report how their investment options are performing?

Mr Jones: Some of them say they are capable of doing it now, but I do not know that there is universal agreement that everyone has that capability.

Senator BUSHBY: You are talking about capability, not willingness. You are saying that you do not know that all super funds would have the capability to identify the performance of an investment.

Mr Jones: It would be linked to the way in which ASIC requires disclosure and the way in which APRA collects the information. That is probably why I cannot say with absolute confidence that everybody would have the capability to match, depending upon the nature of their systems and the way in which they currently capture the data.

Senator BUSHBY: Is it important for consistency in how you are doing it?

Mr Jones: For comparability, absolutely.

Mr Chapman: They certainly all have the capacity to publish something. Whether they would use a comparable basis on both net and gross is the point in question.

Senator BUSHBY: Potentially it could make things worse if there is no consistency.

Mr Jones: It is possible.

Senator BUSHBY: Changing the subject slightly, has APRA looked at the differences between the definition of asset classes that super funds and ratings agencies use, particularly balanced and growth?

Mr Jones: APRA, with ASIC and the industry, is currently working on trying to get an agreed set of risk descriptors, not an agreed description of the language in terms of what 'balance' means. As long as 18 months ago we attempted to get some consensus across industry on language and it was recognised fairly early on that it was probably not possible to get consensus on language, but it may be possible to get consensus on, notionally, what you would describe as risk buckets, whereby everyone would agree that this type of option involves this degree of risk—the risk of a loss in one in x number of years and so on. That is something that we are still working on with industry. We believe we have gone a fair way with that.

Senator BUSHBY: Have you effectively reached a compromise whereby you think you can get some agreement—but not to the extent you were originally trying—that will assist in resolving the issue to a sufficient degree to allow comparability?

Mr Jones: Yes, that is what we hope. We took the view that it was probably unlikely that we would get that comparability by the use of words like 'balanced' and so on, given the way in which the words have been used. So, with the agreement of the industry associations, APRA and ASIC, we looked at the notion of trying to do it via various risk indicators that would be readily identifiable across all investment options for all funds.

Senator BUSHBY: I asked previous witnesses about a code of ethics. I saw in a newspaper article earlier this year that you have a code of ethics or a code of conduct and it applies to the chairman and other senior members of APRA. I commend you on that. I think it is a great thing. Then I had a look at it and I saw that you have had it for quite a few years. I am interested in how that operates, whether there have been any breaches, the degree to which you have to disclose potential conflicts and so forth. I ask this in the interest of understanding the code better for perhaps looking at other areas of government as well.

Dr Laker: Are you talking about the three members or more broadly?

Senator BUSHBY: Generally the code of conduct which applies to—

Dr Laker: We have determined it for the staff, but it applies to us equally. We are subject to it.

Senator BUSHBY: I am particularly interested in how it applies to the senior people.

Dr Laker: There have been very, very few cases I can think of where there were difficulties on a conflict of interest issue. To start with, we disclose any financial interests we have to each other and we disclose those to the Treasurer under the normal arrangements for senior executives. If there were to be a conflict of interest over a particular institution, we would follow a policy of excluding that member from any discussions about that particular matter. But to be frank we have never really had to deal with conflict of interest issues. Perhaps because two of us have had a lifetime in the public sector we do not have to do worry too much about large exposures elsewhere, but we would handle this in the same way and to the high standards that we would expect of a board of the institutions we regulate. In fact, on this one we want to be purer—

Senator BUSHBY: Which I think is highly appropriate.

Dr Laker: We are purer than Caesar's wife, let me tell you.

Senator BUSHBY: As I said, I commend you on the code itself and on publishing it on your website. I think that is a great initiative.

CHAIR: I thank Dr Laker and other APRA officers. The committee is adjourned until 9 am tomorrow, when we have Treasury and Fiscal Group.

Committee adjourned at 23:00