

Chapter 2

Treasury portfolio

2.1 This chapter summarises certain key areas of interest raised during the committee's consideration of budget estimates for the 2019–20 financial year for the Treasury portfolio. The chapter contains an indicative, though not exhaustive, account of issues examined.

2.2 On 5 and 10 April 2019, the committee heard evidence from Senator the Hon. Mathias Cormann, Minister for Finance, Senator the Hon. Zed Seselja, Assistant Minister for Treasury and Finance, and from officers of the Department of the Treasury (Treasury) and agencies of the Treasury portfolio, including:

- Department of the Treasury—Secretary, Macroeconomic Group and Group;
- Department of the Treasury—Fiscal Group;
- Department of the Treasury—Markets Group;
- Department of the Treasury—Revenue Group;
- Australian Taxation Office;
- Australian Charities and Not-for-profits Commission;
- Inspector-General of Taxation;
- Productivity Commission; and
- Australian Securities and Investments Commission.

2.3 Senators present over the course of the two days of hearings included Senator Hume (Chair), Senator Ketter (Deputy Chair), and Senators Abetz, Brockman, Ciccone, Keneally, Lines, Ian Macdonald, McAllister, O'Neill, Patrick, Rice, Siewert, Sinodinos, Spender, Stoker, Storer, Whish-Wilson and Williams.

Macroeconomic Group and Corporate Group

Return to budget surplus

2.4 The committee discussed the forecast surplus of \$7.1 billion in the 2019–20 Budget with officials from Treasury, noting that it will be the first surplus since 2007–08. The Treasury Secretary, Mr Philip Gaetjens, noted that the surplus is forecast to increase to \$11 billion in 2021, with sustained surpluses projected into the medium term.¹ Mr Gaetjens highlighted some of the surplus' contributing factors:

The fiscal outlook continues to benefit, in particular, from commodity prices that have remained at elevated levels, coupled with continued growth in resource exports, which both support further expected improvement in company tax collections in 2018–19 and 2019–20.²

1 *Proof Estimates Hansard*, 5 April 2019, pp. 4–5.

2 *Proof Estimates Hansard*, 5 April 2019, pp. 4–5.

2.5 Mr Gaetjens commented that 'the path returning the budget to surplus has been a long one and reflects the long-lasting fiscal impacts of financial shocks and economic transitions that occur as an economy rebalances'.³

2.6 Mr Gaetjens further noted the effect that the improved fiscal outlook would have on reducing Australia's public debt levels. In particular, Mr Gaetjens highlighted the level of debt in relation to GDP over the forward estimates and medium term:

In the budget, gross debt is expected to be 27.9 per cent of GDP in 2019-20, falling to 25 per cent of GDP at the end of the forward estimates and, further, to 12.8 per cent of GDP by the end of the medium term. Net debt is also expected to decline in each year of the forward estimates and the medium term, falling from 18 per cent of GDP in 2019-20 to a projected zero per cent by 2029-30.⁴

Centre for population

2.7 The committee asked Treasury officials about the new Centre for Population announced in the Budget; due to be established in order to provide detailed analysis and advice on population issues. Mr Gaetjens explained:

I think the new centre will actually look at probably more short-term impacts and what population levels are, both domestic and from overseas migration; what the needs are; the distribution between cities and areas; the distributions between states. Again, the state impact on population at the moment is very different. In Victoria, the population growth is well over two per cent, I think. In the other states I don't think it's as strong. I think the ACT is pretty strong too.⁵

2.8 Treasury officials also noted that the other main activity of the new Centre for Population will be to help devise a population strategy for the Commonwealth government.⁶

Australian Taxation Office (ATO) and Revenue Group

Superannuation guarantee amnesty

2.9 The committee asked officers from the ATO about the superannuation guarantee (SG) amnesty. The committee noted that although the announcement to provide a 12-month amnesty for non-compliant employers had been made in the previous year's budget, no legislation had passed the Parliament in order to give effect to these changes. The committee pointed out that some media reports indicated that the ATO had been waiving Part 7 penalties for employers that had not complied with their SG obligations, despite no official amnesty being in place.⁷

3 *Proof Estimates Hansard*, 5 April 2019, p. 5.

4 *Proof Estimates Hansard*, 5 April 2019, p. 5.

5 *Proof Estimates Hansard*, 5 April 2019, p. 22.

6 *Proof Estimates Hansard*, 5 April 2019, p. 23.

7 *Proof Estimates Hansard*, 10 April 2019, p. 34.

2.10 Officers from the ATO advised the committee that the ATO had been assessing and auditing SG payments as usual. Mr James O'Halloran, Deputy Commissioner for Superannuation, explained:

The reference in that article, and some others at the time, certainly did highlight that, as is normal practice under part 7, the commissioner does have discretion to apply a remission of the so-called 200 per cent penalty in accordance with a number of features. One is, obviously, the individual circumstances, the compliance history, and also the voluntary nature—albeit required under law—in terms to bring forward and lodge, without the ATO knowing about it, the super guarantee charge form.⁸

2.11 Mr O'Halloran also noted that, despite there not being an official SG amnesty in place, approximately \$100 million has been returned to employees as a consequence of employers coming forward over the last 12 months.⁹ Mr O'Halloran elaborated:

I obviously highlight that it's a current obligation of employers to come forward when they identify or know or realise that they have a late or an overdue payment. In a sense, that momentum perhaps has picked up a little bit. But, equally, so has our audit activity to get to people, off the profile that SG has gained in the community, so that we can continue to close the tax gap but also protect employees who may not be getting paid their due and payable.¹⁰

2.12 The committee commented that the lack of any supporting legislation to give effect to the amnesty had potentially created some confusion amongst employers. Officers from the ATO advised the committee that they had been doing their best to ensure employers understood the current situation and concluded that 'the fundamental obligation for an employer to come forward to report when they're late or overdue continues to exist and always has'.¹¹

Instant asset tax write-off

2.13 The committee noted that the government has accelerated tax cuts and has included an expansion of the instant asset write-off program to \$30,000 for businesses with turnover below \$50 million rather than \$10 million in the budget. The committee asked how many businesses have previously used the \$20,000 instant asset write-off.¹²

2.14 Officers from the ATO noted that in 2016–17, there were 362,000 claimants of the instant asset write-off; and that this figure represents approximately 10 to 15 per cent of businesses entitled to claim the instant asset write-off.

8 *Proof Estimates Hansard*, 10 April 2019, p. 35.

9 *Proof Estimates Hansard*, 10 April 2019, p. 36.

10 *Proof Estimates Hansard*, 10 April 2019, p. 36.

11 *Proof Estimates Hansard*, 10 April 2019, p. 36.

12 *Proof Estimates Hansard*, 5 April 2019, p. 61.

2.15 ATO officers confirmed that under the new measure, approximately three million businesses would be entitled to claim the instant asset write-off. Officers from the ATO also noted that, in comparison to previous years, the new cap would cover an additional 22 000 businesses.¹³

Research and Development tax incentive

2.16 The committee discussed the proposed changes to the Research and Development (R&D) tax incentive, which were originally introduced in the 2018–19 Budget. The committee noted that the cost of the scheme had dropped by approximately \$400 million since 2017–18.

2.17 Officers from the ATO acknowledged that since the 2018–19 Budget, the ATO and the Department of Finance had become aware that their estimates for 2017–18 and 2016–17 were a little too high. Officers explained:

The estimate that is provided by Finance is lower. So it's \$400 million lower in the 2018–19 year. That's driven by two components. So \$200 million of that is driven by observed outcomes or the claims that are coming in through the door to the ATO for the 2018–19 year. The other half of that is due to a technical accounting treatment of this ETM [Economic Transition Method]-type table.¹⁴

2.18 The committee also noted that the changes proposed to the R&D tax incentive in the 2018–19 Budget were expected to generate a budget saving of \$2.4 billion; and that this saving would contribute to the 2019–20 Budget's forecast \$7.1 billion surplus.

2.19 As part of the committee's consideration of the Treasury Laws Amendment (Making Sure Multinationals Pay Their Fair Share of Tax in Australia) Bill 2018 (the bill), the committee received evidence from stakeholders that raised considerable concerns about the method used to calculate R&D intensity. Consequently, the committee recommended in its bill inquiry report that the proposed changes to the R&D tax incentive should not be adopted. The committee noted that because the proposed changes had not taken effect, that the associated savings had not been realised.¹⁵

2.20 ATO officers confirmed that since the committee's recommendation not to proceed with the changes to the R&D tax incentive, no actual policy change has occurred, and the savings from the R&D incentive measures are present in the Budget.¹⁶ Officers from Treasury noted that the budget documents must reflect the decisions that have been taken by government.¹⁷

13 *Proof Estimates Hansard*, 5 April 2019, p. 61.

14 *Proof Estimates Hansard*, 5 April 2019, p. 63.

15 *Proof Estimates Hansard*, 5 April 2019, pp. 67–68.

16 *Proof Estimates Hansard*, 5 April 2019, p. 67.

17 *Proof Estimates Hansard*, 5 April 2019, p. 68.

Australian Charities and Not-for-profits Commission (ACNC)

Staffing

2.21 The committee noted that a number of staff at the ACNC had recently left their positions. In particular, the committee noted the departure of Mr David Locke, Assistant Commissioner, Charities Services and of Mr Murray Baird, Assistant Commissioner, General Counsel.

2.22 Ms Catherine Willis, who appeared at estimates on behalf of ACNC Commissioner the Hon. Dr Gary Johns, confirmed that she would be acting in Mr Baird's role for a short period of three to six months. Ms Willis also noted that Mr Locke's position would not be refilled.¹⁸

2.23 Ms Jacqui Curtis, Acting Commissioner of the ATO, noted that the reason for Mr Baird's departure from the ACNC was related to a disagreement about leadership style between Dr Johns and Mr Baird:

They don't see eye-to-eye, and we wanted to resolve this at the lowest level possible to try and resolve the conflict. We agreed with Mr Baird and Dr Johns, that the best thing to do was that, while we worked through that, we would offer Mr Baird an opportunity to come back into the ATO, into a legal role, which his skill sets do suit, and that is what has actually happened.¹⁹

2.24 The committee asked Ms Willis about what the next steps would be in relation to finding a resolution to this issue. Ms Willis advised the committee that there is a 'structure that's evolving at the moment'.²⁰

Inspector-General of Taxation (IGT)

2.25 The committee discussed the IGT's recent review into the ATO's use of garnishee notices, which was released in March 2019.

2.26 The committee discussed a number of issues raised in the review with officers from the IGT. In particular, the committee discussed, the tone and nature of an email sent to ATO staff, regarding the issuing of garnishee notices; ATO's planning for garnishee notice targets; and the use of casual staff in some ATO offices.²¹

2.27 The committee also asked officers from the IGT whether Mr Richard Boyle had made a complaint about the ATO to the IGT. Mr Andrew McLoughlin, the Acting IGT made a public interest immunity claim in relation to this matter, noting:

The nature of ombudsmans' offices is that they receive complaints from people in a private capacity. They are entitled to have that completely private and confidential. The agencies aren't allowed to disclose that when people complain to us and we raise that complaint with the agency. We

18 *Proof Estimates Hansard*, 10 April 2019, p. 46.

19 *Proof Estimates Hansard*, 10 April 2019, p. 54.

20 *Proof Estimates Hansard*, 10 April 2019, p. 47.

21 *Proof Estimates Hansard*, 10 April 2019, pp. 65–66.

operate as the ombudsman's office in seeking to care for people and to make sure that they're treated appropriately and that their anonymity is preserved at all times. It's not just the taxation ombudsman. Any ombudsman's office would be forced into a similar situation to defend the individuals who come to make complaints to us. With respect to their own complaints, they are their complaints. If we were nominating whether people had actually come to us, that could have other implications in litigation or elsewhere. It also has the potential for them to have their own matters, where they may or may not understand the nature of their issues appropriately, opened out into public forum, where they could be seen to be denigrated or to have made something that may be regarded as being a spurious claim which could actually impact upon their own identity and their good right to enjoyment where people may feel that they didn't understand the tax system or didn't have an appropriate claim to make as a complaint. Not every complainant who comes to us necessarily understands the tax system, and people can say some things that other people may regard as not being very smart or not very clever. I would hate to see a situation where we were in a position where it was expected that complainants to any ombudsman's office could be disclosed, because there may be detriment to the party being disclosed at first instance, and certainly to talk about the nature of their complaint would render otiose the nature of ombudsman's processes generally.²²

2.28 The committee resolved to reconsider the public interest immunity claim made by the IGT at a future private meeting.²³

Australian Securities and Investments Commission (ASIC)

2.29 Mr James Shipton, Chair of ASIC, made an opening statement which highlighted the recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission), and noted that 'ASIC's work in maintaining the momentum for reform and improvement in the financial services sector continues'.²⁴

2.30 Mr Shipton also noted \$400 million in additional funding for ASIC, which would assist ASIC in achieving its goals including: increasing the number of cases ASIC can pursue; accelerating the speed of court-based enforcement outcomes; implementing reforms following the Royal Commission; and using the full extent of ASIC's new powers and penalties.²⁵

2.31 The committee noted some new legislation that had come into effect which would assist ASIC in its duties, in particular, the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019* and the *Treasury*

22 *Proof Estimates Hansard*, 10 April 2019, p. 68.

23 *Proof Estimates Hansard*, 10 April 2019, p. 69.

24 *Proof Estimates Hansard*, 10 April 2019, p. 73.

25 *Proof Estimates Hansard*, 10 April 2019, pp. 73–74.

Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019.

2.32 Mr Shipton noted that the powers and penalties contained in the new Acts, along with the new budget allocation, were 'very powerful' and would enable ASIC to be more effective and efficient in their regulatory output.²⁶

2.33 Mr Shipton highlighted the new penalty for the fair, honest and efficient provision of section 912A of the Corporations Act:

There was no penalty for that cornerstone provision to enable or require honest, efficient and fair conduct of financial services businesses in Australia. We now have meaningful deterrents; we now have meaningful penalties, and part of our enforcement priority moving forward will be to pursue cases of this nature.²⁷

2.34 Mr Shipton also noted that Australia's new design and distribution powers, which have existed overseas for some time, would 'allow us to more directly and more quickly intervene when we see detriment happening in the market to consumers'.²⁸

2.35 The committee asked ASIC for an update on ASIC's work in relation to the aftermath of the Royal Commission. In particular, the committee asked what progress had been made on the referrals made by the Royal Commission to ASIC for investigation of potential criminal offences.²⁹

2.36 Officers from ASIC noted that there were 13 matters referred following the Royal Commission, as well as 14 case studies identified. ASIC advised the committee that these matters are either under investigation currently or are being assessed in order to determine whether any investigation is required.³⁰

2.37 ASIC officials stated that a compulsory notice is sent to the relevant financial service provider early in the investigative process informing them of the investigation into their business and the nature of ASIC's inquiries.

2.38 In relation to other ASIC investigations stemming from the Royal Commission, officers noted that there are approximately 90 investigations underway:

Since September, that's an increase of 45 investigations and, since this time last year, it's about 129, 130 per cent increase in the number that we had on at that time, so it is a significant amount. There are currently 14 matters in litigation with six of those being civil penalty matters, two of those are criminal matters and then there are six administrative banning matters, four of which are appeals before the Administrative Appeals Tribunals or the Federal Court. We've got two other matters that we've referred off for action, one being a criminal matter and one being an administrative banning

26 *Proof Estimates Hansard*, 10 April 2019, p. 78.

27 *Proof Estimates Hansard*, 10 April 2019, p. 78.

28 *Proof Estimates Hansard*, 10 April 2019, p. 78.

29 *Proof Estimates Hansard*, 10 April 2019, p. 80.

30 *Proof Estimates Hansard*, 10 April 2019, p. 80.

matter, and then 60 matters that are under investigation and they are at different stages.³¹

2.39 The committee noted the significant public interest in these investigations and asked for a timeline on their potential completion. ASIC officials stated that 'matters of this nature have varying degrees of complexity, which sometimes makes it difficult to say we will have it done by a particular date'. Officials elaborated:

Setting targets can sometimes be frustrated by that sort of action, but we do like to prioritise matters, and we do have in place a prioritisation exercise which is aiming to get a number of matters finalised by mid-May and a further number by 30 June this year.³²

Other topics raised

2.40 The committee discussed a wide range of topics during the two days of hearings with the Treasury portfolio. The above reporting of discussions is not complete. Other topics discussed by the committee included:

- Wages growth and reduction in unemployment
- Free Trade Agreements
- GDP per capita declining
- Company tax receipts and effect on decrease of deficit
- Treasury's incoming Government briefs
- Budget Speech logistics—times to printing; distributed at beginning of lock up etc.
- Climate Solutions Package
- Housing market
- Petroleum Resource Rent Tax
- Expenditure on advertising campaigns—Better tax system
- Income tax cuts
- Cost of policy decisions taken since the Mid-Year Economic and Fiscal Outlook (MYEFO)
- Public infrastructure investment
- Extension of the Energy Assistance Payment to New Start recipients
- Defence share of total capital spending
- Public interest disclosure
- Multinational tax avoidance

31 *Proof Estimates Hansard*, 10 April 2019, p. 80.

32 *Proof Estimates Hansard*, 10 April 2019, p. 81.

- Superannuation accounts (active and inactive)
- Recommendations from the banking Royal Commission
- Foreign Investment Review Board
- Consumer data right
- ATO's management of tax cuts
- Virgin and Qantas flights
- ACNC administration and staffing
- ATO's Gosford office
- Director Identification Numbers
- ASIC's funding
- Misleading and deceptive statements to the ASX and ASIC's role in investigating these
- Helloworld matter
- Product intervention powers
- Extension of the Banking Executive Accountability Regime
- Queensland Nickel and Clive Palmer
- Open banking

