



COMMONWEALTH OF AUSTRALIA

# Proof Committee Hansard

## SENATE

ECONOMICS LEGISLATION COMMITTEE

**Estimates**

(Public)

TUESDAY, 4 JUNE 2024

CANBERRA

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## **ECONOMICS LEGISLATION COMMITTEE**

**Tuesday, 4 June 2024**

**Members in attendance:** Senators Bragg, Canavan, Cox, Hume, McDonald, McKenzie, McKim, O'Neill, Barbara Pocock, David Pocock, Rennick, Roberts, Dean Smith and Walsh

## **TREASURY PORTFOLIO**

### **In Attendance**

Senator Gallagher, Minister for Women, Minister for Finance, Minister for the Public Service

### **Australian Financial Complaints Authority**

Mr David Locke, Chief Ombudsman and Chief Executive Officer

Dr June Smith, Deputy Chief Ombudsman

Mr Justin Untersteiner, Chief Operating Officer

### **Treasury**

#### **Portfolio Agencies**

### **Australian Securities and Investments Commission**

Mr Joseph Longo, Chair

Ms Sarah Court, Deputy Chair

Ms Kate O'Rourke, Commissioner

Mr Alan Kirkland, Commissioner

Ms Simone Constant, Commissioner

Mr Greg Yanco, Chief Executive Officer

Mr Chris Savundra, Executive Director, Legal Services and General Counsel

Mr Peter Dunlop, Chief Financial Officer

### **Australian Prudential Regulation Authority**

Mr John Lonsdale, Chair

Ms Margaret Cole, Deputy Chair

Ms Therese McCarthy Hockey, Executive Board Member

Ms Suzanne Smith, Executive Board Member

Ms Carmen Beverley-Smith, Executive Director

Ms Lucinda McCann, General Counsel

### **Housing Australia**

Mr Nathan Dal Bon, Chief Executive Officer

Mr Stuart Neilson, Chief Financial Officer and Chief Operating Officer

Ms Robyn Briese, General Counsel—Government

Ms Lisa Marigliano, Major Programs Director

### **Productivity Commission**

Ms Danielle Wood, Chair

Prof Alexander Robson, Deputy Chair

Dr Lisa Studdert, Head of Office

Ms Rosalyn Bell, First Assistant Commissioner

Ms Jane Holmes, Assistant Commissioner

### **Australian Bureau of Statistics**

Dr David Gruen AO, Australian Statistician

Ms Teresa Dickinson, Deputy Australian Statistician

Mr Brenton Goldsworthy, Deputy Australian Statistician

Mr Duncan Young, General Manager, Census and Population

Ms Bindi Kindermann, General Manager, People and Place

### **Australian Competition and Consumer Commission**

Ms Gina Cass-Gottlieb, Chair

Ms Sarah Proudfoot, Acting Chief Executive Officer

Ms Tracey Walker, Acting Chief Financial Officer

Mr Tom Leuner, Executive General Manager, Mergers, Exemptions and Digital [by video link]

Mr Rami Greiss, Executive General Manager, Consumer and Fair Trading

Ms Nicole Ross, Acting Executive General Manager, Infrastructure Regulation

Ms Heidi Snell, Acting Executive General Manager National Anti-Scam Centre

Ms Kathie Standen, Executive General Manager, Consumer Data Right Division

Ms Melinda McDonald, Executive General Manager, Competition Division [by video link]

Ms Lauren White, Acting Executive General Manager -Consumer Product Safety Division [by video link]

Mr Richard Home, Executive General Manager, Digital Transformation and Chief Risk Officer [by video link]

#### **Australian Reinsurance Pool Corporation**

Dr Christopher Wallace, Chief Executive

Mr Scott Unterrheiner, Chief Financial Officer

Ms Samantha Lawrence, Chief Governance Officer

#### **Australian Office of Financial Management**

Ms Anna Hughes, Chief Executive Officer

Mr Matthew Wheadon, Head of Funding, Strategy, and Research

Mr Brad Parry, Head of Sustainable Finance

Mr Michael Bath, Head of Structured Finance and Strategy

Ms Erin Martin, Chief Risk and Assurance Officer

#### **Commonwealth Grants Commission**

Mr Jonathan Rollings, Secretary

Ms Rose Verspaandonk, Assistant Secretary

#### **National Competition Council**

Ms Julie-Anne Schafer, President [by video link]

Mr Luke McMahon, Executive Director [by video link]

#### **Australian Small Business and Family Enterprise Ombudsman**

The Hon. Bruce Billson

Dr Craig Latham, Executive Director

Dr Matt Steen, Executive Director

Ms Katrina Collins, Acting Director, Information and Assistance Team

#### **Committee met at 09:01**

**CHAIR (Senator Walsh):** I declare open this hearing of the Senate Economics Legislation Committee into the 2024-25 budget estimates. I begin by acknowledging the traditional custodians of the land on which we meet today and paying my respect to their elders past and present. I extend that respect to Aboriginal and Torres Strait Islander peoples here today.

The committee is due to report to the Senate on Tuesday 2 July 2024, and it has fixed Friday 26 July 2024 as the date for the return of answers to questions taken on notice. The committee's proceedings today will begin with the Australian Financial Complaints Authority. Under standing order 26, the committee must take all evidence in public session. This includes answers to questions on notice. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence.

The Senate has endorsed the following test of relevance of questions at estimates hearings: any questions going to the operations or financial positions of the departments and agencies which are seeking funds in estimates are relevant questions for the purposes of estimates hearings. I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise.

The Senate has resolved also that an officer of a department of the Commonwealth shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Witnesses are reminded of the Senate order specifying the process by which a claim of public interest immunity should be raised. I incorporate the public interest immunity statement 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).

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

*(13 May 2009 J.1941)*

(Extract, Senate Standing Orders)

**CHAIR:** I remind all senators that, as we continue our work implementing the *Set the standard* report, as chair I will ensure that proceedings are conducted in an orderly, respectful and courteous way. The committee has agreed to authorise all media outlets to record the proceedings of the public hearing, subject to the broadcasting resolutions and the following conditions: media entry is subject to not exceeding the capacity of the room and social distancing being observed; the committee or a witness may object to being recorded at any time and the committee may require that recording cease at any time; recording must not occur from behind the committee or between the committee and witnesses and must not otherwise interfere in the proceedings; computer screens and

documents belonging to senators, members and witnesses must not be recorded; and flashes must not be used. The directions of the committee secretariat must be followed at all times.

Before I welcome our witnesses from AFCA, I'll just remind participating senators that the economics committee has agreed to modified hours. There's a hard marker of 10 pm tonight and modified breaks.

### **Australian Financial Complaints Authority**

[09:04]

**CHAIR:** Mr Locke and team, welcome. It's good to see you this morning. Do you have an opening statement that you'd like to give?

**Mr Locke:** Thank you, Chair. I'll just make a few brief introductory remarks because I'm aware your time is tight; your agenda is busy today. As the committee is aware, the Australian Financial Complaints Authority is an industry ombudsman scheme and a not-for-profit organisation that is structured in a way that is fully funded by its members. We're not a government agency and would not ordinarily appear at Senate estimates. However, we recognise we do fulfil an important public role in the financial services sector, and we believe that we must be transparent and accountable, and are therefore very happy to assist with any questions senators may have.

In the last 12 months we have received over 100,000 complaints. We are seeing high volumes in a number of particular areas that give us concern. Scams are an area of concern—obviously, I'm sure—for all senators here today as well as for the public and for AFCA, and we are seeing a doubling in scam complaints this year. Another area of concern to us is complaints involving financial difficulty. Again, we are seeing rising numbers there: a 25 per cent increase.

Disappointingly, we have spoken to a number of senators and to the parliament before with regard to general insurance matters. We are very aware there is a current inquiry looking at how the general insurers responded to the 2022 floods, but we are still seeing significant problems with general insurance. The issues with delay have not abated. In fact, over the last few months we have seen a further spike in complaints relating to delay. We are actively working with financial firms to look at ways in which we can reduce the number of complaints and ways in which matters can be resolved quickly—ideally, without having to come through to AFCA—and we would like to see further improvement from financial firms. We're happy to take any questions today.

**CHAIR:** Thank you very much, Mr Locke. I'll go to the deputy chair.

**Senator BRAGG:** Have you decided that you will expel Dixon from AFCA?

**Mr Untersteiner:** That is correct. ASIC had issued a requirement that Dixon maintain an AFCA membership until 8 April.

**Senator BRAGG:** Sorry, who said that?

**Mr Untersteiner:** ASIC.

**Senator BRAGG:** And they can tell you what to do?

**Mr Untersteiner:** They can, yes.

**Senator BRAGG:** So ASIC, the corporate cop who has failed to properly enforce the law re Dixon, tells you that you must have insolvent, in-administration Dixon as a member?

**Mr Locke:** No, they told Dixon that their membership must remain until 8 April.

**Senator BRAGG:** Why?

**Mr Locke:** So Dixon maintain their membership. That's a question you would need to put to ASIC.

**Senator BRAGG:** You have no insight into why that's the case?

**Mr Locke:** It would be to ensure that consumers who were impacted by Dixon had sufficient time to bring complaints through to AFCA, I anticipate. But, really, that is a matter you should put to ASIC. Dixon were required to maintain their membership until 8 April and then the AFCA board met—

**Mr Untersteiner:** On 23 May.

**Mr Locke:** on 23 May, which was the first board meeting after that date. They determined that we should take steps to expel Dixon from the AFCA scheme. So the administrator for Dixon was given a 21-day notice to show cause as to why they should not be expelled. That's where we're at.

**Senator BRAGG:** How long were Dixon a member of AFCA whilst in administration?

**Mr Untersteiner:** Senator, I can answer that. Dixon went into—I've got the date here—voluntary administration in January 2022.

**Senator BRAGG:** When were they a member of AFCA until?

**Mr Untersteiner:** They still remain a member. Let me clarify that. We've given them an intention to expel as of the end of this month. That decision will be taken at the board meeting on the 20th of this month, pending submissions from the administrator.

**Mr Locke:** It is a decision of the AFCA board. If the AFCA board decide that one of the triggers for expulsion applies—and one of those triggers is that the financial firm is in administration and no longer has a licence to operate—then the process we have to go through, under our rules, is to provide 21 days notice so there's due process to show cause as to why they shouldn't be expelled. Then the board will have to make a decision, based upon having considered those representations, on whether to expel. The first opportunity the board had to consider this matter was the board meeting that has been mentioned, in May. Prior to that, Dixon had been required to be a member of the AFCA scheme until 8 April.

**Senator BRAGG:** From January 2022 until July 2024, two and half years, Dixon Advisory in administration is a member of AFCA?

**Mr Locke:** Correct.

**Senator BRAGG:** Are there any other organisations in administration that have been a member of AFCA for two and a half years?

**Mr Untersteiner:** It varies. If I can give you a little bit more detail about the process of expulsion, I think it would be useful.

**Senator BRAGG:** Sorry, it's a pretty simple question: are there other organisations that have been a member of the organisation in administration for two years?

**Mr Untersteiner:** I can take that on notice.

**Senator BRAGG:** You don't know?

**Mr Untersteiner:** I suspect there have been, but I'll have to go back and confirm our records. The reason for that is that there are three different triggers for expulsion. One is once a firm enters into liquidation. The reason for that and not administration is because it is possible that a company that goes into administration comes out of administration. So we think it would be inappropriate to be expelling a member while they're in administration if they could come out. The third one, which I think is relevant here, is where they are no longer licensed to operate. That was relevant here.

**Senator BRAGG:** Sure. But this is not a new issue. You and ASIC have worked out an arrangement where Dixon will be a member of your authority until the end of this financial year. Is that right?

**Mr Untersteiner:** Can I just confirm that we haven't had an arrangement with ASIC at all. ASIC—

**Senator BRAGG:** Your evidence was that ASIC asked Dixon to remain.

**Mr Untersteiner:** Correct. That's between ASIC and Dixon.

**Senator BRAGG:** That is an arrangement.

**Mr Untersteiner:** It's not between AFCA and ASIC. It's between ASIC and Dixon.

**Senator BRAGG:** For the record: I thought your evidence was that ASIC had asked that Dixon remain a member of AFCA.

**Mr Locke:** ASIC had told Dixon that they had to remain a member of AFCA until 8 April. We were not aware of any trigger at that point. Under those circumstances, it remains a member. That is the position. Obviously as soon as that date passed, at the very first board meeting the AFCA board considered whether there was now a trigger to expel Dixon. Because Dixon no longer had a licence to operate and because they were no longer mandated by ASIC to be a member, that's why we took that decision.

**Senator BRAGG:** Yes, but the reality is that they will be a member until the end of this financial year. That's going to happen.

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

**Mr Locke:** Until 30 June.

**Senator BRAGG:** That's right. How many claims do you now have in relation to Dixon? In February, you told me that you had almost 2,000.

**Mr Untersteiner:** I can give you that information. In terms of open Dixon complaints, we have 2,510.

**Senator BRAGG:** So you've had an extra 600 since February this year when we last spoke. On 15 February 2024, you advised that AFCA had received 1,948 complaints.

**Mr Untersteiner:** That's correct, then.

**Senator BRAGG:** Now you've got 2½ thousand.

**Mr Untersteiner:** Correct.

**Senator BRAGG:** So what process is driving the solicitation or the receipt of these additional complaints?

**Mr Untersteiner:** I believe that there was really one key trigger that saw a spike of complaints come in to us this year. That was complaints lodged to us before 8 April. 8 April was the date that ASIC has required Dixon to remain a member of AFCA. That's where we saw a number of complaints come in, in the two weeks leading up to 8 April.

**Senator BRAGG:** So ASIC has been encouraging people to make complaints to AFCA—is that right?

**Mr Untersteiner:** As I understand—you'd have to talk to ASIC, but what I read was they notified previous Dixon clients of their right to lodge a complaint with AFCA if they believed that there had been some kind of fault in the advice.

**Senator BRAGG:** You're asking me to ask them. I'm asking you because you're part of this scheme. What's your knowledge of what ASIC has been doing?

**Mr Untersteiner:** My knowledge of what ASIC did was provide a notice or a letter of some sort to clients of Dixon at the time or soon after the time they entered into administration, letting them know of their right to lodge a complaint with AFCA.]

**Senator BRAGG:** How much is the total claim? If you're saying you've had 2½ thousand complaints, how much money are we talking about here?

**Mr Untersteiner:** It's important to give some context here. The claim amounts that I'm providing here are purely the claims that have been lodged by consumers. They are yet to be vetted by AFCA. Some of these will be lower. Some may not be in at all.

**Senator BRAGG:** You're doing your best, I understand.

**Mr Untersteiner:** And there's a cap in the scheme, which hasn't been taken into account. This is pre the \$150,000 cap in the CSLR. These are just requests that have come to us that have not been processed. So I'd be careful about how you use these figures. That's really my caution. We have open complaints that came in that related to the top 10—so this is claims that were lodged at the time of the introduction of the legislation—there was \$312 million worth of claims. Further claims beyond that date were \$146 million worth of claims. That's in the open category. In the closed category, we have awarded \$5.7 million in losses.

**Senator BRAGG:** So there are hundreds of millions of dollars of alleged losses.

**Mr Untersteiner:** Correct.

**Mr Locke:** Alleged.

**Senator HUME:** Can I clarify: all of those claims are about advised failures; they're not about MISs or—

**Mr Untersteiner:** Correct. Before we started working on these complaints we did consult with the sector and we did put out an approach document to really clarify how we apportion loss, just to be very clear about where it would be the managed investment scheme, for instance, versus where it would be the adviser. Our approach is consistent with a previous Federal Court decision against Dixon as well. As the moment the complaints we're seeing typically relate to the advice, conflicts of interest for instance, and appropriateness of advice or inappropriate advice. But in saying that, we've only assessed a small number out of many, and it may be that some of those complaints do relate to the managed investment scheme, in which case we would close that complaint.

**Mr Locke:** There are only about 47 matters that we've determined so far. It's a drop in the ocean. There may well be matters that are out of scope for that reason. We just don't know.

**Senator BRAGG:** We're talking about 2½ thousand people.

**Mr Locke:** Correct.

**Senator BRAGG:** You might not know the answer to this, but are many of these people former Treasury officials?

**Mr Untersteiner:** We wouldn't have visibility of that.

**Senator BRAGG:** You don't know?

**Mr Locke:** No idea.



**Senator BRAGG:** We had Treasury here last night. There's been a lot of discussion and engagement about these matters between yourselves, ASIC, the Treasury. I think there were three Treasury officials who have had to declare conflicts of interest in relation to the Dixon matter. Dixon was predominantly a Canberra business. I think that there is a sense that there were a lot of former Commonwealth public servants who may have lost a lot of money here and this Dixon advisory organisation has been treated in a very different way from many of these collapses. Do you have any insight into this at all?

**Mr Untersteiner:** No, we don't.

**Mr Locke:** We have no conflicts of interest with regard to this matter. But we have no knowledge of any of that.

**Senator BRAGG:** I'm not asking whether you have any conflict of interest; I'm asking whether you've become aware.

**Mr Locke:** No, we have not.

**Senator BRAGG:** Nothing has concerned you so far?

**Mr Locke:** We have no knowledge or awareness or concern.

**Senator BRAGG:** What determinations have you made about the Dixon model?

**Mr Untersteiner:** We've now made a number of determinations—23 determinations—relating to Dixon, and we're publishing those. You can see those if you want to look at those decisions.

**Senator BRAGG:** Were you concerned about related-party transactions?

**Mr Untersteiner:** I might pass to Dr June Smith to talk about some of the themes that we've been seeing, which are fairly consistent across those complaints.

**Dr Smith:** The primary allegations relate to best interests duty and the duties of the advisers in the provision of advice to the clients of Dixon, which include individuals and sometimes trustees of self-managed superannuation funds. At the moment, the ones that we have determined all relate to advice to invest in either of the two managed investment schemes, to whether or not that advice was appropriate to the fees that were associated with that, to whether or not there was adequate disclosure of conflict of interest in relation to the ownership of that company and the related companies and to whether or not that would have had a bearing on the informed way in which clients then made a decision about investing in those companies and schemes. They are the matters that we have turned our mind to, as we would, given these matters are paused pending our determination for an application at the CSLR. So we are only looking at whether or not there has been an issue related to the advice relationship and whether or not the adviser in all of those circumstances, together with the financial firm, have met all of their obligations.

**Senator BRAGG:** I understand that you're not a law enforcement agency, but, given that you have looked into this in detail and you've made these findings as a consumer advocate, are you disappointed that more effort hasn't been taken to enforce the law in relation to these significant breaches?

**Mr Locke:** We're not a consumer advocate either. Our role is to independently seek to resolve disputes where we can and, where they can't be resolved, to make determinations based upon our jurisdiction. That's really the function that we play here.

**Senator BRAGG:** You're not worried that the book hasn't been thrown at these people?

**Mr Locke:** We want to see tough action taken against anybody who has caused financial harm and entered into misconduct or misled people. In all of those circumstances, of course we want to see action taken. We have a high number of people who are presenting to us with losses. Of course we'd like to see strong enforcement action taken.

**Senator BRAGG:** Is this one of the biggest cases you've had to deal with in terms of volume?

**Mr Untersteiner:** Yes.

**Senator BRAGG:** Are you aware that this organisation is still continuing in some form?

**Mr Untersteiner:** Yes. We're aware of the company arrangements.

**Senator BRAGG:** Are you aware that the minuscule fine that ASIC agreed with Dixon has not been paid?

**Mr Untersteiner:** Just what I've read in the media.

**Senator BRAGG:** So you are aware of that at least.

**Mr Locke:** I'm aware of the level of the fine, because we've seen that, and I'm aware that there's media reporting that says that's not been paid.

**Senator BRAGG:** And that doesn't bother you?

**Mr Locke:** Of course it does.

**Dr Smith:** Our focus, however, is to impartially assess the allegations of these parties against the financial firm in question and to remain impartial and simply focus on the allegations before us, looking at the law in relation to the advice, obligations and any relevant codes of practice, which would include the FAAA code of practice in these circumstances as well. That is our focus, and that impartiality is of utmost importance to us.

**Senator BRAGG:** I'm pleased to hear that you're concerned about that because I think a typical person would be concerned if you weren't concerned that you've made all these findings and spent all these resources and all this time trying to resolve these issues as best you can and the people and the organisation that have done this are still effectively in business.

**Mr Untersteiner:** Our position as an organisation is that, in an ideal world, you wouldn't need us, because there aren't complaints coming to us, and that would mean less harm and better practices.

**Senator BRAGG:** In an ideal world, the law would have been enforced by an effective corporate regulator. I have one more question. Is it true, Mr Locke, that you went to a conference in Perth and dressed up as a beekeeper?

**Mr Locke:** It's certainly true that I went to a conference in Perth and I wore a beekeeper's hat and gloves. That's true. It was the Financial Counselling Australia annual conference. It was a 30-minute session, which was an education session designed to teach financial counsellors the role of IDR, the role of EDR and the role of regulators through a lighthearted re-enactment of a complaint. I was asked by the CEO of Financial Counselling to participate in that. I did. It was well received. It was lighthearted, but there was a serious message behind it. But, yes, I did wear a silly hat at a conference in Perth. There were about 900 people there and lots of photos of it, but it had serious intent.

**CHAIR:** I'll share the call now. Senator Roberts.

**Senator ROBERTS:** Thank you for appearing. No fishnet stockings like Alexander Downer?

**Mr Locke:** No fishnet stockings.

**Senator ROBERTS:** Your website invites consumers to lodge a complaint regarding the operation of a code of practice. How many such complaints have you received on the Banking Code of Practice?

**Mr Locke:** We receive complaints where a consumer has a contract with the bank and they have suffered financial loss. Then they can bring a complaint through to AFCA. So the matter is really if, for example, the bank has failed to comply with its legal obligations or they've suffered loss through some misconduct or inappropriate action on the part of the bank. We have to determine what's fair, and, in looking at that, we have to have regard to the banking code. That's how the banking code comes into effect. We had 56,000 complaints about banks and other credit lenders last year. In terms of a freestanding complaint about the banking code, though, that would normally go through to the Banking Code Compliance Committee, which is a separate body, and their role is to enforce the banking code. The banking code is relevant to us in our jurisdiction and we do look at it, but, if it's just about a financial firm breaching the banking code obligations on its own, then that would be a matter that would go through to the Banking Code Compliance Committee.

**Senator ROBERTS:** So you would only field the complaint if it was a breach of the banking code?

**Dr Smith:** We can take complaints about breaches of the banking code if the consumer can show that there has been a financial loss suffered as a result of that breach or indeed that they have suffered non-financial loss as a result of that particular breach. For example, a breach of the provision under the banking code related to guarantees and whether or not the guarantor was fully informed of their rights before they entered into that guarantee might be a matter that we would take as a complaint.

**Senator ROBERTS:** So, if someone was just concerned about a potential change or a possible change in the banking code, which is coming up, they would not be lodging a complaint with you?

**Dr Smith:** The conduct needs to have occurred. But, in terms of future issues, there has obviously been a recent review of that code and no doubt that person could also voice those concerns to the Banking Code Compliance Committee.

**Senator ROBERTS:** Have you had any communication with the Australian Banking Association regarding their review of the banking code?

**Mr Locke:** Yes. We were consulted in a fashion by the Australian Banking Association in the course of their review. They commissioned an independent review of the banking code, which was carried out, and then they

undertook an informal consultation process with a number of bodies, including us. Following that, they approached the Australian Securities and Investments Commission for approval to change the banking code. This is a code that has been approved by ASIC, so any changes need to be approved by ASIC. ASIC decided to undertake its own consultation, and we participated in that and made a submission to it as well. So we've engaged with the ABA and we've engaged with ASIC with regard to the ABA's review.

**Senator ROBERTS:** On notice, could I get a copy of your comments to the ABA and ASIC, please.

**Mr Locke:** Certainly. We'll take that on notice. We have made a public submission, and it's available on our website, but we can certainly send the link through to your office.

**Senator ROBERTS:** From the data on your website, for the year 2023, the number of complaints resolved in favour of the complainant was only 31 per cent, with 69 per cent in favour of the bank or financial institution. However, only five per cent of complaints reached the decision stage. Some were rectified early on and some were refused process. Of the complaints over banking disputes—just banking—how many complaints were received, how many were resolved in favour of the complainant and how many were withdrawn for 2023?

**Mr Locke:** I can provide all those details on notice, Senator.

**Senator ROBERTS:** That's fine.

**Mr Locke:** What I can tell you is the way our process works. A consumer will have gone through an independent dispute resolution process with the bank and then come through to AFCA. AFCA sends it back to the bank for them to have one last opportunity to resolve the matter before we otherwise start working on it. What we're finding is that about 65 per cent of the time the banks resolve the matter at that point.

**Senator ROBERTS:** Once you step in?

**Mr Locke:** Yes. Obviously we would prefer for that to have been done and for people not to have to come to AFCA, but we're finding that 65 per cent of the time there. What we then find is that we are able to resolve the majority of cases through our case-working process—through mediation, through recommendations and through negotiation. Only about five per cent of matters actually go through to decision. What you will see is that the matters that resolve when we go back to the bank or the matters that resolve through our processes—that is a situation where the consumer is effectively happy with the agreement that they've reached with the bank. So you would expect that the small number that go through to determinations are probably the ones where it's more contentious, more of a binary decision. You would expect that, where the consumer had a better claim, the banks would have resolved the cases earlier in the process. But I can set all of that out on notice so you've got that.

**Senator ROBERTS:** Could you also break down the information into value groups so that I can see the success rate at progressively higher amounts of claim. My feedback is that AFCA are great at getting back \$1,000 but not so good at getting back \$100,000. The banks' clutches are maybe a bit stronger.

**Mr Locke:** I'll certainly provide you with whatever we have in terms of the breakdown. Last year our work secured \$304 million in compensation and refunds for consumers and small-business owners, but we can give you the amounts that relate to that. I don't think it is the case that it's just lower value amounts that have been settling. We do settle a number of matters where the settlement is in the hundreds of thousands of dollars. We'll provide you with some information on that.

**Senator ROBERTS:** I'm hearing settlements are a fraction of the claim but the complainant accepts something rather than nothing. On notice, of all complaints settled on behalf of the complainant, what was the value of claim verses the settlement accepted or awarded?

**Mr Locke:** I don't think we would have that information, but I can certainly let you have the information that we have available.

**Mr Untersteiner:** The challenge with that is: if something is settled between the parties before it goes to determination, there's no obligation for them to disclose to us what the settlement was, so we typically won't have visibility. We have some visibility, and, on notice, we can share with you what we do have, but it will be a small cut of the overall data.

**Mr Locke:** There are three cohorts that I talked about. The first cohort, when we go back to the financial firm, is given an opportunity to resolve. We don't normally know what the resolution of that matter is. We just know the consumer's happy and doesn't want us to do anything further. That is what we call IDR data, internal dispute resolution data. The firms have, since January, had to report that through to ASIC, so ASIC would have some of that data. The data that we will have are those cases that don't resolve and that are then resolved through our case-working process or the matters that go through to decision, which you have mentioned. With regard to that, I can certainly provide that.

**Senator ROBERTS:** Thank you very much, if you could do that. When AFCA were set up, you were allowed to go back to 2012 to take on older cases. On notice, of all banking cases referred to you for the period 2012 to 2018 for an amount over \$200,000, how many were resolved in favour of the complainant, and what was awarded as opposed to what was claimed?

**Mr Locke:** I will take that on notice. I think, in total in that look-back jurisdiction, if I recall right we had just under 1,500 cases. A majority of those did relate to banking and credit matters. We will certainly take that on notice and provide you with what information we can.

**Senator ROBERTS:** Thank you. Finally, for that group of claims, are there any claims still outstanding from 2012 to 2018?

**Mr Locke:** No. They've all been dealt with.

**Senator ROBERTS:** Great. Thank you. The next question is about your administration. Are you still closing your office at 2 pm on Wednesdays so the staff can go home in the name of productivity?

**Mr Locke:** We don't close the office, but we do give staff—it's effectively a bit like compressed hours—three hours to spend on wellbeing or to use for their time. This was an initiative we trialled during COVID, when we were seeing a lot of burnout and stress amongst our people. We discussed it with our people. We didn't change any of our productivity measures, so the same amount of work had to be completed within the five-day week as was completed with this three-hour period. What we actually found was that productivity increased, and we've found that's continued to be the case. We actually have higher levels of productivity now than at any time in the operation of the organisation, by caseworker. We found giving people that small amount of flexibility has actually made sound business sense.

The initial intent behind it was about wellbeing, particularly when we were seeing a lot of and stress and challenges during lockdowns. Of course the majority of our staff are Melbourne, and they had prolonged lockdowns at that time. But what we've actually seen is that productivity has increased and continued to increase. So that is something that we do, but we don't close the phones. It is an optional thing. Many staff work during that period but use it just for quiet time without interruption, but some staff use it to pick up the kids or to look after older relatives or to arrange appointments. As I said, the same amount of work has to be done during the working week.

**Mr Untersteiner:** I'll just add that we did measure and we saw our attrition rates drop, we saw absenteeism drop, we saw productivity go up, we saw cost per complaint go down and we've seen employee engagement go up. Just from a general business initiative and a cost perspective, it's been cost positive.

**CHAIR:** I need to share the call, Senator Roberts. Do you have another question?

**Senator ROBERTS:** I can put two on notice, but I've got one final question. Are financial institutions afraid of AFCA, or do they see you as another pesky bureaucracy that needs to be surmounted or brushed aside?

**Mr Locke:** Well, I hope—

**Senator ROBERTS:** I know you said 65 per cent of complaints are resolved.

**Mr Locke:** I can't speak on behalf of—there are 44,000 members. About three-quarters of those are people who have ACRs, and the remainder are different firms with Australian financial services licences. I don't think there's any unified view with regard to that. What I hope, Senator, is that financial firms recognise that we play an important role. We do our utmost to act independently and fairly to determine intractable matters that otherwise people would presumably be coming to their elected representatives for or going to the media about. We seek to give people closure on matters, whether that goes in their favour or not. We act in accordance with the rules, and we apply our fairness jurisdiction in accordance with the way that we articulate there. I don't seek for anybody to be afraid of us. I hope that industry see us as playing a constructive and useful role and recognise our legitimacy, but I hope that they also recognise that we will call matters as we see them and we will treat all parties fairly and independently. That's our role as an alternative to the court system.

**Senator ROBERTS:** Could you take on notice if there's any sign, evidence or statistic that reflects that the financial institutions respect what you're doing.

**Mr Locke:** I'll take that on notice.

**Senator ROBERTS:** It's a difficult one.

**Mr Locke:** It's a difficult one for us to answer really.

**Senator ROBERTS:** It is; I accept that.

**Mr Locke:** We hope that parliamentarians, financial firms and people who act on behalf of consumers, whether that's law firms or consumer bodies, respect the role that we play and believe that we do that to our utmost ability.

**Senator ROBERTS:** Thank you.

**Senator DEAN SMITH:** Mr Locke and others, thank you for your participation. On 29 April AFCA issued a statement identifying that 5,396 matters had been drawn to your attention in 2023 with regard to financial hardship and that was a 25 per cent increase on the previous year.

**Mr Locke:** Yes.

**Senator DEAN SMITH:** Can you speak to those figures. I'm particularly interested to know what you might be able to share with us in terms of state-by-state breakdowns; whether you're hearing from a particular demographic in our community; and what might be your expectation over 2024, given that much of the commentary now is about having to adjust to higher inflation and higher interest rates over a longer period of time. I will let you begin, and then I'll follow up with some other questions.

**Mr Locke:** Yes, that's correct: we saw a 25 per cent increase, and if we look at the year to date, financial difficulty complaints are up a further 17 per cent. So we are continuing to see a rise. We can provide state-by-state data. I'll have to take that on notice, but we can provide that on a monthly basis to you.

About 51 per cent of the matters coming to us are complainants saying that they have gone to their financial firm, they've sought hardship assistance and they've had a failure to respond—the financial firm has simply not responded to that. When we unpick that, I think that does cover some cases where the financial firm has required them to provide lots of information or to provide financial statements and some of them have struggled with that and so have dropped out of the system. When we look at that failure to respond, what we see is that that is highest amongst buy-now pay-later providers and amongst the second-tier and third-tier lenders, the non-bank lenders. There's some of that with the major banks and smaller banks, but a lot of it tends to be other credit providers.

What we are seeing, though, with some of the larger financial institutions, including the major banks, is quite a lot of standardisation. Understandably, they're seeking to automate and to have standard approaches.

**Senator DEAN SMITH:** I think you referred to that as the cookie-cutter approach.

**Mr Locke:** We're seeing sometimes, say, that two months without making mortgage repayments is the standard that is being applied across the piece. Actually, the obligation on the financial institution is to consider the individual circumstances of the consumer. There is a report that ASIC put out only a couple of weeks ago—

**Senator DEAN SMITH:** In May. I'll come to that in a moment.

**Mr Locke:** which you may come to. What that showed, I think, was about 40 per cent of people who had some form of hardship provision were then defaulting straight after. That, again, probably indicates that sort of cookie-cutter type approach not really working. We are anticipating that we will continue to see increases in hardship, certainly through the next financial year. Early on, we were seeing people who were presenting with debt, which may be more to do with credit cards, personal loans or buy-now-pay-later. I think that was initially because of pressure in the rental market. Increasingly, though, we've seen home loans become a major source of hardship; that is, obviously, as the higher interest rate period has continued. People are trying to do everything they can to maintain the family home and payments on the family home, so it tends to be really further down the road that you start to see that pressure. But we're certainly seeing it now.

**Senator DEAN SMITH:** Just in regard to that point: the experience has been renters facing higher rental costs, which are pushing them into matters of financial hardship. But now you're starting to see people with home loans being pushed into financial hardship as a result of the cumulative effect of interest rate rises, and you expect that to continue and to increase over the next financial year?

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

**Senator DEAN SMITH:** You mentioned that there had been a 17 per cent increase in this calendar year. Can you just quantify that in terms of a figure?

**Mr Untersteiner:** I don't have a figure, but I think at the moment we're likely on track to receive more than 6,000 hardship complaints for the financial year. That compares to about 5,000 in previous years.

**Senator DEAN SMITH:** And the previous year was a 25 per cent increase?

**Mr Untersteiner:** Correct.

**Senator DEAN SMITH:** So based on your evidence the—

**Mr Locke:** We'll provide the figures on notice, though, so you've got them.

**Senator DEAN SMITH:** Of course, but I'm just going to a quick maths calculation. A 25 per cent increase over the last year and a 17 per cent increase in the year to date is almost a 40 per cent increase over two years.

**Mr Untersteiner:** That's correct. That comes off the back of what was actually a declining level of hardship complaints. We provided feedback that we thought the industry did a very good job of responding to hardship, particularly through the COVID period. Particularly, we saw the larger banks do a lot of tailored work with their customers to support them. But what we're seeing now, just really in the last 18 months, is a deterioration of performance. Again, as Mr Locke mentioned, we're seeing more concerns in buy-now-pay-later and second tier. But, in saying that, we're still seeing some concerns with the larger banks too.

**Senator DEAN SMITH:** Which banks do you have the most concern with?

**Mr Untersteiner:** We can provide that information for you. We publish our data on our Datacube, so we're happy to provide that notice.

**Mr Locke:** We've also seen an increase in complaints from small-business owners as well—an 18 per cent increase there—and we've seen a 19 per cent increase across banking. As I said, a lot of that is driven by scams and disputes about unauthorised transactions, but we're also seeing other factors in there which I think indicate hardship. We're seeing more people seeking to refinance and then having issues around credit listings or worse things. So there are other indicators, again, of hardship that may not present as a financial difficulty matter but which do indicate that.

**Senator DEAN SMITH:** Previously you've seen household hardship, but now you're seeing, quite clearly, small business hardship. As we know, many people borrow against their primary residence to support their small business ventures, and that's now having an adverse effect on people's ability to refinance in an environment of increasing interest rates.

**Mr Untersteiner:** That's a correct statement. I'll just add too that: unfortunately, we only have small visibility of this because there are limits to our jurisdiction. We can only deal with small business lending where the provider of the credit plays in both the small business and the consumer retail spaces. But if it's just purely business lending, we don't have jurisdiction. So I suspect that there's a lot more going on in that space but, unfortunately, we don't have jurisdiction to deal with that and so we don't have visibility of it.

**Senator DEAN SMITH:** I'll go to Mr Locke's point: on 24 May this year, ASIC released its report of last year where it examined some of the responses of lenders to hardship matters. The ASIC report found there was:

An inadequate focus on customers—

which underlies many of the poor practices. It also identified:

Lenders didn't make it easy for customers to give a hardship notice—

that seems a bit peculiar—

Assessment processes were often difficult for customers ... Lenders didn't communicate effectively with customers ...

and

Vulnerable customers often weren't well supported ...

Is that your experience, as now demonstrated in the ASIC findings?

**Mr Locke:** Absolutely. We've been talking about this for a while. When we saw the ASIC report, it very much mirrored what we had been seeing. Once ASIC had issued the report, we issued a press release basically confirming that that was what we were seeing as well. Those were the conversations we were having individually with financial firms as well. Where we see issues where we think they're not complying with their obligations or we see patterns of complaints, we don't just sit back and deal with those one by one; we engage with the financial firm to talk about what we're seeing, how they're comparing with their peers and opportunities where we think they could improve their practices. But, yes, it very much mirrored that.

**Mr Untersteiner:** One other important point I want to raise is that, in speaking to the majors, they shared with me that they are starting to see an increase in mentions of domestic violence in their interactions and believe there is a link to financial difficulty. That might not necessarily be what we're seeing, but it's certainly something that appears to be playing into the system, which is, of course, concerning.

**Dr Smith:** Senator, if it's of assistance, a classic example of that, which we've just handled through our system issues function, has been a case where a bank automated its system related to financial hardship requests. In doing so, they took out manual processes used to identify people who may have needed additional assistance, and all of the applications were in English, causing barriers for people in communities other than English speaking. We also see sometimes call centres that are equipped to provide the right information to individuals who are looking for

hardship assistance and providing the cookie-cutter approach or are simply not providing information that a person may be entitled to use hardship. They are specific examples from our work in systemic issues that may be of assistance to give colour to the comments my colleagues have made.

**Senator DEAN SMITH:** How do you characterise the responsiveness of lenders to these issues at present?

**Mr Locke:** I think it's mixed. Some of the financial firms we're talking to are—

**Senator DEAN SMITH:** Would you like to call out good behaviour?

**Mr Locke:** I don't think it would be appropriate, Senator—

**Senator DEAN SMITH:** To reward people for doing the right thing and perhaps providing a bit of competitive pressure on others?

**Mr Locke:** I've indicated that I think the major banks are playing a better role in hardship than second- and third-tier lenders. At the same time, we've identified some of the challenges around automation in this area. Last Friday, we released the data on our data queue up until 31 December, so anybody can go and look by bank or by financial institution and see what hardship matters we're getting and how those financial institutions are resolving those. I'm happy to provide a breakdown of that so that you can see the difference in performance.

**Senator DEAN SMITH:** That would be great. I have one last question. Section 72 of the National Credit Code requires variations to customer credit contracts. Do you record—this is my terminology—the number of section 72 variations that take place? This is a key element in the discussion of responsiveness, isn't it?

**Mr Locke:** It is. The matters that resolve at the first stage between the banks, say, and the individual customer at that early stage in the process, we don't have that data. But the matters that resolve through our casework processes and at the end, we do have data on the outcomes of those financial difficulty complaints. We may be able to extract some data that indicates, for example, where there has been an extension of term or where there has been some other form of variation. We'll have a look and see what we have. It will be incomplete, but it might give you some assistance.

**Senator DEAN SMITH:** Am I right to assume that the higher the number of section 72 variations, the better the responsiveness of lenders?

**Mr Locke:** It does depend on market share, as well, and on the number of matters.

**Senator DEAN SMITH:** Of course, yes, but is that the ultimate best remedy for a household in hardship?

**Mr Locke:** It really depends on the circumstance of the case. It's not always in a consumer's best interest to have a term extended or varied in some way if, ultimately, all you're doing is increasing their long-term debt that they're never going to be able to pay off. So it really does depend, I think.

**Senator DEAN SMITH:** Thank you very much.

**Senator BRAGG:** There are many different agencies that will be asked to give their evidence on the Dixon matter. It is a very serious matter, as you know. You are involved with it as a complaints-handling body; the corporate regulator has had an ongoing and, I would say, very odd engagement; and then the Commonwealth Treasury is involved with it to the extent that there has been legislation in relation to the compensation scheme of last resort. Your involvement on the Dixon matter, though, is confined to receiving the complaints and then making determinations. Is that right?

**Mr Locke:** Yes.

**Mr Untersteiner:** Correct.

**Senator BRAGG:** Is there anything else that you do here?

**Mr Locke:** No, there isn't. That would be our role.

**Senator BRAGG:** Do you have discussions with ASIC or the operator of the scheme?

**Mr Untersteiner:** We have reporting obligations both to the regulator, ASIC, and now also to the scheme. Those reporting obligations mean that we provide information about claim numbers and other data sources. That is where we have an interaction. We will meet with the CSLR—again, on an operational level—to make sure that we can share that kind of information.

**Mr Locke:** The way the CSLR is constructed is that there's an independent chair—

**Senator BRAGG:** Who's that?

**Mr Locke:** Ms Jo-Anne Bloch—who was appointed by government. There is then an actuarial member, who has to be a senior actuary who's got over 10 years experience. The third member of the CSLR board has to be a serving AFCA board member.

**Senator BRAGG:** Who's that?

**Mr Locke:** That is Ms Delia Rickard; she serves on that.

**Mr Untersteiner:** To confirm, that's a requirement of the legislation.

**Mr Locke:** We manage that conflict with regard to that.

**Dr Smith:** To confirm, the chair is Jo-Anne Bloch, the actuarial member is Kevin O'Sullivan and the AFCA board member is Ms Delia Rickard.

**Senator BRAGG:** Do you meet with the compensation scheme on a regular or irregular basis?

**Mr Locke:** It's a new organisation that's just recently been established, but we would meet on a fairly regular basis.

**Senator BRAGG:** How many meetings have you had with them about Dixon?

**Mr Untersteiner:** I don't believe we've had any meetings with the CSLR on Dixon. Under the legislation, AFCA was asked to set up the company, so AFCA set up the company and handed over to its independent board. So, really, the meetings that have been held between AFCA and the CSLR have very much been about operational matters—about flow of information and about reporting—not to talk specifically about cases. Again, I think the AFCA role within the legislation is very defined: we issue determinations, and then it's up to a consumer to lodge a claim with the CSLR.

**Senator BRAGG:** Who is your minister?

**Mr Locke:** We don't have a minister because we're not a government body. Although we were established by this parliament under the former coalition government, the way in which we were established is similar to the Telecommunications Industry Ombudsman and the state energy ombudsmen, so we're a not-for-profit company limited by guarantee. Our inaugural chair, the Hon. Helen Coonan, was appointed by the government. The subsequent chair and board members were appointed by the board.

**Senator BRAGG:** But you spend money in your organisation.

**Mr Locke:** But we don't spend government money.

**Senator BRAGG:** All the money you spend you raise from industry levies?

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

**Senator BRAGG:** This is the same as with the compensation scheme?

**Mr Untersteiner:** It's in a different way. To give you an idea of what our fee structure looks like, it is—

**Senator BRAGG:** Member based organisations.

**Mr Untersteiner:** It's member based organisations, and it's based on the usage of the system. We charge based on the number of complaints that come to us and how far they go down the process. Our model is very much a consumption based charging model.

**Senator BRAGG:** Do you meet with government ministers?

**Mr Locke:** We will meet from time to time with government ministers and we would meet with the Assistant Treasurer.

**Senator BRAGG:** Is he the main minister you would engage with?

**Mr Locke:** Certainly, but we make ourselves available to all parliamentarians.

**Senator BRAGG:** Has there been a meeting with the Assistant Treasurer about the Dixon matter?

**Mr Locke:** I'd have to take that on notice. I can't—

**Senator BRAGG:** You can't remember?

**Mr Untersteiner:** I don't believe we've ever had a meeting with the minister about Dixon per se. We've had some general meetings where we may have given a brief update on the implementation of the scheme.

**Senator BRAGG:** Has the minister's office asked you for an update on Dixon matters?

**Mr Untersteiner:** We'd have to take that on notice.

**Senator BRAGG:** You would be aware that there's a lot of angst in the financial advice sector about the nature of these levies that are going to be levied onto organisations that have nothing to do with this Dixon matter. A lot of these are very small businesses—mum-and-dad operations. They're going to have to pay for these historical claims where there has been lax law enforcement, and, by your own judgement and your own



determinations, there are significant problems here. Have you had engagement with the industry? Have financial advisers raised issues with you?

**Mr Untersteiner:** Again, AFCA has had no role at all in policymaking here. We really are just a player—

**Senator BRAGG:** I understand that.

**Mr Untersteiner:** I understand what you're saying, but it's not a decision made by AFCA. In saying that, we engage broadly across the sector and we engage broadly with consumer groups. We've had engagement from some groups who have raised the kinds of concerns that we've read about in the media in the last few days.

**Senator BRAGG:** I'm almost finished—

**Mr Locke:** We speak at events. We've been speaking at the FAAA events recently.

**CHAIR:** Sorry to cut you off, Mr Locke. We're keen to move to the next section.

**Senator BRAGG:** I'm almost finished. What I'm trying to get to is that this is a very opaque operation at large, not particularly your organisation but all the different moving parts to do with the executive government, ASIC, the compensation scheme and your operation, and, effectively, as a consequence of all these organisations working in some form, there has been a decision taken to extend the term of Dixon in your organisation which allows now for these claims to be paid by people who had nothing to do with the Dixon matter, which will be very significant to their operations. Many of these are small businesses. So the purpose of my questioning was to try to work out what's happened here. Just so I understand it, for the record, what you're saying is that ASIC has told Dixon, in administration, that it should remain a member of AFCA. Is that right?

**Mr Untersteiner:** Correct. The scheme and the design of the scheme and who pays what—

**Senator BRAGG:** The rest is up to government.

**Mr Locke:** It was passed by parliament. This is a matter for parliament with bipartisan support.

**Senator BRAGG:** No, sorry. That's not right.

**Mr Locke:** AFCA's role was to establish the CLSR.

**Senator BRAGG:** I understand that. I'm just trying to be efficient here. These are not trick questions. All I'm trying to establish is how that part happened. You've given the answer that that was an ASIC and Dixon matter.

**Mr Untersteiner:** Correct.

**Senator BRAGG:** And then the rest is up to the minister. The minister makes the determinations, going forward, about the nature of the levies to be raised. That's all I wanted to know.

**Mr Untersteiner:** A comment to you about transparency—we have been publishing information about these complaints on a regular basis for several years. We've attended these committees now for a period of time, providing information. Our role is to be as transparent as possible, and I believe we have been.

**CHAIR:** Thank you very much, Mr Locke and team. You go with our thanks. The committee will have a brief suspension while we bring ASIC to the room.

#### **Proceedings suspended from 10:04 to 10:07**

#### **Australian Securities and Investments Commission**

**CHAIR:** We welcome Senator the Hon. Katy Gallagher, Minister for Finance. Welcome back, Minister. We also welcome representatives from the Australian Securities and Investments Commission. Good morning, Chair Longo and team. Would you like to give an opening statement?

**Mr Longo:** Thank you for the opportunity to appear here today at Senate budget estimates. ASIC welcomes the additional funding it received from this year's federal budget. This funding will further enhance the delivery of our priorities to benefit consumers and investors and will allow us to support the introduction of government priorities. I will briefly run through the key areas of new funding for ASIC.

Business registers: in late May 2024, the ATO transferred to ASIC responsibility for the companies, business names and other business registers. ASIC has been provided funding in this budget to stabilise these legacy business registers. Funding has also been provided to identify and plan for uplifts to these registers, noting that many are old and it is critical that Australia has reliable, secure and trusted registry platforms to support economic activity. In that respect, ASIC's digital transformation remains of fundamental importance. Our vision at ASIC is to be a leading digitally enabled and data informed regulator by 2030. To support this vision, we have commenced a digital transformation program that received initial funding in the recent federal budget to secure ASIC's regulatory systems. We will move to implement these initiatives, including a new threat intelligence platform to improve information collection and real-time detection of internal and external cyberthreats.

To continue on our journey to make ASIC increasingly data informed and data enabled, further investment in our systems and technology is critical. To ensure smarter regulation, supervision and enforcement, we are also looking at the responsible use of emerging technologies—that is, artificial intelligence, machine learning, big data, predictive coding and cyberprotection tools. Going forward, we continue to work on the plan to uplift our data and insights capability and to use digital tools to improve our interactions with those that we regulate.

ASIC has been provided funding to contribute to the following government initiatives. Fighting scams: ASIC is a key partner in the multiregulator model being developed. Promoting financial finance: ASIC has been provided additional funding to address greenwashing, to contribute to the Council of Financial Regulators's work on sustainability related data challenges and to develop a sustainable-investment-product labelling regime. There are also modernising digital assets and payments regulation, regulating and promoting the proposed new beneficial ownership transparency requirement and supporting the continuation of the website for consumers in north Queensland to compare home insurance policies. Financial hardship: ASIC has recently released two significant pieces of work to support better outcomes for vulnerable Australian consumers who are experiencing significant financial hardship. Our major review of the practices of home lenders found that the lenders aren't doing enough to support their customers experiencing financial hardship. In the worst cases, ASIC found lenders ignored hardship notices, effectively abandoning customers who needed their support in a time of need.

I want to detail one of the most egregious case studies we came across in our investigation. A customer who held a casual job and held a home loan for over 18 years started to fall behind on their mortgage payments and contacted their lender. The lender repeatedly failed to recognise the customer's need for hardship assistance. The customer provided the first four hardship notices in four separate calls with the lender's collections team over a five-month period as they were not able to make the mortgage payments, mainly due to needing to take time off work. None of these calls resulted in a referral to the lender's hardship team. The customer continued to be bounced from call centre to a branch and back to the call centre before they were transferred through to the hardship team. Although the customer provided six hardships over six months, only the last notice was recorded as a hardship notice by the lender.

This is not good enough. Lenders need to do better to help Australians doing it tough. As part of our investigation, we have provided individual feedback to lenders who were part of this review. We have asked the lenders to prepare an action plan outlining how they intend to respond to the issues we raised. We are considering further regulatory action in relation to the issues identified as part of the review to better support consumers. Yesterday, ASIC's Moneysmart also launched a consumer awareness campaign to build awareness of financial hardship assistance and encourage Australians experiencing difficulty in making loan repayments to ask for hardship assistance from their lender.

As I've said to the committee before, barely a day goes past in which ASIC isn't in a court across the country holding individuals and entities to account. This is corporate law enforcement. To give the committee some examples of some of our significant recent enforcement outcomes, let me give you one particular case study. Recently, Daniel Ali, the former director of DanFX Trade, pleaded guilty and was sentenced to five years and three months imprisonment for misappropriating \$771,000 of investor funds. Mr Ali was a Gold Coast based unlicensed FX trader who raised \$13 million from 200 investors through an unregistered MIS. The misconduct took place in 2016 and 2017. In late 2017, ASIC took civil proceedings to obtain injunctions, appoint receivers and seek travel restraint orders. In 2018, ASIC wound up the scheme and associated companies and obtained declarations against Mr Ali personally. However, Mr Ali left Australia before the civil proceedings concluded. ASIC then worked up a criminal brief and referred the matter to the CDPP. An arrest warn was issued. We worked with the CDPP, AFP and the Attorney-General's Department to issue red notices and locate Mr Ali overseas. In November 2021, he was arrested in Poland and, in August 2022, he was extradited to Australia to face the charges. Mr Ali has now been sentenced and is serving prison time. Once released, he will be permanently banned from financial service and credit and permanently restrained from managing corporations. This long-running matter is a good case study for the perseverance required and the time it can take to secure a conviction. It is, of course, just one matter of many.

On the civil side, we have recently taken legal action against three blockchain mining companies: NGS Crypto, NGS Digital and NGS Group. ASIC's action has resulted in the court freezing the digital currency assets of the companies and appointing receivers to manage these assets. We also secured an order to prevent one of the directors from leaving Australia.

Enforcement action alone may not always be effective in responding to and deterring those who are committed to avoiding the requirements of the law. ASIC has deployed much of its enforcement toolkit, including its product intervention powers, against the unlicensed credit activity by the Cigno group, BHFS, BSF and their directors. In

these cases, those responsible for the alleged misconduct have continued to test the regulatory perimeter and continue to re-emerge with novel credit models. Most recently, the Federal Court found that Cigno and BSF Solutions engaged in credit activity without an Australian credit licence and charged consumers prohibitive fees. The court also found that Cigno Australia director Mark Swanepoel and BSF Solutions director Brenton Harrison were involved in the unlicensed activity and other credit act breaches. ASIC's persistent and coordinated regulatory and enforcement actions in these cases sends a strong signal to others in our regulated population that we will continue to take action.

Last month, we also issued a warning and significant report into questionable cold calling conduct eroding the balances of superannuation members. Our review uncovered considerable volumes of superannuation fund movement as a result of cold calling conduct with concerning behaviour. High-pressure sales tactics are being used by some cold calling operators to lure consumers into receiving inappropriate superannuation-switching advice. This comes with significant fees attached.

We also put superannuation trustees on notice that they have a way to go to protect members from unscrupulous operators amid evidence of inadequate oversight of advice fee deductions. ASIC's review found over \$990 million in advice fees charged across more than 476,000 member accounts with caps as high as five per cent of a member's balance in place, with few trustees implementing controls to protect members with low balances. This is part of our priority focus on superannuation funds and their trustees right now. Trustees must have risk based controls, systems and processes in place to ensure there is not member service delivery failure that leads to damaging erosion of members' balances or falls short of the law. In this regard, we have released phase 1 of our multiphase surveillance of the handling of death benefits, and this will continue to be a core priority for ASIC.

Before finishing up, there's a lot going on at ASIC—some changes—and I will just quickly go over those. I want to acknowledge that, since our last appearance in February 2024, there have been some leadership changes at ASIC. Today you will notice the absence of a Senate estimates regular for ASIC over the years: CEO Warren Day. Warren has been a regular at estimates for ASIC since 2010. Warren has taken on an executive role with one of our key partner agencies, the Commonwealth Director of Public Prosecutions, to lead significant change. Warren has made a great contribution to ASIC over the past 20 years and has been a loyal and trusted adviser to the current and previous commissions. I've no doubt he will leave a legacy at the CDPP as he has at ASIC. Our acting CEO is Greg Yanco, who will be familiar to you. Although it is difficult to see our colleagues move on, we have outstanding leaders throughout the agency ready to step up to drive the next phase of ASIC's transformation. We look forward to answering the committee's questions.

**CHAIR:** Thank you very much for that opening statement. We will proceed to questions. I'll go to the deputy chair.

**Senator BRAGG:** Good morning, everyone. I want to start by asking you about the ASIC culture survey. Why is staff satisfaction at ASIC below 20 per cent?

**Mr Longo:** The survey in question was implemented last October and November. It was probably the most intensive survey of its kind ASIC has done probably ever—certainly in 15 years—and the results were mixed. It certainly indicated areas for improvement, but it also indicated areas of strength in ASIC's culture. So far as areas for improvement were concerned, I think we need to work more on building constructive leadership styles and leadership development, better communication within the agency and visibility on decision-making. On the plus side, our people connect deeply with our vision to protect Australians, showing concern for people and being supportive of others, knowing and understanding the work of the agency and maintaining personal integrity.

This is an agency that's staffed by around 1,800 people. They work very hard. They continue to produce an extraordinary range of outcomes. This survey shows that we need to be doing more to support them in that important work. I think that's where we are at the moment. I can certainly talk more about what's been happening since the survey, which was over six months ago now.

**Senator BRAGG:** I'm just concerned about the culture of the organisation. If your own staff are saying that customer service focus is below 10 per cent, doesn't that mean that the people who work at ASIC have a very low opinion of the organisation overall and its internal operation?

**Mr Longo:** I think overall the results from that particular indicator—it's not an entirely aligned concept to talk about customer service within a law enforcement agency. When you stand back from these results, there's clearly some room for improvement, but there are also a lot of positives there, and I'm very optimistic that we're fostering a constructive culture and that we have a lot of staff supporting us to achieve that result.

**Senator BRAGG:** What can you do, then, in your position as chair, to give the parliament confidence that the culture is going to improve at ASIC?

**Mr Longo:** Look at our resolve. I'm working very hard with the staff and the commission and the ExCo. I do a lot of staff engagement. We're doing a lot of listening. Our new CEO, Greg Yanco, can give you a bit more detail, but essentially this is a top priority for me personally as ASIC chair. I'm very proud of the staff at ASIC. I get a lot of feedback from ASIC staff members. Frankly, some of that feedback is, 'Here's where you need to improve,' but it's very heartening that a wide range of staff communicate with me personally or through my team, and they are very committed to making ASIC a better place. They're there because they want to be there. In spite of all the pressures that this agency absorbs almost daily from different places, the staff get up every morning. They execute search warrants on the weekend. They're responding to policy papers. They're implementing new law. They're enforcing the law.

**Senator BRAGG:** I hope they're not implementing new law.

**Mr Longo:** They're enforcing the law.

**Senator BRAGG:** It's not your job to implement the law; otherwise, I'm not sure what the role of parliament is.

**Mr Longo:** Sorry, Senator; perhaps I misspoke. With all due respect, what I was trying to say was that there are any number of law reform proposals that require ASIC's attention. Indeed, the NPPs aren't a bad place to start looking as to the range and depth of matters that we are putting resources into, because it will be the law, or we're being asked to assist Treasury in policy development.

**Senator BRAGG:** So, basically, your answer is that in time you think that the numbers will improve?

**Mr Longo:** I think one needs to step back with culture. The agency is always under a lot of pressure, and the cultural issues that have been identified didn't happen overnight. Cultural issues of this nature have built up over years. What I can reassure the committee and the government and interested parties about is that I personally, the commission and the ExCo are absolutely committed to addressing areas for improvement and also, obviously, supporting the staff in getting that done, but I am personally very confident and optimistic of that improvement. Indeed, in the six or seven months since the survey was taken, I've already seen some improvement. But it's going to take time. There are no quick fixes here. I wouldn't want to suggest that either, but I'm very confident about the future of ASIC and its people.

**Senator BRAGG:** Okay. We look forward to seeing those numbers improve. In the last estimates, on 15 February you and I had a discussion about some of the internal governance issues on the commission. I don't wish to go over those again, but I did want to give you an opportunity to respond to whether or not there were any additional inquiries ASIC had done in relation to commissioners, in addition to the report done by Seyfarth Shaw.

**Mr Longo:** Any additional inquiries into a particular person?

**Senator BRAGG:** As chair, whether you commissioned any other internal inquiries or reports into these matters.

**Mr Longo:** History has taught me to be very clear about these things. So 'into these matters'—would you mind being a bit clearer? Are you talking about the former deputy chair Chester matters or other matters?

**Senator BRAGG:** As you know, there were significant taxpayer funds expended to conduct inquiries into governance matters on the commission. There was a Seyfarth Shaw report, which we've discussed before. I'm wondering whether you personally commissioned any additional inquiries or reports.

**Mr Longo:** In relation to former deputy chair Chester or in general?

**Senator BRAGG:** Yes, in relation to any of these matters.

**Mr Longo:** Just give me a moment, Senator. I've just consulted my general counsel and, given the breadth of that question, I'm going to take that on notice.

**Senator BRAGG:** Fair enough. I also want to ask you about this Mayfair 101 matter. Can you give an update to this committee about ASIC's engagement here, what you were trying to achieve and anything else you think that we should have on the record.

**Mr Longo:** The Mayfair matter has a long history, so I'm going to turn to the deputy chair, Sarah Court.

**Senator BRAGG:** Why don't you give us the pertinent points?

**Mr Longo:** Beg your pardon.

**Senator BRAGG:** Why don't you give us the summary of what you were seeking to achieve and where you think it is up to now.

**Ms Court:** I can take that. From mid-2019, Mayfair ran extensive marketing campaigns for its debenture products across print, radio, billboards, online, social media and the like, and through investment seminars. ASIC was concerned about representations that were being made to investors. If you want, I can go into more detail, Senator, but I'll give you the high level first, and you tell me what more you need.

In March 2020, Mayfair stopped paying investors redemption requests due to liquidity issues but continued to advertise to seek new investors. ASIC took action in April 2020—so shortly thereafter commencing proceedings, in effect, to address or disrupt the misleading advertising issues and in order to protect new investors. Also, that month ASIC sought an injunction to prevent Mayfair from accepting new investments in its debenture products when it couldn't pay redemptions to existing investors. The court at that time declined to make that order but made interim injunctions restraining all advertising, promotion and marketing of the Mayfair debenture products and requiring corrective disclosure on Mayfair's website.

Perhaps, because there is a lot of detail here, I can skip forward to say that ASIC eventually received findings in the Federal Court. We commenced the civil penalty proceedings in April 2020. In March 2021, the Federal Court found, in ASIC's favour, that Mayfair had engaged in false, misleading or deceptive conduct in relation to its debenture products. Again, I can give you those details should you wish to have them. In December of that year, the Federal Court imposed \$30 million in penalties against Mayfair. That matter was appealed by Mayfair to the full Federal Court in October 2022, and the Federal Court dismissed Mayfair's appeal in October 2022. Mayfair went on to seek special leave to appeal that full court finding, and in April 2023 the High Court dismissed Mayfair's application for special leave to appeal and upheld the Federal Court's findings and the \$30 million penalty.

There are, I should say, a range of other associated legal actions that are continuing as we speak. There is a remitted matter back before the courts. There is a second lot of civil proceedings, and there have been charges laid in relation to one of the individuals associated with the Mayfair group. So it has a long history, but that's a high-level summary.

**Senator BRAGG:** I guess my main question is: has there been value destroyed that should belong to retail investors here that could have been avoided?

**Ms Court:** We took action to protect retail investors as best we could. We had to persuade the court, as I've outlined, as to the validity and basis of ASIC's concerns. The court has made clear its findings in relation to the advertising and the promotions. Indeed, it ordered an interim injunction to prevent further fundraising. Far from ASIC taking action to destroy investor assets, we took action quickly to try to ensure that further investors are not misled, given the findings of the court into purchasing or investing in that particular company.

**Senator BRAGG:** I want to ask about the Dixon matter. Did you hear the evidence this morning?

**Ms Court:** I think it's fair to say we heard most of it.

**Senator BRAGG:** What could you have done differently or better to have got a better outcome here? There are huge losses here which are now going to have to be met by other people that have nothing to do with this particular affair. Last time you were here we talked about the paltry \$7 million fine that you had agreed with Dixon, and you actually made the point to the committee that it was not going to be paid. I'm trying to be reasonable here and understand that you can't turn back time, but this could be a very bad precedent for our economy if we end up with a situation where the corporate cop doesn't do all it can to enforce the law, and then we have a compensation scheme coming in to under-girdle failed businesses funded by other parts of the ecosystem. That's my concern. I am wondering what you could have done differently or better in the case of Dixon, which, for all intents and purposes, appears to be functioning in some other guise now.

**Ms Court:** As you say, we have spoken about the Dixon matter on multiple occasions previously.

**Senator BRAGG:** Well, it's a significant case.

**Ms Court:** I accept the committee's interest in the issue. If we can step back, because you have criticism about ASIC's action in relation to Dixon—

**Senator BRAGG:** Yeah, I do.

**Ms Court:** I just want to take a step back and take the committee back to where ASIC was at the time it was investigating these issues. The compensation scheme of last resort—if I can park that separately. And do I understand the issues you are raising, Senator. ASIC investigated the provision of financial advice to a subset of Dixon clients in the period 2015 to 2019 because ASIC was concerned that advisers that were employed by Dixon were not providing financial advice that was in those clients' best interests. We focused on the entity Dixon, as opposed to investigating and taking action in relation to individual advisors—

**Senator BRAGG:** Why?

**Ms Court:** We did that because Dixon held the Australian financial services licence. Dixon has a responsibility for ensuring that those that are operating under its licence are doing so in full compliance with the corporations law.

We filed that case in September of 2020, so nearly four years ago. The court found in ASIC's favour in September 2022. And, as we've talked about before, the court imposed a civil penalty of \$7.2 million together with \$800,000 in costs. That amount that I think you, Senator, have described as paltry was a significant civil penalty at the time for this kind of conduct. Off the top of my head, I think it may have been one of the highest penalties for failures to supervise provision.

**Senator BRAGG:** It hasn't been collected.

**Ms Court:** No. This is unfortunately not unusual—

**Senator BRAGG:** Business is still ongoing in a different guise.

**CHAIR:** Senator Bragg, we'll just allow the deputy chair to answer the question.

**Ms Court:** No, I understand.

**Senator BRAGG:** Sure. Go ahead.

**Ms Court:** Dixon itself, as I know you're aware—and I heard AFCA give evidence earlier—went into voluntary administration in January 2022. ASIC suspended Dixon's AFSL licence a few months thereafter. It's not surprising in that circumstance that Dixon, being in administration, has not paid the pecuniary penalty that the court imposed. In relation to Evans and Partners, which was the holding company, if you like, of Dixon, ASIC did consider whether or not it could take action in relation to Evans and Partners. Unfortunately, though, the way that our laws work is that we have to deal with the company or the entity that is actually engaged in the conduct, and there was no evidence that we could ascertain that Evans and Partners was involved in the conduct that was done by Dixon and its advisers. We did also investigate the various directors of Evans and Partners, Dixon and a range of other entities. We have taken subsequent action, as I have advised the committee previously, in relation to one of those directors that we considered did have some culpability for the circumstances that Dixon found itself in, so that matter is continuing before the court. So, far from not taking action in relation to Dixon, I would suggest that we have taken considerable action, including two separate sets of civil penalty proceedings, one of which remains before the court.

**Senator BRAGG:** What about on directors' duties?

**Ms Court:** Yes. In relation to directors' duties, the second civil matter is against an individual, alleging a breach of his director's duties.

**Senator BRAGG:** Was there nothing else that you could do?

**Ms Court:** That was our conclusion. We have investigated this matter, those individuals involved and the circumstances intensively and exhaustively. We are very aware of the public interest in the Dixon matter. But that is where we have ended up: two sets of civil proceedings, one finding in ASIC's favour and one matter in relation to directors' duties before the court as we speak.

**Senator BRAGG:** So is your argument here that you couldn't take action against the authorised reps?

**Ms Court:** My argument, to the extent I have one, is that at the time that the—

**Senator BRAGG:** You are making an argument. You're arguing why you've taken a particular course of action.

**Ms Court:** I'm explaining the decision-making process that ASIC went through at the time that proceedings were filed against Dixon, in September 2020. Dixon was the holder of the AFSL, and it was appropriate to take action against that entity.

**Senator BRAGG:** Let me just play that out for you. If I set up a financial planning business, get a licence from you and employ Senator Smith as my authorised rep—he'd probably be quite a good financial adviser, actually—and he went and broke the best financial interest duty by putting all my money into his family trust, like the Dixon people did, you wouldn't look at him as a person who has breached the best financial interest duty. You would only look at me.

**Ms Court:** It would very much depend on the circumstances. Sometimes we take action against financial advisers individually; sometimes we take action in relation to the holders of the licence. It's very much a case-by-case assessment as to who should be the proper respondent in this circumstance.

**Senator BRAGG:** Why wouldn't you do both?

**Ms Court:** I wasn't at ASIC in 2020. I can go back and take that on notice. Again, I know we've had these conversations before. We—

**Senator BRAGG:** These are matters of ongoing public interest. This potentially sets a very grave precedent which transcends politics or other particular office holders that were there at the time, because, if this is the system that we have, where we now have a scheme that can come in and repay people, then we're potentially in a very risky position. It potentially incentivises ASIC not to do everything they can do, because they know that consumers will be bailed out by this scheme. This is why I'm trying to understand exactly what happened here. The person in the street would assume that, if you have a best interest duty, or a fiduciary-style duty, that applies to a financial adviser—it doesn't matter who they work for—and they've done the wrong thing by putting someone into a whole lot of related party transactions which were not in their best interests, the corporate regulator would take action against that individual and wouldn't just leave them to go on to a new business.

**Ms Court:** There are a few things in that. If you step back, we do have to distinguish ASIC's enforcement action in relation to Dixon in 2020 and in the period subsequent to that from what you are talking about, which is the impact of the Compensation Scheme of Last Resort. From where we sit at ASIC, we reject any suggestion that ASIC will not continue to enforce the law in the way that we do because of the impact, or otherwise, of the CSLR. That is a completely separate issue. If the issue is about how people get their money back in a circumstance where they have received faulty financial advice, whether or not ASIC takes action against an individual adviser or a corporate entity that is the holder of the AFSL, unfortunately the outcome is likely to be the same. If the company goes into voluntary administration, there are simply not the money—and we see this not just in the advice area but across the field on a regular basis.

**Senator BRAGG:** Who made the decision? Were you there at the time, Chair?

**Ms Court:** No. I don't want to speak for Mr Longo. Mr Longo and I—in fact, none of the commissioners on the commission were present in September.

**Senator BRAGG:** How does it work at ASIC? Who makes a decision—in this case—to not go after the financial planners that did the dodgy, and to pursue just the AFSL holder, who are likely to go into administration?

**Ms Court:** If it were today, the enforcement committee of the commission would be making the decision based on recommendations from our investigation teams and based on legal advice that we receive prior to commencing proceedings. We seek legal advice to assist us to scope matters to work out what the appropriate best contraventions are and to assist us in who we take matters up with.

**Senator BRAGG:** Which commissioner signed off on this?

**Ms Court:** As I said, that is how the system works today. Back in 2020 I wasn't at ASIC. I assume that the then enforcement committee signed off on it, but I could take that on notice for you.

**Senator BRAGG:** Does anyone else at the table know? Does someone else know which commissioner signed off on the Dixon matter?

**Ms Court:** It was some four years ago, I'm afraid. We can find out for you.

**Senator BRAGG:** You must know.

**Ms Court:** No, I don't know.

**CHAIR:** It's been taken on notice, Senator Bragg.

**Senator BRAGG:** Does anyone else know? No-one can remember which commissioner decided what to do with the Dixon arrangement.

**Senator Gallagher:** I think it's reasonable that that be taken on notice, in light of the evidence about the commissioners that are currently here versus decisions that were made in the past.

**CHAIR:** I'll share the call.

**Senator BRAGG:** Well, you're the chair. You can share the call.

**CHAIR:** Indeed. Are you ready to go, Senator Pocock?

**Senator BARBARA POCOCK:** Thanks for being here. I've got a few lines of questioning. I want to start with the audit quality. I want to check whether there's any recent data on the audit outcomes. I'm looking at the 2018-19 data of 26 per cent of audits showing that they didn't meet the standard required, which had grown to 36 per cent in 2022. Are there any data on the proportion of the 2022-23 audits that were problematic?

**Mr Longo:** I'll ask Commissioner O'Rourke to take that question.

**Ms O'Rourke:** I'd like to draw your attention, Senator, to a report that we published in October 2023, report No. 774, in which we do outline our findings, but that was for 2022-23. Is that more recent than the information that you have?

**Senator BARBARA POCKOCK:** I have figures in front of me—correct me if they're wrong—that show that 36 per cent of audits were problematic in 2021-22.

**Ms O'Rourke:** This is the information. I think we've provided evidence at earlier hearings that describes that this report—our 774 report—brings together our findings both in relation to our review of financial reports and our review of audit files. That report covers both, and it's for the 2022-23 year.

**Senator BARBARA POCKOCK:** And the number—the proportion? I'm just trying to track the change over time.

**Ms O'Rourke:** I might take the proportion on notice or try to get it during the course of this hearing.

**Senator BARBARA POCKOCK:** That would be great.

**Ms O'Rourke:** Forgive me, I was going to mention that we've got another report. It's a proposed to be an annual process, so in October we'll have the information available for 2023-24.

**Senator BARBARA POCKOCK:** Mr Longo, what is ASIC's current thinking about the quality of those reports and specifically about the conflict of interest which has surfaced across a range of inquiries by the Senate that arises from allowing firms to deliver both audit and non-audit reports?

**Mr Longo:** I'll ask Commissioner O'Rourke to take that as well—if that's okay?

**Senator BARBARA POCKOCK:** Yes.

**Ms O'Rourke:** Audit quality has been and remains a really important issue for ASIC, which is why we publish reports and continue to design our work in relation to it. I think I've described to other committees the work to adjust how we identify audit files to try to increase the likelihood of finding ones for which there are concerns with the financial reports as well, so there are concrete outcomes in relation to our file review. On 15 May we published a prospective media release that describes the program of work that we are proposing to undertake for the next financial year in relation to audit, financial reporting and other related areas. I particularly draw your attention to the description of the work that we're planning to review auditors' compliance with ethical and independence standards, including with respect to conflict-of-interest management.

We've done some preliminary scoping work by looking at how firms have done self-assessment against AQSM 1. That's a standard that is issued by the AUASB that goes to governance related ethical and independence standards, and there was a self-assessment process that was completed at the end of 2023. The preliminary scoping work that we did identified grounds for us to take further steps in relation to this, and that's what's described in our media release—both those preliminary findings and the intention to do a wider piece of work in relation to the audit firms and some of those governance aspects.

That complements the work that we do in relation to individual audit files. It complements the work that we do in relation to enforcement and engagement. We've got a number of different strands of work that we do in relation to audit, but I bring that to your attention particularly because of your interest in governance and firms.

**Senator BARBARA POCKOCK:** Thank you for that. I'll go to a question I asked in February, when I asked whether PwC was hiding behind any professional legal privilege in relation to the Linklaters report. You replied to me with an answer as I recollect—I think I have it in front of me somewhere. While legal professional privilege has a fundamental role in our legal system, PwC has clearly been using privilege in ways to avoid handing over documents. That's reflected in evidence from the ATO over recent months. We know they've done it before, where they used thousands of claims of legal professional privilege to conceal internal documents from the ATO. We have on the public record now a settlement, a very large settlement, with PwC which was halved when it was finally sorted and signed on 17 March 2023. The original fine was \$1.4 million, and the settlement payment was \$642,000. This was all in relation to legal professional privilege.

As part of the response to the PwC tax leaks, Treasury and the Attorney-General's Department are currently undertaking a joint review of the use of legal professional privilege. Are you consulting with these departments on that review, and, in your view, what are some of the options for possible reform?

**Ms Court:** I think I answered some questions on legal professional privilege on the last occasion, but in relation to that consultation I think our General Counsel, Mr Savundra, might have more information for you.

**Mr Savundra:** Yes, we are being consulted by Treasury as part of their work. We have provided an initial response as part of that consultation, with further work going on within ASIC at the moment with a view to providing additional information to them as part of their policy and law reform work in this area.



**Senator BARBARA POCOCK:** So you're part of the consultation. I also asked in February about your relationship with equivalent bodies in the US and the UK and whether you'd discussed the PwC Australia and PwC global matter with your international equivalents, and you took that on notice. In your answer to question AET037, you responded:

ASIC has neither sent nor received information under any information sharing arrangement with any the FCA, the SEC or any other international regulator with which it has a relationship in connection with the PwC matter.

Your reply lists two reasons for that, the first being:

The information that it holds in relation to the conduct of Mr Collins was received on a confidential basis and cannot be shared by ASIC;

Can you expand on that and explain what lies behind that sentence?

**Ms Court:** We have information-sharing arrangements with a range of law enforcement agencies. They are usually governed by some form of memorandum of understanding between those agencies, and there are statutory secrecy and confidentiality provisions that would apply. So, in relation to that answer—and I'm speaking off the top of my head to some extent—I would anticipate that the information that we received was pursuant to one of those arrangements, and that means we are not at liberty then to share that information to other agencies—for example, to overseas agencies and the like.

**Senator BARBARA POCOCK:** Secrecy provisions, you will be aware over the last year, have been very protective and slowed the investigation of PwC. Is this provision that you are constrained by inhibiting your ability to pursue PwC internationally?

**Ms Court:** ASIC is not investigating PwC itself, as we've talked about previously. We've explored all of the various avenues within which we can take action in relation to particular individuals as we've talked about on previous occasions. I think the correct answer to your question would be no, I don't think that the particular confidentiality issue we're talking about here has inhibited ASIC because we are not investigating PwC, the partnership, for the reasons we've talked about previously.

**Senator BARBARA POCOCK:** Your previous evidence has shown—as I recollect your language, Mr Longo—that you can reach only a sliver of PwC or the big four, because they are partnerships and you can only reach to the corporate.

**Mr Longo:** That was a word I used to describe our jurisdictional scope over these conglomerates.

**Senator BARBARA POCOCK:** That raises very significant questions for regulators or the Australian community who do want to see appropriate regulation of big firms, especially big firms that audit 90 per cent of the ASX 200, as I understand. Is that figure correct for the big four and their take of auditing?

**Ms O'Rourke:** I think that's an accurate estimate.

**Senator BARBARA POCOCK:** I want to go to the second reason you gave in this reply to QON AET037. You say that 'ASIC's regulation of any individuals within PwC is limited to the extent to which they're a registered company'—as we've just discussed—and you go on to say that ASIC 'is not aware of any international regulator holding information that might be relevant to an allegation that any current or former partner of PwC Australia who holds a regulated position is engaged in conduct et cetera'—I'm summarising a little there. You're saying that ASIC is not aware. That's quite passive language: 'you're not aware'. Have you made any inquiries of international regulators and, if you haven't, why not?

**Ms Court:** We have looked at the various jurisdictional hooks that ASIC has in relation to individual partners of PwC that are based in Australia. So that's where our jurisdictional lies. We have explored in detail, and in consultation with the TPB and the ATO, all of the individuals that have been identified, referred to or named in both media reports and in our interaction with those agencies. We haven't, apart from Mr Collins, ascertained any information as a result of those extensive inquiries that would suggest that there has been conduct of individuals within Australia that ASIC can take further action in relation to. So we have not had any cause to go external to this jurisdiction to find additional information because we have no basis or grounds, as things stand based on the information that we have to date. So no, we haven't proactively gone to an overseas regulator and said, 'Can you give us information about this particular list of individuals?' because, based on our inquiries, we have no reason to suspect that there is information held by any particular other overseas regulator that would assist us in that regard.

**Senator BARBARA POCOCK:** I want to go to the way in which you as a regulator use moral suasion. The regulation textbooks talk about having a conversation quietly with a significant player and trying to influence their behaviour. I'm led to this question because of the answer I received from the ATO in relation to Mr Luke Sayers this week. Mr Sayers had a conversation with Mr Jeremy Hirschhorn, whom we didn't have the

opportunity of talking to last night, but hopefully we will in the future. And, while the ATO had previously given us some information about an example of moral suasion some years ago where Mr Hirschhorn spoke with Mr Luke Sayers and we were provided through the timeline from the ATO in August of last year just two dot points about what was talked about in that meeting, yet this week we've received a much more fulsome account of what occurred in that meeting. We knew—and the Australian public know—that PwC used confidential information about tax to assist multinational companies and monetise that relationship, but that is only one of now what we know to be seven different misdemeanours that were raised directly with Mr Luke Sayers.

My question is going to be about your use of moral persuasion, but I just want to draw your attention to the fact this very large entity, which is a major part of the audit machinery and our financial system, not only monetised confidential government information against Mr Peter Collins having signed confidentiality agreements but it did two other things that I think are of great interest and should be of interest to us as regulators. I'm reading from the response to my QON which arrived last week. It refers to PwC:

... assisting clients in the preparation of responses to Request for Information (RFI) notices for clients, where material in those responses was false or misleading to the knowledge of the PwC staff involved ...

That's a serious misdemeanour. Further:

... involvement in Foreign Investment Review Board approval processes on behalf of clients which, through omission and commission, had the potential to mislead or subvert those processes ...

That also, I would think, is a very serious misdemeanour. I was not aware—and I would say the Australian public were not aware—that PwC's misdemeanours extended well beyond the misuse of confidential information to the misuse of information on behalf of clients in relation to the Foreign Investment Review Board and requests for information by the ATO.

What we have is a meeting occurring between Mr Jeremy Hirschhorn and Mr Luke Sayers where not only were all of these matters placed before Mr Luke Sayers but he was also personally read excerpts from the emails which showed the extensive circulation of confidential information through the corridors and amongst many people within PwC. He was read the emails. Mr Longo, have you ever sat down in a moral suasion attempt to change the behaviour of someone you are regulating and read out to them details of their misdemeanours in the hopes that this would change their behaviour?

**Mr Longo:** Moral suasion is a concept of wide import, but I'll try to answer your question. I don't think I've ever read an email out loud to a particular senior executive, but let me make an attempt at answering your question. It's certainly the case that all the commissioners, me included, have regular engagement with a wide range of entities that we regulate. Good examples might be the superannuation funds, the trustees, the trustees' superannuation funds and the banks, and we publish regular regulatory guidance and information sheets. So part of our strategy is, clearly, to set a tone to make it absolutely clear what our expectations are about good behaviour and good conduct. That's certainly part of our approach. For example, the sustainable finance regime that is about to become law, assuming the parliament passes the legislation, is a huge piece of legislation—the greatest change in a generation. So we're doing a lot of work with industry and with reporters, saying what our overall approach is likely to be, and we're going to be publishing guidance.

So that's moral suasion of a kind, but, in the end, we've had conversations with some entities where we've said, 'Look, that's just not good enough,' or we haven't been happy with the cooperation in an investigation or we think the behaviour is grubby and unacceptable. In the end, in Australia, entities that don't take on that guidance, steer or nudge—I think those are words that one hears occasionally—are more and more likely to be the subject of an investigation and court based action. Every time an entity doesn't do what we would like them to do, it unfortunately isn't an opportunity for us to go off to court. It just simply doesn't work that way. The whole nature of moral suasion, after all, is to get entities to do things that they may not necessarily be legally required to do, but they simply are standards or expectations that people, like the people in this room and the general community, simply expect—that a reputable entity would want to do the right thing. So the short version of my answer is that we are constantly engaging with our regulator population, letting them know what our expectations are, but, in the end, if they don't do the right thing and it's a breach of the law, then that gives us something that we can actually work with.

**CHAIR:** Last question.

**Senator BARBARA POCKOCK:** The meetings certainly seem like very significant breaches; there were three of them. I would think it a memorable experience to have the second commissioner of the ATO read you your internal emails. I would think that would be a memorable meeting. There are seven items discussed in detail, and only now—10 months on from when we initially heard about such a meeting—we hear about new

misdeemeanours. But, further, we hear that Mr Luke Sayers, the person with whom this conversation occurred, has no memory. That has been his sustained position—he has no memory.

Now, just remember—I know you will remember, but some of us have lived this nightmare—this attempt at moral suasion happened many years ago. 'I will read you the emails, Mr Luke Sayers. I am the second commissioner of ATO.' He does that and goes through all of those misdemeanours. Mr Luke Sayers's constant response throughout this series of events has been, 'I have no memory.' How plausible do you think that position is? I ask it because it's important. Mr Luke Sayers was the CEO of PwC throughout the eight years of these events. He was paid \$30 million for those eight years of work, if I have my numbers correct—from memory. So he was a very significant player and he's a leader of one of the four major auditors across our financial system, yet he cannot remember being at this meeting, the details of the conversation or being read the emails. What is your view about the plausibility of that failure of memory?

**Mr Longo:** I'm not in a position to comment one way or the other as to who is telling the truth. But all I can say is that, based on what you've said—I understand that these events have come to light in the last few days—it's obviously a very serious situation. On the face of it, it calls for explanation—that those very strident reminders of what was said in emails appear not to have had any impact. Certainly, from my perspective, on the face of it it's a very serious situation.

**CHAIR:** Thank you.

**Senator BARBARA POCOCK:** If I can just conclude—

**CHAIR:** Briefly, Senator Pocock.

**Senator BARBARA POCOCK:** the resource implications of this are very sizeable. It's taken an enormous amount of public sector resources to pursue, and only price, so far, that PwC have paid, at least formally, is a fine—halved—in relation to their misuse of legal professional privilege and some retraining around ethics internally. We have yet to see consequences in relation to these other matters that I've talked about: the foreign investment review and the encouragement to clients to give false information. These matters still remain to be pursued. Should they be pursued, Mr Longo, so that we get more regulatory response to serious misdemeanours?

**Mr Longo:** I think we've had a lot of discussion at these hearings about what ASIC can do and can't do. On the face of it, I can understand the frustration and concern in those particular circumstances. From ASIC's perspective, we do a wide range of investigations in a wide range of circumstances. Regrettably, entities that should know better don't always cooperate; they don't always do the right thing. That is why we're in court most days of the year going after somebody or other.

Even with those entities who have—what's the phrase I'm looking for?—reputational capital, who care about their reputation, we might have, depending on the robustness of their governance arrangements, conversations about some elements of the governance structure, where things have gone wrong in the past or are going wrong now and they're just not aware. So the circumstances can be quite nuanced, but regrettably, even in those entities that you'd think would know better, things go wrong. Where we think we can take action, we do.

**CHAIR:** I'll do some 10-minute blocks to see what we can get through before the break. Senator Hume.

**Senator HUME:** Good morning, everybody. Good morning, Mr Longo. I feel this is very awkward. Every time I see Mr Longo now, it seems to be at the gym on Saturday mornings, so I apologise for the Lycra.

**Unidentified speaker:** His or yours?

**Senator HUME:** Less worthy men have seen me in far less.

**Mr Longo:** I want to reassure the committee that I will never be seen in Lycra.

**Senator HUME:** Sorry. I totally forgot myself for a moment.

**CHAIR:** That was your inside voice.

**Senator HUME:** That was! Alright; I'm going to ask a few questions about something serious now. You mentioned scams in your opening statement and how there seems to be increasing demands on ASIC to respond to some quite nefarious behaviour. I want to ask whether ASIC receives information from international partners when Australians are affected by financial scams.

**Mr Longo:** Scams are a big subject. I might ask Deputy Chair Court to have a go at that one.

**Ms Court:** Thank you for the question, Senator Hume. Scams are a big part of the work that ASIC is involved in and, of course, are an issue of relevance to many regulators and law enforcement agencies across the country. We do receive information from time to time, in the course of investigations into potential criminal misconduct,

from overseas law enforcement agencies that forms part of our investigation. I wonder, Senator, if your question might be triggered in part by some recent media reporting on this very issue—

**Senator HUME:** Yes.

**Ms Court:** which I'd be very pleased to address, if that was at the heart of your question.

**Senator HUME:** Yes, that would be terrific. Can you just let me know which part of the organisation—I've got the organisational chart in front of me—is responsible for responding to international information?

**Ms Court:** There are two different ways that we might get involved in scam related issues. We have our Enforcement and Compliance area. The extent to which we are doing an enforcement investigation in relation to a particular crime, then that will fall within the Enforcement and Compliance Division. We also have, within that division, our scams team. That team does a lot more of our work on disruption, working with the National Anti-Scam Centre, the ACCC and other regulators in relation to our investor alert list, our investment scam take-down service and the like. So we've got the enforcement side and we've got the broader scams team that does disruption and education work.

**Senator HUME:** So the broader scams team don't sit with Enforcement and Compliance. Where do they sit?

**Ms Court:** They do sit within Enforcement and Compliance but not within one of our Investigation and Enforcement Action teams. It's a separate team.

**Senator HUME:** What does the Intelligence and International role, under Registry and Intelligence, do?

**Ms Court:** That's another area—you're quite right—that has work to do in relation to scams as well. We have a group within that division that are called Misconduct and Breach Reporting. That area receives the front end, if you like, of all the reports of misconduct that come in from the public, the media and the various things that are referred to us. They also have a significant role in relation to scams. They receive the reports of misconduct and then, since the establishment of the National Anti-Scam Centre on 1 July last year, that area of ASIC has been working very closely with the NASC, the National Anti-Scam Centre. We now refer all our scam reports to the NASC so that the NASC can bring together all of the scam related information from across the country. ASIC then deal with investment scam related conduct through our take-down service and investor alert list.

**Senator HUME:** The Intelligence and International role is vacant at the moment?

**Ms Court:** No.

**Senator HUME:** I've got a copy of your organisational chart.

**Ms Court:** Sorry, yes, International and Intelligence. Perhaps I can just clarify your question. Do you have an organisational chart that says 'vacant'?

**Senator HUME:** It does say 'vacant'. That's for Intelligence and International, under Registry and Intelligence.

**Ms Court:** I think that would be for the executive director of that new role, which has recently been filled.

**Senator HUME:** Alright. Can I—

**Ms Court:** I'm sorry to interrupt you, Senator. I don't think I answered your question about those particular media articles and what they are referring to. Would that be of assistance?

**Senator HUME:** Yes, that would be terrific.

**Ms Court:** In relation to that investment scam, unfortunately the articles in the *Australian* do contain a number of inaccuracies, and I would like to correct the record in relation to those. The article refers to a complex global investment scam. That scam is effectively serious organised crime and it's being investigated by numerous authorities around the world, one of whom is ASIC. In relation to the investigation, we do have on foot an advanced criminal investigation into individuals who are based in Australia, who are alleged to have facilitated that global scam. The main architects of the scam, as is frequently the case, are based overseas, but they have used, as we understand it, some individuals in Australia to set up Australian bank accounts in order that they can receive funds from Australian investors into those Australian based accounts held by the Australian based individuals. Those funds are then quickly converted into cryptocurrency and forwarded overseas.

Our investigation is focused on holding people in Australia to account for their involvement in the facilitation of the scam, and the investigations have included the execution of search warrants, complex bank and cryptocurrency tracing, interviews with and statements from impacted investors, getting information from banks, and then, as I referred to earlier, significant engagement with law enforcement around the globe.

In relation to that engagement, we became aware that there was a German authority that was also investigating this scam and had executed search warrants in Serbia in January 2023. We felt that those search warrants and the materials obtained as a result might yield evidence that could help with our criminal case in Australia. We

requested information from the German authority. We had to go through some hoops to get it and we eventually received that information through diplomatic channels in August 2023. The information was provided to us expressly on the basis that it was to be used for intelligence purposes only. That is a common protocol which operates between law enforcement authorities. It was not provided for the purpose of ASIC contacting individuals that were identified in that material.

**Senator HUME:** Right.

**Ms Court:** I should also add that it was not in a form where, even had we attempted to do that, it would have enabled us to do that with any efficiency. I think that, in effect, we received 67,000 raw documents which had been seized in the raid. We used the information for the purposes for which it had been provided—for the purposes of criminal investigation. We did not seek to contact Australians if the information included individuals in Australia and elsewhere around the globe. By the time we received the information, of course, it was quite dated. Most of the transactions that we could ascertain dated from 2020 and 2021, with some of them a little bit later. Unfortunately, we think that the reports in the *Australian* are inaccurate and we have been liaising with our German colleagues to understand the basis for the statements which were attributed to them.

**Senator HUME:** Okay. The report—the inaccurate report—said that there were 34,000 Australians who had been impacted by this scam which used advertising campaigns featuring fake celebrity endorsements to draw people into fraudulent crypto schemes. That's exactly what you said.

**Ms Court:** Yes, indeed.

**Senator HUME:** And 34,000 is about the number of Australian victims that you're aware of?

**Ms Court:** I can't confirm that figure. As I said, there may be tens of thousands of Australians amongst many other tens of thousands referred to in the documents that the German authorities provided to us.

**Senator HUME:** The German police have sent letters to all the victims in their own country that have been dealing with this active criminal group, according to this report, advising how to file a criminal complaint. How do the 34,000—assuming that's correct—victims of this fraud find out that they have been defrauded? Potentially, they still might not know, or know how to file a complaint. I can understand that ASIC's role might not be pursuing the criminals—

**Ms Court:** Yes.

**Senator HUME:** but the victims themselves probably aren't even aware at this point in time. Many of them wouldn't be aware that they are in fact victims.

**Ms Court:** Yes. I can't answer for the state of mind of the victims. Obviously, we're investigating in relation to victims who have come forward and made complaints about the fact that they've had money taken from them by this investment scam. Our approach has been that we know the scam was raided in January 2023. I should say that when one of these boiler rooms get closed down, internationally, the next one will open up in a neighbouring country and, unfortunately, continue to perpetuate the crime. As I recall—I think I'm correct in saying this—we don't have any recent reports of misconduct that have come from consumers or investors in relation to the companies that have been identified in those media articles. Since the media went to press we have done extensive research to ascertain whether or not there's any continuing conduct that we need to be made aware of, and we haven't been able to ascertain that to be the case.

**Senator HUME:** Why would the German authorities contact you if it weren't to alert those who have been identified as victims? If they're already pursuing the perpetrators of this scam overseas, and there's a limited amount of criminal activity based in Australia, surely they're telling ASIC so that you can—as the German authorities have done—alert the victims? That's particularly when the vast majority of victims, according to this report, are in fact Australian?

**Ms Court:** As I said when I was outlining the chronology, the German authorities did not contact ASIC proactively. The ASIC criminal investigation team became aware that there had been a raid by German authorities in January. ASIC investigators approached the Germans and said, 'Can we please have information from your raid which may go to support the criminal investigation in Australia?' I can't speak for what the German authorities did or didn't do with the information. What I can say is that we went to them proactively; that was our investigators doing good work. We eventually were able to negotiate the provision to us of 67,000 documents in raw form. They were provided by the German authorities expressly on the condition that they were shared with us for information only. We used all of that information to support the matters that were the subject of our investigation, and that investigation is nearing conclusion.

**Senator HUME:** So—

**CHAIR:** I'll share the call unless you've got one final question.

**Senator HUME:** I kind of need to understand that. If you have 67,000 documents that demonstrate that potentially over 30,000 Australians have been scammed by this particular crime, what is your obligation here? Is there an obligation to notify, whether it be by ASIC or whether it be by the National Anti-Scam Centre, the people who have been scammed? Do you have an obligation to report this to the National Anti-Scam Centre? By the sound of things, some of these victims are quite old, they've been scammed out of millions of dollars, and—again, if this report is accurate—many thousands of them might not even know that it exists. And the report says that the scam continues on today. So what is ASIC's obligation here?

**Ms Court:** In relation to the amounts that have been scammed, the amounts—I'm speaking broadly and I don't mean to diminish the seriousness of this, of course—are more in the hundreds of dollars than in the millions of dollars, as I understand it.

In relation to information that comes into the hands of ASIC or any other law enforcement agency, law enforcement agencies come into information as a result of warrants and other information on a very regular basis. For example, in this matter the information that we received from the German authority was provided to the Australian Federal Police, again for intelligence purposes only. That was the basis on which we were able to share it. In a case like this, were ASIC to have started interrogating the 67,000 documents to work out whether there had been Australian victims, what their transactions were—In what amounts? Where are those contact details?—then that would have taken our Criminal Law enforcement team completely off that matter and diverted them into a completely different suite of issues.

I think it's fair to say, though, that the question you ask is one that we have collectively, as a group of scam related agencies, been thinking about: what is the appropriate—

**Senator HUME:** Obligation.

**Ms Court:** thing to do in this circumstance? One answer to that may be, if we get the permission of the foreign law enforcement agency, to provide that information to the NASC, which is seeking to act as the recipient of all the scams related data, in real time, that is coming in. So we are considering these issues and considering what is expected of an agency like ASIC, and this is just one example—

**Senator HUME:** Consumer protection, I would have thought would be front of everybody's mind. There are 34,000 Australians, if this is even vaguely accurate.

**CHAIR:** I'll—

**Senator HUME:** Sorry, just one more question.

**CHAIR:** I've promised the call to Senator McKim, so this is your final final question.

**Senator HUME:** My concern is that one of the quotes in this report—and, again, you say that much of it is inaccurate—is that the German authorities have said that scam syndicates target countries where they 'know that the law enforcement is not strong or not interested'. How do you think ASIC's lack of action in alerting the victims of this scam will be perceived by other scammers that are looking to assess the Australian enforcement environment?

**Ms Court:** In relation to that comment, the fact of our criminal investigation and the intensity of it, which I have taken the committee through this morning, is indicative that we are taking enforcement action in relation to holding Australians to account. That's in addition to another matter just in February of this year where charges were laid for various criminal offences, including conspiracy to defraud and the like, relating again to fraudulent investment websites and scams. So ASIC is an active enforcement agency in relation to the prosecution of scams.

**Senator HUME:** But it's enforcement as opposed to protection.

**Ms Court:** I understand the point, Senator.

**CHAIR:** Senator McKim.

**Senator McKIM:** Good morning, folks. Thanks for coming in. I'm aware that in your opening statement you outlined some issues around financial hardship, including the work that you've recently done that found that, in some cases, lenders for home loans were simply ignoring hardship notices. Your report found that over a third of customers dropped out of the hardship process due to delays, confusion and lack of support and also that, in the worst cases, lenders were ignoring hardship notices entirely. Are you able to let us know whether you have an understanding of how many breaches of the National Credit Code you uncovered through that process?

**Mr Kirkland:** I don't know whether we gathered data specifically on the number of breaches of the code we found through that process. The point of the report was really to draw out some of the key themes that we were

seeing across the system, and I think we've spoken about those in fairly strong terms—banks making it hard for people to lodge their notices, making the assessment processes difficult, failing to support vulnerable customers et cetera.

**Senator McKIM:** I understand you've fired a shot across the bows of lenders, including in your opening statement today. Will you be taking any lenders to court for breaching the code?

**Mr Longo:** There are some current proceedings against Westpac where these very issues are being litigated. Secondly, there are some ongoing matters that may or may not end up in court. This work needs to be seen as sitting alongside what I would call an enforcement approach, but an enforcement approach alone would have been insufficient. We've definitely got one or two—I'll ask Deputy Chair Court to give a bit more detail, but there are other matters that are in the pipeline that may or may not go to court. But, in the meantime, this report has had a very positive impact on bank behaviour. We've been working on it for over a year, and the very act of doing the surveillance, conducting the interviews and calling for documents has encouraged certainly the bigger lenders to lift their game. That's, broadly speaking, what our strategy is.

**Senator McKIM:** I'm happy for Ms Court to add some detail there, but, Mr Longo, you mentioned cases or proceedings against Westpac. Is that proceeding or are those proceedings specifically in regard to breaching their obligations under the National Credit Code?

**Mr Longo:** That's my understanding.

**Ms Court:** Yes, I think that's right. Those proceedings were filed in September 2023, and we're alleging, in that case, deficiencies with Westpac's online hardship notice systems which resulted in multiple customers not receiving a response. I think I'm right—and Mr Kirkland will correct me if I'm wrong—that they have 21 days to respond.

**Senator McKIM:** That's right.

**Ms Court:** And what we were seeing was that, because of the deficiency—again, I should preface this by saying that these are allegations. This matter is before the court at the moment. Our allegations are that the failure of Westpac's systems led to some significantly detrimental results for particularly vulnerable consumers. That matter is before the court. Just for completeness, we had another matter that came to court last year in relation to Membo Finance. That case has been concluded, and there was a decision of the court that Membo had breached the credit act. We believed, in that case, that it had not been fairly assessing hardship requests as requested by law, and the Federal Court imposed a \$6 million penalty in relation to that matter.

**Senator McKIM:** So the allegation against Westpac that you referred to relates to a failure to comply with the 21-day period to respond?

**Ms Court:** With the timeframes—that's right.

**Senator McKIM:** I think Mr Longo, without trying to quote him directly, indicated that there was some consideration underway internally around some other potential cases. Is that right?

**Ms Court:** We have a number of matters. We have got the—

**Senator McKIM:** Just for clarity, I'm specifically asking about breaches of obligations under the National Credit Code in relation to financial hardship.

**Ms Court:** Financial hardship and how financial institutions deal with applications for hardship is one of our enforcement priorities for this calendar year. We're doing a suite of enforcement investigations. As Mr Longo and Mr Kirkland have said, we're also doing a suite of other work in relation to monitoring and surveillance of the way that financial institutions implement those obligations.

**Senator McKIM:** Could you take on notice how many cases are under consideration at the moment please?

**Ms Court:** I can. I think I can tell you that we have three matters under formal investigation at present. Now whether they will all—

**Senator McKIM:** Specifically in relation to hardship?

**Ms Court:** Specifically in relation to hardship.

**Senator McKIM:** Thank you.

**Senator O'NEILL:** Can I ask a question on notice relating to that. With regard to the hardship, is it solely related to mortgage holders or is it related to small business as well? Could you provide that.

**Mr Kirkland:** The obligations under the National Credit Code generally only apply to personal lending. They're not restricted to mortgage lending—they can apply to other types of loans as well—but they generally only apply to personal credit.

**Senator O'NEILL:** Anything that would give a show for small business would be helpful.

**CHAIR:** Thank you. The committee will take a short scheduled break.

**Proceedings suspended from 11:30 to 11:43**

**CHAIR:** The committee resumes with ASIC. I give the call to Senator McDonald.

**Senator McDONALD:** Good morning. I've got some questions around scope 3 emissions. Yesterday, we heard from Treasury that ASIC would be the ultimate decision maker on what constituted material risk regarding scope 3 emissions. What would ASIC consider material risk?

**Mr Longo:** I'll make an opening remark and then pass to Commissioner O'Rourke. Firstly, that legislation hasn't passed the parliament yet. Secondly, the ISSB standards, S1 and S2, are currently being considered by the Australian Accounting Standards Board. So we've got a way to go to really nail what it is we're actually talking about. If things go smoothly with the passage of the legislation, shortly after that—and perhaps Commissioner O'Rourke will be closer to the detail. The Accounting Standards Board has gone through a couple of rounds of consultation on what the standards should look like in Australia. That's my first broad point—that we're getting ahead of ourselves a bit trying to give a view about that.

We've also been doing a lot of engagement with industry and reporters on how ASIC might administer these standards. We're not the standard setter, but, when the time comes, it will be our job to enforce the standards, to administer them. So there is a lot of work ahead of us to figure out what they mean and how they'll be applied.

Commissioner Rourke is much closer to the detail, but I think they're the key points.

**Ms O'Rourke:** I want to make one additional point with respect to the provision of guidance by ASIC. As our chair alluded to, there are a lot of steps. We do need to know what the final legislative framework is, and then we also need to know what the final standards are from the standard setter. Neither of those are finalised. We do recognise that once they have been finalised there is a need for guidance from both the AASB and ASIC about what the standards and the law mean and how, in our case, we will be administering the law.

Our proposal, first of all, as a principle, is to be joined up, in terms of making sure the guidance covers the field, whether it be given by either agency. And then, with respect to the guidance that we're giving, we've got to plan a two-step plan. We think there will be some information about the legislation that we think we can assist preparers with immediately. We will have a factual based webpage on information about the climate disclosure framework that will be available very soon after the passage of the bill, assuming it's passed.

We recognise however that there is a second phase of guidance that is needed that does require more judgement and consultation, and your example may well be one of them. I'm not committing to that being necessarily a topic of it, but it sounds like something of more depth and substance that requires consultation. We, like with our regulatory guidance rather than our information sheets, always conduct consultation to make sure that we're giving information that they've had input into, even if people don't actually agree with the position—for example, are these the right questions that people need guidance on, and has ASIC considered all the relevant considerations? The second stage of guidance that ASIC is giving will be consulted on, but we will make every effort to do it expeditiously because we are very aware—and I think your question goes to it—of how much people want assistance in understanding these requirements and want support as necessary, including from us.

**Senator McDONALD:** Your point is well made about providing a factual base, guidance and what that might look like. I think the bit that you're possibly missing is that, in the assessment of the legislation as it goes into the House and the Senate, we'll be guided by expertise from organisations like ASIC. My specific question around material risk and whether financed emissions constitute material risk is a significant one around making decisions, particularly for small and medium businesses, those businesses that are not capable of including the cost of assessment in their ordinary business.

**Ms O'Rourke:** I think what you're going to is some of the legislative design and the elements that set out when scope 3 emissions need to be included and what constitutes them. I understand, from us having participated in the Treasury consultation processes, the preliminary ones and, most recently, in relation to the bill, that this is something that small businesses and other submitters, people who will be preparing climate disclosure under the framework, have provided information to take into account in the design.

If your question is our position on it, I'll take it on notice to make sure I give you an accurate answer. But the wider answer is that we agree it's a very important issue for the legislative framework and any associated guidance to give clarity for people who'll be working to comply with the new framework.

**Senator McDONALD:** So what would ASIC consider a material risk? Is that something that you would take on notice, or are you able to answer it now?



**Ms O'Rourke:** What I can take on notice is what information we've provided as to the design of the framework. To the point that our chair made, if the legislation has not yet been concluded and nor have the standards, it would be premature for us to have a completed definition or framework. To my earlier point, as well, it may well be something we'd want to consult on, so it is premature to ask us to provide a definition of that at this point. But I am taking it on notice. To the extent we've given positions in relation to it in the design phase, I'm happy to provide those to you. But, to the extent that it remains something for definition afterwards, we are making sure that our regulatory guidance covers all key issues. That's the second part of my response.

**Senator McDONALD:** ASIC's evidence to this committee at the legislation hearing was that the Australian Small Business and Family Enterprise Ombudsman had raised concerns and had a workshop round table regarding climate disclosures. Can you detail for the committee what that workshop involved.

**Ms O'Rourke:** I would describe it as an event. Whether it's an event or a workshop, the Small Business and Family Enterprise Ombudsman convened an event called ESG for SMEs. That was an opportunity for experts on climate reporting, sustainability and ESG issues more broadly to come together and to provide information on the state of play, the design issues, those frameworks and also wider concerns. I'm sure the ombudsman would be happy to provide additional information, for example about the attendees, or did you want to—

**Senator McDONALD:** I'm sorry to cut you off, but we do have limited time.

**Ms O'Rourke:** No problem.

**Senator McDONALD:** What were the small-business concerns with this bill that were raised at the event?

**Ms O'Rourke:** I think that the ombudsman would be better placed to provide—

**Senator McDONALD:** Really? You didn't get any feedback on what was raised?

**Ms Court:** I was at the event that was hosted by the small-business ombudsman. I think it was a two-day program, but I was just there for the first morning, and I addressed it. I think I can say at a high level one of the concerns of the small-business representatives present was the extent to which there is going to be pressure applied to small businesses by larger businesses in relation to their emissions. As I understand the legislation—and Ms O'Rourke's across more of the detail than I am—as it currently stands, it will only apply to large entities for at least the first year or two. You would say that the obvious answer, then, is that it shouldn't have an impact on small businesses because it's only applying to the big end of town, if I can be colloquial. The issue being raised by the small-business representatives is, if the large businesses have to report on scope 3 emissions, they are going to start putting pressure on small-business suppliers in relation to their own carbon footprints, and that is obviously a regulatory burden and impost for those smaller businesses. Do they have the resources, facilities or abilities to do that? I suspect that the ombudsman would tell you that he has a range of other issues as well, but certainly, in the conversations I've been part of, that potential impact on small businesses imposed by larger businesses who are trying to comply with their scope 3 emission information is at the heart of the concern.

**Senator McDONALD:** That leads me neatly back to my original question about what ASIC would consider material risk for those larger businesses. It's my observation that our businesses are becoming more and more risk averse in this environment, with their reporting requirements. So, whilst there was some discussion about whether or not those big businesses could use modelling or predictions for the smaller businesses, the reality is that they will push down fairly firmly on suppliers and others. I want to ask you, then: what if the business's largest customers were an emissions-intensive trade exposed industry? Would that constitute material risk?

**Mr Longo:** Can I step back for a second. We are talking about accounting standards that are yet to be finalised under Australian law. We had the ISSB framework, but we're awaiting the Australian Accounting Standards Board to finalise those standards. They've gone through two rounds of consultation. There are some significant details that have to be resolved before those standards are finalised, which I think may very well impact on your question.

Secondly, the International Auditing and Assurance Standards Board has yet to issue its assurance standards. And the question of data is huge in this subject. So my overall message, having spent most of last week talking about this at international meetings, is that we have a long way to go. The ASX 100-ish have been voluntarily complying with the gist of these standards for some years. So, as Deputy Chair Court put it colloquially, the top end of town is actually as well prepared as anybody. There's a huge appetite in Australia. I've been to a number of meetings—as have Commissioner O'Rourke and Deputy Chair Court—where we absolutely acknowledge that there's a big appetite within Australia by reporting entities—even the big end of town—looking for reassurance and guidance as to how we will administer these standards. We're going to be talking about this for quite a while, Senator. I think they're the key points. Even top-end-of-town reporters don't know what the assurance standards are going to be yet, let alone the accounting standards themselves.

**Senator McDONALD:** Mr Longo, you've called this the biggest change to corporate reporting in a generation—

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

**Senator McDONALD:** and you're asking the parliament—well, you're not asking the parliament, but we are looking to pass a bill, without any clarity that I can ascertain about the actual obligations the bill would propose. Yesterday, we heard an estimate of the first-year compliance costs being around \$2.3 billion. That seems an extraordinary amount of money to put onto business across Australia, for no productivity gain, in a tight market. I'm seeking clarity from you about what guidance parliamentarians can receive.

**Mr Longo:** What we can say today is that ASIC is doing everything it can to engage with stakeholders, so that, when the time comes, we will do our part to help industry comply with the standards. The government's policy, as I understand it, is to legislate in domestic law the ISSB S1 and S2 standards. That's a matter for the parliament: whether that goes ahead. The Australian Accounting Standards Board's responsibility, under the legislation, is to promulgate the standards, and so, when they materialise, ASIC will do what it can to be helpful in administering those standards. Indeed, globally and within Australia, I would expect additional guidance to be published by the standard setters, not just by the regulators.

The other issue, if I may say so—and I take, today, the opportunity to say it—is that what's really at stake here is: we need standards that everybody understands and can administer, because that's really the utter foundation for sustainable finance. If we are to raise capital confidently in Australia, to deal with all the things that we say we need to do to transition to a net zero environment, these standards have got to work for everybody. We understand that, but there's a lot of work ahead of us.

**Senator McDONALD:** You're talking about S1 and S2—

**Mr Longo:** Correct.

**Senator McDONALD:** Chair, two more questions, please?

**CHAIR:** Will that see you out?

**Senator McDONALD:** Mostly! Let me just ask these two.

**CHAIR:** You're at 15 minutes, and I've got five senators on the list.

**Senator McDONALD:** Thank you. I appreciate that, Chair. Mr Longo, you raised S1 and S2.

**Mr Longo:** Correct.

**Senator McDONALD:** We're talking about S3. Do you know what other jurisdictions around the world are requiring S3 reporting?

**Mr Longo:** Nature and biodiversity—is that what you're referring to?

**Senator McDONALD:** No, I'm talking about scope 3 emissions reporting—financial reporting for scope 3 emissions. What other jurisdictions are requiring that?

**Ms O'Rourke:** I think we might take on notice any specific information we can find about their particular position on your question. I can assure you that we are engaged in international discussions around how different jurisdictions are implementing what are international standards. While there can always be jurisdictional-specific factors that may mean the standards are, at the margin, adjusted to accommodate those particular situations, there is certainly, I understand from the government, a desire to be suitably aligned with international standards and with practices in other jurisdictions.

**Senator McDONALD:** And, particularly, with our trading partners. The point that I'm trying to get to today is that it would be devastating to Australian businesses if we were requiring a level of reporting to scope 3 that our trading partners were either disregarding or just not requiring.

**Ms O'Rourke:** We'll take on notice any particular information with that focus on trading.

**Senator Gallagher:** Treasury did, yesterday.

**Ms O'Rourke:** They did? Thank you.

**Senator Gallagher:** They have taken it on notice.

**Senator McDONALD:** Nobody seems to be aware of what our competition is doing or what the framework is around the world.

**Senator Gallagher:** I said in the hearing yesterday that the EU and New Zealand already report scope 3—

**Mr Longo:** That's right.

**Senator McDONALD:** But not our big Australian partners.

**Senator Gallagher:** and that China, Japan, the UK—

**Mr Longo:** India.

**Senator Gallagher:** are consulting over scope 3. We did provide that, but Treasury also took it on notice.

**CHAIR:** Thank you, Senator McDonald. I'll take the opportunity to table the opening statement by Chair Longo. I will also take the opportunity to advise participating senators and the Australian Reinsurance Pool Corporation, scheduled to appear at 7.20, that the committee releases them. Senator Pocock.

**Senator BARBARA POCOCK:** I have a question about the beneficial ownership issues that you mentioned in your opening statement, Mr Longo. You've been provided funding to regulate and promote the new beneficial ownership transparency requirements. Can you fill us in on what that means. What are you doing, with what purpose?

**Ms O'Rourke:** I'm happy to provide some additional information in relation to this reform. It's a reform that's being consulted on by Treasury, but the final outline of the particular provisions that will apply remains to be completed. In preparation for the proposed beneficial ownership transparency regime that will apply to Australian companies, we've been given funding to, first of all, operate a suppression regime to protect the privacy of vulnerable individuals. That's one of the steps that we may be required to take. There is also responding to reports of noncompliance. If there's an obligation to provide beneficial ownership through to a company and there's noncompliance by that beneficial ownership then we'll be the relevant regulator responsible for responding to that report. We will be developing a dedicated surveillance and compliance program for the beneficial ownership identification requirements for proprietary and unlisted public companies, and, under the proposed provisions, there will be enhanced provisions that apply to the listed space as well.

As you'll be aware, with listed companies there's an existing tracing notice regime, which is an indirect way of getting information about beneficial ownership. Under the proposed reforms, that will be enhanced, as well as the additional, new responsibilities that will apply in the unlisted space to provide information on beneficial ownership through to the company in which they're held.

The other two activities we have been given funding for are undertaking enforcement activities for noncompliance with the new regime, and we need to develop and implement some changes to ASIC's ICT systems to support our new regulatory activities. At a high level, those are the kinds of activities that we've been given funding for—

**Senator BARBARA POCOCK:** Sorry to cut you off, but I'm under a time limit. When do you expect that to be all operational?

**Ms O'Rourke:** Some of the things do require there to be a passed bill—a legislative framework.

**Senator BARBARA POCOCK:** So you've got to wait for legislation.

**Ms O'Rourke:** But we can do preparatory work in terms of designing ICT but also designing compliance and enforcement—certainly the compliance side of things. And, if we need to do regulatory guidance, we can be thinking ahead. To the earlier conversation, it does depend on the final bill being passed.

**Senator BARBARA POCOCK:** Thanks for all of that detail.

**Ms O'Rourke:** That's okay.

**Senator BARBARA POCOCK:** The only other question I have—this is my last one—is in relation to your opening statement, Mr Longo. You referred to a real priority on the multiphase surveillance of the handing of death benefits in superannuation. I'm sorry if I'm going over ground that everyone else understands, but what are the issues here and what are you doing about them?

**Mr Longo:** I'll ask Commissioner Constant, who's done a lot of work in the superannuation sector, to answer.

**Ms Constant:** We commenced a program of review of member service delivery and potential points of failure in superannuation, at the beginning of the year. Superannuation is a priority for us—both a strategic priority and an enforcement priority. Related to that, we looked at where data might suggest surveillance is most warranted, where there might be the most potential harm, for example, with respect to points of failure in delivery of member services. We're sometimes asked about reasons for that. Reasons for that include the complaints. You were with AFCA earlier today. If you look at AFCA data, there is a significant rise in the number of complaints about member service delivery with respect to superannuation and a disproportionate increase still when it comes to claims about the delay in the payment of death benefits, particularly.

We're conscious of how important superannuation is to the economy and also obviously to individuals, and the growing importance as people move into that drawdown phase. We're going to get another 50 per cent, I think, rise in the number of people in ten years who'll be in that pinch and needing the member service delivery phase. We thought it was an important priority this year. This is just the first of our member service delivery surveillances. It's a multiyear program, but with death benefits being the first and foremost.

As I said, systemic data to suggest it's worth looking at whether there are issues is based on AFCA data. Also when you look at the individual case studies, the risk of egregious conduct at the point of real vulnerability for the family of a member suggests this is an area of real consumer need for surveillance. We completed the first phase, which was a broad sweep of, I think, 22 trustees, looking at websites and the AFCA data. We published an article a month ago putting superannuation trustees on notice saying, 'We found this, and these are some things you should be looking at for better practice.' We're now looking more closely at less than half of that number. We've required some information and deeper analysis and will be coming forth with those findings later this year.

**Senator BARBARA POCOCK:** To understand—the main issue in relation to death benefit is delayed payment? Is that—

**Ms Constant:** That is the most significant. In fact, interestingly, the AFCA data suggests that actually more significant than the outcome of whether it's paid or not is that question of delay and what's causing the delay. Looking at both case studies and the data, there are some simple things that trustees can do—and some do it better than others—and that includes a simple notice on the website of what it looks like and what to expect. Manage those expectations from the outset. It includes making sure that First Nations people or people for whom English is not a first language understand the process. On the face of it, it's simple, but if you don't explain it with simplicity, it can be complex—an example is understanding the purpose of a binding death benefit nomination. It's really important. Trustees who've done that best have said: 'This is the point of this. This is what it does. This is how you do it.' They have better outcomes. Similarly, they need to be renewed. Why not send a reminder that you need to renew your binding death benefit nomination? They're the kinds of practices we've been calling out at this point in our surveillance, although we're really looking forward to seeing the next phase, when we get deeper.

**Senator DEAN SMITH:** Can I get an update on matters regarding the Aboriginal funeral benefit fund, Youpla?

**Mr Longo:** Yes. The update is what's happening with the litigation? Or we recently launched an appeal, but we'll let you know the answer.

**Ms Court:** I've got a lot of background in relation to this matter because, as we've discussed previously, ASIC's had a number of actions here. I'll run through it as quickly as I can. We've had one set of proceedings that commenced in October 2020 against two of the Youpla companies, related to misleading and deceptive conduct. In September 2023, the Federal Court found in ASIC's favour in relation to one of our allegations and ordered a penalty of \$1.2 million to be paid. We appealed that decision because we were concerned in relation to some of the findings of the judge at first instance. In February 2024, the full court upheld ASIC's appeal and found that Youpla had misrepresented to Aboriginal consumers that it was Aboriginal owned or managed when that was not the case. That matter's now gone back to the trial judge to determine the appropriate penalty, so that matter is continuing.

We've had a second set of litigation in relation to some of the former directors that were involved in the Youpla Group. In August of last year, we commenced proceedings against five former directors and officers, alleging breaches of directors' duties. That case includes an allegation that those directors and officers maintained insurance arrangements with a Vanuatu based company that was owned and controlled by two of those directors, and were not in the interests of Youpla. The allegation is that those arrangements stood to benefit those directors personally. Those proceedings are being defended and no trial date has yet been fixed.

In relation to the liquidator's recovery actions: a general-purpose liquidator has been appointed for quite some time. He has advised that, of the four Youpla funds, it is only fund No.1 that's likely to have some money available to distribute to creditors. A draft distribution application has been circulated to ASIC and NSW Fair Trading—which is another regulator that has been involved in this suite of matters—and also, importantly, to Youpla's committee of inspection. This is a group made up of representatives of the Youpla creditors. We're providing feedback to the general-purpose liquidator in relation to how to strengthen that application in terms of content and evidence, with a view to expediting the court's consideration of that application. And, just for completeness: special-purpose liquidators have been appointed as well. We're continuing to assist those special-purpose liquidators to expedite any actions they may be able to take in relation to investigation and recovery.

I should just finish, for completeness, by saying that the government has also rolled out the Youpla Group Funeral Benefits Program in order to provide some payments to those who have become victims to the collapse of this group. Applications for that particular program can be made until 30 June this year. Thereafter, there's the Youpla Support Program, which the government is administering; that will be ongoing.

**Senator Gallagher:** They were actually in Markets Group yesterday. I can give you some information if you're interested in that program—

**Senator DEAN SMITH:** No, I'm fully aware of what the government has done and has announced. It's been received relatively well.

**Senator Gallagher:** Alright; I'm just trying to be helpful, Senator Smith.

**Senator DEAN SMITH:** That's okay. I'll call on your assistance. You'll know it when I do it: I'll say, 'Minister'.

**Senator Gallagher:** Thank you!

**Senator DEAN SMITH:** Is ASIC aware of the quantity of funds that might be available for distribution?

**Senator Gallagher:** That would be for Markets Group, and I've just said I could provide some information if you'd like.

**Senator DEAN SMITH:** Minister, what's the quantity of funds that will be available for distribution?

**Senator Gallagher:** I think the total of funds is \$96.9 million, which would also include the administration of the support program. It's expected to help more than 13,000 people recover from financial loss and provide certainty to their families.

**Senator DEAN SMITH:** I was more interested, Ms Court, in the distribution of the funds from the insolvency.

**Senator Gallagher:** I thought you meant the support program.

**Ms Court:** From the liquidation?

**Senator DEAN SMITH:** From that liquidation, yes.

**Ms Court:** We don't have that information yet, Senator. We're still waiting for the liquidators to finalise their work.

**Senator DEAN SMITH:** And you're not aware of a range, or a ballpark figure?

**Ms Court:** I don't have that in front of me; sitting here today I'm not aware of the range.

**Senator DEAN SMITH:** Thank you very much, and congratulations to the government on making those funds available to those victims.

Chairman, I just want to go to your opening statement. You mentioned that ASIC asked lenders to prepare an action plan outlining how they intend to respond to the issues that you've raised in regard to hardship arrangements. First question: has ASIC advised on what features of an action plan would be suitable to ASIC? Second question: what are the timelines for completion and implementation of those action plans? And are the action plans required to be provided to ASIC for your review and commentary before they're finally agreed and put in place by lenders?

**Mr Longo:** I'll ask Commissioner Kirkland to answer those questions.

**Mr Kirkland:** Certainly. Senator, I understand that we're in the process of writing to lenders. To be clear, those communications will be with the 10 lenders that were part of the deep dive in our hardship report.

**Senator DEAN SMITH:** Which is the May 2024 report?

**Mr Kirkland:** That's correct. We'll provide individual findings to each lender, based on what we observed. It's not across the board; they're particular to the observations we made about their practices. Then we'll ask them to provide an action plan that responds to those individual concerns. We'll also have ongoing conversations along the way—if we're not satisfied with the actions they've identified, we'll make that known to them.

**Senator DEAN SMITH:** You've identified matters for remediation or improvement in that group of 10, and the action plan they're required to share with ASIC is specifically in regard to those particular issues that you've raised in the context of their own hardship arrangements.

**Mr Kirkland:** In addition to the general findings published in the report, we'll provide individualised feedback to each lender based on the observations that we made. And we'll ask for the action plans to respond to those individual findings.

**Senator DEAN SMITH:** Is there a timeline or timeframe expected around when those lenders should be required to respond to this?

**Mr Kirkland:** I haven't got that in front of me, so I'll just need to take that on notice, but it is a—

**Senator DEAN SMITH:** But my first question is a general one: will they be asked to provide remedies in a certain timeframe?

**Mr Kirkland:** We'll ask them to provide the action plans within a particular timeframe. I need to take on notice the period over which we propose to examine those action plans. But it's a matter of ongoing interest for us, so it's not something where we'd provide those letters and then turn our gaze away. We expect to be in regular communication with those lenders.

**Senator DEAN SMITH:** Especially given that AFCA mentioned this morning that it expected matters around hardship to continue to increase.

**Mr Kirkland:** It's a matter of ongoing concern. I should say that we've also said to the rest of the credit industry that the fact that some of those broader lenders weren't involved in our review doesn't mean they're not of interest to us. This is an interest across the board. To the extent we see other reports of misconduct that raise concerns about lenders' hardship practices, they'll also be taken very seriously as well.

**Senator DEAN SMITH:** That brings me to the report released yesterday in regard to ASIC's observations about hardship in the community. Can you talk about that?

**Mr Kirkland:** We released some data from a nationally representative survey, identifying some data on the proportion of Australians who had concerns about making a repayment in the past 12 months. It showed that 47 per cent of Australian adults who had debt had concerns about their ability to make a repayment.

**Senator DEAN SMITH:** How many Australians have debt?

**Mr Kirkland:** I haven't got that figure in front of me, but the 47 per cent of Australians who do have debt concerns translates to 5.8 million Australians.

**Senator DEAN SMITH:** People?

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

**Senator DEAN SMITH:** But of course that's individuals, and many of them would be living in family situations?

**Mr Kirkland:** That's based on individuals, that's right.

**Senator DEAN SMITH:** That's a very big number then, isn't it? The average household in Australia is three or four people, so that's a very significant number of Australians experiencing hardship.

**Mr Kirkland:** It was 5.8 million people based on the figures in that survey.

**Senator DEAN SMITH:** How big was the survey?

**Mr Kirkland:** It was a typical nationally representative survey, so just over a thousand respondents.

**Senator DEAN SMITH:** What was the geographic distribution between states?

**Mr Kirkland:** It was national, but it wasn't intended to be a large enough sample to give a state-by-state breakdown. It was only intended to establish a nationally representative survey to allow us to make observations at the national level.

**Senator DEAN SMITH:** What were the other findings from the survey?

**Mr Kirkland:** We also identified levels of awareness of the ability to seek hardship assistance from lenders. From memory, we found that around 55 per cent of respondents were not aware that they could seek assistance from their lender. We identified some of the key causes for not seeking hardship assistance, which included a lack of awareness and emotional barriers, such as feelings of stress, anxiety, shame or embarrassment. We identified the positive impacts for people who had sought and received hardship assistance from their lender, with people in that situation generally reporting that it had a positive impact on their lives and that they wished that they'd sought assistance earlier. That's important, because the key point, I guess, of the data released yesterday was that it was part of a consumer awareness campaign to try to break down some of those barriers and make people aware that they can request assistance if they're in trouble—and also to make it a little bit easier for them to take the first step, which can be challenging.

**Senator DEAN SMITH:** Is this a one-off survey or part of an annual program of research?

**Mr Kirkland:** That was a one-off survey. It's part of our Moneysmart program, which is our financial awareness and literacy program. We run surveys like this from time to time based on issues we consider to be

topical where we think it can aid our overall work to raise awareness in the community about people's rights when engaging with the financial services system.

**Senator DEAN SMITH:** What motivated the survey?

**Mr Kirkland:** In following up on the work that we'd done to look at how lenders were responding to requests for hardship assistance, we were interested in understanding consumer awareness of hardship assistance and engagement with that system. It was seen as a complementary piece of work to the deeper surveillance we'd done of lenders' practices and was really intended to inform what we needed to do in terms of a consumer awareness campaign and also provide a basis for that work.

**Senator DEAN SMITH:** Is it true to characterise Australians as being reluctant to seek assistance if they are in financial hardship? Do they have to get to a particular level of severity before they are inclined to ask for help or look for help?

**Mr Kirkland:** Both our surveillance and the research we released yesterday show that it's hard to make generalised assumptions. First, the reasons people can find themselves in financial hardship vary quite significantly. They might be due to general economic factors such as cost of living, or they might be due to an unexpected event such as a drop in income or an unexpected expense. Some of the case studies highlighted yesterday included people with sudden medical expenses.

**Senator DEAN SMITH:** I think you identified three issues: living pressures, reduced income and unexpected expenses.

**Mr Kirkland:** They were the top 3 reasons why people identified that they'd found themselves in financial hardship.

**Senator DEAN SMITH:** Were they equally top 3, or was there quite a large gap between them?

**Mr Kirkland:** They were in that order: cost of living followed by reduced income followed by unanticipated expenses.

**Senator DEAN SMITH:** And the unanticipated expenses might be unforeseen medical treatment?

**Mr Kirkland:** That was one of the examples that came through in the case studies, yes.

**Senator DEAN SMITH:** Is it ASIC's intention to do the survey again next year?

**Mr Kirkland:** We haven't planned that at this stage, but we will continue to monitor the reports that we're seeing from bodies like AFCA and from the National Debt Helpline to understand whether there's a need for us to do more work in relation to financial hardship. It may well lead us to do another survey of that type, but it's not planned at this stage.

**Senator DEAN SMITH:** Do you think that hardship issues are likely to abate over the next 12 months for Australian households?

**Mr Kirkland:** I'm in no position to forecast what might happen to hardship assistance, though we did observe in our report that there had been an increase in the number of hardship notices given to lenders in the final quarter of 2023 compared to the previous year.

**Senator DEAN SMITH:** What was the cost of the survey exercise?

**Mr Kirkland:** I'd have to take notice.

**Senator DEAN SMITH:** Thanks very much.

**CHAIR:** Deputy Chair.

**Senator BRAGG:** At the last hearing, we discussed these ongoing issues of the superannuation funds not paying death benefits when they should be and the issues with administration. We last discussed this on 15 February. How many complaints have you had since February?

**Ms Court:** I would have to take that on notice.

**Senator BRAGG:** And you take complaints directly as well as through AFCA?

**Ms Court:** Yes. Complaints come to us in a variety of ways, but we do receive complaints directly through our misconduct and breach reporting area. Also, particularly in relation to this issue, we have received information from AFCA.

**Senator BRAGG:** Anecdotally, have you had a number of these since February?

**Ms Court:** I would have to take it on notice. I'm not aware. As Ms Constant was talking about earlier in response to Senator Pocock and as we've talked about before, this issue about claims and mishandling is a priority

for us and continues to be. Ms Constant outlined a suite of the work that we're doing in relation the issue, including the payment-of-death-benefits issue we've talked about before.

**Senator BRAGG:** Yes. It's an absolute disgrace. I want to ask you about this case we've discussed before: this poor man from Tasmania, Mr John Bothman. We have discussed him a number of times. He had to provide a second death certificate for his wife, who passed away. This is hugely stressful for this poor man. You had said that Aware Super was looking at this or you were trying to get them to rectify the situation or do whatever they could do. Where is it up to?

**Ms Court:** Yes, you have raised Mr Bothman with us. He was referred to in an ABC article in September of last year. He's one example of many that we know have struggled in relation to death benefit payments. We met with Aware in relation to Mr Bothman and other matters in September of last year as well, shortly after the article appeared.

**Senator BRAGG:** So what's happened here?

**Ms Court:** We were advised by Aware Super that Mr Bothman had received his payment. I think it was probably shortly after—

**Senator BRAGG:** After the last hearing?

**Ms Court:** No, back in September of last year we were advised that Mr Bothman received his payment. We then followed up further with Aware and requested information from Aware about the root cause of that issue and how it was improving its systems since that issue occurred. We've also had a notification from AFCA about a number of complaints lodged with AFCA about Aware.

**Senator BRAGG:** I appreciate the update, but it's not a good situation to have to rely on parliamentary hearings and media pressure to get the right outcome for these sorts of people. What are you going to do to make sure that, in the future, people don't have to provide multiple death certificates for people who have passed away?

**Ms Court:** As we outlined earlier in the hearing, as Ms Constant outlined, there is a suite of work that we are doing in relation to surveillance of superannuation trustees and how they are dealing with these issues. It's a priority for us.

**Senator BRAGG:** Do you think they are sufficiently on notice now and afraid of what you might do to them if they do the wrong thing?

**Ms Court:** I think there is no doubt that superannuation trustees are sufficiently on notice as to our deep concerns in this area.

**Senator BRAGG:** That's good. We hope not to have to raise these issues again in these hearings and appreciate your follow-up on that issue.

Mr Kirkland, the last witness we had before you had dressed up as a bumblebee or something at a conference. Did you also go to this conference?

**Mr Kirkland:** I did if you're discussing the Financial Counselling Australia conference.

**Senator BRAGG:** Did you dress up as Sherlock Holmes?

**Mr Kirkland:** I did.

**Senator BRAGG:** Why did you do that?

**Mr Kirkland:** I think Mr Locke provided some context to that part of the conference in his evidence. To put this in context: financial counsellors do really hard work in communities across Australia every day. They had gathered some hundreds of them for their annual conference, which was about trying to bring them together and make them feel special but also give them the skills to help them in their work. I was asked to be part of a session, as described by Mr Locke, to try to take some very serious issues and explain them in a slightly more lighthearted way that might be more memorable for financial counsellors. I was very happy to do so.

**Senator Gallagher:** Sherlock Holmes is a lot more stylish than a beekeepers outfit. Just saying!

**Senator BRAGG:** It may be a better outfit, but have you got enough work on that you can do this?

**Mr Kirkland:** I had a very busy week at that conference. As well as the financial counsellors from across the country, many of whom wished to speak with me, and the other speeches I gave as part of events around the conference, there were a number of industry people there as well, so I would say it was probably one of the busiest weeks that I had all year in terms of both consumer and industry engagement.



**Senator BRAGG:** Alright. Finally, Chair, given the issues we've discussed today about the cultural problems at ASIC in the survey results and the longstanding issues with law enforcement, is it a good idea for people to be doing dress-up games at work at the corporate regulator, which surely has significant issues?

**Senator Gallagher:** Before the chair responds, I think it's been explained in evidence what was being done at this conference.

**Senator BRAGG:** There are very serious cultural issues here in this organisation, and I'm asking the chair about it.

**Senator Gallagher:** It takes nothing away from the work that's going on to address the cultural issues for people to participate in a conference around their educatory function. I think that's absolutely appropriate.

**Senator BRAGG:** That's your view. I'm asking the chair.

**Mr Longo:** I think Commissioner Kirkland has done a fine job of explaining and amplifying the context in which he dressed up as Sherlock Holmes. I don't think the circumstances, or the situation, require too much more amplification that's not already been provided. So far as the culture of ASIC is concerned, I think I already addressed that earlier this morning. I think it's terrific that the commissioners are out there engaging, being a positive part of the work we do. I really want to take this opportunity to say what a great job they're all doing, engaging with all aspects of our stakeholders. There's a lot going on. The more we hear from industry—people operating in the economy—from stakeholders and from consumer groups, the better informed our work becomes.

**Senator BRAGG:** I guess Sherlock Holmes is better than Keystone Cops!

**Senator O'NEILL:** Some educators might give you a bit of a lesson in learning theory—

**Senator BRAGG:** Thank you very much for your answers. I don't think that was the question.

**Senator O'NEILL:** It was an educational endeavour. A bit of learning theory might help you out of the situation.

**Senator BRAGG:** I don't think we have questions from Senator O'Neill right now, do we?

**CHAIR:** That was a good build-up to that line, granted, Deputy Chair. Senator Rennick.

**Senator RENNICK:** Hi, guys. I've been contacted by a few constituents who have lodged complaints with ASIC over corporate behaviour. The reply that they received was that they should seek legal advice and litigate themselves. The constituents have complained about that to me, saying, 'Well, I can't afford to get legal advice,' because they've already lost money. Often with legal proceedings you don't know how long a piece of string is. Given that ASIC already receives taxpayer funding, how do you decide when ASIC is going to pursue a company for illegitimate behaviour versus letting the shareholder pursue the company?

**Mr Longo:** I'll go through a couple of broad propositions before I hand over to Deputy Chair Court. We're actually industry funded. We're not taxpayer funded. Secondly, if there are particular constituents that have raised concerns with you, and you're not happy with the way we've handled them, we're always open to you communicating with us offline, and we'll have a look. The third thing is that we're not a complaints-handing authority. We get thousands of complaints, issues and matters brought to our attention each year. A tiny fraction can be resourced for action or investigation. Indeed, there's another inquiry going on to which we've made multiple submissions trying to explain that, with a staff of 1,800 people at ASIC and getting over 10,000 complaints a year, if you do the maths you can see immediately that only a tiny fraction of those matters can inform our enforcement activity. We are happy to hear about the rest of the matters, and they inform our overall prioritisation. That's like a short version of a response.

**Senator BRAGG:** I'll just follow up on that, because you're right—I understand you do get lots of complaints. Do you think you need to be a little bit more punitive on some of this white-collar crime to send a message that it's not okay? I'll give you an example that happens a lot. You'll often see a significant increase in the number of short sells before a raising of capital. It's happening a lot on the market, which suggests insider trading. Do you track that at all, and do you track insider-trading behaviour on the ASX?

**Mr Longo:** We do a lot of market surveillance with the ASX. We have a system called Artemis which, as it turns out, is a prize-winning piece of software which does a lot of real-time surveillance work in the market to see whether pre-transaction leaks are affecting trading behaviour. In fact, we're shortly going to be publishing a market cleanliness report. I think Commissioner Constant might be able to give you a bit more colour about our surveillance activity. Overall, what I can reassure the committee about is that our overall market cleanliness around continuous disclosure, insider trading and timeliness of announcements is actually very good. We benchmark ourselves against a range of global benchmarks.

The only other thing I would say before I hand over to Commissioner Constant is market abuse is an enduring priority. We have a number of continuous disclosure matters going from time to time. In the last 10 days we've had a number of insider trading matters in court, as my opening statement said, and there's a matter before the Federal Court at the moment where ANZ have appealed a case we won against them a little while ago.

**Senator RENNICK:** How do you track custodians? Custodians are often separated from the real owners and they're behind a wall, so to speak. How do you know that custodians don't own shares in both companies, for example, or that they don't use insider information, given it's very difficult to track true ownership once they've enhanced custodians?

**Ms Constant:** The response to that is part of the response to your first part of inquiry. We have various data sources we use for surveillance in terms of understanding cleanliness of market. The chair has spoken about the work we've recently done and we've refreshed, which looks at almost exactly your opening scenario—so what happens before there is a significant announcement. You talked to shorting and maybe others just acquiring. We then put that data together. That will be part of our published report into the listed market. Using Artemis, we track all sorts of links and connections, including data about anonymised—so safely used, to understand connections between individuals, including business relationships. That includes custodians. The idea is to be multifaceted and multidimensional. We have pre-imposed trade data. We have data sources understanding connections. We look at unusual profit—so when we see an unusual profit and the link with announcements. All that goes into our surveillance to understand where there might be risk and where we might see an issue.

I would also add: you might be getting at the fact there are significant holdings being built up with regard to listed and also unlisted stocks, and custodians of the superannuation funds, who look after those funds or funds management, are really mindful of that. When we release the cleanliness report on the listed equities market, we will make announcements about what we're doing in the next phase to look at the broader funds management and holding industry, because we're aware—and I gave a speech last week, on the record—that the larger these entities become and the more variety of investments they have, the more potential for touch points. Whether with their custodians, with advisers or with consulting firms, more touch points raises the risk of insider trading. We're equipped for that in regard to the surveillances I explained, but we're very mindful of that.

**Senator RENNICK:** Thank you very much.

**Senator ROBERTS:** Thank you for appearing today. Last estimates I raised a series of concerns regarding the Banking Code of Practice, and Ms O'Rourke was very forthcoming in her answers; thank you for that. At one point, Ms O'Rourke, you said you would update me if there was any progress on the negotiation for the new banking code. Could you provide an update now, please, in respect of these four matters. Is 'prudent and diligent banker' still in there? It's a meaningless phrase.

**Ms O'Rourke:** Yes, we had that discussion at the last hearing, about the code of practice. I'm happy to update in relation to the discussions we've been having. To step back a moment—

**Senator ROBERTS:** On those specific four points: is 'prudent and diligent banker' still in there?

**Ms O'Rourke:** I think, prior to that particular question, you said, 'What's the state of play?' The state of play is that there's not yet a final code that has been finalised by the ABA to put to us for approval. The answer is that it's not yet determined whether or not that phrase 'prudent and diligent' will or will not be in the final code. Can I give a little bit more detail?

**Senator ROBERTS:** Sure.

**Ms O'Rourke:** It is in the existing code. In the draft code published by the ABA last year, in relation to which we've had a consultation process, there was a proposal to narrow the application of 'prudent and diligent' to very specific circumstances and for other circumstances to rely on other legal provisions. That has been something through the consultation process we have had submissions in relation to, and it is something we have been speaking to the ABA about. The ABA is still considering its position, and there isn't a final outcome.

**Senator ROBERTS:** Is there a guarantee of face-to-face banking services?

**Ms O'Rourke:** That is not in either the existing code or the proposed code from the ABA. Like I say, there is no final position in relation to what the final code will look like but that's one that's not been proposed, nor was it particularly raised in the submissions we received.

**Senator ROBERTS:** This is not a comment aimed at you, Ms O'Rourke, but we're not interested so much in whether or not something was in there or will be in there; we're interested in—purely, that's something we believe is necessary. Is there a guarantee of access to the King's currency of cash?

**Ms O'Rourke:** The current code does not have that, nor does the proposed code.

**Senator ROBERTS:** Is there a guarantee not to debank a customer for competitive or social reasons like, 'We don't agree with your politics'?

**Ms O'Rourke:** That's not in the current code nor is it proposed to be in the revised code.

**Senator ROBERTS:** I believe you took on notice the debanking issue, but the response only answered 'other matters'. Has ASIC considered the debanking issue? It's a device by which the banks harm the business of their competitors and manipulate the markets to their financial advantage—as they have, for example, with cash in transit. This says misuse of market power to me. Has ASIC considered the debanking issue?

**Ms O'Rourke:** ASIC has been part of discussions around the cash-in-transit issue you referred to. I'm not sure whether you've had an opportunity to speak to other agencies, including the RBA, Treasury or others involved on the government side, or, indeed, if you've had opportunities to speak to the ABA or others. We're more interested observers than participants in relation to cash in transit. We don't have any regulatory hooks or provisions that particularly go to the provision of cash or its transportation.

**Senator ROBERTS:** What about debanking?

**Ms O'Rourke:** Similarly, there is no requirement to bank or to take steps in relation to debanking in relation to which we could take action.

**Senator ROBERTS:** On the crypto scam: Senator Hume asked some very fine questions today. Your testimony was that you were aware of this scam for quite some time, yet the scam companies Infinity CapitalG, Topmarketcap, Iron Bits and Richmondsuper were added to the scam list just yesterday. Why did it take so long to get those companies onto the scam list?

**Ms Court:** As I said in my answers to Senator Hume, when that information came in to us it was for the purposes of a continuing criminal investigation at that time. At that time, in August 2023, we didn't have up and running the investor alert list we have now; that commenced in November 2023. We hadn't received any reports of misconduct or any indication that any of those entities referred to in the article—that consumers were continuing to invest or lose money as a result of investments in those entities. However, following the media reporting, we went back and had a look at those entities, and I think we took a decision that we would put four out of the five—even though we had no information about continuing losses to investors—on the investor alert list, for completeness.

**Senator ROBERTS:** Thank you. On Mayfair 101: ASIC went after a company that appears to have been trading illegally. Mayfair 101 were up-to-date with repayments to lenders and, as demonstrated over the last three years, had financial resources as they fought your action. ASIC considered Mayfair's advertising misrepresented their investment product and took immediate action to freeze the company's asset. By doing that, ASIC almost cost 500 Australian investors \$200 million but the company has survived. ASIC's actions have, however, caused a lot of damage to investors and the company for no good reason we can see. One Nation, I must mention, as I previously stated, is one of those investors. This matter has been dragging on for three years and now ASIC is going for another round. What's the state of play now?

**Ms Court:** I gave quite a long answer to Senator Bragg earlier, when you weren't in the room, about the status of Mayfair—

**Senator ROBERTS:** Okay; we'll leave it. I want to get on. Thank you for that. Your actions were ostensibly to protect investors, yet the investors in Mayfair have not had access to their funds or a return on their investment since you started your action, despite the entity they invested in still being viable. Why are you hurting the people you profess to protect?

**Ms Court:** As I said in my response to Senator Bragg earlier, ASIC acted quickly in relation to the Mayfair matters for the purposes of protecting future investors. The matter's been before the court, and Mayfair has been found to have engaged in misleading conduct. The court has imposed a \$30 million penalty on Mayfair, which I understand remains unpaid. There are still several matters currently before the courts, and the courts are testing ASIC's claims and the defences to those claims. That is an appropriate place for them to be determined now.

**Senator ROBERTS:** Okay. I had one more question on that, but I'll move on to the next issue, because I've got some questions on this. This is really important to us—about the bullion company I've asked about before. I do need to be careful with my words, as the matter is now before the National Anti-Corruption Commission. The question all along has been, did ASIC give the company so much warning of the audit that the company was able to do two things: (1) buy the bullion that they were charging customers for storing but hadn't yet bothered to buy; and (2) move bullion around to misrepresent their stock? Since we met on this issue, another whistleblower has come forward to testify that they were personally involved in moving bullion around to defeat the audit, to bypass it. My question is: did you allow for the chance of and defeat the moving of bullion to rig the audit?

**Ms Court:** Perhaps I will answer that question first, and I'm then going to pass to my colleague Mr Savundra, because you have raised an issue about the National Anti-Corruption Commission which is a most serious allegation—

**Senator ROBERTS:** It is.

**Ms Court:** In relation to this issue, as you're aware, ASIC has conducted an extensive investigation in relation to various allegations of a particular gold bullion company. We have done everything we would normally do in an investigation and certainly reject any suggestion that anything inappropriate has been done or people tipped off, to use I think the language in your question. But, with the chair's leave, I'm going to pass to Mr Savundra now to deal with some of the other elements of your question.

**Mr Savundra:** Thank you, Senator, for the question. You raised the matter of a referral to the National Anti-Corruption Commission, and I want to put some information on the record regarding that. Late last Friday ASIC received correspondence from a complainant—

**Senator ROBERTS:** My question has been—

**Mr Savundra:** It's important, Senator—

**CHAIR:** Senator Roberts, I'll give Mr Savundra the call.

**Mr Savundra:** Late last Friday ASIC received correspondence from a complainant well known to ASIC. The complainant has submitted a number of reports of misconduct to ASIC relating to a particular entity. His original report of misconduct was investigated by ASIC. It required the expenditure of considerable time and resources. ASIC has an open investigation in relation to a further report of misconduct from the same complainant relating to the same entity and other entities in the same industry. ASIC is close to finalising this aspect. Again, this has required the expenditure of considerable time and resources by ASIC. ASIC has corresponded with and met the complainant on several occasions during this period. We've also responded to about 40 freedom of information requests from the complainant and five FOI requests which we understand were authored by the complainant but submitted by someone else.

In total, ASIC has spent more than 650 hours responding to these requests. ASIC has also responded to four questions on notice from this committee and other committees in relation to the matter the complainant is concerned with. In correspondence from the complainant last Friday, he indicates that he remains dissatisfied with ASIC's conduct of its original investigation and states, as you've mentioned, that he has referred several ASIC officials to the NACC for investigation, including Deputy Chair Court. He states that this is in addition to his existing referral of former Deputy Chair Karen Chester. He indicates he will also be providing output of his work to multiple committees within the Australian Senate and the Australian Federal Police.

The complainant also states in the letter that if ASIC did not, by 5 pm that same day, indicate its intention to meet with him, he would be 'informing the Australian people of the real truth of ASIC's investigation'. The complainant says he's been working full-time for an extended period on these issues and refers to reports he has drafted that span many hundreds of pages and contain many hundreds of exhibits. ASIC was provided with a copy of the report and supporting material yesterday afternoon. We will examine that report. We understand this material has been referred to the NACC and will be referred to the AFP and, no doubt, other agencies.

In the covering letter, the complainant requests that ASIC, amongst various other requests, formally engages him and his team to undertake further investigation into the entity. We assume the complainant is seeking that this occur on a paid basis and we note that the complainant has previously sought payment from ASIC for the work he has done to date.

We have advised the NACC of the issue. We recognise the important work of the NACC and will, of course, fully cooperate with any investigation it proposes to undertake.

The complainant has also made a number of speculative allegations relating to ASIC's conduct, including via social media. Based on the information available to ASIC, these allegations appear to be baseless and lacking in credibility. Despite this lack of credibility, ASIC has dealt with the complainant's reports of misconduct seriously and on their merits. As I mentioned at the outset, given the complainant indicated he'll be providing the material to multiple Senate committees, we feel it is important that the committee is advised of ASIC's awareness of this issue.

To assist the committee, we'd like to table a copy of the letter from the complainant dated 31 May 2024. We have redacted the names and other identifying information of the complainant, his lawyer and the entity which is the subject of the complainant's reports of misconduct.

**Senator ROBERTS:** Thank you for that. I'll put my question again to you. Since we met on this issue, another whistleblower has come forward to testify they were personally involved in moving bullion around to defeat the audit. Question—I'll read it again—did you allow for the chance of, and defeat the moving of, bullion to enable the rigging of the audit?

**Mr Savundra:** If you have information from a whistleblower, we'd be grateful to receive it. Based on the information available to ASIC, we believe that we have thoroughly investigated the matter and that the audit was conducted appropriately.

**Senator ROBERTS:** I know Senator Bragg has done a marvellous job in holding ASIC accountable, and, as I understand it, he continues and is relentless in doing that. I've just been vindicated, with accusations I made against a very powerful entity in this country—not inside of government but associated with the government. After five years of denial, they have now admitted that what I said was correct, just because someone is persistent. Now, I want to ask another question. It's now been found—

**CHAIR:** Senator Robers, I'll need to share the call. How much—

**Senator ROBERTS:** I'd like to come back, because I'm not going to put these on notice.

**CHAIR:** How much more have you got—

**Senator ROBERTS:** It depends: if I get an answer like I did last time or if I just get an answer to my question. It shouldn't take too long.

**Senator Gallagher:** I'd like to record that ASIC was allowed the room to provide a statement in relation to some of the questions that are coming. But let's work through what you've got left, Senator Roberts, as quickly—

**Senator ROBERTS:** You're the chair, Chair.

**CHAIR:** Yes, indeed. The committee will table the document provided by ASIC.

**Senator ROBERTS:** I'll just finish my questions?

**CHAIR:** Yes. I just want to give an indication, Senator Roberts, that, when you say that someone has been referred to the National Anti-Corruption Commission, it's a serious allegation. It's a matter for you whether you wish to do that. Obviously—

**Senator ROBERTS:** Do what?

**CHAIR:** To invoke the National Anti-Corruption Commission here in this hearing. The NACC—

**Senator ROBERTS:** In my earlier question, do you mean?

**CHAIR:** Yes. Are you moving on from that now?

**Senator ROBERTS:** Yes. Same topic—a bullion company—but I want to get on to other questions, which shouldn't take too long.

**CHAIR:** You have the call.

**Senator ROBERTS:** It's now been found that the bullion inspected was the property of three companies operating two investment schemes. Were you aware that your auditor was inspecting bullion belonging to two companies not under investigation?

**Ms Court:** I'm unable to comment further on this issue of the bullion company. I haven't got further information beyond that which—

**Senator ROBERTS:** So you're not saying that you won't answer; you're saying that you haven't got it with you.

**Ms Court:** I'm saying I—

**Senator ROBERTS:** We'll put it on notice.

**Ms Court:** Perhaps—if you put questions in relation to this issue. I'm assuming that your questions relate to a continuing investigation that Mr Savundra referred to. In those circumstances, it would be appropriate to put those on notice to make sure that we can answer them comprehensively.

**Senator ROBERTS:** I'm talking about the audit. I'll continue with questions on the audit. What steps did your auditor take to ascertain ownership of the bullion being offered as theirs? What steps did the auditor take?

**Ms Court:** I think it would be preferable to take those questions on notice. You're asking for details of an investigation. We have given evidence previously that the matters raised in relation to the bullion company have been extensively investigated.

**Senator ROBERTS:** So it should be easy to get answers. Was the theoretical stocking figure provided for the amount of bullion just for one scheme as compared to gold for two? My information is that it was.

**Ms Court:** I will take that on notice.

**Senator ROBERTS:** The facility that held the bulk of the bullion did not have council approval for secure storage and, in fact, was not a secure storage. Why wasn't the company prosecuted for charging customers for secure storage that didn't exist?

**Ms Court:** I'll take that on notice also.

**Senator ROBERTS:** Can you answer that now? It's Senate estimates. The guideline is that you will answer if you can answer it now.

**CHAIR:** Senator Roberts, another ASIC inquiry is underway. In relation to operational matters, from time to time, ASIC provides information to senators in another forum where we can be very assured that appropriate structures are put around the information provided, so, when Ms Court says that she's taking it on notice, that is appropriate in relation to this investigation.

**Senator ROBERTS:** This one? Okay. Will you now please set aside your pride, open up the investigation and work out what was done wrong and what action should be taken for misleading ASIC.

**Ms Court:** I've already said that I'd prefer not to answer further questions. Part of the challenge with answering the questions in the way that you're putting them is that it assumes the correctness of the proposition in your question, which, of course, ASIC takes issue with. We reject that there has been any misconduct by ASIC in relation to this investigation. It has been conducted extensively over quite some time. As the chair has indicated, to the extent that you could wish us to address you on these issues in camera, then, of course, we would be willing to do that, if the committee seeks that briefing.

**Senator ROBERTS:** Okay. Can we do that? I'll finish with the last question on this issue. I have put in more detailed questions on notice and ASIC has received the information I mentioned today directly, so I look forward to further communication on this matter and will take you up on the offer for the in camera briefing.

**Senator HUME:** I have some questions about the cost recovery levy. In response to some questions on notice at last estimates, ASIC noted that one of the big drivers of higher cost recovery imposts on financial advisers was, and I quote:

- A not insignificant enforcement effort required in respect of unlicensed operators involved in providing financial advice.
- I'm interested in the logic behind this. Obviously the advisers that are doing the right thing are paying their fees and meeting the requirements, but then they're burdened with the cost of pursuing the scammers in the industry and those that aren't doing the right thing. Some of those obviously are licensed but some are not, so the people doing the right thing are paying for those who don't even have a licence. How does this work?

**Mr Longo:** To some extent, the industry funding model is premised on that very proposition.

**Senator HUME:** Yes.

**Mr Longo:** It's its seventh year of operation. The innocent sometimes pay for the sins of the guilty—that's how the system works, broadly speaking. I will ask Commissioner Kirkland to have a first go at answering this question. The industry funding model is incredibly prescriptive and complex, so, to the extent that we get into the detail, we do have our chief financial officer here to help if necessary.

**Senator HUME:** Thank you.

**Mr Kirkland:** We are aware of concerns from the industry about the allocation of enforcement costs in relation to unlicensed conduct. As the chair has said and your question acknowledges, the way it works at the moment is based on the principle that the cost of regulatory work and enforcement are met by the entities and subsectors that are causing the need for regulatory and enforcement efforts. In the case of unlicensed financial advice, under that model, the enforcement costs in relation to financial advice are borne by the financial advice sector.

It is part of our work across all sectors to regulate the boundaries of permitted conduct. So in any area that we may be looking at unlicensed conduct then, under the industry funding model, the relevant cost would be allocated to the relevant subsector. There was a recommendation in the review of the industry funding model that the recovery of regulatory costs in relation to unlicensed activity be spread across the relevant sectors based on ASIC's total regulatory effort for each subsector. It's possible, if that were implemented, it would result in those costs shared in a different way and a reduction.

**Senator HUME:** How would you do that, particularly with social media companies—your TikToks and all of that sort of thing? Do you go to the individuals that have put it up, the influencers or whatever they might call themselves, or do you go to social media companies? How would it work?

**Mr Kirkland:** The way we do it at the moment is we identify the conduct and identify which area of conduct appears to be unlicensed. In the case of, say, a influencer giving financial advice without a licence, that's clearly unlicensed conduct in relation to financial advice. If it was somebody who was operating something that is akin to a managed investment scheme without a licence, in that case the costs would most likely be allocated to the funds management sector. It's a matter of identifying the conduct—the conductor should be licensed—and then the relevant costs get allocated to the—

**Senator HUME:** But there's nothing in the legislative framework, there's nothing in the cost recovery model and the industry funding model that would allow you to cost recover from a social media platform that allowed that unlicensed financial advice to take place?

**Mr Kirkland:** Since the industry funding model was established, it's been based on levying licensed firms. There has never been an aspect of the model that would allow us to apply levies to entities outside our regulatory remit.

**Senator HUME:** Okay. What was the quantified cost of enforcement for those unlicensed operators providing financial advice during the last cost recovery period?

**Mr Kirkland:** I don't think I have that figure to hand. We might need to take that on notice.

**Senator HUME:** No? Can you take that on notice for me? That would be terrific. To what extent do financial advisers and financial professionals report this activity to ASIC? I would imagine they'll see an Instagram post or they've received an unsolicited phone call or whatever it might be. They realise it's unlicensed financial advice and they report it to you. How often does that happen?

**Mr Kirkland:** I'd need to take it on notice as to whether we're able to provide specific data on that point. But certainly in my engagement with financial advice industry bodies, it is a matter of concern to them. While I understand their concerns about the way in which the levies are allocated, they are also keen to see ASIC take action in relation to unlicensed conduct. For example, we've recently released some information on cold-calling practices in relation to superannuation. Some of that potentially involved unlicensed financial advice conduct. And in talking to organisations like the Financial Advice Association, they've welcomed us taking action in relation to those practices because of the harm it does to the industry in general.

**Senator HUME:** It sounds like the cost recovery model has been quite demanding in recent times. I just want to confirm there is nothing in the current legislative framework that allows for cost recovery from other sectors beyond licensed advisers—is that right?

**Mr Kirkland:** Beyond licensed firms more broadly.

**Senator HUME:** Licensed firms I should say, yes; you're right. Is that something that ASIC would be seeking to address the increasing problem that it is now facing from a proliferation of unlicensed advice or misconduct that financial advisers are now paying for?

**Mr Kirkland:** Ms O'Rourke may want to add to that in relation to some of the other entities besides licensed firms that contribute to the industry funding model.

**Ms O'Rourke:** In terms of the categories, in terms of financial advisers, yes, that's one of the cohorts. But I'd just acknowledge that as well as licensed entities—for example, companies are a cohort that do pay under the IFM model. However, I think your question is whether you could move costs from one cohort across to others. This is not facilitated through the model. The model is based on that principle that within the activities that are referable to those group activities is where their cost falls.

**Senator HUME:** So if you can see this is becoming unreasonable or unfair on those who are doing the right thing, how does ASIC respond? Do you go to government and say, 'Look, this is not working any more,' or does government risk come to you and say, 'We're hearing from stakeholders that this isn't working anymore.'

**Mr Kirkland:** The design of the industry funding model is obviously a matter for government, with Treasury being the key adviser. It has been the subject of a review—

**Senator HUME:** That's right.

**Mr Kirkland:** so, in that context, ASIC itself wouldn't be seeking to examine any further options for reform of the funding model. If there is a future review, then I imagine industry stakeholders will put forward a range of views. We may well have views at that point in time, but it's not something that we're examining at the moment.

**Senator HUME:** Thank you.

**Senator CANAVAN:** I have some quick ones following up from Senator McDonald. I want to go back to the climate reporting, carbon emissions reporting standards. I'm informed that during the legislative committee hearing on this bill, you provided evidence that the Australian Small and Family Enterprise Ombudsman had raised concerns about this piece of legislation. Could you detail what those concerns were?

**Ms Court:** I did give some brief answers to Senator McDonald.

**Senator CANAVAN:** That was covered, was it?

**Ms Court:** It was; yes.

**Senator CANAVAN:** And did you go through who was at that workshop?

**Ms Court:** No, I didn't. We did suggest Commissioner O'Rourke and me. I was present for a short period of the workshop, as were various other regulators.

**Senator CANAVAN:** Okay, but it was organised by the ombudsman though, was it, so we can follow it up later?

**Ms Court:** Yes; it was organised by the ombudsman. I think Mr Billson would be able to give you a full list of attendees and the program.

**Senator CANAVAN:** Okay. Did you contribute, or were you just there to—

**Ms Court:** I spoke, as did Deputy Chair Keogh from the ACCC and other regulators. I think there were policy department people there and a number of industry representatives, if I recall correctly.

**Senator CANAVAN:** Okay. Can you explain to me the modified liability period under the legislation?

**Ms O'Rourke:** I'm happy to give introductory comments and I'm happy to then take anything on notice if it isn't sufficient. As you are aware, the bill would require companies in particular groups to provide climate disclosures mandated to match the standards that are being set by the AASB. In relation to whether or not those standards have been met or whether there are any breaches of the new provisions that apply, the bill currently has a three-year period of time during which liability is modified. The modification is such that third parties are not able to bring action in relation to those statements. However, ASIC is allowed to take action during that three-year period. So the modification doesn't directly impact us in terms of the causes of action that we may commence proceedings for, but it does impact third parties who may, in relation to those climate disclosure statements, identify concerns.

**Senator CANAVAN:** Okay. Just before I get on to the third parties, what can be considered a breach? Is it just misleading and deceptive information? I presume if you don't do it at all you're in breach, but if you have made a good-faith effort to put in this climate statement, to go through all the effort, what action can be taken?

**Ms O'Rourke:** The misleading and deceptive conduct provisions are existing. That's the basis on which ASIC and other regulators take action for greenwashing.

**Senator CANAVAN:** Because it's a statement to the market, you can be pursued for misleading and deceptive—

**Ms O'Rourke:** That's right. Involuntary statements to the market that are currently undertaken—our chair referred earlier to the fact there are a lot of companies that have commenced climate disclosures as information about their company's climate actions or transition plans or, indeed, if they voluntarily make claims about their products or services, there may be something that's alleged to be misleading and deceptive. What I was drawing your attention to earlier was that in addition to 'misleading' and 'deceptive' as existing provisions, the bill introduces the active past that will require particular statements to be made and information to be provided, so there will be new courses of action that will be created through these new provisions. So if a statement is made in a required disclosure that one alleges is misleading and deceptive, the modified liability provisions or protections will apply to statements made in those new disclosures.

**Senator CANAVAN:** Okay. I presume then, during this transition period, there may be a situation where some of these third parties put pressure on ASIC to take action. Are you anticipating that at all?

**Ms O'Rourke:** We already have, like I referred to, existing activities in relation to—what do you call it—greenwashing or misleading or deceptive conduct more generally, or concerns around climate disclosures as a pre-existing body of work that occurs. The information that comes to us about concerns comes not only from individuals but also from groups and people. We have—I think it was referred to earlier—our breach reporting. Reports of misconduct come through to our team, so we have a system in place for getting reports, for assessing them and for testing them against our priorities, the kind of resource intensity and the alternative actions. So, yes,



there will be additional reports now there are additional provisions. We're set up to absorb, analyse and then appropriately action those where they meet the requirements or the priorities we have.

**Senator CANAVAN:** In what sense then is the transitional period modified? I mean, if you've been acting on these reports anyway—

**Ms O'Rourke:** As I explained—

**Senator CANAVAN:** From a company perspective, for this three-year period, they're still on the hook, basically, aren't they?

**Ms O'Rourke:** As I explained earlier, the modification period doesn't apply to us; we're an exception to that provision. It's in relation to third party actions that would have been immediately available, because there are new provisions that arguably have or haven't been breached. There may be allegations of breach. It's those actions for which there is the three-year period in which they cannot be progressed.

**Senator CANAVAN:** I suppose what I am getting at is, as you say, you have already got a system in place today that takes complaints. You triage them, by the sounds of it, in some way. Will you, during this three-year modified liability period, put any different tests on allegations that come through these new provisions compared to what you are already doing? Will there be a higher threshold or you will be given some—I don't know what the word would be—degree of grace to companies in this three-year period compared to what you do with more established regulations?

**Mr Longo:** Perhaps that needs a bit of clarification. We haven't used the word 'greenwashing' yet. Our enforcement activities around greenwashing will continue. That's the messaging—

**Senator CANAVAN:** That's what I am saying may be different.

**Mr Longo:** Yes, that's fine. The accounting standards that are yet to be issued, I've given a couple of speeches on this topic, as have some other commissioners. The key points are the private sector can't sue anybody for breaching any of these accounting that are standards coming our way. ASIC's powers are unaffected, as Commissioner O'Rourke has confirmed. Everyone's very interested, though, in what circumstances ASIC would take action—

**Senator CANAVAN:** That is what I'm getting at.

**Mr Longo:** to deal with alleged departures or failures to comply with the new standard. I think it is fair to say what I said quite publicly: let's just step back and say, 'Let's see what the standards say. They haven't been promulgated yet.' We're getting a lot of appetite from industry for help and facilitation to say: 'What do these standards mean? What are your expectations on how we will use the data?' In this very early stage, our priority will be education and guidance. There's a lot of appetite for that.

**Senator CANAVAN:** The problem for me and for all of us here is we're potentially going to vote on this in weeks, once the committee is finished. I suppose, I'm taking from your evidence it's a bit of a blank cheque for you. If we were to pass this law then you will work out how to enforce it. But you can't give me surety about how the law will be enforced before I vote on it. Once I vote on it, that is it.

**Mr Longo:** I wouldn't call it blank cheque, with respect. We have existing accounting standards in Australia and they are revised from time to time. That doesn't go back to parliament; that is the role of the Australian Accounting Standards Board. They are in power to issue standards. They are about to be empowered, if this legislation is passed, to deal with climate risk. Once we know what the standards ultimately are, we will be working closely with standards setters and the industry and reporters to make sure that, as best we can, we administer those standards in a sensible way. But in the end, it will be the law for reporting entities to comply with those standards, and we will do our best. So it isn't a blank cheque. I wouldn't call it a blank cheque.

**Senator CANAVAN:** Obviously, we could modify it. It is not a blank cheque for me but what I am saying is what would make more sense right now is to have a proper grace period, not a modified period, as people work this out. That is not for you; that is a policy matter that we would have to work out. It doesn't sound like this three-year transition period is much of a transition at all. We don't know how much of a transition it will be if you can't establish or can't tell us.

**Mr Longo:** I want to acknowledge on behalf of the commission that we really do acknowledge the concern about what is our approach going to be to enforcement, frankly, of these standards over the next two or three years. As things stand, we are all going to be doing a lot of learning. These standards are entirely new. They are complex. They will require data. We will do our best to work with industry to come up with a pragmatic, sensible approach to compliance with them. But if entities go out of their way not to comply, you can expect us to take action.

**Senator CANAVAN:** That is what I am getting at. The problem with misleading or deceptive conduct at law, I suppose, is I don't think you have to prove intent necessarily.

**Mr Longo:** No, you don't.

**Senator CANAVAN:** If someone is intentionally breaching the law, that is a different matter. But here is a situation where the issues are more elevated. Maybe you could comment on this. You've drawn comparisons to existing accounting standards, but there is a fundamental difference between estimating or measuring your cash at hand, your short-term liabilities, your accounts payable compared to how much carbon emissions are created by my product which I sold with third-party overseas? There is a greater degree of freedom and uncertainty with the latter case.

**Mr Longo:** Yes, I acknowledge that.

**Senator CANAVAN:** There might be a situation where it was in good faith that I was trying to estimate my scope-3 emissions and suddenly I am getting activist groups go after me whereas, in the former case, you can go 'well, here are my accounts payable; here are my invoices.' I've got a trail.

**Mr Longo:** I do acknowledge those concerns. They have been expressed to us in various forms. Your last point about the data was fundamental and interesting. One of the big challenges facing reporters will be where they do get their data from. The different sources of data. All I can do for this afternoon's purposes is acknowledge that challenge and we will be working through it.

**CHAIR:** That concludes the questions the committee has for you today. Thank you, Chair Longo. Thank you, team. You go with our thanks. I now call the Australian Prudential Regulation Authority. We will take a short suspension while we do so.

#### **Australian Prudential Regulation Authority**

[13:20]

**CHAIR:** I welcome the team from APRA. We've received an opening statement from you, Mr Lonsdale. The committee is happy to table it. Did you wish to make any opening remarks or just proceed to questions?

**Mr Lonsdale:** Good afternoon, Chair. Good afternoon, committee. It's good to be here. I'm very happy to table it. It provides a selection of our work. I'm happy just to go straight to questions.

**CHAIR:** Okay. Thank you very much. If there is no objection, I will incorporate the agency's opening statement.

*The statement read as follows—*

My colleagues and I welcome the opportunity to be here today to update the committee on APRA's work to maintain safety and stability in Australia's financial system.

In opening, I would like to reassure the committee that the long period of stability in Australia's financial system continues, supported by sound regulatory settings. This should provide confidence to Australian depositors, insurance policyholders and superannuation fund members.

As 2024 progresses, APRA is monitoring several risks in the operating environment including geopolitical risks, continuing high inflation and elevated mortgage interest rates. Cost of living pressures remain a key concern.

Non-performing housing loans have increased over the past few months, albeit from a low base. Borrowers experiencing financial hardship are also increasing, however, many borrowers maintain prepayment buffers.

In this context, APRA is focused on ensuring lending practices are prudent and banks remain resilient, including through targeted changes to the prudential framework for authorised deposit-taking institutions (ADIs).

APRA is also closely monitoring pressures on access and affordability of household insurance, particularly considering the increasing losses relating to flood and other natural catastrophes.

APRA has progressed several important reforms since we last appeared before the committee in February.

The Financial Accountability Scheme (FAR) commenced for ADIs on 15 March 2024, and is due to come into effect for insurance and superannuation industries next year. The expectations of strengthened responsibility and accountability outlined in this framework, which APRA jointly administers with ASIC, is aimed at improving the risk governance cultures of APRA-regulated entities.

As the Committee would be aware, the Australian community continues to be impacted by operational outages and cyber-attacks on institutions. APRA is taking several actions to mitigate this.

APRA has largely completed a review of all regulated entities' compliance with the CPS 234 Information Security standard. Although remediation is still underway at some entities, this exercise has helped organisations to lift their cyber defences and data privacy protections for Australians.

APRA has now finalised formal guidance on CPS230 Operational Risk Management, which will be published shortly and comes into effect on 1 July 2025. This standard will assist organisations to better understand their critical operations and material third party service providers and to set tolerance levels for potential business disruptions. APRA has responded to industry requests to ensure the regulation is effective and proportionate to the size and significance of the entity, including supervision intensity for certain elements of the standard.

In relation to climate-related risks, APRA is conducting a voluntary survey of its regulated entities, asking them to self-assess the maturity of their current practices against APRA's guidance on managing the financial risks of climate change. The initiative will provide insight into the progress that entities have made in identifying, assessing and managing climate-related financial risks since the release of APRA's practice guide in 2021.

In the superannuation industry, we are further progressing work to improve transparency and to ensure that trustees are always acting in the best interests of fund members.

In that regard, APRA will publish the results of the 2024 annual performance test in late August. The test assesses the long-term performance of superannuation products against tailored benchmarks, with consequences for those that fail. Shortly afterwards, APRA will publish a detailed package of performance metrics, investment returns, and fees, to provide further transparency to super product performance. In addition, APRA will soon begin publishing new and more granular data on how members' funds are being spent and invested by trustees. Amongst other information, it will include expenses data across several categories and payments to certain categories of third parties at both a fund and industry level.

Finally, the committee will be aware the Government has announced its intention to publish a regulatory initiatives grid. APRA supports this and will contribute to the grid's development. In addition and as part of our commitment to transparency, we will continue efforts to assist entities to better understand and efficiently manage their obligations. APRA will launch a pilot version of our new digital Prudential Handbook later this month, which organises more than 140 Prudential Standards, Guidance and associated information into an easy-to-use and search format. In July, we will publish our latest Corporate Plan which will include an update on our policy and supervision priorities.

APRA would like to acknowledge the additional funding allocated by the Government to invest in APRA's technology, data, security and supervision capabilities.

With these remarks, my colleagues and I are happy to take your questions.

**CHAIR:** I'll go to the deputy chair.

**Senator BRAGG:** Good afternoon. I want to ask you about some of the laws that you're supposed to be enforcing. In the last financial year, according to the disclosures, the super funds provided almost \$40 million to unions and various umbrella groups. Some of these funds—AustralianSuper, Cbus, HESTA, Hostplus, TWUSUPER and First Super—each paid more than \$1 million to various unions, and this is all backed up by Electoral Commission data because, of course, the funds are paying money to political organisations, like unions. I'm wondering where you're up to with your investigation into these particular payments.

**Mr Lonsdale:** Thanks for your question. I'll ask Ms Cole to take it. I'll just make one overarching comment, though. You talked about enforcement. I'd just like to make it clear that we are a supervision led organisation; that's the first tool that we use. But, in terms of enforcement, we certainly have an appetite to take on enforcement where we see wrongdoing under the law or the prudential standards. I just want to make that clear at the beginning. Margaret?

**Ms Cole:** We have an ongoing, live investigation that I've referred to in response to your questions on previous occasions in this committee, so I am not in a position to discuss that any further. As for the other expenditure to which you refer, we do, through our supervisory interactions with super funds, put them to the test to explain the expenditure they have. They are required, as you know, to satisfy our standards and to make sure that their trustees are operating in the best financial interests of members. We have numerous supervisory interactions where we go into these issues. We have standards that they're obliged to work in accordance with. Of course, those are principles based standards, but we do expect them to do a rigorous assessment of the expenditure that they make.

**Senator BRAGG:** Can you explain to me how the best-financial-interests duty is enforced by APRA?

**Ms Cole:** As the chair said, our primary focus is as a prudential regulator, and our first tool is supervision—in our supervision relationships. Super funds, like other entities that we supervise, have teams that interact with them very regularly. That's the nature of the business we do. They will go into conversations with trustees about the nature of the expenditure they're incurring. If there's something that does not appear to be justified on the basis of what we see, we are prepared to take those matters further, drill into them—

**Senator BRAGG:** How many cases have you found where that's had to happen?

**Ms Cole:** I don't think I can tell you the answer through the supervision relationship, but I was listening with great interest to the earlier conversation about moral suasion. Moral suasion is essentially part of the toolkit of our prudential regulator.

**Senator BRAGG:** You shouldn't need moral suasion.

**Ms Cole:** That is actually what we do. Most of what we do is not in the public domain.

**Senator BRAGG:** But you have black-letter law.

**Ms Cole:** We do have black-letter law. As I've said, we continue to have a live investigation. If and when we—

**Senator BRAGG:** How long has the investigation been going for?

**Ms Cole:** I think it started approximately two years ago.

**Senator BRAGG:** And it's still ongoing?

**Ms Cole:** It's still ongoing.

**Senator BRAGG:** When do you think it might conclude?

**Ms Cole:** We will draw our conclusions as to whether we have a case to bring when we have finished gathering the evidence and the legal advice that we need to take on whether there is a case to answer.

**Senator BRAGG:** And this is any investigation into multiple funds, I imagine.

**Ms Cole:** I'm not going to discuss the parties we are investigating pursuant to this process.

**Senator BRAGG:** The reason there is great interest in these matters is that you are responsible for enforcing very particular laws that the parliament enacted only a few years ago. In relation to the best financial interest duty, the explanatory memorandum says, 'Trustees cannot hide behind unjustifiable claims that they are ignorant of what they are purchasing.' So I imagine that you are asking trustees about certain line items, are you?

**Ms Cole:** We do ask trustees about certain line items, but, as of this moment, I don't specifically have that in my head. But you're right. I went back to look at the explanatory memorandum—you referred to it last time, Senator—to remind myself of that. There are various issues with the explanations in there, but fundamentally we set out a framework that trustees are required to observe, and we test them on that.

**Senator BRAGG:** I don't wish to be in any way obtuse, but I heard you say before that you are a principles based regulator. I understand that in the main you are and in the main you do a good job. But these particular arrangements are quite direct and explicit. The understanding of a legislator here in this building would be that you would be running the ruler over individual payments—is it the right expectation?

**Ms Cole:** They are not directly and explicitly what you have referred to before as political donations. They're payments for services.

**Senator BRAGG:** They have to be in the best interest of members.

**Ms Cole:** Yes, and the services which are engaged pursuant to these payments are something that we can and do look into.

**Senator BRAGG:** Let me ask you about a few of these. According to the new disclosures, which we now have as a result of this same law reform, everyone can see what payments are being made. Maybe in the past it was only APRA that could see, but now everyone can see what payments are being made and to which entities. In the last set of disclosures, the super fund called AustralianSuper paid \$566,000 to the AMWU for an 'alliance partnership'. What do you think that is?

**Ms Cole:** Well, off the top of my head here I'm not sure I can give you an accurate answer to that specific question. Can I just check that you're referring to the Australian Electoral Commission disclosures?

**Senator BRAGG:** I'm talking about the disclosures made for the year ending 30 June 2023.

**Ms Cole:** That are published by the AEC?

**Senator BRAGG:** No, the disclosures made by the funds under the law reforms which require them to disclose payments to certain bodies and to suppliers.

**Ms Cole:** I'm still not clear what you're talking about. We certainly have our own statistics.

**Senator BRAGG:** This is not AEC data.

**Ms Cole:** Okay. We've been publishing more and more about this, and perhaps that's where this information is coming from. There are various payments that are made between super funds and third parties—and you would categorise some of them as unions. They are typically for member services, directors' fees—we've discussed this before—and sometimes partnership arrangements for training; they are issues of that order.

I understand why it's important to see enforcement in relation to expenditure. What we have to examine are the actual facts against the law and the things that we would have to prove in any particular case. I can assure that, if

we go back to the case that I've explained before as a live case, we're working through those issues very thoroughly. But it's not as easy as saying, 'There seems to be a sum of money here, and isn't it obvious that that is, in some way, going for some nefarious purpose.' I'm afraid that, if we're going to try and prove a case at law, there are various stages that we do have to work through.

**Senator BRAGG:** I understand that, and I respect that these are new laws and it takes some time to get the enforcement right, but APRA has a good reputation as a regulator, and I think it's important that it maintains that. We all want that to be the case. It would be ridiculous for us to come down to the bush capital to make laws for all Australians and then not see the regulator enforce the laws. That would be a huge waste of our time.

**Mr Lonsdale:** If I could make clear: the world we're in is one where we think the be fit law is there. It is clear. As Ms Cole said, we are operating and working very hard to make sure the letter of the law is applied. As a supervision regulator, there is a lot you don't see. We're working in the same way as we work on banks and work on insurance companies. But we are updating our guidance. We're working on SPS 515. You will see that shortly. It is looking at a principles based approach because we are a principal based, risk based regulator. At the end of the day, it is for trustees to justify how the expenditure that they're making is in the members' interest. That's what it comes down to. On the case, as Ms Cole said, we're working very hard and very judiciously. We take our powers very seriously. We want to make sure, if we are taking action, that it is appropriate action.

**Senator BRAGG:** Of course. There are many cases I could ask you about here, but I will ask you about another one. It's a significant and unusual sum of money. There is a fund called First Super which has made three payments of over \$700,000 each to the CFMEU in the last reporting period. That's over \$2 million. The alleged purpose is coordinator costs. What do you think that is?

**Ms Cole:** Off the top of my head at this moment I couldn't go into any detail about that. I wouldn't have that in my head. If I could add to what the chair just said: it's pleasing that APRA has a strong reputation. That reputation needs to be preserved by acting carefully and thoroughly as we move into areas that are not as familiar territory for APRA as a prudential regulator. We need to be very careful in how we approach such matters. And we operate within the rule of law, as the chair has said.

**Senator BRAGG:** I respect that you're doing a piece of work, and I'm not seeking to ask you to disclose things that you don't wish to at this stage, but are you able to take that on notice?

**Ms Cole:** I will take a question on notice if I'm clear on what the question is.

**Senator BRAGG:** There is a fund called First Super, which is a \$4 billion fund, which has made three payments of over \$700,000 each in the last reporting period, over \$2 million in total, for coordinator costs to the CFMEU. If you could take on notice whether that complies with the best financial interests duty, I think that would be very helpful for the committee.

**Ms Cole:** We'll take your question on notice.

**Senator BRAGG:** Thank you.

**Ms Cole:** As the chair points out, we are enhancing one of our core standards, which is SPS 515, strategic planning and member outcomes. That's the standard in which we are going to put more grit into the machine, if you like, about expenditure. We've taken quite a lot of time on that. If you'd like any further information about that or the legalities of our approach to that standard and any guidance under it about expenditure, Ms McCann, our general counsel, can go into that for you.

**Senator BRAGG:** Just so I understand the summary of your position: you've got an ongoing investigation which is a live case. You are doing that. You're also looking at updating your guidance to ensure that there is—

**Ms Cole:** And the standard.

**Senator BRAGG:** a good understanding of what your expectations are in regard to expenditure? There are two things.

**Ms Cole:** Yes. But we don't believe that it's open to us to ban particular types of expenditure. If you'd like to understand why that is, we can go into that further.

**Senator BRAGG:** I understand that it's on the trustees, but you also have to enforce the black letter of the law. If an organisation is making payments out of the super fund for a political purpose—for example, to support a political campaign or a union campaign—I don't see how that could be something that's in the interest of the members of the fund.

**Ms Cole:** I would find it difficult to understand that to be in the interests of the members of the fund.

**Mr Lonsdale:** What we are saying is that, ultimately, this is up for the trustee who is making the expenditure to explain that. That is our first port of call. That is what the law is saying.

**CHAIR:** I'll take the chair's prerogative and ask one question. I am recalling your evidence, Ms Cole, the last time these issues were canvassed. Questions as to whether some types of payments made by funds to unions for promotional purposes can be appropriate in APRA's eyes.

**Ms Cole:** That's absolutely right. That's why it's not so simple as to say, 'There is a payment which appears to have gone to a union.' It's not as simple as to say there must be something wrong with that. That's why we would have to go into a greater understanding of what the payments are for. We do that. Where we are not perhaps comfortable with what we are hearing, that is when we would take matters further and go further into it, as we have done and continue to do.

**CHAIR:** Thanks.

**Senator BRAGG:** I want to ask you about this New Daily matter. This is the media outlet called the New Daily. Is your position that you're not in a position to enforce the best financial interests duty, because you don't regulate this entity?

**Ms Cole:** I guess that's part of the story. There's no regulated super fund that we regulate that has a direct investment in the New Daily.

**Senator BRAGG:** Are there ongoing payments to support this organisation from the fund? Do you know?

**Ms Cole:** Again, off the top of my head, I don't think I've got that answer available. I can certainly go into more about why we don't think we would have a case against super funds for investing in the structure that sits above the New Daily.

**Senator BRAGG:** What is the status of that organisation?

**Ms Cole:** Which one? The New Daily?

**Senator BRAGG:** Or whatever entity owns it.

**Ms Cole:** The New Daily is owned by Industry Super Holdings, as I understand it, which owns a number of entities, including IFM Investors Ltd, which, as you know, is a significant investment company, is profitable, has a number of clients that are not super funds and has a number of international clients. It is part of a group, in other words.

**Senator BRAGG:** We've had this conversation many times. Effectively, the summary of the view you have is that an organisation like this—which is, I would argue, not established to support member outcomes; it's more for political and media propaganda—can be held inside a vehicle which is doing other things and supported by the super funds.

**Ms Cole:** The fact of the matter is it's a de minimis part of a much bigger enterprise that does provide various services and initiatives for super funds. I think I'm telling you the practical reality of the situation.

**Senator BRAGG:** According to the ASIC reports, the New Daily lost \$1.7 million in 2021-2022, \$2.7 million in the financial year before that and \$2.8 million in 2019-20. This is an organisation which is haemorrhaging cash but is being propped up by an entity funded by super funds. That doesn't bother you?

**Ms Cole:** I'm not sure that's the characterisation I would give it.

**Senator BRAGG:** Have you got a different reading of it?

**Ms Cole:** I did try to say last time that I didn't think there was anything I could add on this subject. I'm being drawn in to repeating things, as you've said, that have been said before.

**Mr Lonsdale:** I think it comes down to the same issue as the previous line of questioning. Here we have an investment. It is up to the trustees making the investment to justify why this is in the best interests of the members. I think when you see the revised standard that comes out, we will be talking about things like ensuring that expenditure meets strategic objectives, having a clear link with member outcomes, and making sure that there are clear decision-making protocols that are happening. There are a whole range of things at a principles level that we would expect. I think it is boiling down to the same issue.

**Senator BRAGG:** Okay. We look forward to your updated guidance on that, then. I think that will be much anticipated. When will that be out?

**Ms Cole:** It's fairly imminent, I think. Could I add something else that might be helpful?

**Senator BRAGG:** Sure.

**Ms Cole:** I hope it is, anyway. We're about to see the Financial Accountability Regime extend from banks to insurers and super funds. That will happen as of March next year. Under that regime, there are prescribed responsibilities and key functions. One such key function is for marketing and advertising, defined as oversight, design and implementation of the entity's marketing and advertising strategy and budget. That means that there will have to be a person designated in that key function. That will mean that we will have a very clear touchpoint to go to to raise such issues. It will be useful to us in the way that we supervise.

**Senator BRAGG:** The reason I'm asking you about this—

**CHAIR:** Sorry, deputy chair. I'll just check with the committee and also the minister. I think that, if we go on for no more than 15 minutes, we may be able to release APRA. Are you happy to do that? So we would be delaying the lunchbreak by 15 minutes.

**Senator BRAGG:** I'll try to be very efficient here.

**CHAIR:** We'll delay the lunchbreak by 15 minutes and continue.

**Senator Gallagher:** So we'll go at five to two?

**CHAIR:** That's right.

**Senator BRAGG:** That's fine. I don't want to labour the point. The reason I'm asking about this is that there is a very explicit law on the books here and I believe that it is being subverted through the establishment of these vehicles, which are allowing the funds to put money into these vehicles to do whatever they want to do, including running propaganda units or dirt units, with retirement savings. Effectively, they have organised this enormously expensive business called the Super Members Council, which is now releasing research into very political things. For example, we have a disagreement in this building about using superannuation for housing. The government believe the current rules are good. Our policy is that the rules should change. The Super Members Council are using members' funds to commission research and put it into the media to try to influence the election, for example. I think this is a key point for you in your upcoming guidance, because they could effectively use these bodies as a way to get around the law if your guidance is soft. After that long preamble, my question is: what about the correspondence we've exchanged in relation to the money and the campaigning done by these industry bodies like the Super Members Council? What sorts of rules will apply to these organisations, particularly when it's about election materials or election policies?

**Ms Cole:** We don't regulate the various peak bodies and industry bodies, and there are quite a large number of them relevant in the super industry. We don't regulate them. As to that specific question—what are we going to do about that?—I don't think that is within our remit. But what we do expect, as the chair said, for any super fund at any part of the spectrum that is paying members' money for membership fees for such organisations is that they have a very strong understanding of what they are getting for that and that they can justify that as being in members' best financial interests. That applies whether it's the Super Members Council or any of the other ones in this space.

**Senator BRAGG:** So, if 10 members of the Super Members Council put \$10 million each into a fund run by the Super Members Council and it ran wall to wall TV advertising against the coalition's housing policy during the election campaign, what would you say to that?

**Ms Cole:** At the moment, I would say it was a hypothetical.

**Senator BRAGG:** Of course you would at Senate estimates, but the reality is that these organisations are heavily funded, so will your guidance deal with these organisations?

**Mr Lonsdale:** Senator, can I finish where I started? In your preamble, you made the point, I think, that you are very interested in making sure that the law is operating as intended, and our assurance to you is that we are working very hard to make sure that happens. We're doing that as a supervision led organisation. As Ms Cole said, we have an investigation underway and, if it turns out that more than supervision is needed, you should rest assured that we will take action where it is needed.

**Ms Cole:** I think it would be helpful to invite Ms McCann to speak.

**Ms McCann:** To reiterate what my colleagues here have said, we do take the best financial interest duty and all of the other trustee covenants very seriously. They don't set prescriptive requirements for trustees; rather, they set the parameters around trustees' ability to make decisions and exercise powers. That includes decisions around investment and expenditure. When you look at the best financial interest duty again, that's not a prescriptive duty but what it's specifying is the sorts of decision-making processes that trustees need to follow when they're making decisions about using trust assets or exercising their powers.

Really for them—and this is what the EM for Your Future, Your Super makes so helpfully clear—the best financial interest of members in the fund has to be the determinative factor. It's not to say there can't be other non-financial factors at play, and at least some of the examples make that clear, but it has to be the best financial interest of members that is the key driving factor. With trustees, when we make inquiries about how they're spending members' money and what sort of relationships they are entering into, if they can satisfy us that they've done that analysis, that there is robust quantification of the financial benefits to members and that that's documented and been properly considered, then from our perspective, that does satisfy the requirements of the best financial interest duty.

**Senator BRAGG:** Very helpful.

**CHAIR:** We will share the call with Senator Hume.

**Senator HUME:** Has APRA been briefed by the Assistant Treasurer on the Crescent Wealth super fund or whether APRA have briefed the Assistant Treasurer on the Crescent Wealth super fund?

**Ms Cole:** Not to my knowledge. I don't think so. I don't believe so.

**Senator HUME:** So he hasn't sought a brief on the Crescent Wealth's underperformance?

**Ms Cole:** Not that I can recall, no. I don't believe so.

**Senator HUME:** I'm concerned that Minister Jones has been promoting a super fund that has failed APRA's performance test and is being forced to merge because of this poor performance. I'm not entirely sure that that's appropriate. I'd be interested in APRA's position on whether or not that is appropriate—if an assistant minister is actively promoting a fund that has underperformed.

**Mr Lonsdale:** I don't think we're aware of that.

**Senator HUME:** So you're not aware of the endorsement that I'm referring to?

**Mr Lonsdale:** No, I'm not aware of it.

**Senator HUME:** Has the Assistant Treasurer Stephen Jones ever declared any conflicts of interest when it comes to Crescent Wealth to anybody at the desk?

**Mr Lonsdale:** To nobody at the desk.

**Senator HUME:** Minister?

**Senator Gallagher:** Did you say 'Crescent Wealth'?

**Senator HUME:** Crescent Wealth.

**Senator Gallagher:** I'm not aware of any.

**Senator HUME:** Is APRA aware of any conflicts of interest given that the super fund is headed by a New South Wales powerbroker whose name is Talal Yassine? Has that come up in any of your dealings with Crescent?

**Ms Cole:** No.

**Mr Lonsdale:** No, not to our knowledge.

**Senator HUME:** Minister, do you know if the Assistant Treasurer has recused himself in any formal matters in relation to Crescent Wealth?

**Senator Gallagher:** I'm not aware, sorry.

**Senator HUME:** What dealings has APRA had with Crescent Wealth?

**Ms Cole:** I would have to take that on notice. They would be one of our entities that we would have a supervision relationship with.

**Senator HUME:** So they haven't got a red flag next to their name for any reason other than underperformance?

**Ms Cole:** I would have to take it on notice.

**Senator HUME:** Thank you.

**CHAIR:** The committee will now break for lunch. We are in a position to release APRA, so you go with our thanks. We will return after lunch with Housing Australia.

**Proceedings suspended from 13:49 to 14:44**

**Housing Australia**

**CHAIR:** The committee will resume. Welcome to Mr Dal Bon and representatives from Housing Australia. Did you wish to give an opening statement, or just go straight to questions?



**Mr Dal Bon:** We're happy to go straight to questions, thank you.

**CHAIR:** Thank you. We'll go to the deputy chair, Senator Bragg.

**Senator BRAGG:** How are you?

**Mr Dal Bon:** Good, thanks.

**Senator BRAGG:** You're running Housing Australia, right?

**Mr Dal Bon:** That's right—I'm the chief executive officer. There's also a board.

**Senator BRAGG:** Yes. Do you also run the HAFF?

**Mr Dal Bon:** Yes. The Housing Australia Future Fund is being administered by Housing Australia.

**Senator BRAGG:** It used to be NHFIC, right?

**Mr Dal Bon:** Correct.

**Senator BRAGG:** And now it's Housing Australia.

**Mr Dal Bon:** That's right.

**Senator BRAGG:** What's the difference?

**Mr Dal Bon:** There are a couple of differences. One, in particular, relates to the new function under the Housing Australia Future Fund. There's also the accord, which is an additional 10,000 affordable homes. We have responsibility for those two functions in addition to the bond aggregator and also the Home Guarantee Scheme, which we have been administering for some time now.

**Senator BRAGG:** Okay. So you administer the HAFF?

**Mr Dal Bon:** That's right.

**Senator BRAGG:** How much is in the HAFF?

**Mr Dal Bon:** In terms of the seed funding—is that what you're referring to?

**Senator BRAGG:** Yes.

**Mr Dal Bon:** That was the initial commitment of \$10 billion which was to be managed by the future fund.

**Senator BRAGG:** Do you have that now?

**Mr Dal Bon:** That's being managed by the future fund.

**Senator BRAGG:** But is it available for you to spend?

**Mr Dal Bon:** There's an income stream which comes off that \$10 billion and then there's an annual determination which is made by government with respect to the amount of distributions made through a number of different accounts. But that's an annual decision by government.

**Senator BRAGG:** So the \$10 billion is invested by the future fund?

**Mr Dal Bon:** Correct.

**Senator BRAGG:** And then, of that, there's a distribution paid to you to spend?

**Mr Dal Bon:** We're one of those options in terms of distribution from the fund.

**Senator BRAGG:** Where else would it go?

**Mr Dal Bon:** As I understand it, there are three accounts where distributions can be allocated—subject to government decision.

**Senator BRAGG:** Okay. Who's running the tender for the HAFF?

**Mr Dal Bon:** We are.

**Senator BRAGG:** Is the housing minister your minister?

**Mr Dal Bon:** Correct, yes.

**Senator BRAGG:** Apparently, the housing minister said in answer to a question on notice back in April that you have run a process over 10 weeks, from 15 January to 22 March.

**Mr Dal Bon:** Yes; applications were open for a 10-week period over that timeframe.

**Senator BRAGG:** How many did you get?

**Mr Dal Bon:** I should say, just in terms of the process, that we're still constrained by probity considerations because—

**Senator BRAGG:** You aren't constrained by probity in telling me how many you received.

**Mr Dal Bon:** Yes, but I'm just giving you the general—

**Senator Gallagher:** Context, yes.

**Mr Dal Bon:** because it's still under active consideration. I'll try my best in terms of answering questions, but I may need to take some of the more detailed questions away on notice because we're subject to probity requirements at the moment. But we did get very strong interest in terms of applications. We've been working through those applications since we received them on 22 March.

**Senator BRAGG:** How many did you get?

**Mr Dal Bon:** We had a total of 673 applications.

**Senator BRAGG:** So 673 applications. And these are applications from community housing providers or other people?

**Mr Dal Bon:** The eligible applicants are detailed in the call-for-applications documentation which, in turn, reflects the investment mandate. Eligible applicants include state and territory governments, local governments, their corporations and community housing providers, and also charities which are focused on housing—Indigenous and veterans related charities.

**Senator BRAGG:** I can see that you've got a call for applications for funding round 1, 22 March. That's open to all those different entities?

**Mr Dal Bon:** Correct.

**Senator BRAGG:** And you got 600 applications?

**Mr Dal Bon:** 673?

**Senator BRAGG:** What's the pool of money that's going to be disbursed to the winning applicants?

**Mr Dal Bon:** That's a decision from government, and we're still working through the evaluation process.

**Senator BRAGG:** Will it be a proportion of that \$10 billion?

**Mr Dal Bon:** You would expect the government to make an annual decision on the basis of the income off the \$10 billion investment that is managed by the Future Fund.

**Senator BRAGG:** Do you have a sense of how much it will be?

**Senator Gallagher:** In the first round?

**Senator BRAGG:** Yes.

**Senator Gallagher:** The government is still waiting for that process to be gone through by Housing Australia. The legislation, I think, sets out the minimum disbursement.

**Senator BRAGG:** Is the minimum \$500 million?

**Senator Gallagher:** Yes, in 2024-25. Then it's indexed from 2029-30.

**Senator BRAGG:** So it's at least \$500 million, but it could be more?

**Senator Gallagher:** That's what the legislation says.

**Senator BRAGG:** Will you give advice to government about the quantum?

**Mr Dal Bon:** We would work with the Department of the Treasury, just in terms of advising government, in the context of that government decision, yes.

**Senator BRAGG:** So it could be more, but it can't be less?

**Senator Gallagher:** That's right.

**Senator BRAGG:** How does it work? You've got state governments, local governments and community housing consortia. Are there other groups that I've missed in that summary?

**Mr Dal Bon:** As I said, the charities that are focused on housing for veterans and Indigenous—

**Senator BRAGG:** Like safe housing and those sorts of people.

**Mr Dal Bon:** veterans and Indigenous. They don't have to be community housing providers. There's also the ability for one of those eligible applicants to set up a special purpose vehicle, which could be open to other members.

**Senator BRAGG:** How does it work? Am I right in saying that these are availability payments or that these are grants? What sort of disbursements will be made?

**Mr Dal Bon:** The basic model that we're looking at in terms of our responsibility under the HAFF is essentially based on an availability payment model over 25 years. As you'd know, social and affordable housing

projects typically are not viable in their own right, so they do need a top-up payment, which is a grant, to essentially be viable.

**Senator BRAGG:** Okay. So these are grants?

**Mr Dal Bon:** Yes, effectively they're an annual grant that's made over a 25-year period.

**Senator BRAGG:** So let's say the view was that we're going to allocate \$500 million, which is the minimum level in the legislation. That money is then paid out as availability payments and grants?

**Mr Dal Bon:** That is one option with the \$500 million, yes.

**Senator BRAGG:** And the other options?

**Mr Dal Bon:** For example, there is \$330 million in support that's been announced by the government due to housing needs.

**Senator BRAGG:** I understand there are different buckets. I'm just trying to nail into the detail of how this is actually going to work. You're saying it's \$500 million minimum. Sorry, you're not saying that. That's what the law says.

**Mr Dal Bon:** That's what the legislation says.

**Senator BRAGG:** So no-one can quibble with that. Then the question is: what type of disbursements are they?

**Mr Dal Bon:** In our case, we would need to have a look at the applications that come through, which is what we're currently evaluating. We will then determine what we think is an appropriate final list, and then that final list will have a funding profile attached to it. That would be to call upon the \$500 million.

**Senator BRAGG:** Could they be loans?

**Mr Dal Bon:** In terms of stepping through the scheme, there are the availability payments, which are essentially—

**Senator BRAGG:** They're grants.

**Mr Dal Bon:** A grant or a top-up payment. Then, in addition to that, we've been operating the bond aggregator since we commenced almost six years ago, which essentially provides long-term finance—

**Senator BRAGG:** But that's separate. I'm just asking about this program. It sounds like the answer is—and I'm not trying to verbal you here—that the \$500 million is likely going to be paid out in grants and availability payments.

**Mr Dal Bon:** For the portion that will come to Housing Australia, we would expect that to be in the form of grants, which will then support availability payments to those successful projects. I will quickly add that there is also the concessional loan which is specific to the HAFF and the accord. That is basically one of the—

**Senator BRAGG:** Is that counted in the \$10 billion?

**Mr Dal Bon:** No, this is separate. This is a 25-year interest-free loan than can be made available to registered community housing providers. That was an additional government decision that was taken.

**Senator BRAGG:** When you're assessing these 600—

**Senator Gallagher:** 673.

**Senator BRAGG:** These 600-odd applications, what are you looking for? Are you looking for volume? How are you going to make this judgement?

**Mr Dal Bon:** The call for application documentation that we put out—

**Senator BRAGG:** Yes, I've seen that.

**Mr Dal Bon:** That has the scheme objectives and it also has the evaluation criteria.

**Senator BRAGG:** What's most important to you, though? You're the chief executive.

**Mr Dal Bon:** I might hand over to Ms Marigliano, who's heading up the evaluation process.

**Ms Marigliano:** There are five evaluation criteria that are outlined in the call for applications and they are the criteria against which the applications are assessed. Would you like me to tell you what they are?

**Senator BRAGG:** Yes.

**Senator Gallagher:** I am mindful of the fact that there is a process underway for round 1.

**Senator BRAGG:** I'm not asking for any secret squirrel information. I'm just trying to understand how it's going to work.

**Senator Gallagher:** Asking the weighting of consideration whilst we're in an, essentially, open process that hasn't closed could be, I think—

**Senator BRAGG:** I think it's fine. I think the officials are happy to do it.

**Senator Gallagher:** I'm just, again, restating the point that has been made by the CEO here about the fact that there is an open process that hasn't been finalised.

**Senator BRAGG:** I'm not going to feel guilty about asking for the basic criteria.

**Senator Gallagher:** I'm not asking you to feel guilty. I'm just drawing your attention to it.

**CHAIR:** We might just clarify at this stage of the questioning that those five criteria are public.

**Mr Dal Bon:** Yes, that's correct.

**CHAIR:** Did you want to read them out, then?

**Ms Marigliano:** They reflect the typical kinds of criteria that you would expect to see in a program of this type. They go to questions around policy. They go to financial evaluation and the value for money proposition in each of the applications. They go to certainty around project delivery, capability and capacity of the applicant to deliver and to manage the housing over the period of time, and also commercial and risk considerations. All applications are tested against the same criteria.

**Senator BRAGG:** That's very helpful. Can these payments be made to institutional investors?

**Mr Dal Bon:** Are you talking about the availability payments? They would need to be made to the eligible applicants that were referred to earlier.

**Senator BRAGG:** Could that include institutional investors?

**Mr Dal Bon:** Potentially, if they were part of an SPV.

**Senator BRAGG:** If I was a foreign fund manager or a local super fund, and I partnered with a community housing provider, I could get access to that?

**Mr Dal Bon:** Certainly, in terms of the consultation that we had in the lead-up to the HAFF and the accord, most of our discussions with institutional investors were focused on supporting the financing side of things. They'd be, essentially, a financier to an eligible applicant, in which case they wouldn't be receiving the availability payment. It is, potentially, the case through that SPV structure where you could have an eligible applicant form an SPV with other parties, including institutional investors.

**Senator BRAGG:** Do you think institutional investors need subsidies, though, to build houses?

**Mr Dal Bon:** The concept here is actually providing a grant for social and affordable housing, which by definition is a below-market product.

**Senator BRAGG:** But do you think that institutional investors in particular should be part of this scheme?

**Senator Gallagher:** Senator Bragg's war on super continues! I think the witnesses have been clear.

**Senator BRAGG:** I'm happy to ask you, then.

**Senator Gallagher:** There are criteria. There's legislation. It's all there, transparent for people to see. The applicants, whatever form they take, will be assessed under the required criteria.

**Senator BRAGG:** Do you think it's a good idea for institutional—

**Senator Gallagher:** I think it's a good idea to build more affordable housing in this country. Yes, I do. I note that you opposed this legislation and stalled it for as long as you could in the parliament. We got it through, with the help of the crossbench. We are very supportive of the work that it does and the fact that it will deliver more affordable housing across the country.

**Senator BRAGG:** Do you think there is a risk here that, by giving more tax breaks to already very heavily advantaged institutions, they could end up owning a large part of the Australian housing market?

**Senator Gallagher:** I support the work that Housing Australia is doing implementing legislation that has passed this parliament.

**Senator BRAGG:** You're not worried that the country could be on the pathway to a corporate style of housing policy?

**Senator Gallagher:** I don't share your war against super.

**Senator BRAGG:** It's not a war against super.

**Senator Gallagher:** It is. You try to damage its reputation every second you have the microphone—

**Senator BRAGG:** You're trying to give tax breaks to major super funds to build houses.

**Senator Gallagher:** And you're trying to get people to ransack their retirement savings so that you can inflate house prices across Australia without delivering one additional house.

**Senator BRAGG:** You're very defensive about this.

**Senator Gallagher:** No, not at all.

**Senator BRAGG:** You haven't built any new houses. You've gone backwards.

**Senator Gallagher:** There has been housing built, and there will be more—as much as that probably pains you.

**Senator BRAGG:** I want to see house built.

**Senator Gallagher:** Yeah, right.

**Senator BRAGG:** I'm not sure I want the super funds to own all the houses in Australia.

**Senator Gallagher:** If you want to see housing built, why did you oppose the HAFF and why are you trying to get people to raid their super without delivering one additional property?

**Senator BRAGG:** Because it's their money.

**Senator Gallagher:** But without one additional house. You have no plans for one additional dwelling.

**Senator BRAGG:** Why would you want to give already super rich and super powerful institutions more taxpayer funds?

**Senator Gallagher:** I want eligible applicants, who are assessed as eligible for funding through the HAFF, to be provided with an opportunity to deliver more affordable housing product in this country.

**Senator BRAGG:** I have some more questions, once you have finished on your pro-super—

**Senator Gallagher:** I'm just trying to bring some rational balance to the attacks that have been waged on super for the last two days.

**Senator BRAGG:** We don't support corporate housing. You want corporate housing. We don't support that.

**Senator Gallagher:** We want affordable housing, something that you opposed in the parliament.

**CHAIR:** Time out! Senator Pocock is waiting patiently for the call. Deputy Chair, you have the call.

**Senator BRAGG:** Will the list of availability payments be made public?

**Mr Dal Bon:** As in the—

**Senator BRAGG:** The availability payments we just had an argument about—will they be made public?

**Senator Gallagher:** The successful applicants.

**Mr Dal Bon:** I would need to take that on notice.

**Senator BRAGG:** You don't know?

**Mr Dal Bon:** There are commercial-in-confidence dimensions to these deals. Regarding the next stage, there is annual reporting that, obviously, we need to do as part of our requirements through the annual report and other mechanisms. In terms of whether we are narrowing it down to individual projects or not, I would need to take that on notice and confirm whether that will be made public.

**Senator BRAGG:** I imagine that there would be great public interest in whether or not this fund will in fact be making payments to major super funds and foreign fund managers. Despite Senator Gallagher's relaxed position on this, I think there would be a great deal of interest.

**Senator Gallagher:** Don't verbal me.

**Senator BRAGG:** You're desperate to defend the super industry and give them more money.

**Senator Gallagher:** I'm not desperate to; I'm just trying to bring balance to the otherwise irrational presentation that we have had to endure from you for the last two days, with your attacks on super.

**Senator BRAGG:** You love super because it's your main donor.

**Senator Gallagher:** You are very anti-super for somebody who—

**CHAIR:** Senator Pocock, you have the call.

**Senator BRAGG:** I didn't get the answer to my question.

**Senator Gallagher:** The answer is: there will be a provision of information. I presume successful applicants, through the fund, will be reporting, as you would expect.

**Senator DAVID POCOCK:** Mr Dal Bon, you mentioned 673 applications. How many housing units does that represent?

**Mr Dal Bon:** Sorry? How many?

**Senator DAVID POCOCK:** There were 673 applications, but how many houses or housing units does that 673 represent?

**Mr Dal Bon:** The number that relates to that is a raw number, in the sense that that's the total applications.

**Senator DAVID POCOCK:** Yes, the total number of applications.

**Mr Dal Bon:** We are working through that total number at this point in time.

**Senator DAVID POCOCK:** What is the total number?

**Mr Dal Bon:** It's 50,167.

**Senator DAVID POCOCK:** Great. That is a really good start. Senator Bragg asked about the move from NHFIC to Housing Australia. I'm interested in how much that rebranding cost in total—letterheads, business cards, websites, graphic design et cetera.

**Mr Dal Bon:** I might hand over to Mr Neilson.

**Mr Neilson:** The total cost of the rebrand was relatively modest. It was less than \$20,000.

**Senator DAVID POCOCK:** I'm interested in Housing Australia's total FTE staffing level. Can you give me that?

**Mr Neilson:** At the moment, as at the end of April, the current FTE is 131 staff plus seven contractors.

**Senator DAVID POCOCK:** Sorry, how many contractors did you say?

**Mr Neilson:** Seven, as part of our BAU. There are additional contractors that are supporting the HAFF.

**Senator DAVID POCOCK:** Looking at the executive remuneration report on your website, Housing Australia has 19 staff whose average total remuneration is over \$300,000, including five above \$400,000 a year. The top remuneration—which I assume is yours, Mr Dal Bon—is \$526,906 a year. That is not quite what the PM gets paid, but it's pretty close. I'm interested if the overall number of highly paid executives increased for 2023-24 and, if so, by how much?

**Mr Neilson:** I'm happy to take that question. The remuneration for the CEO is set by the Remuneration Tribunal. That's an independent process to ascertain that; it's not a decision that Housing Australia make. In terms of the other executives, we benchmark salaries to other comparable Commonwealth entities and a standard called FIRG, which is the Financial Institutions Remunerations Group. They provide some balance around that. We've done benchmarking in terms of number of staff that we have and for the number of exposures that we manage. On a percentage basis, we have less staff per dollar of exposure. What that sometimes means is that staff may be paid a slightly higher average, but the work they do is of a standard that enables us to support the larger number of exposures that we operate.

In terms of the question around whether that number has increased, most of the senior staff are subject to the agreement that was set by government on salary increases. This year it's less than four percent. I think it's around 3.7 or 3.8 per cent. We also benchmark; if there's been significant change in someone's role, then it would be adjusted.

**Senator DAVID POCOCK:** Looking at an agency with 131 staff, would it be a bit usual to have 26 of them being high-paid executives?

**Mr Neilson:** If you look at other comparable corporate Commonwealth entities, that wouldn't be unusual, no.

**Senator DAVID POCOCK:** Clearly there is a need for expertise, and it seems like you are paying for it. I was looking at the contracts listing on your website for 1 January 2023 to 31 December 2023. It shows you spent \$16.6 million on IT, legal, advisory and other services. That is on top of the \$7.4 million you spent in the preceding six months. Are you concerned that \$24 million is a large amount of taxpayer money to spend on consultants in 12 months, given you have so much expertise and so many well-paid executive staff?

**Mr Neilson:** I'm happy to take that question. In terms of the contract spend, looking at the Murray Motion Senate order, that is the total value of the contract from 1 January to 31 December. So it's actually over two different financial years. The total amount of money that we've spent to April on consultancy and contractors is about \$12.9 million this year. That is made up of about \$8 million on consultants and \$4.9 million on contractors. A large amount of that spend—around \$8 million—has been on some one-off work for the setting up of the HAFF and the NHAF, which Mr Dal Bon has been through. That included setting up the portal to be able to

receive all the applications—673 applications came through a portal that was set up to be able to take that information in. The call for applications and all the reportable schedules were brought in. There was also a lot of work done around the CFA—legal documents and a lot of financial modelling. We had the volume of changes that were legislated and go through until the end of early December. That meant we were trying to get the program out as quickly as possible.

The ANAO had put out a report about the rapid implementation of government programs and the need to, if necessary, bring on board the necessary skills to ensure successful delivery. That's what we did by engaging appropriately skilled contractors. The plan is that those contractors will be replaced by full-time staff over time, but those people are also under the supervision of Housing Australia staff.

**Senator DAVID POCOCK:** Mr Dal Bon, you're certainly spending money on contractors, including \$24 million in 12 months. The government is spending \$21 million on food banks over the next four years, as a point of comparison. As the boss, how do you justify that, given how highly paid your team is? I would have thought a lot of these skills would be in-house.

**Mr Dal Bon:** From my perspective, and I've been in the business for almost six years, we are funding community housing providers who are providing services to some of the most vulnerable people in Australia. We have been very conscious of our budget and our spend over the six years. I think the size of the program that we're taking on and the complexity associated with the HAFF and the accord and, as Mr Neilson said, given some of the challenges at the moment we are keen to see that new supply rolled out as quickly as possible.

We have anticipated a spike in the use of these external resources as we take on new functions. We're looking to basically manage that down in subsequent years as we build our in-house capacity. To give you a sense of the increase in staffing numbers, from the end of last financial year I think around 60 or so people, we're at around 130 now, and we're potentially going to 200 by the end of this year. There is a very deliberate but also rapid effort to bring in-house those resources, particularly for subsequent rounds of the HAFF and the accord.

**Senator DAVID POCOCK:** I saw that between PwC, Paxon and Nous Group you spent over \$3.6 million on what was termed 'advisory services'. Can you detail what these were and why it was necessary given you've got 26 people on executive salaries?

**Mr Dal Bon:** I'll have Mr Neilson respond to the detail, but I think some of the functions that we're incorporating, such as running a grants program, is a new function for Housing Australia. If I think of the changes that came out of the HAFF legislation last year, a lot of it is scaling the existing capacity we have—for example, in the provision of concessional loans through the bond aggregator.

There's also a completely new function which goes to the administering of a grants program. That's something we've had to start from scratch. A lot of the resources we've brought in have been to assist us in building that capability, as well as assisting with some of that scaling and the surging in a short-term capacity until we can recruit those resources on a permanent basis. I'll hand over to Mr Neilson.

**Senator DAVID POCOCK:** Minister, do you know any other agencies spending this amount of money—\$24 million—to administer a couple of projects?

**Senator Gallagher:** There certainly would have been, particularly in an initial set-up here.

**Senator DAVID POCOCK:** A spend of \$24 million on—

**Senator Gallagher:** I think the evidence you've heard that you choose to ignore is that was over two financial years and the year-to-date spend is in the order of, I think, \$12 million was the evidence I heard.

**Senator DAVID POCOCK:** It's still a lot of money.

**Senator Gallagher:** Yes, it is a lot of money, but so is what we're asking Housing Australia to do. It's a very important job. You have to resource it properly. I think, as the Audit Office has indicated, when you're setting up things and doing new things, you should do it properly. We've got a big focus on reducing the reliance on consultants and contractors, but it's not to not use them ever. That is not the policy of the government. It's to use them for the specific skill set and the work that we need to do. In commercial corporate entities—well, essentially commercial entities—I don't think it would be unusual for you to see establishment costs like this.

**Senator DAVID POCOCK:** I would have thought that, with something like administering grants or receiving applications, that's something that a number of Commonwealth departments would do. Why are we—

**Senator Gallagher:** But we're not asking a department to do this; we're asking Housing Australia to do this.

**Senator DAVID POCOCK:** Yes, but I assume they could reach out to someone in the APS, rather than pay PwC or Scyne. I thought we were moving away from—

**Senator Gallagher:** Well, we are. The data shows that we are reducing our spend on external consultants and contractors. But, for example, establishing a portal—I don't know that that skill set exists within the APS. I think, routinely, ICT Solutions are brought in because the skill set doesn't exist. Whether they should exist is, I think, another question, as we build up data and digital capabilities across the APS.

**Senator DAVID POCOCK:** I'm interested in the \$1.2 million that was spent over six months on Clayton Utz. Was there a tender process for that?

**Mr Dal Bon:** Yes, and I'm happy to hand over to Ms Marigliano.

**Ms Marigliano:** Yes, Senator, there was a competitive process that invited a number of law firms to submit proposals. So it was considered—

**Senator DAVID POCOCK:** Was it an open tender?

**Ms Marigliano:** It was a select tender.

**Senator DAVID POCOCK:** Why did you choose to go with select?

**Ms Marigliano:** It was quite a specialised skill set that was required in order to undertake the legal work and to understand the nature of residential construction, Commonwealth procurement and the financial aspects, as well as to understand or have a level of experience with similar programs, particularly in a state context. So we did choose to go to four law firms and invite them to submit proposals, and we assessed those competitively.

**CHAIR:** Last question.

**Senator DAVID POCOCK:** For that one, you said 50,167. I understand you've worked in this space for a long time. Based on your understanding of the CHP landscape at the moment and that sort of appetite to deliver, do you think, if the government chose to increase the size of the HAFF, you'd be able to deliver with projects?

**Mr Dal Bon:** I think we're getting into the hypothetical space, but I'm happy just to talk generally.

**Senator DAVID POCOCK:** It's hypothetical, but you've also got applications for 50,167 houses.

**Mr Dal Bon:** Sure, but, in terms of your question—in terms of looking forward at the capacity of the community housing sector and what's likely to come forward—I would say that I've been incredibly pleased with the response that we've had in terms of the overall demand and also the cross-section of responses. When we look at the government's objectives, I think that has been incredibly pleasing as well. This particular initiative does have substantial objectives in mind in terms of the 40,000 over five years.

In the approach that we're taking with respect to the availability payment model, it is a new model that has been done on a state level but taking it to a national level is new. So I think it's really pleasing to see that strong interest. That large number—there have also been some surveys that have been done that I'm aware of, which go to subsequent rounds. There is obviously more demand that will come in subsequent rounds. In terms of achieving that 40,000—30,000 under the HAFF and 10,000 under the accord—over the five years, I would certainly have confidence in the community housing sector in terms of stepping up.

**Senator DAVID POCOCK:** You'd hope so—with applications for 50,000. Thank you. Can I put something on notice quickly, Chair?

**CHAIR:** Sure.

**Senator DAVID POCOCK:** With that money spent on advisory between PwC, Paxon, Scyne and Nous, would you be able to give us a bit of a summary on what each of those advisory firms advised on?

**Mr Dal Bon:** I'm happy to take it on notice.

**Senator DAVID POCOCK:** Thank you.

**CHAIR:** Senator McKim.

**Senator McKIM:** When could we expect the first house or first dwelling unit to be completed with funding from the HAFF?

**Mr Dal Bon:** It ultimately depends on the profile of applications. As you'd appreciate, there are a range of different housing products that are currently on the market. For example, some would be starting from scratch, and you know that there is a construction timeframe depending on the type of product. It can range from a relatively short period of time with townhouses, or it could be years with respect to high-density apartments, for example. Then there are also the turnkey spot purchase projects. As part of this evaluation, I think we'll see a blend of those different types of housing products, and, once the evaluation process is completed, we'll have an idea of what those respective timeframes will look like.

**Senator McKIM:** Have you got a best case scenario for the delivery?



**Mr Dal Bon:** We're still evaluating, so it's hard to say.

**Senator McKIM:** Is it the case that under the reverse-tender process the more rent a housing provider can collect the more competitive their tender will be?

**Mr Dal Bon:** We were talking about it before in terms of the evaluation criteria. There are a whole range of criteria that we're taking into account to assess the projects. Certainly, revenue is one aspect of that, but it's not the only aspect in terms of assessing their overall level of competitiveness.

**Senator McKIM:** I accept that, but, all other things being equal, would a tender where the provider could collect a higher level of rent be more competitive than a tender where the provider would be collecting a lower level of rent?

**Mr Dal Bon:** Not necessarily, because, as I said, there are a range of criteria that we are taking into account.

**Senator McKIM:** Sorry to interrupt, but, if all the other criteria were the same and you just take the criteria relating to the amount of rent that a provider could collect, would it be accurate to say that the more rent a provider could collect the more competitive their tender would be?

**Mr Dal Bon:** When you say the same criteria—sorry, I just want to clarify.

**Senator McKIM:** All other things being equal. Hypothetically, if there were two tenders that came in, and everything else was the same except for the amount of rent that the provider could collect, would a tender where the provider could collect a higher level of rent be more competitive than a tender where the provider could collect a lower amount of rent.

**Mr Dal Bon:** Are we talking the same location, the same typology?

**Senator McKIM:** The same everything.

**Mr Dal Bon:** And are we talking about comparing a social with another social or a social and affordable—

**Senator McKIM:** Yes; all other things being equal.

**Mr Dal Bon:** And cost structure?

**Senator McKIM:** Yes.

**Mr Dal Bon:** Right.

**Senator McKIM:** You can laugh, Minister, but the point here—

**Senator Gallagher:** I'm not laughing. Well, it is just going to be in 673 applications.

**Senator McKIM:** Let me phrase the same question in another way that I think might assist us in getting a response. Does it make a tender more competitive if a provider can collect a higher amount of rent compared to a provider collecting a lower amount of rent?

**Mr Dal Bon:** This is why I'm asking the questions, because social versus affordable—that's an important consideration.

**Senator McKIM:** So the amount of rent that can be collected is an important consideration?

**Mr Dal Bon:** As I was saying before, rent is an important consideration but not the only consideration. In terms of what we are talking about with projects, the rent-setting mechanism for a social project is very different to the affordable rent-setting mechanism. I'm sorry if I'm telling information you already know, Senator—

**Senator McKIM:** No, please.

**Mr Dal Bon:** Social is typically set with respect to income—around 25 per cent. With respect to affordable, the definition, which is in the call-for-application document, is 74.9 per cent of the market rent.

**Senator McKIM:** If the amount of rent a provider can collect is an important consideration, do you think there's a danger that could result in disadvantage for providers who would be housing people with low income—for example, homeless people or people in regional areas?

**Mr Dal Bon:** As I said, the rent setting is different between social and affordable. The government has also articulated a commitment of 20,000 social, and the people that are in social are typically lower income people. There are 20,000 properties that have already been ring-fenced. If it were the only consideration, yes, it might lead to undesirable outcomes, but there are multiple criteria that the government has articulated in terms of objectives and investment mandates that we need to take into consideration in terms of assessing the overall competitiveness or value for money when it comes to projects. Geographic balance is one of those key considerations across jurisdictions and within jurisdictions. There are particular cohorts that have been identified by the government as well.

**Senator McKIM:** So you don't think there's a danger that having the amount of rent a provider can collect as an important criterion could lead to a situation where providers who will be housing people with lower incomes would be disadvantaged?

**Mr Dal Bon:** When you're taking into consideration the multiple objectives and the setting aside of 20,000 for social and affordable, I think there's a balance there. We'll have the opportunity to assess what we see out of the first round. This is a five-year program. If we do see imbalances emerge in the first round, we'll have an assessment of that. If we need to do some fine-tuning to have the appropriate balance, we'll certainly be open to doing so.

**Senator McKIM:** Have you received any communications from providers expressing any difficulty in applying for funding?

**Mr Dal Bon:** Yes, we've had some communication. I'd probably characterise it overall—the sense was that it was a reasonable process, noting that this is the first time we've run a program of this size. As Mr Neilson was referring to earlier with respect to the establishment of a portal and so forth—and we've certainly taken some learnings out of this process through which we're looking to improve going forward—the feedback that I've received at a general level has been positive in terms of the overall program. We've been a financier for a range of different state run projects, and the community housing sector, as you probably know, is not shy in terms of giving feedback on programs and how accessible they are.

**Senator McKIM:** But it's very helpful, right?

**Mr Dal Bon:** It's very helpful. That's why we invested a huge amount of time in the lead-up to the commencement of the process. In the developing of the portal, we actually also developed a financial model to assist. We also invested a huge amount of time in simplifying the funding documents, which we also put out for consultation. So, through our experience with the bond aggregator, we sat there and received a lot of that feedback and we tried to put it into practice with respect to this particular program. I think I'm not embellishing things by saying that the feedback has been largely positive.

**Senator McKIM:** Is it the case that a provider has to borrow money to fund the construction of a housing project before they can apply for an availability payment?

**Mr Dal Bon:** I don't think that is correct. What we have at the moment are two separate processes running within Housing Australia. One relates to the evaluation process for the availability payment, which Ms Marigliano is heading up, and then, for those applicants that put in, say, bond aggregator applications, there's a separate process being run by the origination and credit team. In some cases, applicants are not seeking senior debt from Housing Australia; they're going to other sources—banks or whoever.

**Senator McKIM:** Does that last comment relate specifically to funding through the HAFF?

**Mr Dal Bon:** In terms of debt, going out and seeking finance, it's possible for someone to put their hand up for an availability payment while having a large amount of equity, free land or other forms of—

**Senator McKIM:** But it's not a requirement?

**Mr Dal Bon:** It's not a requirement.

**Senator McKIM:** Alright. What proportion of the \$500 million do you expect to be subscribed with availability payments after the first funding round is complete?

**Mr Dal Bon:** We'll know that soon. We're in the middle of that evaluation process at the moment. Once we narrow down the list of those projects, that will be noted as being successful. There will still be further work that needs to continue after that. But we should at least have the indicative figure for when we notify applicants. Then, no doubt, in some cases, there may be some firming up in terms of applicants going out and getting offers of finance. There is also some movement in construction costs that can happen up until contractual close and interest rates until financial close. All of these factors will impact on that final number.

**Senator McKIM:** Alright. Do you have a rough timeframe within which you'd expect to have an indication?

**Mr Dal Bon:** As part of the public consultation that we did before applications opened back in January, we were indicating the third quarter as our target this year in terms of notifying. We did actually send some communication out to applicants last week just to provide an update, given it has been approximately 10 weeks since applications closed. Based on the information we have at the moment, we're targeting August in terms of having those notifications ready, and that subject—

**Senator McKIM:** And your evidence was that, once you've given those notifications, you'll have an indicative figure that you will be able to provide?

**Mr Dal Bon:** Yes. Basically, for those that are successful, there will be a conditional offer that will have an availability payment attached to it.

**Senator McKIM:** Okay. But at the moment you've got no real idea as to what that might be—

**Mr Dal Bon:** We're still going through the evaluation process. That's why the figures would be moving up until that point.

**Senator McKIM:** Once the \$500 million is fully subscribed in whatever timeframe that takes, does that mean that the HAFF can't build any more homes?

**Mr Dal Bon:** We have the target of 40,000 over five years.

**Senator McKIM:** Yes, but you might not make it, right—out of the \$500 million? Or are you sure that you will?

**Mr Dal Bon:** We've got round 1, which, as I said, is still moving around because we're going through the evaluation process. As to whether we will have sufficient funds under the HAFF, we'll have to wait and see in subsequent rounds in terms of price point and projects that are brought forward. There are a whole range of things that impact on the actual cost to the HAFF. Other factors, for example, could be if you're getting faith based groups or states and territories that are contributing land or cash. That impacts on the overall call on the availability payment as well.

**Senator McKIM:** Notwithstanding any of that, is it the case that, once the \$500 million is fully subscribed, the HAFF can't construct any more homes?

**Mr Dal Bon:** As I said, it's a five-year objective. We're working towards achieving the 40,000, so you would expect the funds to be committed over that five-year period.

**Senator McKIM:** By government?

**Mr Dal Bon:** Under the HAFF, yes.

**Senator McKIM:** Even if the \$500 million is fully subscribed, you'd expect there to be funds on top of that that would allow you to meet your target? Is that what you're saying?

**Mr Dal Bon:** That's a decision of government.

**Senator McKIM:** I beg your pardon?

**Senator Gallagher:** It's a decision of government.

**Senator McKIM:** I understand that.

**Senator Gallagher:** So let's just see what we're dealing with.

**Senator McKIM:** What I'm trying to ask is: in the absence of an extra commitment from the government, once the \$500 million is fully subscribed, that's it for the HAFF, isn't it? In the absence of any further funding commitment, that would be it for the HAFF in terms of being able to construct further homes?

**Mr Dal Bon:** In terms of the initial commitments, yes, but you've got a 25-year tail in terms of the availability payments.

**Senator McKIM:** Understood.

**CHAIR:** Are you—

**Senator McKIM:** This is my last question, Chair. I just wanted to ask, with regard to the \$1 billion that the Greens secured under the National Housing Infrastructure Facility, whether Housing Australia could give an estimate as to how many properties that would deliver.

**Mr Dal Bon:** I would need to take that on notice. I think some of the criteria, which have just been articulated by the government recently—we need to work through how those criteria will play out in terms of cost of product and so forth. The investment mandate will need to be updated as well. Treasury probably have a better sense of that at the moment because they're leading that process. But, once we have those details, I could come back to you and give you an estimate of what we think could emerge.

**Senator McKIM:** Thanks very much.

**Mr Dal Bon:** No problem.

**CHAIR:** I'll go to Senator Roberts, and then I'll go back to the deputy chair. Then I understand we'll be able to move to the Productivity Commission. Senator Roberts?

**Senator ROBERTS:** Thank you for appearing today. Can you tell me how many mortgages are guaranteed under the five per cent deposit for the Home Guarantee Scheme?

**Mr Dal Bon:** This goes to the Home Guarantee Scheme. There are a couple of initiatives. There's the first home buyer, then we have the family payment and the regional scheme. In terms of the Home Guarantee Scheme at the moment, we have 156,000 Australians that are being supported through 104,000 guarantees.

**Senator ROBERTS:** Can we get the others on notice?

**Mr Dal Bon:** In terms of the breakdown? Yes, I can take that on notice.

**Senator ROBERTS:** Thank you. Have you done any analysis on how many of those guaranteed mortgages are under mortgage stress?

**Mr Dal Bon:** We do a regular update in terms of stress testing in the portfolio. We do monitor in terms of the numbers in arrears, and if they go to default obviously we'll need to pay out. Yes, we do—

**Senator ROBERTS:** Could I have the numbers as well on notice?

**Mr Dal Bon:** Happy to.

**Senator ROBERTS:** And the categories: if they are fall under arrears or pulled out altogether.

**Mr Dal Bon:** Sure.

**Senator ROBERTS:** The scheme started in 2020. It's been identified that the people under the highest level of mortgage stress are people who bought at low rates during COVID and are now feeling the full brunt of those rate rises. My worry is whether the government has put people into house loans they can't afford, given they couldn't afford the deposit, and they're now suffering. Are there people in mortgages under the Home Guarantee Scheme who are suffering because they're in a mortgage they can't afford?

**Mr Dal Bon:** In terms of the overall book, we have quite a large number of liabilities now under the scheme, which have been guaranteed since it commenced.

**Senator ROBERTS:** Guarantees of people who have failed?

**Mr Dal Bon:** Guarantees of the mortgage. For example, total liability that we have at the moment is \$5.7 billion.

**Senator ROBERTS:** Not failed—they're actually mortgages still continuing?

**Mr Dal Bon:** That's the extent of the guarantees that the government has offered through the scheme. What we have seen, from what I understand, is an extraordinarily low rate of arrears for a book of that size. As I say, we've done some stress testing to determine the viability of that book to see how it responds to higher interest rates. We have regular conversations with panel lenders in terms of the health—

**Senator ROBERTS:** Panel lenders?

**Mr Dal Bon:** The panel lenders that deliver the scheme on behalf of the government. There are a number of major banks and smaller banks. We have regular dialogue with them in terms of understanding how their lending profile is. In addition, we monitor the arrears and so forth to see if we're seeing anything in terms of deterioration of the book.

**Senator ROBERTS:** Can you take on notice to provide any briefing material or information you have in terms of people who have mortgages under the Home Guarantee Scheme, and their financial position or ability to repay?

**Mr Dal Bon:** I'm happy to take it on notice. If you're interested, I have some information going to the strength of the book, which might be useful. At 30 April this year 61.5 per cent of scheme backed loans are in advance of their scheduled payments. 38.4 per cent are on schedule. 0.1 per cent of scheme backed loans are in 90-day plus arrears. That's a total of 85 loans.

**Senator BRAGG:** These questions are not about superannuation. It's all good. Do you have a government relations function?

**Mr Dal Bon:** We have a corporate function, which includes a government relations role. Yes, that's correct.

**Senator BRAGG:** What does that job do, the government relations role?

**Mr Dal Bon:** As you would expect with a government relations role, to engage with government stakeholders at the Commonwealth level and across the state and territory level. Also they assist with general stakeholder engagement as well.

**Senator BRAGG:** Do they walk around this building talking to people?

**Mr Dal Bon:** As part of their communication with government, yes.

**Senator BRAGG:** They do. Who do they meet with in this building?

**Mr Dal Bon:** The would be meeting with the minister.

**Senator BRAGG:** The government relations person meets with the minister?

**Mr Dal Bon:** The minister's office, sorry.

**Senator BRAGG:** Who else would they meet with?

**Mr Dal Bon:** I would have to take on notice in terms of exactly who they meet with. There are obviously a number of stakeholders that have an interest in housing from a government perspective.

**Senator BRAGG:** I have to say, I've always been sceptical of government agencies with government relations positions. What exactly is this person doing?

**Mr Dal Bon:** As I said before, they're engaging with a range of stakeholders from government and also a broader group.

**Senator BRAGG:** Do you do that as well?

**Mr Dal Bon:** Yes.

**Senator BRAGG:** Do you go to meetings with this person?

**Mr Dal Bon:** Sometimes, yes.

**Senator BRAGG:** Does this person meet with only members of the government or members of the other parties?

**Mr Dal Bon:** Not that I'm aware of.

**Senator BRAGG:** Only government members?

**Mr Dal Bon:** Yes.

**Senator BRAGG:** Who's doing the job?

**CHAIR:** We don't usually go to individual officers in estimates unless there's a—

**Senator BRAGG:** Fair enough. Is the person a recent ministerial adviser?

**Mr Dal Bon:** Yes.

**Senator BRAGG:** Did you personally appoint this person?

**Mr Dal Bon:** No.

**Senator BRAGG:** Who appointed the person?

**Mr Dal Bon:** There was a process that we follow, when we had the head of HR, then we have the head of the corporate area that conduct interviews.

**Senator BRAGG:** So it was an external piece of advice done on this job for human relations purposes, or—

**Mr Dal Bon:** Sorry, I'm not sure—

**Senator BRAGG:** Was there an HR or recruitment firm involved with this?

**Mr Dal Bon:** I'd have to take that on notice.

**Senator BRAGG:** So the decision to appoint the government relations official wasn't yours?

**Mr Dal Bon:** No.

**Senator BRAGG:** Who does this person report to?

**Mr Dal Bon:** To the head of corporate affairs.

**Senator BRAGG:** Do you have knowledge of this person's activities?

**Mr Dal Bon:** At that general level. Obviously I have a regular catch-up with the corporate affairs team to discuss their work, which would also extend to that person's—

**Senator BRAGG:** In summary, this person, who is a former ministerial adviser in this government, right—

**Mr Dal Bon:** Yes.

**Senator Gallagher:** People are able to get other jobs outside of this place, once they have had one.

**Senator BRAGG:** There's no problem with that.

**Senator Gallagher:** You're clearly trying to assert that there's something afoot here.

**Senator BRAGG:** If you'd followed anything that I've said about other government agencies, you would know that I've always been very sceptical about the idea of government bodies having government relations functions.

**Senator Gallagher:** Government liaison units are standard.

**Senator BRAGG:** I think it's very risky.

**Senator Gallagher:** Government liaison units are pretty standard, I would think, even in big departments. There are areas where ministerial support—

**Senator BRAGG:** What's the job title? Is it government relations adviser?

**Mr Dal Bon:** That's my understanding, yes.

**Senator BRAGG:** So what is the job other than meeting with members of the government?

**Mr Dal Bon:** Meeting with a broader group of stakeholders. Particularly with the HAFF and the Accord and the complexity of the programs that we're delivering and the number of stakeholders that we're engaging with, effective stakeholder engagement is one of our key areas of focus.

**Senator Gallagher:** Including with states and territories, for example.

**Senator BRAGG:** Would an official get involved in the parliamentary process? Would they meet with crossbenchers or other members of opposition parties?

**Mr Dal Bon:** As I said before, I'm not aware of that person meeting, but I think if they were to do that, it would obviously need to be with the agreement of Minister Collins or her office.

**Senator BRAGG:** Not you?

**Mr Dal Bon:** No, because I think those decisions need to be determined by government.

**Senator Gallagher:** That's pretty standard. If someone seeks a briefing on things that I'm responsible for, a member of the crossbench or opposition, it's not up to individual government entities, regardless of what structure they are, to decide those, unless they are an independent body.

**Senator BRAGG:** I guess I'm wondering what sort of control and risk management framework you have in place here, because most government bodies don't have government relations functions.

**Senator Gallagher:** I don't know what they're called, but most would have government liaison, stakeholder liaison—whatever you want to call it. Most of them would. In fact, probably all of them would in one form or another.

**Senator BRAGG:** Unfortunately, you and I once again are not agreeing, which makes me sad, but it is what it is.

**Senator Gallagher:** Does it really?

**Senator BRAGG:** Yes, it does.

**Senator Gallagher:** I actually don't think it does, Senator Bragg, if you're entirely honest.

**Senator BRAGG:** But let's go to the last point of this line of questioning, which is that if there is a government relations person running around this building engaging with various people for whatever purpose—

**Senator Gallagher:** And other stakeholders, because I think we've already established that it's not just in government.

**Senator BRAGG:** My question is: would you this person get involved in negotiations on legislation or inquiries or other things that might be—

**Senator Gallagher:** Potentially. When I think of, say—they're slightly different structures but under the GBE structure, if someone wanted a briefing on something, I would imagine they would send their stakeholder engager/government liaison/senior people for those sorts of briefings.

**Senator BRAGG:** It seems highly unusual to me that the government needs a government relations adviser.

**Senator Gallagher:** Again, I think stakeholder engagement, government liaison and government relations are seemingly all the same thing, essentially. It's standard and pretty common, certainly across the GBEs and other entities that I have worked with.

**Senator BRAGG:** I'm not sure we're going to agree.

**Senator Gallagher:** Even in departments. They have ministerial liaison units.

**Senator BRAGG:** I have one more question once this assessment concludes. Can you please provide the budget of the corporate affairs department.

**Mr Dal Bon:** Corporate affairs is not big enough to have a department. Certainly, the area—

**Senator BRAGG:** Who else works in government relations then?

**Mr Dal Bon:** We have one government relations person, but in terms of corporate—

**Senator BRAGG:** Who does that person report to?

**Mr Dal Bon:** That's the head of corporate affairs.

**Senator BRAGG:** How many people work in that whole department? Is it two?

**Mr Dal Bon:** No, there are more than that.

**Senator BRAGG:** How many are there?

**Mr Dal Bon:** Mr Neilson, do you have the exact—I think there are half a dozen at the moment.

**Senator BRAGG:** Half a dozen?

**Mr Dal Bon:** Yes.

**Senator BRAGG:** Wowzers!

**Mr Dal Bon:** I think in terms of—if I can offer two observations. We're a Sydney based organisation, so I think it's important for us to have a presence in Canberra, as required, and also across the country, now that we're running a national program. I think, also, to sort of echo the minister's experience, that's been my experience as well. When looking at other Commonwealth corporate entities, it's fairly common to have a corporate affairs area and then also to have someone who is focused on government relations. In this case, it's government relations but also broader stakeholder relations.

**Senator BRAGG:** Can you provide on notice what the budget is for that department, for those people and for whatever else they use taxpayer funds to do?

**Mr Dal Bon:** Sure. No problem.

**CHAIR:** Thank you, Mr Dal Bon and team. That concludes the questions we have for you. You go with our thanks.

### Productivity Commission

[15:51]

**CHAIR:** We welcome Ms Danielle Wood and team. I think you didn't get on the last time estimates was on. So, while your appointment is not brand-new, you are new to appearing at estimates with us. Congratulations on your appointment. Do you have an opening statement that you would like to give or are you happy to go straight to questions?

**Ms Wood:** I'm happy to proceed straight to questions.

**Senator HUME:** Ms Wood, I've got to start with this. On the Future Made in Australia you stated: ... we need to be very cautious about stepping into this space.

So, regarding the Future Made in Australia package, which would you call yourself: a flat-earthier or 'completely out of touch with international reality', as the government has labelled the critics of this policy?

**Ms Wood:** I would consider myself neither of those things.

**Senator HUME:** Maybe you could outline, then, for the committee what some of your concerns around these measures might be—the ones that have been bandied about under the rhetoric that protection is the new competition.

**Ms Wood:** The context of the comments you are referring to is a number of policies that were being talked about. We hadn't seen the details yet in the budget package. I was hoping to remind people that industrial policies come with a set of costs. The costs that I was talking about were obviously taxpayers' money. You can create businesses that, if they are not successful in establishing a competitive position, can come back for further subsidies and we can divert resources from different parts of the economy that may be more productive. So I was merely highlighting that there are costs as well as potential benefits associated with these types of policy interventions.

**Senator HUME:** You used a phrase which I thought painted a very nice word picture on the ABC's *Insiders* podcast regarding green subsidies. You said: 'Our infants grow up, they turn into very hungry teenagers and it's kind of hard to turn off the tap.' Perhaps you could expand on that point and give us some examples. I know you referred to the automotive industry there.

**Ms Wood:** That's right. Certainly the Productivity Commission and its predecessor organisations have a long history of documenting assistance and trade policies across the economy. It is certainly possible, if you start providing assistance, that you'll create sectors that will have a long-term reliance. The car industry is an example

of that. At the same time, potentially, if you create an industry that does have a comparative advantage, it may not be the case. What I was really stressing was that policy design matters. You need to be clear about what the objectives are. You need to set up off ramps and exit strategies. I think the government has, to some degree, done that with its package.

**Senator HUME:** To some degree?

**Senator Gallagher:** That is in the design particularly of the production tax credit.

**Senator HUME:** To some degree?

**Ms Wood:** Those production tax credits, for example, have a 10-year maximum period. So that builds in the fact that taxpayer support will be time-limited.

**Senator HUME:** I thought it was 17 years.

**Ms Wood:** They're able to access credits for a maximum of 10 years.

**Senator HUME:** Is the Productivity Commission aware of another subsidy program for a specific sector that has such long time horizon?

**Ms Wood:** Not off the top of my head.

**Senator HUME:** Is it the commission's view that production credits are a form of industry subsidisation?

**Ms Wood:** Yes, they are certainly a form of industry assistance.

**Senator HUME:** Are they an efficient form of industry subsidisation?

**Ms Wood:** It would depend on the particular policy.

**Senator HUME:** The policies are clear now in the budget papers. That's what we were just saying.

**Ms Wood:** We haven't done a full-scale analysis—

**Senator HUME:** Of whether it's efficient or not.

**Ms Wood:** of those particular industries and those particular tax credits.

**Senator HUME:** Do production credits result in additionality of production?

**Ms Wood:** They can. Potentially, you pay some credits for things that might have happened otherwise and then at the margin you may get additional production as well.

**Senator HUME:** Ms Wood, in your previous role you were a vocal advocate for far more holistic tax reform. In your view, are production credits tax reform?

**Ms Wood:** They're not tax reform; they are a tax policy.

**Senator HUME:** I'm going to quote you here to make sure I get you right. You noted:

One view of the world is when other countries subsidise their production, we say thank you very much. That means lower prices for Australian consumers [and] where that relates to green products that's actually going to help us with our own green transition.

We heard yesterday from Treasury that the intent of this policy is to instead subsidise the green premium for domestic products because export markets are less likely to pay for them. Is it effectively an implicit carbon price?

**Ms Wood:** I think it's a recognition of the fact that there are externalities associated with production using certain inputs and that those currently aren't priced in globally or in Australia.

**Senator HUME:** This year's trade and assistance review did a range of analysis of implicit carbon prices of policy interventions, and notably it found that the electric car discount is one of the most expensive forms of abatement, at almost \$20,000 per tonne of CO<sub>2</sub>. Will the PC do a similar analysis on the Future Made in Australia policy?

**Ms Wood:** We may at a future point in time, if we were to repeat that type of analysis.

**Senator HUME:** Is that the sort of thing you would initiate, though? Obviously the Productivity Commission initiates its own reviews, or can initiate its own reviews.

**Ms Wood:** It can. Under the trade and assistance review, we, over time, look to incorporate measures of different assistance into those estimates. I would expect we would be doing that with elements of the Future Made in Australia package.

**Senator HUME:** Some of the elements of this policy don't come into place for a few years. Would the Productivity Commission then be willing to do that analysis early as part of the trade and assistance review and



provide that to this committee, knowing that those policies, to be made as efficient as possible, are yet to be implemented and there is still time to tweak them at the margins?

**Senator Gallagher:** You opposed them, Senator Hume.

**Ms Wood:** I was asking Ms Wood whether the Productivity Commission would do a review.

**Senator Gallagher:** But you've taken the decision to oppose them without any, and now you want some analysis done.

**Senator HUME:** Yes.

**Senator Gallagher:** But you oppose them.

**Senator HUME:** Does it matter? Wouldn't you like them to be more of efficient?

**Senator Gallagher:** So you remain open to being convinced. Is that what I take from that?

**Senator HUME:** I'd like the most efficient use of taxpayer money. I think we've discussed that before, this week. Is that the sort of thing the Productivity Commission would consider, Ms Wood?

**Ms Wood:** The trade and assistance review would be looking at the quantum of support. That particular piece of work isn't a full review of the merits of any particular policy. It's an assessment of how much support is available via a particular policy. We receive the terms of reference from the government to conduct inquiries on a range of matters, and we would be happy to look into that if asked to do so.

**Senator HUME:** The Solar Sunshot program was supported on announcement by an announcement that the New South Wales government would purchase the domestically made solar panels funded by the federal government. Essentially, the taxpayer through the federal government is subsidising the creation of solar panels, which will then be purchased by the subsidisation of the taxpayer by the New South Wales government. What are the risks here, given that taxpayers are paying for the production and then paying for the purchases of these goods? Is that productive?

**Ms Wood:** It would depend on the details of that arrangement. I'm not sure of the procurement arrangement that's been set out with the New South Wales government.

**Senator HUME:** It doesn't sound logical, though, does it—having taxpayers fund both the production and the purchase?

**Ms Wood:** It's a different set of taxpayers, and I'm not aware of the details of that.

**Senator HUME:** It's not. New South Wales taxpayers pay tax to the Commonwealth as well as state taxes.

**Ms Wood:** That's true. I'm just not aware of the details of that procurement arrangement. I have not received any reports of that.

**Senator Gallagher:** In terms of our investment in the Solar Sunshot program, as we went through yesterday, under the economic resilience and security of the national interest framework, the government believes it is in our national interest to provide support to enable domestic capability in this area of technology.

**Senator HUME:** Do you think the taxpayers of New South Wales think it's in their national interest to pay twice?

**Senator Gallagher:** I'm not here to answer for the decisions of the New South Wales government. I'm here to answer for the decisions of the federal government. I've just outlined and went through yesterday the reasons why we believe it's important to provide some support through Solar Sunshot.

**Senator HUME:** As the finance minister for all Australians, I think that the people of New South Wales would be very concerned about that. Last question, because—

**Senator Gallagher:** No. I can't let that assertion lie. What I said is was that I cannot answer for the New South Wales government.

**Senator HUME:** I was asking you to respond to the New South Wales taxpayer.

**Senator Gallagher:** I am not responsible for decisions taken by the New South Wales government. I'm here to explain the decisions that I have been involved in—

**Senator HUME:** But they're your taxpayers too.

**Senator Gallagher:** and the decisions that we have made around economic resilience and security reasons for providing investment into the Solar Sunshot program.

**Senator HUME:** So you're happy for New South Wales taxpayers to pay twice for a product that they could buy cheaply from overseas?

**Senator Gallagher:** I'm frankly surprised that the coalition doesn't support it: that you think it's fine to just continue being so totally dependent on another country's technology for our long-term economic resilience.

**Senator HUME:** I think that's a great argument to be put to the Productivity Commission, who, if you had the courage to do so, you could ask to assess the efficiency of that decision, but you haven't done that yet, which is why we're having them here to talk about it today.

**Senator Gallagher:** You normally have the Productivity Commission in to talk.

**Senator HUME:** And that's why I'm asking the questions about whether it's the sort of thing that they would consider doing some analysis of. I'll just ask one more question, and then I'll transfer the call. But I would like it back, if that's okay, unless you'd like me to keep going, Chair.

**CHAIR:** I think you're going okay. I reckon keep going.

**Senator HUME:** Ms Wood, we were talking before about tax reform, and you said that you don't agree that most of the \$23 billion of the Future Made in Australia package was about company tax reform. That's what the Treasurer said in parliament this week. He said:

A large proportion—indeed, most—of the \$23 billion of the Future Made in Australia package that I announced from this dispatch box almost exactly two weeks ago was about company tax reform ...

But production credits aren't company tax reform. They are a tax policy, but not tax reform. That's what you said, is that right?

**Ms Wood:** There are probably different ways you can cast it, but they are an effective reduction in tax for a subset of industries.

**Senator HUME:** When was the Productivity Commission first consulted on the Future Made in Australia policy? Was it through the budget process?

**Ms Wood:** No. We had various interactions with government agencies prior to the budget process.

**Senator HUME:** Were there informal conversations? Were there formal conversations?

**Ms Wood:** I'm not 100 per cent sure of the distinction, but we had conversations—

**Senator HUME:** Did somebody say, 'Can we have a meeting to sit down and talk about a big policy idea that we have that we would like the Productivity Commission to consider?' or did they say: 'Hey, good to see you at the water cooler. I think the government might be doing something big around solar panels'?

**Ms Wood:** They were meetings set up to discuss our thoughts around aspects of the package.

**Senator HUME:** For most of the package, was that unveiled to you formally? Or was it something that you heard about in the budget reveal through the media as we did?

**Ms Wood:** It was a mix. A lot of the things in the package had already been publicly announced. I was aware of some additional elements that were later announced as part of the budget.

**Senator HUME:** What about the Prime Minister's speech? Did he or his office consult the Productivity Commission or seek your advice on his speech that announced the Future Made in Australia?

**Ms Wood:** No, but nor would I expect to be consulted on that.

**Senator HUME:** Your comments, and the comments of every other former productivity commissioner from Garry Banks through to Michael Brennan, have attracted quite significant public criticism from the Prime Minister and the ALP President, Wayne Swan. Has anyone in government reached out to you directly to apologise for those comments?

**Ms Wood:** No, they have not.

**Senator HUME:** Is it fair to say that your views are widely held within the Productivity Commission as well? I'm not going to line you all up against the wall with a firing squad in front of you and say, 'What do you think?'

**Senator Gallagher:** Well, opinions aren't appropriate.

**Senator DEAN SMITH:** That would be Senator Gallagher's job.

**Senator Gallagher:** Yes.

**Senator HUME:** Do you think, generally in the Productivity Commission, by virtue of the work that you do, that your views would be reflected?

**Ms Wood:** I think the comments that I've made are consistent with the history of commission work in this space.

**Senator HUME:** Okay. You've been clear in your views publicly. Was your advice on this matter sought directly by the Treasurer?

**Ms Wood:** I didn't have a direct meeting with the Treasurer on this.

**Senator HUME:** What about the industry minister?

**Ms Wood:** No, I didn't have a meeting with the industry minister.

**Senator HUME:** What about the Prime Minister or his department prior to the policy's announcement?

**Ms Wood:** I did have a meeting with his department.

**Senator HUME:** With PM&C?

**Ms Wood:** Yes.

**Senator HUME:** Prior to the policy being announced?

**Ms Wood:** Prior to some aspects. Obviously there were a number of announcements over a long period of time.

**Senator HUME:** When was that meeting, approximately?

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

**Senator HUME:** The Treasury PBS shows that headline funding for the Productivity Commission is actually going to be cut from \$79 million in 2023-24 to \$75 million in 2024-25. Can you confirm that the Productivity Commission's resourcing in this budget is going to be reduced by about \$3.9 million in the next financial year?

**Dr Studdert:** The funding is less than last year's because we operated at a small operating loss last year, using some surplus funds from prior years, but our appropriation was as usual and expected this financial year heading into the budget.

**Senator HUME:** And over the forward estimates too? That's the funding reduction on the 2023-24 levels that continues over the forward estimates as well?

**Dr Studdert:** I think there are only very minor reductions over the forward estimates—a small savings measure.

**Senator HUME:** Was that funding cut something that you sought? Did you say, 'Because we were operating by carrying over a surplus from previous years, we don't need funding as big this year'?

**Dr Studdert:** I wouldn't describe it as a funding cut. It's just returning to the funding appropriation that we have operated on for a number of years.

**Senator HUME:** Explain to me how this works. Does the Productivity Commission go to government and say: 'All we need is X. We don't need any more than that'? Or does the government say, 'Ahh, we found a little hollow log that you hadn't used over there'?

**Dr Studdert:** No. There are no hollow logs. The funding has been reasonably steady and the same for quite a few years. There was a small uplift a few years ago to accommodate the Closing the Gap work that we took on. As I said, in this current financial year, we applied for an approved operating loss to do some investment projects, but the appropriation for the 2024-25 year is as has been standard over the last few years. Our appropriation this current financial year was not higher; it was just using some funds that had been unused over a number of years.

**Senator HUME:** Over how many years?

**Dr Studdert:** We have a three-year window to roll forward unused funds, so it has accumulated over a few years.

**Senator HUME:** Minister, are there any other agencies that have unused funds from previous years that are rolling forward?

**Senator Gallagher:** Yes, there would be.

**Senator HUME:** Why is the Productivity Commission, then, the only major Treasury agency to see a resourcing cut of this magnitude?

**Senator Gallagher:** Well, we've just had it explained: there isn't a cut. They've rolled over some money that wasn't expended and that presumably is exhausted. So, you go to your normal budget—

**Dr Studdert:** There actually remains some unused funds that have continued to roll forward, and you can see that in the budget papers—

**Senator HUME:** Other agencies have that, too, and they haven't seen a backward step in their funding.

**Senator Gallagher:** There's no 'backward step'. That's the point of the evidence.

**Senator HUME:** Well, ABS, ATO, ACCC and Treasury themselves have all seen their resources increase, and the Productivity Commission hasn't.

**Dr Studdert:** The appropriation has remained the same, with a normal CPI increase going forward—indexation. It has not been cut. It is just that the numbers for this current financial year appear higher, because we used some reserve funds.

**Senator Gallagher:** And in relation to the other Treasury agencies, those ones you've just recited, I would think all of them have a specific measure through this budget that they've been additionally resourced for.

**Senator HUME:** When you ask the Productivity Commission to take on particular roles, do you give them increased funding to do that?

**Senator Gallagher:** I think if there was something new, as with Closing the Gap, there would be an expectation, if there was additionality being required, that you would resource that.

**Senator HUME:** What's the size of the Closing the Gap commitment?

**Dr Studdert:** The funding allocation?

**Senator HUME:** Yes—sorry, no: not to the Productivity Commission, but generally. I haven't got that budget paper in front of me. I'm wondering whether—

**Senator Gallagher:** I don't either.

**Senator HUME:** Is it bigger, or smaller, than for Future Made in Australia?

**Senator Gallagher:** What, the entire—

**Senator HUME:** Yes.

**Senator Gallagher:** resourcing for—

**Senator HUME:** Well, the analysis that the Productivity Commission have done or were funded to do was for a program of a particular size.

**Senator Gallagher:** Yes, it would be more.

**Senator HUME:** It's more than for Future Made in Australia?

**Senator Gallagher:** It would be more—well, if you think across health, First Nations health, housing. Yes, I would think it would be—over a number of years, because remember, it's \$22.7 billion over 10, I think. So yes, Closing the Gap would far exceed that. I say that without having all the details in front of me.

**Dr Studdert:** But I would add that our review was more around the response to the national agreement across a range of governments and the priority reforms area. It wasn't around the expense of the budget that is allocated for various Aboriginal and Torres Strait Islander programs.

**Senator HUME:** Okay. What's the specific job that Treasury is getting an uplift for, Minister?

**Senator Gallagher:** Well, we dealt with this yesterday. But in relation to Future Made in Australia, they're essentially the lead agency. So, they'll be developing the legislation. They'll be developing the single front door—

**Senator HUME:** So that's why they get an uptick in funding.

**Senator Gallagher:** They'll be implementing the national interest framework. There's a whole range of functions that we've asked Treasury to undertake in relation to a Future Made in Australia.

**Senator HUME:** Right. In budget paper 2 there's \$79.7 million given to Treasury. It looks like business as usual; it doesn't look like it's gone up because of the Future Made in Australia. In fact, I don't even think it's been specifically cited.

**Senator Gallagher:** There was additional resourcing provided, and we went through it yesterday, when we had the relevant officials here.

**Senator HUME:** But the Productivity Commission isn't looking at Future Made in Australia, so they don't need additional resourcing?

**Senator Gallagher:** Well, they may choose to, as the chair has already said, in the normal course of—

**Senator HUME:** And if they do, they could come back to you and ask for additional—

**Senator Gallagher:** determining their priorities.

**Senator HUME:** And if they do decide to look at this enormous policy—something that is of a magnitude not dissimilar to Closing the Gap—is that something you would consider—

**Senator Gallagher:** I don't think we've established that! So, don't put words into my mouth. But—

**Senator HUME:** It's \$23 billion.

**Senator Gallagher:** If the chair or the Productivity Commission decides to examine elements of or the entirety of Future Made in Australia, that's a matter for the Productivity Commission to determine through its normal workload. I mean, the Treasurer wants an active and engaged Productivity Commission. That's why we're so pleased that Ms Wood has taken on the responsibilities as chair. It's a matter for the Productivity Commission.

**Senator HUME:** Didn't the Treasurer say that he wanted to restore and revitalise the status of the Productivity Commission?

**Senator Gallagher:** Yes. That was my point that I've just said.

**Senator HUME:** How does a reduced profile of \$14 million over the forwards mesh with either keeping—

**Senator Gallagher:** Sorry? I think we've established that there has been no funding reduction for the Productivity Commission.

**Senator HUME:** Well, it is a reduced profile of \$14 million over the four years.

**Senator Gallagher:** I think we've established that there is no reduction in appropriations for the Productivity Commission.

**Senator HUME:** So how does that—

**Senator Gallagher:** No matter which way you want to put it, there is none.

**CHAIR:** I'll share the call, Senator Hume—

**Senator HUME:** I just want to understand how a reduction in a funding profile over the forward estimates meshes with either keeping pace with inflation or the Treasurer's commitment?

**Senator Gallagher:** Agencies across government, including entities like the Productivity Commission, are indexed to deal with CPI costs.

**CHAIR:** I think—

**Senator HUME:** I just want to clarify one thing and then I promise I'll hand over, Chair. Ms Wood, would you consider doing the scale of review that the minister just described, noting the substantial risks that you've highlighted, on the Future Made in Australia? And the minister has said it's your decision to do it. Is that something that you'll consider?

**Ms Wood:** I think, if we were to look at the package as a whole, that would be something that we would do in response to a request from government. There may be smaller research pieces that we do off our own back.

**CHAIR:** Senator McKim.

**Senator McKIM:** Good afternoon, folks. Thanks for coming in. Housing has become significantly more unaffordable in Australia in recent years. Have you done any work on what that means in terms of our productivity as a country? If you have, what have you found, and, if you haven't, have you got any thoughts about what that might mean?

**Ms Wood:** We did look at housing as part of the review of the National Housing and Homelessness Agreement a number of years ago. I believe—and I'll defer to my colleagues in a moment—that we also discussed the importance of housing in our productivity review that we put out a couple of years ago, making the point that being able to afford to live close to jobs and amenities is one important driver of productivity. I might turn to Professor Robson if there's anything further that we might have said as part of the advancing prosperity review.

**Prof. Robson:** I'd only add in respect of housing policy in the prod review that we did discuss stamp duty reform and property tax. But the main piece of work we've done recently on housing is, as the chair said, the housing and homelessness report.

**Senator McKIM:** Could I just throw a few possible impacts on productivity at you, Ms Wood, if that's okay. Households often now need two income earners to buy a house. That has implications in terms of childcare costs, for example. Financial stress from high house prices or high rents could impact on productivity. It could lead to poor mental health, for example, which of course would also impact on productivity. It could compound tensions within families, which could impact on productivity. A whole bunch of workers' earnings now go to banks, where they could have gone into more productive parts of the economy if land prices and house prices weren't as unaffordable as they are. Do you reckon there's a body of work there for the Productivity Commission to actually understand the impacts of high house prices on all of those elements and what, if any, role they play in Australia's productivity?

**Ms Wood:** I certainly think it's an important issue. As I said, we have touched on it before. Another dimension we've touched on, when we were looking at small-business access to finance, was the fact that small businesses have typically used housing as collateral for taking out loans to start their businesses. As fewer people own homes, that closes off or makes it more difficult for people to start small businesses. So that's another point that we've touched on. But, certainly, it's something that would be of interest to us and potentially we may look at further from potentially different angles.

**Senator McKIM:** You can do own-motion inquiries, can you not? You don't need to have a matter referred to you?

**Ms Wood:** We can do self-initiated research.

**Senator McKIM:** Could I just invite you to think about that next time you're doing some blue-sky thinking about some of your work programs?

**Ms Wood:** Please do. There are lots of very interesting questions kicking around, but I certainly think that housing is an important one.

**Senator McKIM:** Alright, thanks.

**Senator Gallagher:** The National Housing Supply and Affordability Council have just released—I think it was last week—their big report *The state of the housing system 2024*. So, in the meantime, that's quite a detailed assessment of what's going on.

**Senator McKIM:** Thanks, Minister. That's helpful. I'll have a look at that. The commission's recent snapshot on inequality was very interesting. It calculated a wealth adjusted income. Basically, in broad terms, income and assets are taken into consideration. That's a pretty insightful metric. Is there anything preventing that metric being used more broadly across government departments? Can you think of any barriers to that metric being incorporated into, for example, assessment processes of government departments?

**Ms Wood:** I can't think of any barrier. We had to access microdata to do that calculation, but obviously we have now put that metric out in the public domain, so there's nothing to stop any government agency picking that up and using it.

**Senator McKIM:** The snapshot made it clear that the increasing value of assets is, in broad terms, enriching older generations and leading younger generations into despair—that's probably my word, not yours, but it's causing concern to younger generations—about housing security. How do we get the homeownership rate up for young people who haven't got wealthy parents? I guess, as a corollary of that, given one of the defining features of feudalism was basically that economic opportunity depended on the wealth, or lack of it, of your parents, do you think there's a danger that in the context of homeownership we're now heading into a sort of neo-feudal situation?

**Ms Wood:** I probably wouldn't use those terms.

**Senator McKIM:** I have made the minister smile, anyway.

**Senator Gallagher:** Senator McKim has accused me of using propaganda and things like that in the past—

**Senator McKIM:** Well, I don't think anything I've just put is unreasonable, but Ms Wood will have her own views on that, no doubt—as, it's safe to say, might you, Minister.

**Senator Gallagher:** You're liking that, Senator McKim. I tip my lid to you.

**Ms Wood:** We've certainly documented, as have others, a decline in homeownership rates amongst younger households. We have documented the rise in younger people accessing support from their parents to enter the housing market. I think those things are well established. In terms of what can be done about it, we've certainly done work in the past around the importance of supply and building homes close to areas where there are jobs and amenities, and the benefits in doing that. As Professor Robson said, we've also looked at some of the tax settings around land tax and stamp duty and the opportunities there to improve affordability.

**Senator McKIM:** Have you looked at the possibility of different tax settings around negative gearing and the CGT discount? Have you done any work in those areas?

**Ms Wood:** I don't think the commission has done any work on that for a very long time. There was a housing inquiry—I'm going to say well over a decade ago—that touched on those things. My understanding is—

**Senator McKIM:** Nothing since then?

**Ms Wood:** that we haven't done anything since then.

**Senator McKIM:** I think you flagged that you're working on a paper on intergenerational inequality and mobility. Is that right, and, if so, have you got any timeframes around that?

**Ms Wood:** That is right. That's the second paper. The first one was the snapshot on inequality that you referred to before. The second one is looking at how opportunity transmits across generations, particularly with regard to adverse life effects and transmission of poverty. In terms of timing, I'm going to look to others to see if anyone knows. I know that it is underway.

**Senator McKIM:** Perhaps you could take—oh, sorry, do you have an answer?

**Ms Wood:** Yes: sometime in July.

**Senator McKIM:** That's for publication?

**Ms Wood:** That's right. It will be in coming months.

**Senator McKIM:** So pretty soon—okay, thanks I know we're closer to the 2050s than the 1990s, but—

**Senator Gallagher:** Where are we going?

**Senator McKIM:** The minister's giving me that look again! I'm interested in whether the commission has done any work at all on evaluating a decades-long privatisation agenda in Australia. The privatisation of things like vocational education and training, power generators, monopoly energy transmission, energy retailing, multiple ports, multiple airports, Qantas, Telstra, the Commonwealth Bank—has that actually increased productivity in Australia? Has that worked? I reckon there's a pretty strong argument that it hasn't, and I wonder if that's a job for you—to have a look at that and tell us whether the privatisation agenda, which is still ongoing today, is actually delivering in the public interest.

**Ms Wood:** I'm not aware that that's something the commission has looked at. I think if we were to do it we would need to look at them sector by sector. I don't think it's something you could do as a whole piece of work. You'd need to be looking at each of those policies to assess them properly.

**Senator McKIM:** You think it would be difficult to do that as a broad piece of work, and you think you could only do it on a sector-by-sector basis. Might it be possible to do that sector-by-sector work and then take that and mash it up and come to a view?

**Ms Wood:** I guess my point is you would have to do it from the bottom up.

**Senator McKIM:** Is there a legitimate role for government owned businesses to compete in markets where there's poor competition and elevated prices for consumers?

**Ms Wood:** That's difficult to answer without specific context, I think it's fair to say. One thing that's worth noting is that we house the Australian Government Competitive Neutrality Complaints Office within the commission, which ensures that government businesses compete on a level playing field where they're competing against private-sector operators.

**Senator McKIM:** You said you'll consider housing affordability and its impacts on productivity when you're thinking about your future work programs, and I thank you for that. Would you also consider privatisation in the same context?

**Ms Wood:** We're very happy to take any ideas. We obviously have a framework for prioritising and thinking about what we take forward, but we have a broad research program.

**Senator McKIM:** Thank you.

**Senator ROBERTS:** Thank you for appearing again. Commissioner, I understand that you were recently briefed on the productivity benefits of competition in the conveyancing market. Can you explain your understanding.

**Ms Wood:** Of the conveyancing market?

**Senator ROBERTS:** Yes, and productivity in there.

**Ms Wood:** The briefing was in relation to competition in that market: the fact that at the moment there is a monopoly provider of conveyancing services and the opportunity to introduce further competition and choice in that market.

**Senator ROBERTS:** So are you going to be doing a study on that?

**Ms Wood:** It's not something that we are specifically doing a study on at this point in time.

**Senator ROBERTS:** The briefing, as I understand it, was on the productivity benefits of competition. What are those benefits? I understand, but I'd like to know a bit more detail.

**Ms Wood:** I'll speak in the broad. First of all, competition can drive lower prices for consumers. It can spur innovation. Competition can feed into productivity in a number of different ways.

**Senator ROBERTS:** Can you provide on notice any information you have on the national productivity benefits of competition in the conveyancing market.

**Ms Wood:** I'm happy to provide it on notice, although I don't think we have anything specific. But I can confirm that for you.

**Senator ROBERTS:** I have a couple of other questions. Energy prices and energy availability have huge impacts on productivity. That's my understanding, and in fact if I were to be asked what has been the major driver of the dramatic improvement in standards of living in the last 170 years I would say it's the relentless decline in energy prices, until about 1996, when John Howard came to office. Have you done any work on the relationship between reducing energy price and increasing productivity?

**Ms Wood:** To my knowledge, we haven't done a formal piece of work on that question.

**Senator ROBERTS:** What about the relationship between increasing productivity and increasing standard of living or decreasing cost of living?

**Ms Wood:** We've written a lot about the impact of productivity on standard of living and wages. Our productivity review that came out towards the start of last year spends a lot of time stepping through the broader benefits of improvements in productivity.

**Senator ROBERTS:** So there has been nothing specifically done on the reduction of energy prices and the impact of the reduction of energy prices on productivity, but you've done plenty of work on increasing productivity and its benefits.

**Ms Wood:** That's right.

**Senator ROBERTS:** Increasing productivity would increase wages, wouldn't it?

**Ms Wood:** There's certainly a very strong relationship between productivity and wages over time.

**Senator ROBERTS:** Can you name a document that you would refer us to to get insights into or a summary of the relationship between productivity and standard of living and wages, from your work or your commission's work?

**Ms Wood:** Yes. I would refer you to the *Advancing prosperity* report released by the commission towards the start of last year, particularly the first volume in that series, which steps through that in some detail.

**Senator ROBERTS:** I have a question off the cuff. I'm a strong believer in federalism and states' rights. I'm not asking for your opinion; you can give it if you want, but I'm not fishing for that. It seems to me that competitive federalism is quite a wonderful initiative from the United States' founding fathers that our founding fathers adopted and that gives a marketplace in governance at the state level. If one state does better than other states in a certain area and it's positive, then the other states tend to adopt it, otherwise they'd lose residents, business et cetera. If one state screws it up and people leave, then the other states don't screw it up, because they learn. Isn't competitive federalism, the notion of states' rights, really a marketplace in governance?

**Ms Wood:** Competitive federalism should operate to mean that good ideas thrive across states. I probably wouldn't use those exact terms, but, broadly, it operates in the way that you explain.

**Senator ROBERTS:** Has there been any work done on the productivity benefits of competitive federalism and states' rights?

**Ms Wood:** Not specifically on the productivity benefits, but we've certainly done pieces of work that look at opportunities for states to learn from each other in terms of areas where states are doing particularly well on aspects of policy.

**Senator ROBERTS:** How would I go about finding those studies?

**Ms Wood:** We did a series called What Works, which, I think, was focused on looking at areas where states were performing well.

**Senator ROBERTS:** I don't know if you've done any studies on this, but an observation is that, while there are many benefits to competitive federalism, states' rights and states retaining sovereignty for much of what they have been given responsibility for under the Constitution, the trend has been the other way, towards centralising, either deliberately or unconsciously, with more and more power going to the federal government. Have you done any work on that?

**Ms Wood:** We haven't done any specific work on that.

**Senator ROBERTS:** Thank you very much; I appreciate your answers. Thank you, Chair.

**CHAIR:** Senator Smith.



**Senator DEAN SMITH:** Welcome, Chair. Will cuts to company tax rates in Australia make Australia more competitive?

**Ms Wood:** I'm not aware of any specific work the commission has done on that, but as a broad—

**Senator DEAN SMITH:** As a first principle, recognising that only Portugal and Colombia, I think, have a higher tax rate than us?

**Ms Wood:** As a broad principle, reducing company tax will make us more internationally competitive. It's a little more complex when you talk domestically because we have a dividend imputation system that not many other countries have.

**Senator DEAN SMITH:** Are there any particular industries in Australia that you think would especially benefit from a company tax cut at the moment?

**Senator Gallagher:** We do. Green hydrogen and critical minerals processing through production tax credits are two industries that spring to mind.

**Senator DEAN SMITH:** Would you agree with that, Ms Wood?

**Ms Wood:** We haven't done the work to—

**Senator DEAN SMITH:** So you're disagreeing with the minister?

**Ms Wood:** I'm not disagreeing with the minister. I'm just saying we haven't done the work.

**Senator DEAN SMITH:** But you are informed about these things. You come to the role with a good understanding of productivity and economic issues generally. So which particular industries do you think would do particularly well from a company tax cut in Australia?

**Ms Wood:** My general expectation is that they would be industries that are more likely to attract foreign capital. That's as far as I can generalise.

**Senator Gallagher:** I can't wait, Senator Smith, for the coalition to release its tax cut policy for company tax cuts that you and Senator Hume have been arguing for for two days.

**Senator DEAN SMITH:** Well, if the Prime Minister chooses to have an election on 30 November or 7 December, you won't be waiting very long at all.

**Senator Gallagher:** So you've got a company tax cut lined up, have you? You'll have to fund that!

**Senator DEAN SMITH:** No, I'm just saying—

**Senator Gallagher:** You will have to fund that.

**Senator DEAN SMITH:** I'm just saying you are in control. When you want to see—

**Senator Gallagher:** Indexing income tax—

**Senator DEAN SMITH:** When you want to see the coalition's tax plan, you are more—

**Senator Gallagher:** Indexing the income tax thresholds—

**Senator DEAN SMITH:** in control of that than you would like to think.

**Senator Gallagher:** and company tax cuts.

**Senator DEAN SMITH:** Of course, if the election is going to be later, before May next year, you will have to wait.

**Senator Gallagher:** We'll hold you to that.

**Senator DEAN SMITH:** You'll just have to wait.

**Senator Gallagher:** We'll hold you to that. No doubt they'll all be costed by the Parliamentary Budget Office.

**Senator DEAN SMITH:** Was Minister Husic right to put the issue of company tax cuts on the broad economic agenda, as he did recently?

**Senator Gallagher:** You're seeking an opinion from the chair of the Productivity Commission, and, as you know, that is not—

**CHAIR:** Within the orders.

**Senator Gallagher:** within the standing orders.

**Senator DEAN SMITH:** Minister Gallagher, Ms Wood—

**Senator Gallagher:** And I've dealt with this issue. I agree with Minister Husic that looking at how you incentivise investment and how you use the tax system to support that is an important discussion, which is why a key part of our Future Made in Australia is the production tax credits.

**Senator DEAN SMITH:** I don't want to be unkind, Senator Gallagher, but I would consider Ms Wood a subject matter expert, and I would be very interested in hearing her views. I can hear your views every day the Senate sits, but I'd like to hear Ms Wood's views because I don't get that opportunity.

**CHAIR:** Could you just rephrase the question, Senator Smith. I think things did get lost a bit there.

**Senator DEAN SMITH:** Is the time right to put company tax cut issues on the economic agenda for Australia?

**Ms Wood:** I think that's really a judgement for the government to make. What I can say is—

**Senator DEAN SMITH:** No, no. Ms Wood, to be fair—and I preface this by saying that I've read a lot of what you have done, and I admire the courage with which you prosecute issues that are important for our country. This is an important platform for you, in your role as the chair of the Productivity Commission, to share attitudes and perspectives with the Senate.

**Senator Gallagher:** Senator Smith, I think Ms Wood understands what her role is without having it explained to her in such a way.

**CHAIR:** Yes. I was just going to assist from the chair that—

**Senator DEAN SMITH:** I don't think Ms Wood needs this level of protection.

**Senator Gallagher:** We're not providing protection. Again—

**CHAIR:** I was just going to assist from the chair about the rules.

**Senator Gallagher:** Yes, there are rules.

**CHAIR:** Obviously, opinions are being sought, and the witness, as we like to say, can answer as they see fit about opinions that are being sought.

**Senator DEAN SMITH:** I'm very interested in your views, Ms Wood.

**Ms Wood:** What I am able to say, Senator, is that, as part of the commission's advancing prosperity review, we did stress the importance of the tax mix as one driver of productivity growth, and we talked about company tax, along with other taxes, as part of that discussion. It was very general. We didn't do any detailed analysis. But we certainly see the tax mix as one lever that governments have when it comes to productivity.

**Senator DEAN SMITH:** Thank you.

**CHAIR:** I—

**Senator DEAN SMITH:** I haven't finished yet.

**Senator Gallagher:** That did look like a final thank you.

**Senator DEAN SMITH:** That wasn't so uncomfortable, was it, Minister Gallagher? That wasn't so uncomfortable.

**Senator Gallagher:** Again, I feel like I'm getting patted on the head.

**CHAIR:** We've got a number of people on my list—

**Senator DEAN SMITH:** I have 10 minutes, I think. Ms Wood, has the Productivity Commission on its own initiative done any work around the GST distribution arrangements since January this year?

**Ms Wood:** No.

**Senator DEAN SMITH:** Has it done any in the last 12 months?

**Ms Wood:** Nothing since the previous review, as far as I'm aware.

**Senator DEAN SMITH:** Are you making any preparations at the moment for the Productivity Commission review into the GST arrangements that's required, I think, at the end of 2026?

**Ms Wood:** We haven't made any preparations at this stage because it is some time off. As you said, we're due to report at the end of 2026.

**Senator DEAN SMITH:** I just want to turn to the matter of the *Future foundations for giving* Productivity Commission draft report. Minister Leigh said that that would be available in the first half of 2024, which has now expired. When can we expect to see the final report?

**Prof. Robson:** That report, the final report, was provided to government on 10 May.

**Senator DEAN SMITH:** On 10 May, the final report on the future foundation of giving was provided to government. How long does government have to review the final report before it's released?

**Prof. Robson:** My understanding is that it's 25 sitting days.

**Senator DEAN SMITH:** In documents provided to the Senate, Dr Leigh's office provided a media comment to a media inquiry, and that media comment was that this was an interim report—so he was referring to the draft report—released by the Productivity Commission for stakeholder consultation and the draft recommendations did not represent government policy and it was not something the government was considering. You're aware of those views? How are you aware of those views?

**Prof. Robson:** We get media in our inbox every day and we read ministers' comments.

**Senator DEAN SMITH:** So you weren't formally told by the government that the draft recommendations—around school building funds, for example—did not represent government policy? You just read it in media commentary, did you?

**Prof. Robson:** What was the first part—did you say 'formally'? What was the first part of your question? I just want to answer it properly.

**Senator DEAN SMITH:** My question was: how did you find out that the draft recommendations do not represent government policy?

**Prof. Robson:** I read about it in the comments that you're referring to.

**Senator DEAN SMITH:** Do you recall which was the first media article you read—

**Prof. Robson:** No, I don't.

**Senator DEAN SMITH:** So how did the government formally advise the Productivity Commission that the draft recommendations do not represent government policy?

**Prof. Robson:** I don't think we've been formally advised of that, in a formal sense, but neither would we expect to get a formal response to a draft report.

**Senator DEAN SMITH:** So the media commentary that you read that said that the draft recommendations do not represent government policy in no way has influenced the final report?

**Prof. Robson:** I'm not going to comment on the final report until it's released by government.

**Senator DEAN SMITH:** I'm not asking you to. I'm just asking you whether or not the government's view has influenced—

**Prof. Robson:** No, Senator.

**Senator DEAN SMITH:** It hasn't?

**Prof. Robson:** No.

**Senator DEAN SMITH:** So the government has been out there telling stakeholders that the Productivity Commission draft recommendations do not represent government policy, and that has in no way influenced your work on the final report which is now with government?

**Prof. Robson:** Correct.

**Senator Gallagher:** But I don't think any report from the Productivity Commission—

**Senator DEAN SMITH:** That's not true. Regional—

**Senator Gallagher:** Well, until government accepts them—

**Senator DEAN SMITH:** That's not true.

**Senator Gallagher:** or responds to them—

**Senator DEAN SMITH:** Senator Gallagher, that is not true. There was one significant—

**Senator Gallagher:** Well, I would think that would be normal.

**Senator DEAN SMITH:** I encourage you to go and research. There was a Productivity Commission review into regional tax arrangements that was amended from the draft report stage to the final report stage. Feel free to go and use all of your staff and all of your resources to identify—

**Senator Gallagher:** No, no—I was making a different point. If the Productivity Commission, on any report, provides an interim or a draft report to government, then the recommendations contained in there wouldn't represent government policy until the government had responded to them and said they were government policy. That's only the point I was making—

**Senator DEAN SMITH:** So the draft recommendations, because they don't represent government policy, will be ruled out by the government by the time it releases the Productivity Commission report?

**Senator Gallagher:** Who's saying that?

**Senator DEAN SMITH:** You're saying here: the draft recommendations do not represent government policy. And then I'm asking you—

**Senator Gallagher:** And then you're taking it one step further and saying—

**Senator DEAN SMITH:** So the final report that is sitting on the Treasurer's desk or Minister Leigh's desk—

**Senator Gallagher:** Dr Leigh—presumably, it has gone to him.

**Senator DEAN SMITH:** Is that true? Is it on Dr Leigh's desk, or Dr Chalmers's desk?

**Prof. Robson:** It gets provided to a range of ministers' offices.

**Senator DEAN SMITH:** To what extent did the Productivity Commission, in the period between releasing the draft report and presenting the final report to government on 10 May, consider the comments of people like Peter Wertheim from the Executive Council of Australian Jewry, who characterised the draft recommendations as 'puzzling and disturbing'?

**Prof. Robson:** I can't comment on Mr Wertheim's specific comments, but we did a range of consultations with a number of organisations, including religious organisations and individuals, in between the publication of the draft and the final.

**Senator DEAN SMITH:** When Melbourne's Catholic archbishop, Peter Comensoli, described the report as missing the important work that religious based charities play in the Australian charity sector, to what extent did those comments influence your work between the draft and final reports?

**Prof. Robson:** I might just say at the outset that, if you read page 191 of the draft report—I'll just read it for you:

Religious organisations and the practice of religion plays an important role in many people's lives and in a range of communities across Australia, although there may be different perspectives on the personal value of religion. Some researchers have found that religious beliefs are associated with higher economic growth (McCleary and Barro 2019; Webber 1905). Religious faith and values can also provide important inspiration for undertaking a range of charitable activities. For some people, undertaking activities such as helping those in need is how they put into practice their religious beliefs and values within the community. Many participants to this inquiry—

and this is prior to the draft—

have highlighted the community benefits of religious activities and the interconnectedness of religious practice and other charitable activities ...

**Senator DEAN SMITH:** That's not my point. My point is—

**Prof. Robson:** In response to the comments that you were telling me—

**Senator DEAN SMITH:** No. Excuse me.

**CHAIR:** Senator Smith!

**Senator DEAN SMITH:** My point is that, since the release of the draft report, there has been very, very widespread criticism of the draft recommendations of the report, the damaging effect they would have on the existence and operations of religious charities in Australia and the damaging impact they would have on school building funds in particular. I think your report identified 5,500 school and other building funds. My point of inquiry is to understand how the final report—how your work between the release of the draft report and providing the final report to government—has changed to incorporate what has been very, very widespread criticism, including criticism that has come from Senator Gallagher Senate colleague, the former senator Jacinta Collins. We have to wait 25 sitting days but, prior to the release, I'm just looking for a level of satisfaction that the Productivity Commission has taken seriously those concerns that have been raised publicly in articles and privately in representations to Dr Leigh, me and others, because I did an order for the production of documents just to make sure that the Productivity Commission has given those concerns close consideration.

**Prof. Robson:** I would agree that there has been a great deal of criticism on those issues that you refer to. We take those concerns very seriously. Following requests from faith based organisations, we held additional hearings in Sydney in public in February, and we also held a workshop with members of the Charity Law Association of Australia and New Zealand to discuss the draft report's recommendations on religious and faith based organisations. We've also, obviously, received many hundreds of submissions on that particular topic, and they were taken into account in the preparation the final report.

**CHAIR:** Senator Smith, how are you going, because—

**Senator DEAN SMITH:** Just one last question.

**CHAIR:** Okay.

**Senator DEAN SMITH:** Using the full suite of draft recommendations, was the commission able to quantify what the magnitude of increases to philanthropic giving in Australia would be as a result of the draft report?

**Prof. Robson:** No, we haven't done that exercise as part of this report.

**Senator DEAN SMITH:** Is it an exercise that it would be possible to do?

**Prof. Robson:** It would be very difficult to do. If it was possible to do it, we would've done it. There is a rough costing of the recommendations in relation to the DGR recommendations in the draft report, but the recommendations around DGR reform are game-changing in the sense that you could expand the number of entities that receive DGR status by 15,000 to 20,000 charities, so the extent to which that then encourages more aggregate giving or shifts it around between existent DGR entities is a difficult question to answer, and we didn't do that exercise in this report.

**Senator DEAN SMITH:** Is it an exercise that—

**CHAIR:** Senator Smith, I need to share the call.

**Senator DEAN SMITH:** Excuse me; just one last question. Is it an exercise that the Productivity Commission could do? Does it have the level of skill to be able to do that exercise? Or could someone outside of the commission do that exercise?

**Prof. Robson:** We could do it, but it would be an uncertain exercise to be able to do it. It's an imprecise science. We did have some projections of aggregate giving in the report, noting the government's goal of doubling giving by 2030 that's in there.

**CHAIR:** Thank you. Senator McDonald.

**Senator McDONALD:** Ms Wood, we have heard from both ASIC and Treasury that the government's climate disclosure laws will impose a \$2.3 billion compliance cost on the economy in their first year alone. We've heard from ASIC's deputy chair today that small businesses are worried that this will push compliance down the supply chain to small businesses. All of this is for annual reports. In the Productivity Commission's view, how would \$1.3 million per year across 1,800 companies—\$2.3 billion just on public reports—boost productivity?

**Ms Wood:** That's not a policy that we've looked in to or done any analysis of, so I'm not really able to say anything more than that.

**Senator McDONALD:** Does that mean that the Productivity Commission wasn't consulted on the development of the policy?

**Ms Wood:** No, we weren't, nor would we expect to be in that particular area.

**Senator McDONALD:** Right. The Productivity Commission, I just assumed, would have an input into things that might affect productivity. Is there a substantial regulatory burden on Australian businesses, in that it's not like for like with our international peers and trading partners? Is that likely to make our businesses more or less competitive?

**Ms Wood:** We have certainly made general comments on regulatory burden and making sure that regulation is fit for purpose and doesn't extend any further than it needs to, because the broad business environment is important for competitiveness and productivity.

**Senator McDONALD:** I believe you can self-refer inquiries or bodies of work within the Productivity Commission.

**Ms Wood:** Yes. We are able to self-initiate research.

**Senator McDONALD:** Is a more regulatory comparison with international peers and trading partners a body of work you've been considering?

**Ms Wood:** We did a report—I can't remember the exact timeframe—a number of years ago now specifically looking at regulatory burden on small business and issues to help alleviate that. I know I've certainly had a number of meetings with the small business sector in this role, and that was well received. It may be that, at some point in the future, we revive that, and it's possible that international comparisons are part of that work.

**Senator McDONALD:** So there weren't international comparisons with the body of work that has been done to date?

**Ms Wood:** I am not sure of that point.

**Senator McDONALD:** Would you take that on notice and come back to me?

**Ms Wood:** Yes. I'd be happy to do that.

**Senator McDONALD:** My question is: what body of work could be done on that international comparison, particularly with our trading partners, to ensure that we are not regulating ourselves out of competitive status?

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

**CHAIR:** Thank you, Senator McDonald. The committee will take a short break as per the schedule. We will return with some more questions for the Productivity Commission.

**Proceedings suspended from 16:53 to 17:07**

**CHAIR:** The committee resumes with the Productivity Commission. I'll go to Senator Cox.

**Senator COX:** I'd like to ask some questions around the *Closing the gap* final report that was released in February. Can you walk us through some of the key pieces of evidence that led to the conclusion of that report?

**Ms Wood:** Yes, I can. The report undertook a very comprehensive consultation process. Somebody told me the figure earlier today—

**Dr Studdert:** Two hundred and forty.

**Ms Wood:** I think about two-thirds of those were with Indigenous individuals or organisations. The relevant commissioners and team travelled very broadly to talk to a broad cross-section of people impacted by the agreement. It was probably the biggest consultation exercise that the commission has undertaken as part of one of its reviews.

**Senator COX:** What was the remit of the report? Were there any areas that fell out of the scope that might have been relevant to some of the conversations you were having through the consultation but that didn't appear, because they were outside of your original remit?

**Ms Wood:** The remit of the report was to review progress against the agreement and the priority reform areas. I understand that there was actually quite a lot of consultation undertaken to even grapple with how we approached those terms of reference. You will see in the report that it is quite broad-ranging but really focuses on how much progress government has made against those priority reforms.

**Senator COX:** When is the next update of the dashboard of targets due?

**Ms Wood:** Very soon. I was looking at the text just on the weekend, so I would say I don't have the exact date, but certainly in the coming weeks.

**Senator COX:** Are you able to provide that on notice?

**Ms Wood:** Absolutely.

**Senator COX:** How does the commission capture the data, especially the qualitative data, to assess that progress? I know it's easy to run the numbers, but what's the qualitative piece of data that the commission uses or looks for?

**Ms Wood:** The quantitative numbers that get reported on the dashboard come from a range of different data sources. Something that we've put a lot more effort into with the forthcoming release is trying to contextualise some of that data, and that comes from consultation and from understanding the way the data is collected, so we try and put some of that context around the numbers.

**Senator COX:** What are the main data sources that you utilised through the analysis?

**Ms Wood:** There are various ABS sources—the Australian Institute of Health and Welfare and some broader administrative datasets. There's a very broad range of sources because the targets are very broad in nature. Not all of them are we able to report on at this stage because some of the data that we need is just not available yet.

**Senator COX:** We know there are missing elements of data. From your understanding of the progression, has progress been made in the development of structural systems that allow us to collect some of that data?

**Ms Wood:** I think there have been some indicators where we have now been able to report. I might have to take that on notice because I can't recall what that is off the top of my head. There are certainly still a number where we don't have any data at this stage.

**Senator COX:** Yes. I think the Prime Minister mentioned in his speech on the day of the apology there were 11 out of the 19 socioeconomic outcomes for improving and four are on track to meet their targets, but some of the critical ones are going backwards around early childhood development, rates of children in out-of-home care, rates of adult imprisonment and, tragically, mental health and suicide. Is the commission investigating the use of data sovereignty during this process?

**Ms Wood:** Yes. We are doing further work on how we incorporate the principles of Indigenous data sovereignty within our own work on this project and projects more broadly at the commission.

**Senator COX:** Who's informing that piece?

**Ms Wood:** That piece of work is underway at the moment. I know the relevant teams consulted with various experts in the area, but I don't have specific names yet.

**Senator COX:** In the interests of time, can you provide on notice who's involved in the consultation piece? That would be really helpful.

**Ms Wood:** Indeed—and that piece is ongoing. In response to the dashboard update, 31 July is when the dashboard will be updated.

**Senator COX:** Great, thank you. That's really helpful. Regarding the methodology for collecting some of this data, there's been much criticism of the targets being set against mainstream data, if you will, or systems. In terms of the Productivity Commission's opinion—without saying 'opinion'—or thoughts on this, are there wellness indicators that it can point to or that are significant to inform the story of what closing the gap essentially is for Indigenous communities and Indigenous peoples? I ask that because I think a critical missing piece is that we don't hear about some of the more strength based resilience and community wellness shining through.

**Ms Wood:** So connection to country and those broader elements?

**Senator COX:** Yes.

**Ms Wood:** We're certainly trying to provide some context, which I think may be helpful in addressing that. Whether governments might craft an indicator to reflect that is, I think, a really interesting question. We report against the indicators that are given under the agreement, but it may be possible to think about how you could try and quantify that. It's difficult, obviously, as I'm grappling with it now but, certainly, we think it's very important to provide in the context around the reporting of the indicators.

**Senator COX:** It would be a very interesting point if the government was open to a conversation around what that might look like. It seems that most of the collection of that data is about quantitative aspects of that versus a very qualitative approach which has an interconnected focus of what that looks like for First Nations people who are essentially trying to close the gap on life expectancy. That report that came down was the first review. Is there a timeline for further reviews, apart from the one you've given me on 31 July?

**Ms Wood:** Is this the dashboard or the review of the agreement?

**Senator COX:** Both. If you don't have them on hand, I'm happy for you to take them on notice.

**Ms Wood:** We do the review of the government's progress against the agreement every three years. The dashboard is updated three times a year.

**Senator COX:** In the report, there wasn't a priority action or a pointing to any priority actions that the government could do. I think the quote that was captured in the report said that 'the actions by government exacerbate rather than remedy disadvantage and discrimination'. In the context of that report, what does that represent? What are the actions that government need to stop doing that are making this worse and actually start doing as part of the report that the commission gave?

**Ms Wood:** The recommendations of the report which were for government focused on things like greater sharing of power when it comes to decision-making that impacts Indigenous people. They focused on government systems and culture, so there are a number of things that you can imagine fall under those broad banners.

**Senator COX:** Power sharing is obviously a very critical part of this agreement. Could you give us an example of what that might look like in the context of what you heard during the development of this report?

**Ms Wood:** My understanding of what that was getting to was where governments are making decisions that particularly impact on Indigenous people in community—not just a model of one-way consultation but more seriously taking into account the views of Indigenous people and organisations about the design of that policy.

**Senator COX:** What about government systems and culture? They are very critical elements. Obviously given that most of the—I want to say—'responsibility' lies with the Commonwealth for Indigenous affairs, were there any examples given about government systems changing or culture within this place in particular, and the approach of the Commonwealth to working alongside communities?

**Ms Wood:** The report certainly articulated a view that there had been sometimes a disregard for First Nations people's knowledge and solutions, and there would need to be some attitudinal shift to see that kind of cultural change.

**Senator COX:** Does the commission have a view or any suggestion for closing the gap targets that should be prioritised, given the inherent link between many of those targets?

**Ms Wood:** I don't think we attempt to prioritise them in any way. We're given the targets, and we report against them. There are a number of really important indicators there, so it's not our job to say which ones are top of the pile.

**Senator COX:** But, significantly, there are four that are going backwards. There are some we don't have any data on. Clearly that should be the focus now of government to make sure that we get those ones on track and make sure that we've got adequate at best, make sure we're power-sharing, and changing the systems and the culture to reflect that, and I really hope that we do see that in the future because it's such an important focus.

**Ms Wood:** That's right, and the point of reporting against the targets is to focus the mind of policymakers to point out the areas where we're not doing as well as we can, and we really see that the commitments under the agreement, if well executed, can flow into that.

**Senator COX:** Thank you.

**CHAIR:** Senator Canavan.

**Senator CANAVAN:** I've got a couple of quick questions. First of all I want to confirm the work you have underway at the moment. When I check your website, under current inquiries you have two inquiries, one of which is a public inquiry and one of which is a commissioned study. Then there is one research project. Of course I know you've got your standard research that you do every year. That seems low. That doesn't seem like a high workload for the Productivity Commission compared to normal. Are you in discussions with governments for more inquiries—for more work?

**Ms Wood:** Yes, we're in regular discussions with government. As you know, sometimes inquiries are floated and they take a while for the terms of reference to formally arrive, so there's certainly a pipeline of possibilities that we are in discussions around.

**Senator CANAVAN:** I presume that you're not going to disclose the topics of those?

**Ms Wood:** You would presume correctly.

**Senator CANAVAN:** What about commissioned work? It's been a little while since I was there. Your commissioned studies, from memory, are ones that are self-initiated, is that right? I would have thought that number of inquiries is a little low. Is that correct compared to your normal workload?

**Ms Wood:** It fluctuates. We've just handed in the philanthropy inquiry, so we've just had a major one come to an end. I certainly expect that there will be a couple of significant ones that come along. In addition to that we have a number of self-initiating projects in the pipeline as well that may not be on the website yet but certainly will be started shortly.

**Senator CANAVAN:** That's good to hear. Just on your trade and assistance review, when's the next edition due out? Have you got a publication date? I would have thought it would be pretty soon?

**Ms Wood:** It's close. Professor Robson?

**Prof. Robson:** July.

**Senator CANAVAN:** It will be July—a regular July—

**Prof. Robson:** Yes, the regular time.

**Senator CANAVAN:** There have obviously been significant announcements in this budget to support critical minerals, hydrogen et cetera. I would have thought that type of assistance—production tax credits and some of it is concessional lending—that gets captured by the trade and assistance review, does it?

**Prof. Robson:** The TAR is backward looking. The next one that will come out in terms of the estimates of what assistance has actually occurred will be 2022-23.

**Senator CANAVAN:** Yes, it's not forward-looking, so it won't really capture what's been announced in the budget—

**Prof. Robson:** Say, in last year's TAR, we had some discussion of industry assistance in the form of concessional finance or carbon pricing or things like that, but that's forward looking to say, 'These might be quantified in future TARs to the extent that there will be policies around those,' but, for the official estimates for the 2021-22 year and last year's, it's programs that are actually in place and we estimate those and publish those.

**Senator CANAVAN:** So this edition of TAR won't capture the budget announcements?

**Prof. Robson:** In terms of the quantification—

**Senator CANAVAN:** Yes.

**Prof. Robson:** that's correct.



**Senator CANAVAN:** Are you planning to have a discussion about these types of measures?

**Prof. Robson:** You'll have to wait and see.

**Senator CANAVAN:** At a conceptual level, do you capture concessional finance in your quantitative estimates?

**Prof. Robson:** Sometimes we do. In last year's TAR, we did have some estimates of concessional finance in relation to a number of the existing bodies and policies that were already there.

**Senator CANAVAN:** And a production tax credit—that's more plain vanilla. That would generally be considered 'industry assistance' if its credit was to a specific industry?

**Prof. Robson:** Yes. The general rule is that if it's selective and doesn't apply to industry more broadly, and it's at the discretion of government, then that's the general flavour that would be counted as assistance. But that doesn't go to the effectiveness or the efficiency of the policy; it's just a transparency exercise to say, 'Here's how much it costs when we include it in the assistance estimates.'

**Senator CANAVAN:** Did the government ask you to provide any advice on the Future Made in Australia policy?

**Senator Gallagher:** Senator McDonald has been in and asked exactly these questions.

**Senator CANAVAN:** Alright—well, not the ones about the TAR, perhaps, but, yes, that one. So were you? Yes or no—sorry, I wasn't here. But were you asked—

**Ms Wood:** We engaged in some consultation with different departments on the policy.

**Senator CANAVAN:** Okay, good. Thank you.

**CHAIR:** We'll go to Senator Roberts, and then it's back to Senator Smith.

**Senator ROBERTS:** No, I've already asked questions of the Productivity Commission, thank you.

**CHAIR:** Great. Senator Smith.

**Senator DEAN SMITH:** Just following up Senator Roberts' inquiry of you in regards to e-conveyancing, Ms Wood, you said you'd had a briefing on e-conveyancing in Australia. Would you characterise the market as competitive?

**Ms Wood:** It's a monopoly provider, so, no, I wouldn't.

**Senator DEAN SMITH:** Great, thank you very much.

**CHAIR:** That concludes the questions the committee has for the Productivity Commission. Thank you, Ms Wood and team. You go with our thanks. Thank you. We will take a brief suspension while the Australian Bureau of Statistics comes to the table.

#### **Proceedings suspended from 17:26 to 17:27**

#### **Australian Bureau of Statistics**

**CHAIR:** The committee resumes with the Australian Bureau of Statistics, and we welcome Dr David Gruen and team. I think you have an opening statement that you'd like to give, Dr Gruen.

**Dr Gruen:** I do.

**CHAIR:** Please go ahead, and we've circulated it to the committee now.

**Dr Gruen:** Okay, very good. Given recent statements in parliament and on social media, I thought it would be useful for the committee if I briefly explained how and why our estimates of excess deaths have evolved.

The ABS started publishing provisional mortality statistics in June 2020 to measure changes in patterns of mortality during the COVID-19 pandemic. In these initial reports, we compared counts of deaths to a baseline: the average number of deaths recorded over the five-year period to 2019—that is, before the pandemic. We noted that the average baseline served as a proxy for the expected number of deaths, to provide what we called an indication of excess mortality. This was the best we could do in the limited time available, given our desire to provide timely, useful information in such an extraordinary period.

With more time, we were able to improve our methodology. In November 2020, the ABS began publishing excess mortality estimates based on an adaption of the Serfling model, a model that has been used both internationally and in Australia to produce excess mortality estimates for influenza. It is an adaptation of the Serfling model because the ABS worked closely with the Centre for Epidemiology and Evidence in the New South Wales Ministry of Health to adapt aspects of the model for COVID-19. Several agencies with expertise in these methods, including jurisdictional health authorities, peer reviewed our model. These excess mortality

estimates from the model are superior because they account for changes in the age structure and size of the population for seasonality in observed deaths and for any trend in mortality. By contrast, an average of deaths recorded over the five-year period to 2019 provides a less accurate estimate of expected deaths because it takes none of these developments into account. Having received funding from government, we now report these superior estimates six-monthly. We call these estimates official estimates of excess deaths, in line with other statistics produced by the ABS.

From March 2022, we sought to avoid confusion by clarifying that the baseline average estimates in the provisional mortality statistics publication do not constitute official estimates of excess deaths. From April 2024, we removed the baseline estimates from the provisional publication, given that we now publish the superior official estimates six-monthly. We continue to look for ways to improve the quality of our official estimates, and, in July 2023, we made some refinements in our model to do just that.

As you'd be aware, there is currently a Senate inquiry into excess mortality. A submission by the Actuaries Institute compares our official estimates to three others derived by other groups and concludes, 'Each of these four estimates of excess mortality gives similar results.' The ABS has also made a submission to the inquiry that explains our approach in more detail, and ABS staff will appear at the inquiry. I did, though, want to take the opportunity now to stress we have sought to be transparent throughout and have always been motivated by the desire to produce the most accurate estimates possible.

Thank you, and I look forward to answering questions the committee may have.

**CHAIR:** I'll go to Senator Smith.

**Senator DEAN SMITH:** The budget paper outlines that the ABS will receive an additional \$267.4 million to support the delivery of the 2026 census via myGov. Could you explain how the census will work via myGov.

**Dr Gruen:** Certainly the amount you've quoted is to do many more things than simply enable being able to get into the census via myGov. The aim is for myGov to be a new way that you will be able to get to the census portal. You will not actually fill the census in on myGov. We haven't built this yet; we've been funded to do it, but the aim is that you will be able to go via myGov to the census portal. I don't know whether either of you want to add anything to that.

**Mr Young:** I can do. As Dr Gruen says, the myGov is one component. We'll work with Services Australia to support and develop the myGov platform to research and work with users on how it can best support and help people to participate in the census. Another way that we think that it could help the census is that people could register through myGov to get a digital notification of a census. For the census in 2021 and the census in 2016, people received a letter in the post about the census, and that's what the majority of Australians will get for the next census, but, if people would prefer to get a digital notification through the secure myGov platform, that sounds like a really good use of that platform and a good way for people to participate in the census. Whilst the majority of people complete the census in one go—it doesn't take that long for households to complete—for some people they will partially complete the census and then come back and complete it later, so the myGov platform will also provide another way of saving their form and resuming their form later on. These things will be tested and worked through in our privacy impact assessments and worked through with citizens to make sure it is something that really does make the census easier for people to participate in.

**Senator DEAN SMITH:** The budget paper identified \$267.4 million to support the delivery of the 2026 census. Can we break that figure down to various component parts?

**Mr Goldsworthy:** I don't have the full breakdown in front of me. I can report that, for the myGov component, it was \$9.1 million over three years, through to 2026-27. But I don't have the full—

**Senator DEAN SMITH:** On notice, can you provide to the committee a breakdown of the component parts of the \$267.4 million?

**Mr Goldsworthy:** Yes, certainly we can do that.

**Senator DEAN SMITH:** To be clear: Australians will still get a written notification by mail and have the myGov option available to them—is that correct?

**Mr Young:** We haven't made a final decision on that yet. One of the things that we'll test is that, if people indicate to us that they prefer to receive a digital notification to complete the census, and that's a successful channel, we may choose to not provide those people with a letter, in alignment with their preferences. But, for people who don't indicate that they'd like to participate through a digital channel, we'll still continue to provide either a delivered form or a delivered letter.

**Senator DEAN SMITH:** That sounds like there might be a pre-registration process where the Australian participant thinks, 'Do I want to get my census by digital means or do I want to get it by written means?' Then they would register their preferred way. Doesn't that add to the complexity of the census?

**Mr Young:** It's something that we need to explore and test with the public. Some people who interact regularly through myGov might find that a much easier channel than having paper mail. They might prefer to not have the paper form produced.

**Senator DEAN SMITH:** I don't want to rain on your parade, but, when you come across someone who is a very adept myGov user, please send them our way! Could it be that 2026 is the first full digital census experience?

**Mr Young:** I wouldn't say that. We know that a number of people in Australia will prefer to, or need to, complete the census on paper forms. We'll continue to make paper forms available to anyone in the public who would prefer to complete the census via that channel or for whom that's the only channel they can respond by.

**Senator DEAN SMITH:** Australians can be reassured that, if they want a traditional census form, they will be able to have a traditional census form and fill it out manually?

**Mr Young:** Absolutely.

**Senator DEAN SMITH:** You talked about the testing. Can you explain how this will be tested?

**Mr Young:** We haven't developed test plans yet for the myGov option. It's been a recent announcement in the budget. We'll work with Services Australia to develop those testing plans. A component of those testing plans is likely to be our major test. It's what we call an operational readiness exercise, but it's essentially a dress rehearsal of a census that we conduct in August 2025. That's likely to be a component of the testing, but we tend to undertake a range of other testing: cognitive interviews and focus groups—different exercises to gain public opinion.

**Senator DEAN SMITH:** Is the testing exercise an element of the \$9.1 million or is that in addition to that?

**Mr Young:** All of the expenses related to the potential introduction of a myGov channel would be included in that component. To add to my colleague's response, there is a component also going to Services Australia for their work, which is separate and distinct from that \$9 million.

**Senator DEAN SMITH:** Turning to the General Social Survey, I understand that it supports the Measuring What Matters exercise or report. What's the cost of the General Social Survey?

**Mr Goldsworthy:** In the budget, the ABS received \$14.9 million. That was to design and conduct an annual wellbeing survey, the General Social Survey, to strengthen the capacity of the Measuring What Matters framework. I can't be confident that the \$14.9 million doesn't do more than the annual General Social Survey, but it appears to be covered by that amount.

**Senator DEAN SMITH:** Just explain how the General Social Survey is undertaken.

**Mr Goldsworthy:** I don't know if you're happy to do that, Ms Dickinson.

**Ms Dickinson:** The General Social Survey will form part of our social survey suite where we approach households, first of all by letter, and ask them to participate. We choose a sample, of course, that's representative of the Australian population. We will, for the General Social Survey, have a digital-first approach, so we will invite households to participate using a digital portal that we are in the process of designing and building. We will also have phone follow-up and, if necessary, follow-up with an interviewer so that households can complete that survey in the way that works best for them.

**Senator DEAN SMITH:** Is this the first time the ABS has adopted a digital-first approach?

**Ms Dickinson:** We've been progressively moving to a digital-first approach. For example, our Monthly Population Survey has a digital option, and we encourage households, if they want to, to use that option in lieu of having a field interviewer come and visit them.

**Senator DEAN SMITH:** What has been the experience with people's willingness to take up the digital option?

**Ms Dickinson:** We've progressively moved towards this, and we now have about a 40 per cent take-up rate for the Monthly Population Survey, but we haven't required respondents to use a digital-first approach, and we've pursued it very much on a voluntary basis. We have a lot more work to do to provide a digital experience that is contemporary and in line with what Australians will experience in other forms of interaction with government, so part of the funding you spoke about will be to develop plans to become more digitally enabled for our surveys.

**Senator DEAN SMITH:** When you are using the digital-first approach, I notice the hesitancy on the part of participants. Does that in any way undermine the quality of the research exercise?

**Dr Gruen:** Senator, what do you mean by 'hesitancy'?

**Senator DEAN SMITH:** The deputy statistician said you had been moving towards a digital-first approach, and thus far just 40 per cent of people were utilising the digital-first approach or taking up the digital option.

**Dr Gruen:** For the monthly population survey?

**Senator DEAN SMITH:** Yes. In my mind, that doesn't look like a strong endorsement just yet. I am not saying that—

**Dr Gruen:** There's another tranche that answers it over the telephone. It's becoming increasingly costly to have interviewers go out to people's homes.

**Senator DEAN SMITH:** I can imagine.

**Dr Gruen:** Worldwide, there's been a decline in response rates for household surveys. We've done significantly better than most countries, but it is getting increasingly expensive to have interviewers knock on doors and collect surveys face to face, and COVID simply accelerated that trend. So, along with other advanced-country national statistical offices, we are moving in a direction that responds both to the fact that more and more people would prefer not to have interviewers in their house and to the fact that more and more people prefer a digital approach on a tablet or a smartphone. So I think the 40 per cent is up from much lower numbers earlier, so it's actually quite a strong uptake relative to other countries. The other thing is that with other surveys, such as the survey of income and housing—

**Ms Dickinson:** We have other surveys where we've started being more assertive in suggesting a digital-first approach to our respondents, including the survey of disability, ageing and carers and the survey of income and housing. They are both higher than the 40 per cent.

**Senator DEAN SMITH:** Which surveys have the highest uptake of digital?

**Ms Dickinson:** Actually, our business surveys have a far higher uptake of digital.

**Senator DEAN SMITH:** What is that level?

**Ms Dickinson:** It will depend survey to survey, but in some it's close to 100 per cent. It's the channel that we use.

**Dr Gruen:** And the 2021 census was just under 80 per cent digital.

**Senator DEAN SMITH:** So there's a strong willingness on the part of Australians to take the digital options.

**Ms Dickinson:** We are finding that to be more and more the case.

**Senator DEAN SMITH:** Great. Thank you very much. Just on a different matter related to the next census—

**CHAIR:** I might share the call and come back. Senator Roberts.

**Senator ROBERTS:** Thank you for appearing again. It's good to see you, Dr Gruen. Do you know the COVID vaccination status of the 2.3 million new arrivals under the current government? Is that data you're provided with?

**Dr Gruen:** No, I don't think we know the vaccination status of immigrants—at least, not that I'm aware.

**Senator ROBERTS:** I didn't think so. It's just striking that we locked down the whole population and mandated a shot that's still experimental—in fact, for some people it's still mandated—yet we're letting people in without any question.

**Senator Gallagher:** Senator Roberts, there isn't a mandatory vaccination program now in the country. It's a voluntary vaccination program.

**Senator ROBERTS:** No, there are still some states and employers that are doing it.

**Senator Gallagher:** As a requirement of their employment?

**Senator ROBERTS:** Yes.

**Senator Gallagher:** Well, the Commonwealth vaccination program is a voluntary program.

**Senator ROBERTS:** Not if you're in the Department of Defence, Australian Electoral Commission or aged care. It doesn't exist anymore—I accept that—but it was never voluntary. If someone on a temporary visa, people who can be here for 20 years, has a baby, does that count as a domestic birth?

**Dr Gruen:** I'm not quite sure. You mean it's a birth in this country?

**Senator ROBERTS:** Yes. I'm sorry; I didn't make that clear. People can be here for 20 years on a temporary visa. If they have a baby while they're in Australia, does that count as a domestic birth?

**Dr Gruen:** I'm not sure that we have a category called 'domestic births'.

**Senator ROBERTS:** So they're all lumped in?

**Dr Gruen:** No, I'm just saying that I'd have to look at exactly what the categories are in our birth data. I haven't got our birth data with us.

**Senator ROBERTS:** Could you take that on notice, please?

**Dr Gruen:** Certainly.

**Senator ROBERTS:** If we got a temporary arrival in this country who was not vaccinated and had a baby, they could be providing an inaccurate picture of the Australian domestic birthrate post COVID. If there's a problem—and some gynaecologists are saying that there certainly is—then that would be covering up a decrease in the birthrate.

**Dr Gruen:** I don't think I understand. Most people are free not to get vaccinated if they choose, whether they're immigrants or whether they live here.

**Senator ROBERTS:** There are studies and also anecdotal reports of a significant decrease in birthrate.

**Dr Gruen:** I think we've had this discussion before, when you were suggesting that the birthrate in December had plummeted, and we explained to you that that was preliminary data. I think I said to you at the time that people who give birth have got other things on their mind than making sure that their reports are up to date with births, deaths and marriages. As we demonstrated to you at the time, there is no decline in birthrate in December. That was simply a function of looking at preliminary data, and, when the data was more complete, that effect went away.

**Senator ROBERTS:** Yes, I understand that. But, if we don't trap immigrants by their vaccination status and they have a baby here, then it could be covering up any decrease in birthrate.

**Dr Gruen:** We measure the birthrate.

**Senator ROBERTS:** If we're bringing in foreigners who are having babies here, and we've had a domestic decline in birthrates, then that's covering it up. That's the reason for my question. How do you categorise people?

**Dr Gruen:** We look at the resident population and we also record births. But I don't understand the implication of whether people are vaccinated or not, because the same statements would be true of people who grew up here and chose not to be vaccinated.

**Senator ROBERTS:** Correct, but we don't know because we don't really have an assessment of the population now because of the inference—

**Dr Gruen:** I think I do. We have just as good an assessment as we ever did, I think.

**Senator Gallagher:** Births would be captured through state hospital systems that wouldn't discriminate on visa status.

**Senator ROBERTS:** Correct. That's my point. Do you know what I'm getting it?

**Senator Gallagher:** Okay.

**Dr Gruen:** All the people who usually live in Australia, regardless of visa status, are included in the statistics.

**Senator ROBERTS:** Do you trap any data by COVID vaccination status—births, deaths, illness, employment—anything at all?

**Dr Gruen:** The Australian Immunisation Register records vaccination status for people who are vaccinated, and that data is linked in our integrated data asset, which goes by the name of Person Level Integrated Data Asset. Researchers have done an analysis using the link between the Australian Immunisation Register and other datasets to examine all sorts of questions of relevance. The department of health used that link to find out which language groups in the community had low-vaccination uptake during COVID, and there have been researchers at the University of New South Wales that have looked at mortality by vaccination status. That was a paper published in the *Lancet*. So the data exists, and it is available to researchers who are doing research that is assessed to be in the public interest, but it's individual data that has been de-identified and is kept in a secure environment to be worked on. It's not data that gets published on our website.

**Senator ROBERTS:** No. Given the minister said there are no vaccine mandates at the moment—

**Dr Gruen:** I think she said there were no Commonwealth government vaccine mandates.

**Senator ROBERTS:** Correct. That's true. I'm taking it from what you're saying then that you don't trap data by COVID vaccination status, births, deaths, illness, employment or anything else like that.

**Dr Gruen:** The answer would be that you could uncover that by linking the Australian Immunisation Register to other datasets that capture that information. But, for instance, in our labour force survey we don't ask about vaccination status.

**Senator ROBERTS:** Your data on COVID deaths shows deaths by ethnicity, and people were saying that that was very handy to have and it's significant, with some nationalities having three times the death rate from COVID as the Australian average, as you pointed out.

**Dr Gruen:** Yes.

**Senator ROBERTS:** I hope our health officials are now trying to work out why they're different outcomes—and some of them are. I notice, however, that you are removing ethnicity from the 2026 census. How is that helping—

**Dr Gruen:** We're not removing ethnicity from the 2026 Census. We never collected ethnicity in any of the censuses, so it's not a removal.

**Senator ROBERTS:** Okay, my mistake.

**Dr Gruen:** That's okay.

**Senator ROBERTS:** Moving on to inflation—

**CHAIR:** Last question, Senator Roberts.

**Senator ROBERTS:** That'll be one of a series. I'm just flagging that I'll come back to this topic when we come back again. Moving on to inflation, your official interest rate does not agree with the perception everyday Australians have—

**Senator Gallagher:** That's not—

**Dr Gruen:** Hang on. The official interest rate is the Reserve Bank; we publish the CPI.

**Senator ROBERTS:** Thank you. That's a correction. Your CPI—

**Dr Gruen:** The Consumer Price Index.

**Senator ROBERTS:** Your CPI does not agree with the perception everyday Australians have of how much things are going up. Let's unpack that: the measure you use for inflation is a basket of goods—

**Dr Gruen:** Yes, and services.

**Senator ROBERTS:** thank you—which changes more frequently than people might realise.

**Dr Gruen:** The basket?

**Senator ROBERTS:** Yes, the components in the basket. What's in the shopping basket?

**Dr Gruen:** The basket is enormous. For instance, we capture every item—in a de-identified way—that is sold in the four major supermarkets. It's a very extensive measure.

**Senator ROBERTS:** In the last change of weighting, the category of recreation and culture increased by 16 per cent. That category happened to be one of the leading disinflationary categories dragging down the CPI figure. Are you telling Australians that in the middle of the worst cost-of-living crisis in decades they are spending 16 per cent more on recreation and culture than a year ago?

**Dr Gruen:** I don't have the weights for the CPI in front of me, but I'm happy to take that on notice. Do you mean 16 percentage points or 16 per cent?

**Senator ROBERTS:** The weighting of the category of recreation and culture increased by 16 per cent.

**Dr Gruen:** We can check that. I can tell you that we update the weights every year so that they are an accurate reflection of expenditure by average households in the capital cities. That's the point of the exercise. Most of the time, those weights change gradually, but I don't have in my head the particular weight that you are talking about.

**Senator ROBERTS:** I'll return to that topic in the next one.

**Senator COX:** Thank you for appearing today. What is the ABS's understanding of Indigenous data sovereignty?

**Dr Gruen:** As I'm sure you are aware, the framework for the governance of Indigenous data has been endorsed and published by the NIAA, and we were involved in the development of that framework. What I understand by 'Indigenous data sovereignty' is the idea that Indigenous groups, where they have an interest in data

about them, their rights and the circumstances in which data is collected in those communities, will have a say in how that is done, and they will have certain rights over that data.

**Senator COX:** Apart from your work in the development of the framework, is the ABS doing anything specifically to ensure that there is Indigenous data sovereignty?

**Dr Gruen:** What we are doing is responding to this framework. There are 48 recommendations across four guidelines for this framework, and our assessment is that, of those 48, nine are not applicable to us, six are already in place, eight can be implemented in the coming year—and we will implement them—and 15 will require more time and/or resources to complete. As I suspect you're well aware, the timeframe for departments and agencies to implement this is a seven-year period, but we will do what we can, as soon as we can. We do not intend to wait seven years; we intend to do those things that we think we can do, much more quickly than that.

The other contribution we're making is putting an ABS staff member on the team that is supporting implementation activities.

**Senator COX:** To clarify, one of your team will be on the implementation group?

**Dr Gruen:** Yes, for the National Indigenous Australians Agency.

**Senator COX:** Who has been guiding the work in this particular area thus far for the ABS?

**Dr Gruen:** Our chief data officer.

**Senator COX:** Internally. Have you had any other conversations externally? Apart from the NIAA, are there any other any other specific groups that—

**Dr Gruen:** The Deputy Secretaries Data Group Sub-Committee, which is a grouping across the government, has discussed that—

**Mr Goldsworthy:** Roundtabling for the census.

**Dr Gruen:** Yes, that's true.

**Senator COX:** Sorry, I missed that.

**Mr Goldsworthy:** I was mentioning that, as part of the census preparation, we have an Aboriginal and Torres Strait Islander roundtable, who we're in close consultation with, to talk about how we can really ensure that the census best serves their needs.

**Senator COX:** Great. Given that many of the Closing the Gap targets don't have any data available to assess progress, what role does the ABS have in collecting some of that data specifically?

**Dr Gruen:** We are always open to conversations with government about data gaps. Obviously, we're not in a position to collect data if we're not funded to do so, but, to the extent that there is a need for extra data to be collected, we are happy to engage in those conversations and find a way to put it into our work program.

**Senator COX:** So that would include the eight that you've talked about and the 16 that need more time and resources in the future?

**Dr Gruen:** Those things are to do with implementing the actions that are part of the framework for the governance of Indigenous data.

**Senator COX:** Okay. How does the ABS capture data—specifically, qualitative data—to assess the progress that you're already involved in under Closing the Gap? Are there any qualitative frameworks that you use?

**Dr Gruen:** I don't know the answer to that question. We could take that on notice.

**Senator COX:** I'm happy for you to take that on notice. Could you include in that answer if there's a particular methodology that you use to collect some of this data and if it's linked to—one of the conversations I was just having with the Productivity Commission was around wellness indicators and making sure that we frame it in the right way of telling the story that's interconnected and is actually grounded in things like the context of country and culture and some of the resilience factors, rather than talking about it from a purely statistical point of view and building it against mainstream targets. If you can articulate that in the answer on notice, that would be great.

**Dr Gruen:** We will.

**CHAIR:** Senator Canavan.

**Senator CANAVAN:** I just wanted to go to this excess mortality issue. I hadn't really looked at it closely, but, now you mention it—I've looked at the excess deaths issue, but not your statistical changes. Just for a start, you referred to the Actuaries Institute submission to a Senate inquiry, which said, as you said in your opening statement, 'Each of these four estimates gives similar results.' It's not a criticism, but you don't explain what the four estimates are. What four estimates are they using? I'm trying to find that myself, but—

**Dr Gruen:** Are you looking for the Actuaries Institute's submission?

**Senator CANAVAN:** Yes. I'm looking at it myself. But I've only just been made aware of this, and you've mentioned it.

**Dr Gruen:** I can tell you where to look; I'm happy to do that. In the Actuaries Institute submission, on page 4 of 12 they quote four different excess mortality estimates. The first one is from the Actuaries Institute's mortality working group, the second one is ours, the third one is from two researchers by the names of Kobak and Karlinski and the fourth one is from the *Economist*. If you look at those numbers, you will see, just by looking at the percentages, that they're not identical but they are very close.

**Senator CANAVAN:** Are the ABS ones the provisional estimates or—

**Dr Gruen:** No. The ABS ones are our best estimates based on the latest model—the adapted Serfling model.

**Senator CANAVAN:** Have you got the provisional estimates for 2020, 2021 and 2022 in front of you?

**Dr Gruen:** Do you mean our official excess deaths?

**Senator CANAVAN:** No, the former five-yearly baseline ones.

**Dr Gruen:** No.

**Senator CANAVAN:** Why not?

**Dr Gruen:** Why don't I have them?

**Senator CANAVAN:** Yes.

**Dr Gruen:** Do you mean the actual deaths or the indicator ones?

**Senator CANAVAN:** You'll correct me if I'm wrong, but my understanding of the evidence is that, in provisional mortality statistics publications, you used a five-yearly average as a baseline.

**Dr Gruen:** Yes.

**Senator CANAVAN:** What I'm assuming here is—tell me if my assumptions are wrong—the excess were the bits above that baseline?

**Dr Gruen:** It was below in 2023.

**Senator CANAVAN:** Above or below that baseline.

**Dr Gruen:** That's right.

**Senator CANAVAN:** What I'm trying to do is compare those estimates with the updated Serfling model, which is in this paper.

**Dr Gruen:** Right. I don't have those numbers with me, but it is worth being aware that, obviously, there are a bunch of things going on that are germane to this. One is that the population is ageing, so mortality is rising.

**Senator CANAVAN:** Just given the time, maybe just—

**Dr Gruen:** So there's a bunch of things that—

**Senator CANAVAN:** Because I can go away and have a look at it, I just—

**Dr Gruen:** The past average is just—

**Senator CANAVAN:** Maybe you can take it on notice? I'm trying to compare and look at what's different with this new model.

**Dr Gruen:** Sure. The answer is: the new numbers are significantly less because the previous baseline significantly underestimated what you would expect to be deaths going forward. But we can provide those numbers.

**Senator CANAVAN:** Right. With this Serfling model—

**Dr Gruen:** Yes, which sounds fancy—

**Senator CANAVAN:** From my quick look at this online, you have to determine or decide what constitutes an excess—seemingly a standard deviation from the average; is that right?

**Dr Gruen:** Mostly what you're doing is taking into account the fact that the age distribution of the population is changing, the population is getting bigger and there's a trend in mortality. Those three things are the big things, and then Serfling adds a sine and cosine because there are more deaths in winter.

**Senator CANAVAN:** Thanks for the background, but my question was: do you have to select a threshold for what is excess? It seems the description is a standard deviation from the average, so what's the threshold you—

**Dr Gruen:** To be concrete about it in Australia—



**Senator CANAVAN:** What do you choose for your model?

**Dr Gruen:** The critical thing for Australia is the 2017 influenza. We had a big influenza outbreak in 2017, and you don't want to include that in the—

**Senator CANAVAN:** Okay, but what's the standard deviation? What's your threshold for analysis?

**Dr Gruen:** That I can't tell you.

**Senator CANAVAN:** Could you take it on notice?

**Dr Gruen:** Sure.

**Senator CANAVAN:** There's a criticism here of the Serfling model:

The selected threshold for what constitutes "excess" is somewhat arbitrary.

**Dr Gruen:** That may well be true. I guess the reason I'm trying to give you confidence is the fact that four different organisations, who've done this in very different ways, come up with very similar—

**Senator CANAVAN:** They don't use the Serfling model?

**Dr Gruen:** No. They do different things. The economist does different things and has done it for 80 countries.

**Senator CANAVAN:** Why wouldn't you use ARIMA?

**Dr Gruen:** Serfling came up with something that was used historically for influenza and so, to the extent that you're trying to pick excess deaths in an influenza outbreak, there's a logic to using the same model as has been used historically for similar situations.

**Senator CANAVAN:** There's a criticism of Serfling, as I mentioned. Here it says that it's a somewhat dated approach, given modern computing methods.

**Dr Gruen:** We do not claim to have detailed expertise. As I said in my opening remarks, we sought peer review of what we were doing, and we worked with the Centre for Epidemiology and Evidence in the New South Wales Department of Health.

**Senator CANAVAN:** I might see if I can get involved in this other inquiry and we can take it up in more detail. I suppose my initial reaction is that the problem with doing this now is that it's a bit of a black box. It's not exactly an environment where people have a lot of trust in statistics, post COVID—

**Dr Gruen:** Yes, which is why I think it's—

**Senator CANAVAN:** They're probably more leaning towards Disraeli's description of statistics, so I'm just worried that the more complex you make this the—

**Dr Gruen:** Is that 'lies, damned lies, and statistics'?

**Senator CANAVAN:** Yes. Well, actually, I don't think it was Disraeli; it might have been Mark Twain. Apparently he's the original author but—

**CHAIR:** I'll share the call for the moment, Senator Canavan.

**Senator CANAVAN:** I've got more questions, but alright.

**CHAIR:** We'll go to Senator Bragg.

**Senator BRAGG:** How often does the ABS release data on migration and building approvals?

**Dr Gruen:** I don't know. We can certainly tell you that on notice.

**Mr Goldsworthy:** I'm pretty sure migration is quarterly. Building approvals are—

**Dr Gruen:** They are either monthly or quarterly.

**Senator BRAGG:** How often does the ABS release data on dwelling commencements and completions?

**Dr Gruen:** I think that is monthly, isn't it?

**Mr Goldsworthy:** We don't have the frequencies in front of us. I can tell you the headline ones. GDP, CPI, labour force, can I tell you those.

**Senator BRAGG:** Some of these are probably quarterly.

**Dr Gruen:** They could be.

**Senator BRAGG:** Can you provide that on notice, please?

**Dr Gruen:** Sure.

**Senator BRAGG:** What about home loans? Do you collect data on home loans?

**Dr Gruen:** I think APRA or the RBA do.

**Senator Gallagher:** APRA does.

**Senator BRAGG:** You don't collect data on home loans?

**Mr Goldsworthy:** I don't believe we collect it. We can take this on notice and correct the record if necessary but, as part of our lending indicators publication, we provide data on that but, as others have said, it's collected by APRA and others.

**Senator BRAGG:** I thought you might have some data sets on lending, but obviously not.

**Dr Gruen:** There we are—lending indicators. Thank you very much, Minister. We have a lending indicators release.

**Mr Goldsworthy:** That's the publication we produce, but my recollection is that it is based on another data source.

**Senator BRAGG:** So it's not your data?

**Dr Gruen:** I beg your pardon?

**Senator BRAGG:** It's APRA's data, is it?

**Dr Gruen:** We are happy to take that on notice. It may well be that some it is ours and some of it is theirs, but we can check.

**Senator BRAGG:** What about construction data? How is that looking at the moment?

**Dr Gruen:** The national accounts are coming out tomorrow, so you will get the latest. At 11.30 tomorrow—construction as one of the industries—there will be data on that.

I have just had confirmation that building approvals is monthly.

**Senator BRAGG:** Do you mean building approvals or dwelling commencements?

**Dr Gruen:** No, building approvals. If you want them all, we can give you that on notice.

**Senator BRAGG:** Yes, because we want to look at some of this data for the same time period. If some of them are quarterly, others are monthly—

**Dr Gruen:** Things feed into the quarterly national accounts. The picture of GDP overall is quarterly.

**Senator BRAGG:** When did you last release data on home construction? Would that have been in the last quarter?

**Dr Gruen:** Certainly, these things get hoovered up in the national accounts.

**Senator BRAGG:** So when was the last national accounts?

**Dr Gruen:** The last national accounts were three months ago, because we are releasing the next one tomorrow.

**Senator Gallagher:** The ABS website, as you were asking questions—

**Senator BRAGG:** You are so helpful.

**Senator Gallagher:** All I am saying is building activity in Australia: it looks like it was released on 10 April 2024. It has a green tick saying 'latest release'. It's the total dwelling commencements, private sector house commencement, private sector other residential and total building work.

**Senator BRAGG:** I am glad you made the comments, Minister, because it looks like we are at a decade low in terms of housing construction—

**Senator Gallagher:** We went to this yesterday and it is covered in the forwards—

**Senator BRAGG:** 163,000 houses built in the calendar year 2023.

**Senator Gallagher:** Yes, we want more housing to be built, which is why we are investing \$32 billion.

**Senator BRAGG:** But we are at a decade low.

**Senator Gallagher:** We went to this yesterday, and you were talked through by Treasury.

**Senator BRAGG:** We are at a decade low. Why are we at a decade low, do you think?

**Senator Gallagher:** Well, it's for a range of reasons. Some of it is to do with the fact there hasn't been enough done in the previous decade.

**Senator BRAGG:** But there were more houses built under the former government.

**Senator Gallagher:** Well, I am not sure that is the case.

**Senator BRAGG:** It is the case.

**Senator Gallagher:** Well, that is why. You have opposed every element of our Homes for Australia policy.

**Senator BRAGG:** It was only five or six years ago that we were building 230,000 houses, Now, we are down to 170,000.

**CHAIR:** The witness is the Australian Bureau of Statistics, and we are about to get to the dinner break.

**Senator BRAGG:** I am trying to give the minister some helpful data points.

**Senator Gallagher:** Well, I am trying to give you some helpful data points by telling you about—

**Senator BRAGG:** You always help, and I appreciate it.

**CHAIR:** Everyone is being so helpful.

**Senator Gallagher:** You could also flag some of the questions on notice by having a look at how frequently this data is being produced.

**Senator BRAGG:** As you know, I like to be efficient, so I will put the rest of them on notice but I did want to point out—

**Senator Gallagher:** Or go to the website.

**Senator BRAGG:** What did you say?

**Senator Gallagher:** It's more efficient to go to the website than to put them on notice to get told they're on the website.

**Senator BRAGG:** I'm going to put some on notice. But I guess I was wondering whether you are going to weigh in here because I was going to ask you a question about why we are at a decade low on building completions. You have now given a political answer, which is fair enough, but I will have some actual questions on notice about the regularity of data and how that matches up.

**CHAIR:** I take the opportunity to table the opening statement of Dr. Gruen, and we will now go to Senator Smith.

**Senator DEAN SMITH:** Thank you, Chair. When is the next Measuring What Matters report expected to be released?

**Mr Goldsworthy:** My understanding is the Measuring What Matters report will be released by Treasury, so that is a question for Treasury. What we will be doing is publishing a dashboard of indicators on our website. I'll need to get back to you on notice on the exact date.

**Senator DEAN SMITH:** So will you be publishing the dashboard after Treasury's release of the Measuring What Matters?

**Mr Goldsworthy:** It is a question for Treasury as to when they are going to be publishing the report, so I don't want to say whether we are updating the dashboard after or before. We would obviously co-ordinate the release.

**Senator DEAN SMITH:** I'm not looking for your date because that would be contingent on their date, and I understand you cannot give me their date; I accept that. But from a process point of view, you must know at the moment whether you will update the dashboard on the same date or a day after the date or a week after the date.

**Mr Goldsworthy:** What I'm not sure about is Treasury's intentions regarding publishing the report on Measuring What Matters.

**Senator DEAN SMITH:** That is not a question for you, just an observation from me. That sounds like there might be a question about whether or not the Treasury will continue with the metric.

**Mr Goldsworthy:** I am to privy to Treasury's—

**Senator Gallagher:** They will.

**Senator DEAN SMITH:** They will, Minister?

**Senator Gallagher:** Yes, and I think when it is released, the dashboard will update against the Measuring What Matters annually. It's been deliberately not linked to the budget cycle, from memory of the discussion we had. I'm just trying to see when it was uploaded last time. You would expect 12 months from that point, I would imagine.

**Senator DEAN SMITH:** That is probably true if it's an annual report. Are there any ABS surveys that feed into the Measuring What Matters report?

**Mr Goldsworthy:** There is the general social survey, which has been funded to run an annual general social survey. That will provide a substantial amount of input into the Measuring What Matters publication.

**Senator DEAN SMITH:** When is the general social survey that is underway at the moment expected to be completed?

**Ms Dickinson:** It is in the planning stages at the moment. I need to check. I will take it on notice exactly when it goes into the field.

**Senator DEAN SMITH:** It sounds to me like the next general social survey exercise will not feed into the next Measuring What Matters report.

**Ms Dickinson:** No.

**Senator DEAN SMITH:** It will not? Just to be clear, the general social survey that is in its planning stage will not be ready or not inform the release of the next Measuring What Matters report.

**Ms Dickinson:** Unless the next Measuring What Matters report is significantly later than expected, the answer is that the next general social survey will not feed into the report.

**Senator Gallagher:** I just saw it was released at the end of July, so I would expect the next one around that time.

**Senator DEAN SMITH:** Based on Ms Dickinson's evidence, the General Social Survey will not be informing the next *Measuring what matters* report?

**Ms Dickinson:** That is my understanding, but I will check that for you and the committee.

**Senator DEAN SMITH:** Minister, the inaugural release of *Measuring what matters* was heavily criticised for its lack of rigorous analysis, lack of timely data and use of out-of-date data. What steps have been taken to ensure that the next release of the *Measuring what matters* report, which may be next month, is of a better quality?

**Senator Gallagher:** The first one was the first time this has been done. Concerningly, the health and wellbeing of Australia hadn't been measured before or provided in a way that, I think, is useful in an annual sense. So this was the first iteration. I imagine that, like with most things, when you start, they're quite different. You add in where you can, you strengthen where you can, and you take feedback where you can. I imagine all of that has been taken on board.

**Senator DEAN SMITH:** I don't think that starting off with poor quality and hoping that it gets better is the operating model the ABS uses.

**Senator Gallagher:** No, I'm saying that—if we talk about some of the work I'm doing about gender assessments, from where we started to where it ends up in a few years, it probably will evolve. If we can strengthen the *Measuring what matters* report, you would expect a government to do that. It's the first time it's been done.

**Senator DEAN SMITH:** It was done poorly.

**Senator Gallagher:** That's your view, Senator Smith.

**Senator DEAN SMITH:** No, I think there's very widespread commentary about a lack of rigorous analysis, a lack of timely data—

**Senator Gallagher:** There's also widespread support for having a wellbeing framework. We can play to and fro on the ping-pong, but there was wide support for the Treasury to actually make the effort and measure things against a broader set of indicators, which is what this seeks to do.

**Senator DEAN SMITH:** Ms Dickinson, when is the General Social Survey expected to be completed?

**Ms Dickinson:** I'm just finding that out now—2026.

**Senator DEAN SMITH:** 2026?

**Ms Dickinson:** In 2026 the data will be available to be included in the Measuring What Matters dashboard.

**Senator DEAN SMITH:** Are you able to give me a month of 2026 or a quarter of 2026?

**Ms Dickinson:** Not at this point, but I will take that on notice.

**Senator DEAN SMITH:** Thank you very much for that. I just want to turn to another matter if I can, Dr Gruen, and it relates again to the 2026 census. It's not an issue that you'll be unfamiliar with, and I thank officials at the ABS for the opportunity to have a private briefing on this some weeks ago. It goes to the very sensitive and, dare I say, increasingly contentious matter around religious affiliation and the religious affiliation question for the 2026 census. For the sake of the committee, can you provide us with an overview of the issue from your perspective, the consultations that have been underway and are underway with various stakeholders—primarily but not necessarily exclusively religious stakeholders—and where the ABS is up to in considering that matter.

**Dr Gruen:** I think it might be useful for me to table something we put on our website on 20 May, which is a clarification about the religious affiliation question. It is on our website, but I'm happy to table it as well. It's two pages which go exactly to the point you're making. The religious question has been on all censuses since 1911. In recent decades, it's been a voluntary question, but it's had very high uptake. A very substantial proportion of people choose to answer the question.

**Senator DEAN SMITH:** I think it's above 95 per cent.

**Dr Gruen:** It's certainly above 90. It may be 95 per cent. As you know, the way the question was asked in 2021 was: what is the person's religion? There were 10 options where you could simply tick your option. They were in order of how those questions have been answered in the previous census—from the most common answer to the least common ones. So there were 10 options and underneath those was a box that you could write another option in, if you chose to do that.

I got representations in the lead-up to the 2021 census from religious groups that weren't in the list, asking about why they weren't in the list. And we had representations from other religious groups about the logic of giving nine religious groups a tick box and requiring everyone else to write in their religion. So in September we will test an alternative option which asks: does the person have a religion? There will be the possibility to write no or yes and then an opportunity to write in the religion if they have ticked the yes box, and we'll give a series of possible examples. So we'll test this, but the fact that we're testing it should not be taken as an indication that that's where we'll end up. The possibility of having an updated version of the 2021 census question remains very much an option.

A decision will be made later in the year on the basis of the evidence that we get from the test and from consultations that we have with religious groups. We'll make a decision late in the year about which option will be the 2026 question. It won't simply be the results of the test which will matter; I'm also very happy to have representations from religious groups, if they wish to meet with us—I'm very happy to do that. So we're in a listening phase; we haven't made decisions and we're testing an alternative option.

**CHAIR:** Last questions, Senator Smith.

**Senator DEAN SMITH:** This is quite substantive, so we'll have to come back to it after dinner.

**CHAIR:** Well, the discussion with the deputy chair was that we would release the ABS—

**Senator DEAN SMITH:** We won't release them until I finish my line of questioning, and Senator Canavan may have some too.

Dr Gruen, who makes the decision? Is it a decision of yourself or the chief statistician, or is it a decision of government?

**Dr Gruen:** I am the chief statistician.

**Senator DEAN SMITH:** Oh, sorry!

**Dr Gruen:** That's fine.

**Senator DEAN SMITH:** So you're saying that it's your decision?

**Dr Gruen:** Yes.

**Senator DEAN SMITH:** You've already consulted with interested parties about this issue. What further consultations are scheduled at the moment?

**Dr Gruen:** I've simply said that if people wish to provide further advice to us, then we're open to that. I do understand that this is a sensitive topic and that people have strong views about it. We won't be in a position to satisfy everyone, but we will take this decision very seriously. It isn't our aim to do something that seeks to make people's lives more difficult than they are—

**Senator DEAN SMITH:** It's a heavy burden.

**Dr Gruen:** Indeed, but we'll make a decision and make clear what that decision is when we make it—well in advance of the census. Obviously, I have been reading what religious groups are writing in their representations.

**Senator DEAN SMITH:** I'm sure you have been. Can we just talk briefly about the test that will be undertaken. What's the quantum of people that this exercise will be tested on, what is the geographical distribution of that and how does the test take place?

**Mr Young:** The sample for this test is 50,000 households, give or take, and the sample is spread across a number of areas in Queensland, New South Wales and Victoria. I think this particular test is just across those three states. We select areas to try to get a mix of demographics to provide feedback in the answers. That's not

just designed around the religion question; there are a range of other things in the test in September to try to make sure that we get a mixture of responses and understand how the questionnaire works across all of the population.

**Senator DEAN SMITH:** In choosing Queensland, New South Wales and Victoria, it's not state bias or anything; you're going to areas that, when put together, give you an Australia-like example. Is that correct?

**Mr Young:** Correct. We don't try to get areas that perfectly weight themselves to be a mini Australia. We go to some areas which are more urban and city based, some which are a bit more regional, some where there's a slightly older population and some where there's a slightly younger population to get the full mix of demographics that we'll see across Australia.

**Senator DEAN SMITH:** Are you able to share with the committee what other features of the 2026 census are being tested at the same time as the religious affiliation question?

**Mr Young:** I'm happy to talk through a few examples if you'd like. One of the areas that we're looking at is expanding the question on ancestry. Ancestry was first introduced in the census in 1986, and it allows people to have a self-declared measure of their cultural background or ethnicity. Currently people will provide just two answers in terms of ancestry. One of the parts of the feedback from the consultation processes over the last few years has been that people are finding that increasingly difficult in our culturally diverse society. So, by allowing people to provide four responses, that will provide a greater picture of our cultural diversity. Another example is mode of travel to work. Mode of travel to work has been a common question in the census for some time. With the introduction and increasing popularity of e-bikes, there's started to be a bit of confusion around whether people should respond as a motorbike or as a bicycle. So we're updating that question to include e-bikes explicitly under the category of bicycle. I could go on.

**Senator DEAN SMITH:** It's going to be a broad test. In terms of how the test is undertaken, in our earlier conversation this evening we talked about the rollout of a digital first approach. Is this digital first approach going to be part of this particular testing mechanism?

**Mr Young:** We approached the test slightly differently because we want to make sure that we get sufficient response from a test on a paper form and a digital form. As Dr Gruen pointed out earlier, the paper response for the census is now quite low. It's only about one in every five households. So we've designed this test around having some households only receive a paper form. They'll receive a paper form up front and we'll ask them, 'Can you please respond on the paper form?' If they really, really want to do it digitally, they can call us up and ask for it. Other households will go down a more similar approach to what will be used in 2026, where the first option for households is to complete digitally but paper forms are available on request.

**Senator DEAN SMITH:** Finally, Dr Gruen, is your door very wide open to those people who feel it necessary to come and share their perspective with the ABS on this particular religious affiliation?

**Dr Gruen:** Yes.

**CHAIR:** I'll go briefly to Senator Roberts and Senator Canavan and then briefly back to Senator Dean Smith. Senator Roberts.

**Senator ROBERTS:** Continuing on the theme of inflation and calculating CPI, your basket of goods, I assume, includes a box of breakfast cereal, as an example. If that cereal has for years been in a 500-gram box which suddenly becomes a 400-gram box but the price hasn't gone up, would you track that as 20 per cent inflation or as zero per cent inflation?

**Dr Gruen:** That's called shrinkflation, and we capture that—definitely.

**Senator ROBERTS:** Leading brands are shrinking. Peanut butter has gone from 500-gram jars to 470-gram jars, dishwashing tablets are down from 50 to 47 and wraps have gone from 560 grams per pack to 508 grams. Will they show up in CPI figures?

**Dr Gruen:** They do. The reason is that we capture both the amount that's been spent and the code that tells you what the quantity is.

**Senator ROBERTS:** If steak gets too expensive and people start buying rice as a substitute in their grocery basket, you don't continue to track the price of the steak inflation. You say the price of rice is included in the grocery basket instead. That's a huge problem, isn't it, because you're not tracking how prices are changing for the same product?

**Dr Gruen:** This is an interesting issue which was brought to the fore when there was a cyclone that destroyed the banana crop about 15 years ago. The government of the day decided that bananas would not be imported, so the price of bananas went up by a factor of 10 or maybe a factor of 50. Virtually no-one bought bananas when the price went through the roof. They bought other things. But, in the way we calculated the CPI at the time, we

assumed there was no change in the quantity of bananas purchased. So we got a spike in the inflation rate at the time, and the Reserve Bank had to look through it. We explained to them what the story was. So we now have a more sophisticated index way of treating substitution. To the extent that the price of steak has gone up and people buy less steak, we don't ignore that, but we take it into account in a way that is appropriate.

**Senator ROBERTS:** How do you do that?

**Dr Gruen:** Index number theory is reasonably complicated, but we can give you a more detailed answer on notice if you'd like it.

**Senator ROBERTS:** Certainly. That would be wonderful.

**Dr Gruen:** We'll need a whiteboard

**Senator DEAN SMITH:** Sounds like a tutorial might be necessary.

**Senator ROBERTS:** We can take you up on that. How is the housing element calculated? Does it take into account new homes getting smaller on smaller blocks of land being built to a lower standard of durability?

**Dr Gruen:** In the CPI, there are rents and there is the cost of building a new home. Those are the components of housing that feed into the CPI. In terms of the cost of building a new home, again we can take on notice the detail, but, as a general proposition, what we try to do is capture the price increase for the same product. We are alert to the possibility that products change in their nature and we take that into account to the extent that we can.

**Senator ROBERTS:** So smaller land, smaller buildings, smaller rooms and lower standard of durability would be captured?

**Dr Gruen:** It's the cost of building that we're capturing. The land is a separate issue.

**Senator ROBERTS:** If you get a smaller house, smaller land et cetera, isn't that shrinkflation? You're getting less for the same money.

**Dr Gruen:** The house is an asset, so it doesn't appear in the consumer price index. But the cost of building materials is what we're capturing.

**CHAIR:** Thank you, Senator Roberts. Senator Canavan.

**Senator CANAVAN:** I have a technical question about the employment to population ratio. We learnt from Treasury earlier in the week that there are 500,000 more people here on temporary visas than on average. How quickly are those temporary visa holders or any migrants inserted into the denominator for the population? Is that kept up to date?

**Dr Gruen:** The denominator is the estimated resident population. That's what feeds into employment over resident population. We also scale up.

**Senator CANAVAN:** Would that capture these temporary visa holders, because you say estimated resident population? What's the estimate? Does it look at data on visas?

**Dr Gruen:** Net overseas migration feeds into the estimated resident population. You've got natural increase, deaths and net overseas migration. So it feeds in.

**Mr Young:** The reason it's an estimated resident population is that between our censuses every quarter, we estimate it based on the flows of that data in between and then we recalibrate it every census again. Temporary migrants and temporary visa holders—as long as they're in the country for 12 months out of 16, they're treated as usual residents and included in the count.

**Senator CANAVAN:** Is that done instantaneously? Is it not subject to large revisions later?

**Mr Young:** We release it every six months. Initially it's provisional and it assumes that past arrival behaviour is what the base is for future arrival behaviour. Then, as we see whether or not the migrants have stayed in the country it gets updated. Most figures become—

**Senator CANAVAN:** My point is that we've gone through a bit of a shift change post COVID, so the past might not be that reflective of the current in this situation? Are you confident that you're capturing all these extra 500,000 people? I'm asking because we've had a large increase in the employment to population ration and it's higher than the rest of the world. I wondered if there's a measurement issue here. Presumably you're doing a survey of the labour force figures quite regularly?

**Dr Gruen:** Yes, monthly.

**Senator CANAVAN:** But you're not doing a monthly survey of who lives here?

**Mr Young:** No, we don't. We don't need to do a monthly survey of who lives here because we have very good records of who's arrived here, who's left here, who was born here and who died here. Those figures allow us to have very accurate population estimates. There are revisions but they're not significant revisions.

**Senator CANAVAN:** Maybe another time. I'm not sure if it's so clear we have good data on those matters because it depends, as you say, on how long they stay. We know who comes here, but it depends if they're staying or leaving for good, or almost good.

Maybe you'll have to take this on notice or maybe you're aware of this—it's been brought to my attention there's quite a large discrepancy in COVID-19 deaths for the year 2022 between NSW Health figures and ABS figures. According to NSW Health data, COVID-19 deaths were 5,671 in 2022, but the ABS only had the figure at 3,607. Are you aware of that discrepancy?

**Dr Gruen:** I'm not, but our data comes from births, deaths and marriages registries in the state. We don't have an independent source of information.

**Senator CANAVAN:** They might have revised it. Could you take it on notice?

**Dr Gruen:** We can.

**Senator CANAVAN:** There's obviously a lot of classification issues at times.

**CHAIR:** Thank you, Senator Canavan and the ABS. We're ready to break.

### **Proceedings suspended from 18:43 to 19:42**

#### **Australian Competition and Consumer Commission**

**CHAIR:** The committee resumes. We welcome the ACCC. Thank you for being here for us. Chair, we've got an opening statement; would you like to speak to it?

**Ms Cass-Gottlieb:** I'm content to have provided it to the committee and to go to questions.

**CHAIR:** Thank you. We will table the opening statement and a copy for the minister. We will go to Senator McDonald.

**Senator McDONALD:** I want to start with the Gas Mandatory Code of Conduct, please. In February, you said forecasts indicated that, in 2027, there would be a 135-petajoule surplus of gas and 33 petajoules surplus in 2028. Has there been any change in these forecasts since then?

**Ms Cass-Gottlieb:** We have just concluded another report to government. That is soon to be provided and then will be made public. There is not a material change in the forecast.

**Senator McDONALD:** Terrific. Have there been any revision to your 92-petajoule shortfall from 2029 or to your forecasts of shortfalls thereafter?

**Ms Cass-Gottlieb:** At this point, no. What we have made clear and we do think is important to note is that the additional over 500 petajoules of gas that is committed under the exemptions is subject to regulatory and environmental approvals and also to final investment decisions. We do want to always be clear about those contingencies, in effect.

**Senator McDONALD:** Terrific. You also mentioned that there were 30 smaller exemptions to the Gas Mandatory Code of Conduct being considered. How many of these were granted or denied and how many are now under consideration?

**Ms Cass-Gottlieb:** There are 40 exempt small suppliers. They apply under the provisions of the code, so they are exempt. We have published the names of those approximately 40 exempt small suppliers. There have been five ministerial exemptions granted. We have the conditional ministerial exemptions for the larger entities and we have published four over them and will shortly publish the fifth.

**Senator McDONALD:** Does that mean there are none currently under consideration?

**Ms Cass-Gottlieb:** To my knowledge, no, but I will check. Yes, there are none.

**Senator McDONALD:** Can you provide any more recent data around the impact the code has had on gas supply and gas investment?

**Ms Cass-Gottlieb:** Yes. In terms of investment, the suppliers who have been granted the exemptions have made commitments to bring on for domestic supply an additional 564 petajoules. Their exemption application states that the exemption has given them the confidence and capacity to make that investment. It is still subject to those other, for instance, environmental and regulatory approvals. In terms of supply, when we gathered the data for the last report, we'd only had four months since the code began. We therefore think that it will only be our next report that will really give a long enough period to see the first initial results, but it is reported to us by CNI



users that, while there are some reports of improved supply in 2024, most continue to face challenges to secure sufficient gas supply for the CNI users who are speaking to us. They also report that the \$12-a-gigajoule wholesale price under the code is a functioning as a floor, not as a cap.

**Senator McDONALD:** That's an important distinction, isn't it? You said last estimates that you'd made representations to DCCEEW about the need to bring on additional gas supply. Have you done this again since February?

**Ms Cass-Gottlieb:** We have in the report that we're about to give to government. We have a strong conviction that that is important.

**Senator McDONALD:** Has the advice changed at all since February?

**Ms Cass-Gottlieb:** The advice we are giving is the same in terms of the importance. We are also aware of the updated forecast by AEMO under the GSOO, including looking at a likely greater reliance on gas for gas power generation. It gives further support for the same advice.

**Senator McDONALD:** Has the future gas supply had any bearing on that advice?

**Ms Cass-Gottlieb:** The future gas demand has very significantly—

**Senator McDONALD:** I'm sorry; the document that—

**Senator Gallagher:** The Future Gas Strategy?

**Senator McDONALD:** Yes, thank you; the Future Gas Strategy.

**Ms Cass-Gottlieb:** We were contextually aware of it. We can see important bases for it. It was based upon both our data collection as part of our powers under the code and also upon the work by AEMO—so a range of important data and evidence in addition supports that advice.

**Senator McDONALD:** In previous estimates, you've spoken about streamlining the reporting requirements on gas companies so that they don't have to do burdensome reporting at various different points throughout the year. Do you have any update on the progress of this?

**Ms Cass-Gottlieb:** We do. For the four to date and now fifth exempted suppliers, in response to submissions from them we altered timeframes for the reporting, which we still think is consistent with the code, to enable them a reasonable timeframe that met with their business reporting processes as well. In addition, we have been consulting with industry and government agencies so that we could obtain data from other agencies such as AEMO wherever possible. We have also given a grace period before the requirement to produce the data so that systems could be put in place, and on individual notices we are also continuing to consult. We know that that transition period to the new process has some additional commencement, but we think it will be a more streamlined, effective process, and we're getting some support from the sector that they can see that.

**Senator McDONALD:** Terrific. Back to the Future Gas Strategy and the future demand, particularly for offshore LNG, I had a look through some of the ASX listed company reports. They seem to be showing different numbers for the future gas supply strategy. Did the ACCC have any input into assessing the data that was used for future gas demand?

**Ms Cass-Gottlieb:** Apart from knowing that government has had our regular reports, to my knowledge we were not aware of what was taken into account. But I will check if we had any engagement in relation to that.

**Ms Ross:** The ACCC did contribute to the analytical work behind the strategy, providing input to the officials working group. We've looked at the long-term global industrial outlook, international demand outlook and the domestic demand and production. But it was primarily providing the ACCC's expertise around the sector.

**Senator McDONALD:** The numbers that went into the future demand side of the strategy, particularly for LNG, into places like Bangladesh and Vietnam and our relatively near neighbours, does the ACCC have a view on where that landed?

**Ms Ross:** We would not have collected data on that. We have data from the LNG producers in Australia that we collect under the inquiry, but we don't go looking at demand in international markets.

**Senator McDONALD:** Just changing gears slightly, referring to the ACCC submission to the Treasury competition review in February this year, your submission states, 'The Port of Newcastle was a stark example where no adequate regulatory framework led to an unconstrained monopoly that could charge inefficiently high prices.' Could you elaborate on this? What regulatory framework would the ACCC like to see in this instance?

**Ms Cass-Gottlieb:** That example was given as part of the submission, as you are noting, that we put in to the task force in respect to further issues that are being considered, particularly also at a combined state, territory and Commonwealth level, particularly in the context of privatisations. In that context, while we understand

governments make decisions to make privatisations, we are proposing there be a practice and a principle that, as part of the decision to sell an asset or a license or an opportunity, to set in place a set of competitive conditions to enable continuing competition; for instance, to enable two stevedores in a port rather than to grant a monopoly. That was the example in the case. We are concerned with increasing landside charges, particularly at a number of ports across the east coast, that were the subject of privatisations by various governments.

**Senator McDONALD:** Hopefully you will turn your mind to Brisbane at some point. Have you been asked by Treasury to provide briefings on that regulatory framework?

**Ms Cass-Gottlieb:** We have been contributing. That submission was published. We have also been contributing examples and input to consideration of principles that will then be considered. The New South Wales government is also leading the state based contribution.

**Senator McDONALD:** Just turning to those charges, the Port of Newcastle has recently increased its fees to coal users. In the case of wharfage charges, they more than tripled from 9.5 cents a tonne to 30 cents a tonne in April. Does the ACCC have any concerns about this, and is it something you are monitoring?

**Ms Cass-Gottlieb:** We do have a stevedoring monitoring direction. However, it is not at the Port of Newcastle. We can see similar charging increases occurring in the monitored ports. We have also in the past—in fact, part of the origin of the case the ACCC took to court in relation to the agreements in relation to the Port of Newcastle—though we were not successful in court, a number of the major customers, including the coal exporters, certainly brought the problem to the ACCC.

**Senator McDONALD:** Going back to your submission to the Treasury competition review, where you state the Port of Newcastle has no regulatory framework, can you explain what regulatory models are in place at other ports across the country that better serve the interests of competition and efficiency?

**Ms Cass-Gottlieb:** In some cases there are regulatory frameworks pursuant to undertakings given to the ACCC when acquisitions were given, which involve requirements for there to be publication and posting before a price increase takes place and then expert determination if the customers have complaints on the basis that the increase is not cost and methodologically related. In other cases, because the state government has continued to maintain the conditions for at least a number of competitors, we can also see the benefits of competition.

**Senator McDONALD:** I think you said that while you're monitoring fees and charges at other coal loading ports, like in Queensland, you are not monitoring Newcastle. Is that correct?

**Ms Cass-Gottlieb:** It is correct.

**Ms Proudfoot:** We'll come back and confirm it to you.

**Senator McDONALD:** Your predecessor, Rod Sims, recommended a part IIIB be inserted into the Competition and Consumer Act to address non-vertically monopolies like the Port of Newcastle. Is this something the ACCC is continuing to pursue?

**Ms Cass-Gottlieb:** It is. We have recommended, as part of a national competition policy review, we have identified that part IIIA has been shown to be seriously wanting where there is not vertical integration, where there is a capacity through monopoly to exploit customers in increased price. We are proposing that there needs to be a regulatory framework that will enable appropriate regulation where it's appropriate for intervention.

**Senator McDONALD:** Finally, the NSW Minerals Council issued a media release on 14 March saying, 'The port is able to increase these charges so significantly because it's a monopoly operating without any regulatory oversight on pricing, forcing users to pay more for the same services.' Is that an accurate description of what is occurring in Newcastle?

**Ms Cass-Gottlieb:** It's an accurate description of our concerns, yes.

**Senator DEAN SMITH:** Thank you very much and welcome. Could you provide us with an update on the news media bargaining code?

**Ms Cass-Gottlieb:** In response to the Assistant Treasurer's request for advice, on 20 May the ACCC provided advice in relation to the application of the news media bargaining code to the conduct by Meta Platforms Inc. That advice covered only one of the elements the Assistant Treasurer is required to consider when reaching a decision on whether to designate Meta under the news media bargaining code. We understand the Assistant Treasurer has also sought advice from Treasury. The Assistant Treasurer has indicated he's carefully following proper decision-making processes and will be carefully taking those steps following his receipt of advice.

**Senator DEAN SMITH:** Just to be clear, the ACCC provided advice to the Assistant Treasurer on 20 May?

**Ms Cass-Gottlieb:** Yes.

**Senator DEAN SMITH:** On what date did the Assistant Treasurer seek advice?

**Ms Cass-Gottlieb:** It was in March. I will check that and tell you shortly. In between, we consulted with approximately 70 news media organisations. We also sought the provision of data and information—

**Ms Proudfoot:** It was 4 March.

**Ms Cass-Gottlieb:** Thank you very much, Sarah.

**Senator DEAN SMITH:** Thank you.

**Ms Cass-Gottlieb:** We also sought data from organisations and also from Meta. We reviewed the conduct. We reviewed the experience that has occurred in Canada. So we looked at a source of possible information and databases and we then analysed it and provided the advice.

**Senator DEAN SMITH:** To the ACCC's knowledge, has Minister Jones engaged with any social media companies directly on the news media bargaining code?

**Ms Cass-Gottlieb:** I'm not aware.

**Senator DEAN SMITH:** Minister, are you aware of whether Minister Jones has engaged with media companies directly on the media bargaining—

**Senator Gallagher:** I know that Minister Jones and Minister Rowland are working together on this. A lot of work is underway. I understand there have been meetings with stakeholders. I'm not entirely sure who they may be. I can take that on notice and come back to you.

**Senator DEAN SMITH:** If you could take it on notice and provide a list of those social media companies that Minister Jones and Minister Rowland have met with over the last three months that would be appreciated.

**Senator Gallagher:** I can certainly do it on Minister Jones's behalf. I understand that this would have been dealt with in the communications committee.

**Senator DEAN SMITH:** How would you characterise progress towards designation at this stage?

**Ms Cass-Gottlieb:** Our role is to provide the advice. Then the next steps would be in the purview and at the discretion of the Assistant Treasurer.

**Senator DEAN SMITH:** Has the Assistant Treasurer, his office or the government more broadly given you any indication on when you might receive a response to the advice that you provided?

**Ms Cass-Gottlieb:** No.

**Senator DEAN SMITH:** To the extent that Facebook has already pulled news from its platform, does that put us behind in the race for better regulation or are we still able to respond in an effective way?

**Ms Cass-Gottlieb:** The position, as we understand it, is that the step taken in Australia which saw Meta removing the news tab was taken at the same time in the United States and had previously been taken in some European jurisdictions. It has been stated by Meta that it is part of a global change in the way it treats news content. We are now awaiting the Assistant Treasurer's consideration of the various elements of advice that he's received. In essence, the news media bargaining code decision will be made according to the discretion of the Assistant Treasurer. We do see continuing important value in the recommendation we made in September 2022 for there to be a legislative framework which enables the designation of specified key global digital platform intermediaries and service-specific targeted codes. That was embraced by the government in December last year, in principle, and we see that to be an extremely capable and flexible framework to respond to conduct which, in the digital platform sector, can change rapidly as the technology and business models of these very large global participants who play such an important role, adapt. We have performed the advice that we were asked to do under the news media bargaining code. We are working closely with Treasury to assist with moving towards consultation for the purposes of considering the implementation, or moving past that in-principle support, of the recommendations in our fifth report, in September 2022.

**Senator Gallagher:** Senator Smith, I can answer that question I took on notice. Since Meta announced it will no longer pay for news, the Assistant Treasurer has met with Meta, the Digital Publishers Alliance, Google, News Corp, Seven, Nine, Ten / Paramount, Australian Community Media, ACM, Country Press and Mamamia.

**Senator DEAN SMITH:** Thank you for that. Are you satisfied, Chair, that we are moving fast enough on this issue?

**Ms Cass-Gottlieb:** We consider that 2024 is an important year to act. Europe has acted. In the UK—just in time, before the election was called—the parliament passed the UK's framework for regulation, which is very similar to the framework we have recommended. It has come into law, and the UK Competition and Markets

Authority has the capacity to take the steps. So we do think key steps are occurring in jurisdictions and it would be favourable—

**Senator DEAN SMITH:** And we should keep pace with those?

**Ms Cass-Gottlieb:** We should keep pace.

**Senator Gallagher:** The ACCC provided its advice to the Assistant Treasurer on 20 May—

**Senator DEAN SMITH:** That was the evidence, yes.

**Senator Gallagher:** And the Assistant Treasurer is being briefed, in addition to the ACCC, with Treasury, in relation to the application of the news media bargaining code to Meta. I think that advice has not been finalised, but I think you can see, from the number of meetings and the amount of work that's underway, that this is a priority for the government.

**Senator DEAN SMITH:** On what date did the Assistant Treasurer meet with the Treasury?

**Senator Gallagher:** I think he meets regularly with the Treasury.

**Senator DEAN SMITH:** On this matter?

**Senator Gallagher:** I don't have a specific date, but he would be meeting regularly.

**Senator DEAN SMITH:** And the Treasury has not yet provided formal advice?

**Senator Gallagher:** That final advice, as I understand it, hasn't been advised. You could have asked these questions yesterday, when Treasury were here.

**Senator DEAN SMITH:** No—I'm asking them in a different context.

**Senator Gallagher:** I know, but in relation to that I don't have those officials here.

**Senator DEAN SMITH:** Senator Gallagher, you cannot have it both ways. You cannot rush to provide information and then not expect senators to ask you questions about the information that you provide in this context. It's one way or the other.

**Senator Gallagher:** It's been a very long day. I am trying to be helpful.

**Senator DEAN SMITH:** I accept that, but you can't expect me to sit here and just accept that without asking—

**Senator Gallagher:** Well, I've said that Treasury have not provided the advice. It's not finalised, but we are working through the work before the Assistant Treasurer.

**Senator DEAN SMITH:** Thank you very much.

**CHAIR:** This might be an opportune time for me to do something that I forgot to do after dinner, which is to remind everyone of the 10 pm hard marker of this committee.

**Senator DEAN SMITH:** Returning to your opening statement, in one of your final comments you made a reference to reinvigorating national competition policy. What work is the ACCC doing—and been asked to do—in the national competition policy area? Also, I think I recall reading in an interview with you and about you that you did your thesis on federal-state competitive opportunities—is that the right way to characterise it?

**Ms Cass-Gottlieb:** It is. I did a comparison of US and Australian law on that.

**Senator DEAN SMITH:** Just to satisfy my curiosity, perhaps you might talk to that as well, after you've referenced this remark.

**Ms Cass-Gottlieb:** We are contributing to the Treasury Competition Review Taskforce. We have given a public submission. We have attended meetings that have been held amongst state and territory government representatives and the Commonwealth in order to share observations on the advantages of being able to refresh and reinvigorate—as the treasurers announced, combined, at a COAG level—to achieve greater harmonisation between inconsistent laws, to remove inefficiencies and problems arising from that and to focus upon areas that, due to either privatisation or development, no longer have the conditions for competition. We have also been addressing examples that we have experienced in our work. One in particular comes from product safety, in terms of electrical safety. We have not only state consumer protection or product safety law but also state electrical safety law and multiple—at each level—different regulatory structures. That become burdensome for businesses to comply with. Also, very significantly, it's difficult for us and state and territory regulators, who are our co-regulators on product safety, to achieve strong compliance and response to problems. We have also given examples of where those problems are causing damage to productivity and damage to competition.

**Senator DEAN SMITH:** Are you satisfied that there is universal acceptance, across the states and territories, of the need to refresh and reinvigorate the national competition agenda?

**Ms Cass-Gottlieb:** There has been expressed a shared goal to do so and to move forward to work on what are now, in effect, updated and appropriate changes across our economy. We believe it's wrong to talk about a separate digital economy. We believe the whole economy is digital and should be seen as such, for example.

**Senator DEAN SMITH:** That's a very important comment, because I'm going to come to the digital platforms and CDR in a moment.

**Ms Cass-Gottlieb:** We have seen that, together with the Treasurer, in the agreement of the state and territory treasurers, there has been an agreement that our national economy will benefit from a reinvigoration of our national competition principles.

**Senator DEAN SMITH:** Have you identified any priority areas where we might get maximum and more immediate benefit from reform?

**Ms Cass-Gottlieb:** We have looked at supply chains—ports are an example. We have looked at those compliance areas, as an example. We are also concerned about the care sector and about differing levels of regulation as well. We have put a couple of examples, and I will check if any of my senior executives think we should raise others.

**Senator DEAN SMITH:** Are our existing institutional frameworks appropriate to carry the next national competition reform agenda?

**Ms Cass-Gottlieb:** The benefit of this review and the discussion on new principles will enable what we think will need to be some reform to existing frameworks.

**Senator DEAN SMITH:** Institutional frameworks? On notice, could you share with the committee your views about what would make sound first principles when approaching the second tranche of national competition reform?

**Ms Cass-Gottlieb:** Yes, we will.

**Senator DEAN SMITH:** Thank you very much.

**CHAIR:** I'll share the call and come back to you. We'll go in 10-minute blocks. Senator McKenzie.

**Senator McKENZIE:** It's great to see you again, ACCC en masse. It's just fabulous to have you here. I have some questions around the implementation and development of the new vehicle efficiency standards. This was rushed through both houses in record time, without even allowing His Majesty's opposition the opportunity to put a second reader in, in the House or in the Senate, let alone put it to an inquiry. Given the small size of our automotive sector and this piece of legislation setting out the trading of credits, I do want to understand whether the infrastructure minister, the climate change minister or their departments consulted with the ACCC in the design of the legislation and the credit-trading framework that's been set up as a result of the legislation.

**Ms Cass-Gottlieb:** I will ensure that this is checked, but my expectation is that I don't believe so. We do think that members of industry have misunderstood how the Competition and Consumer Act might apply. We think they have a concern that is unwarranted. Melinda, did you want to add to that?

**Ms McDonald:** Yes. I can confirm that the ACCC was not contacted about the standard, nor did we necessarily expect that we would be. The ability to on sell the credit—as we understand how the standard works—does not in itself create any competitive-conduct risk, because competition law doesn't prevent competitors from buying or selling credits. Competition law requires businesses to compete on their merits and independently, and we understand the standard is set up with a framework with an ability for parties to do just that.

**Ms Cass-Gottlieb:** We have sought to clarify that.

**Senator McKENZIE:** You've got clever officials in the ACCC, who, after a cursory glance of the legislative framework, have made this assessment. But, equally, there are people that have a counterclaim to that. I'm just interested in how, if you weren't consulted, you came to this conclusion. Have you also then consulted with industry, or is it just a preliminary reading of the legislation itself?

**Ms Cass-Gottlieb:** We have—

**Senator McKENZIE:** To the officer—sorry.

**Ms McDonald:** We formed that understanding from our engagement with and reading of the standards, so we understand that there is an ability still for businesses to compete on their merits and operate independently in complying with the standard.

**Senator McKENZIE:** Given that we have been unable to have an inquiry, would the ACCC be open to receiving submissions from those in industry who do have a concern with this, to allay those concerns?

**Ms Cass-Gottlieb:** I should add that we have heard from some industry stakeholders about elements relating to the standard, and that in part has come through our motor vehicle information scheme. But we would definitely be very open to having that engagement.

**Senator McKENZIE:** Fantastic. Has the government asked the ACCC to monitor the impact of the new vehicle efficiency standard on any increases in new vehicle prices?

**Ms Cass-Gottlieb:** No.

**Senator McKENZIE:** No—for 2025 and beyond. Again, according to industry, the only auto manufacturers that will sell credits under this legislation, particularly in the early stages, are the EV-only manufacturers, such as Elon Musk's Tesla, and Chinese EV manufacturers, such as BYD, thus creating a very small pool of sellers of credits, whose decisions can have significant and severe impacts on the types of cars available for Australians to purchase and on the prices that Australians will be paying. If a legacy auto manufacturer such as Ford sought to enter an exclusive arrangement with one of these credit providers, that would ultimately distort what has been quite a competitive market—we've got one of the largest ranges of cars available in the world—and therefore restrict the products available to consumers.

**Ms Cass-Gottlieb:** Certainly, if there were an exclusive dealing or a arrangement entered into that had a risk of harm to competition, we would not need a direction from government.

**Senator McKENZIE:** You wouldn't?

**Ms Cass-Gottlieb:** We would not. We have the power under the Competition and Consumer Act to investigate and, if we do find the evidence of a likely effect, to take action. In the case of an exclusive agreement, we would have that capacity under our existing powers under the act.

**Senator McKENZIE:** How would you become aware of that exclusive arrangement? It would be my guess that neither Ford nor the credit seller would be fronting up, shall we say.

**Ms Cass-Gottlieb:** One of the interesting beauties, I would have to say, of what happens in the role of the ACCC is that competitors notice change in behaviour. Sometimes dealers notice change in behaviour, for example. We do hear more often than you might expect. Sometimes disaffected employees also bring information to the ACCC, and those aspects then prompt investigation. Melinda will have many such examples from her experience.

**Senator McKENZIE:** I remember a great beef inquiry many years ago about our meat processors, and it's very similar market, if you like. It's a small number of players, and they're all hyper aware of each other's products and each other's systems. There's a settlement of sorts at the moment, and it's being argued that this is the greatest shake-up of our automobile industry since we got rid of the horse and cart. Is it probable that competing auto manufacturers, prior to seeking to enter into discussions about the trade of credits, should actually seek the authorisation of the ACCC to do that? And, given the type of market we're talking about, would that be a prudent course of action to make sure that they're not setting themselves up for failure?

**Ms Cass-Gottlieb:** We are very happy to engage, to discuss the application and the relevant principles under the act. We do consider that, in the ordinary course of business, trading between one party to another is not likely to give rise to such a concern, as Ms McDonald said. If there were a decision more in the manner you were referring to, where a group were to come together, they would be wise to get advice and consider an application then.

**Senator McKENZIE:** Thank you very much.

**Senator ROBERTS:** Thank you for appearing tonight. Could you please produce the document that Senator Smith referenced about opportunity for competition between federal and state?

**Ms Cass-Gottlieb:** Yes. He is talking about a thesis I did—

**Senator ROBERTS:** That's fine.

**Ms Cass-Gottlieb:** I hope I could find it!

**Senator ROBERTS:** You can take that on notice.

**Ms Cass-Gottlieb:** It's probably over 40 years ago, which shows how long I've been practising!

**Senator ROBERTS:** If you could take that on notice.

**Ms Cass-Gottlieb:** It was called *Crafting bright lines*.

**Senator Gallagher:** That sounds very optimistic!

**Senator ROBERTS:** If I can move to the Origin Energy takeover. In waving through the \$18.7 billion takeover with minimal conditions, the ACCC said the benefits of a quicker transition to low-carbon energy would outweigh the disadvantages. Can you please elaborate on exactly what the disadvantages would be?

**Ms Cass-Gottlieb:** You're talking about the proposed merger, which didn't proceed?

**Senator ROBERTS:** Yes.

**Ms Cass-Gottlieb:** The competition concerns were that—

**Senator ROBERTS:** Could you please elaborate on the disadvantages? That's what you're starting to do?

**Ms Cass-Gottlieb:** Yes.

**Senator ROBERTS:** Sorry.

**Ms Cass-Gottlieb:** The disadvantages were the concern about competition detriments. They related to the existing ownership that Brookfield, through investment, had in AusNet, the transmission network in Victoria, particularly. There was a concern that a vertical integration between the investment in new renewable projects that were being conducted and coming through Origin sitting at the control of AusNet—that there would be the incentive to preference the Origin ventures over other competitive ventures. That was the competition concern. That was the detriment. Also, if you have further questions, more detail can be given by Mr Leuner.

**Senator ROBERTS:** I just wanted to know the disadvantages. Thank you. You have two avenues to approve a deal, I understand. No. 1, you believe it would not likely substantially lessen competition.

**Ms Cass-Gottlieb:** Correct.

**Senator ROBERTS:** No. 2, the likely public benefits would outweigh the detriments. So you have approved this under the second limb, which means you couldn't do it under the first one?

**Ms Cass-Gottlieb:** That's correct. We reached the view that we were not satisfied that there was no likely substantial lessening of competition.

**Senator ROBERTS:** Does ACCC stand for 'Australian climate change cop'? Where is it in your charter to enforce the wind and solar transition? You're meant to regulate competition.

**Ms Cass-Gottlieb:** We are, but the transition to net zero is an important area where parties can put to us public benefit. Under our act we are able to approve—in fact, Senator, you just read out the second limb of that approval. The party submitted to us that that is a public benefit. It is a public benefit as defined in various governmental, at state and Commonwealth level, commitments and objectives and also in multiple engagements with community. I can, for example, also tell you over the last five years that one quarter of the applications to the ACCC for authorisation have included a reference to a claim of a sustainability benefit. We require absolute evidence of such a benefit when required to be satisfied that they will be of ongoing significance. Other examples of such benefits would be increased employment and increased investment in innovation that people can put before us, but greater sustainability and supporting a transition to net zero is one of the public benefits that can be put before us.

**Senator ROBERTS:** Thank you. An expert adviser you consulted during your deliberations on the Origin takeover disagreed with your assessment of the balance of detriments and benefits. Who was that, and what did they say?

**Ms Cass-Gottlieb:** We did produce that report. That was a report by Frontier Economics. I will have Mr Leuner also talk to that. They looked at the development that they thought was likely to occur and thought that there would be a similar investment in other renewable ventures if that transaction did not proceed.

**Senator ROBERTS:** Is it possible to take it on notice to provide that dissenting opinion?

**Ms Cass-Gottlieb:** Mr Leuner, can you confirm for me—I think we published it with our report, so we could give a link. I will check whether that is correct.

**CHAIR:** Thank you, Senator Roberts. I am going to you, Senator McKim, because I think Senator Smith wasn't quite ready.

**Senator ROBERTS:** That was only five minutes.

**CHAIR:** I thought you had concluded.

**Senator ROBERTS:** I hadn't concluded at all.

**CHAIR:** You were having a pause?

**Senator ROBERTS:** Correct.

**CHAIR:** Continue.

**Senator ROBERTS:** How exactly did you quantify the benefits of low carbon dioxide energy, and what dollar figure did you put on it?

**Ms Cass-Gottlieb:** We first looked to analysis that had been provided by the Department of Climate Change, Energy, the Environment and Water.

**Senator ROBERTS:** On notice could I get a copy of that, please?

**Ms Cass-Gottlieb:** Yes.

**Senator ROBERTS:** Thank you.

**Ms Cass-Gottlieb:** In addition, we looked at what the parties had put before us and the business plans in order to bring forward in an accelerated manner the investment and rollout of further renewables.

**Senator ROBERTS:** Doesn't policy to cut human production of carbon dioxide require the specific quantified effect of carbon dioxide from human activity on climate? That has to be the basis of policy, yet no-one can provide that to me.

**Ms Cass-Gottlieb:** In that matter, we relied upon evidence that had been done by the department and what we received from the parties.

**Senator ROBERTS:** That's the department of climate change?

**Ms Cass-Gottlieb:** Yes. It is not required, when we weigh up the relevant benefit and detriment, to be able to absolutely quantify it. Often it is not possible to absolutely quantify it, but we do need to feel we have sufficient evidence to be satisfied. It was a finely balanced decision, but we did reach that conclusion. Mr Leuner, do you want to add anything to that?

**Mr Leuner:** I actually did want to respond to that earlier question. That Frontier report is online, and we are happy to provide a link to that.

**Senator ROBERTS:** I would have thought that to, first of all, justify it, you'd have to know the specific effect of carbon dioxide from human activity on climate to measure the disadvantages as well as the costs of any abatement. Then you would have to do a cost-benefit analysis. Then you would have to look at several different options. Surely that would be a matter of policy. Then you would need such a figure anyway to be able to track your progress on implementing your policy and what the benefits are. I can't understand how we can go down this path without a simple understanding of the specific effects of human carbon dioxide.

**Ms Cass-Gottlieb:** I can say that there are very significant scientific reports as part of the United Nations progressive set of reports on those impacts. I understand from your question you're not satisfied with them, but I would put them before you.

**Senator ROBERTS:** Thank you. We can have another talk about that one day.

**CHAIR:** Last question, Senator Roberts.

**Senator ROBERTS:** Where in your deliberations did you consider that every country that has pursued low-carbon dioxide energy has had their electricity bills go up almost inversely proportionally?

**Ms Cass-Gottlieb:** We did ask ourselves that, and we do include in our analysis whether we could anticipate the price effects, so we did raise that point in the analysis. It's a lengthy analysis about benefits and detriments.

**Senator ROBERTS:** Is that in the report?

**Ms Cass-Gottlieb:** Yes.

**Senator McKIM:** Good evening. Thanks very much for coming in. I just have a few questions to kick off about merger reforms. I note that Treasury's merger reform proposal doesn't include call-in powers for below-threshold transactions, which was something that your proposal did include. Do you have a view on whether the workarounds proposed by the government will be satisfactory? Will they adequately allow you to assess a full range of anticompetitive mergers? The government's proposed workarounds include market share thresholds for mandatory notifications, considering multiple years' worth of deals plus ministerial powers. Are they going to adequately deliver the same level of analysis from the ACCC as would the call-in powers you proposed?

**Ms Cass-Gottlieb:** There are two elements we think are important in the current framing to look at that question of the right scope. Maybe I should say there are three, actually. One is that the thresholds, which will have some elements of financial levels, are set low enough to capture transactions that have a sufficient prospect of potential harm that they're reviewed. The second is the proposal that there will be an ability for a relevant Treasury portfolio minister to set specific reporting requirements for key sectors. For instance, one that we would consider would be the supermarket sector. We understand government is looking to us to provide evidence for sectors that do need sector-specific provision, but we think that will be important, for instance, where there are



multiple local areas acquisitions which then, together, can cumulatively create an impact on competition. The third part is the three-year aggregation, but we think the first two parts are very important.

**Senator McKIM:** Are you working with government to provide some advice in regard to those issues?

**Ms Cass-Gottlieb:** We are contributing. Indeed, the taskforce is consulting broadly. We are also contributing to work in relation to these elements. We are also building upon our experience in the past with the financial levels of transactions that we thought merited very careful consideration, and we are putting those examples before the taskforce.

**Senator McKIM:** You mentioned making sure the thresholds are set low enough. Are you talking about market share thresholds there?

**Ms Cass-Gottlieb:** No. I am talking about possible financial measures. For instance, the consideration—

**Senator McKIM:** Like the value—

**Ms Cass-Gottlieb:** Exactly. We are aware also of the proposal to include market share thresholds. We are continuing to engage with the taskforce in relation to that.

**Senator McKIM:** You would obviously prefer call-in powers, because that was in your proposal, right?

**Ms Cass-Gottlieb:** We do see strength in call-in powers. We understand the set of criteria that the taskforce is weighing up in order to provide certainty for the business community, which is why we can see that we can achieve a similar protection provided that the thresholds are low enough and that particular key sectors have special rules that give us greater assurance that we will see the appropriate transactions.

**Senator McKIM:** Would you be prepared to comment on where you think those thresholds would need to be set?

**Ms Cass-Gottlieb:** We did, very early in the process, before the government made the in-principle decision to have the competition review, help inform those deliberations, and Treasury did make that document public. We looked back at transactions that the ACCC had found needed close scrutiny, and the figure we came to was \$35 million—

**Senator McKIM:** In terms of the value of the proposed transaction.

**Ms Cass-Gottlieb:** in terms of the value of the transaction. We know that seems small. However, one-off acquisition of a store, for instance, in a local area that would otherwise have no independent supermarket to serve it, can come at that level. In addition, a recent transaction in relation to which we issued a statement of issues, the acquisition by REA, the largest provider of real-estate advertising, of the only digital real-estate forms business, was similarly, I think, \$40 million. In any event, it gives you an example that, in Australia, material transactions can occur for what people may think are reasonably low values.

**Senator McKIM:** Thank you; that's helpful. In terms of a market-share threshold for mandatory notification, should that, in the view of the ACCC, capture vertical integration where, for example, a company might buy up key parts of a supply chain?

**Ms Cass-Gottlieb:** Yes. We consider it should.

**Senator McKIM:** Your answer is yes?

**Ms Cass-Gottlieb:** Yes. And, as we understand, the taskforce, in considering this—and it's still under consideration—is looking at a share of supply: the share of supply that the vertical integration would then capture.

**Senator McKIM:** Thank you. That's helpful as well. I think you've answered this, but I want to be clear: should that threshold capture market share and specific reasons? To use supermarkets as an example, where I live in Tasmania there's no Aldi, so Coles and Woolworths have a greater share of the supermarket sector in Tasmania than they would in some other parts of the country. Should that be a consideration in assessing a threshold for mandatory notification?

**Ms Cass-Gottlieb:** These are matters that will be informed by the supermarket inquiry we're undertaking, but do you want to look at it—

**Senator McKIM:** I'm going to ask you about that in a minute.

**Ms Cass-Gottlieb:** What we do know is that a jurisdiction that has a strong reliance on market shares for the purposes of thresholds for merger assessment is Spain. I have recently spent some time coming to understand how they approach it. They look at market-share thresholds at a local, regional and national level.

**Senator McKIM:** Thank you.

**CHAIR:** Senator McKim, you're at almost 10 minutes. How much more time do you need?

**Senator McKIM:** I've got one, or maybe two, more on this issue, and then I will have another group of questions.

**CHAIR:** Ask your last question in this block, and then I'll come and chat to you.

**Senator McKIM:** Okay. You've spoken about where the threshold might be set in terms of the value of the proposal. Do you have a view as to where the market share threshold should be set, in terms of a percentage of the market, in any particular area?

**Ms Cass-Gottlieb:** We have not framed that at this time. We have put more emphasis on the other two elements. However, if that moves forward in serious contention by the taskforce, we will then consider it and look to other jurisdictions that rely on it.

**Senator McKIM:** Thanks, I appreciate that.

**CHAIR:** Senator Smith?

**Senator DEAN SMITH:** I want to go to the federal-state national competition reform agenda. You mentioned that you had met with states and territories and shared observations. On notice, could you provide to the committee the dates of those various meetings with states and territories and whether they were unilateral or whether they happened as part of participating in a Heads of Treasuries meeting, a Council on Federal Financial Relations meeting or another type of meeting?

**Ms Cass-Gottlieb:** Yes.

**Senator DEAN SMITH:** That would be helpful. Very quickly, has the Prime Minister engaged with or sought any advice from the ACCC in regard to the news media bargaining code?

**Ms Cass-Gottlieb:** No.

**Senator DEAN SMITH:** Thank you. In earlier comments, you talked about the importance of the digital economy, or digitisation of the existing economy. Can you just share with the committee again why digitisation of the economy is important in bringing competition and consumer benefits?

**Ms Cass-Gottlieb:** We are aware that a significant majority of transactions are now occurring digitally, whether they are by individual consumers in the manner in which they purchase, frequently using a mobile device, or whether they are through business-to-business transactions—also, now, in terms of conveyancing transactions, for example. So it is providing ready accessibility. It also has the capacity to provide greater efficiency and the capacity to provide transparency of information, more broadly, to inform and data to inform transactions. It is really, in effect, a part of all of our lives.

**Senator DEAN SMITH:** On 11 November 2022, the ACCC provided its fifth interim report on digital services platforms. How do you explain to stakeholders the tardiness of the government acting on the recommendations that were contained in that interim report?

**Ms Cass-Gottlieb:** The government, in December 2023, stated in-principle support. There have been steps taken in terms of a range of consumer recommendations—including, significantly, in terms of scams—a movement to having mandatory codes and the increase in penalties and the provision of contravention in terms of unfair contracts. There is progression which we hope is—

**Senator DEAN SMITH:** But they are progressions rather than resolutions, aren't they?

**Ms Cass-Gottlieb:** So far, the unfair contract terms has been legislated. Work is very strongly underway in terms of scams codes and a legislative framework. There is consultation progression for the reform of the consumer law on unfair trading practices, which we think is extremely important. We are very keen to see the next step in terms of the competition reforms, which is the legislative framework to allow designation and targeted service-specific codes.

**Senator DEAN SMITH:** So the competition benefits are yet to be acted upon. The consumer benefits are progressing.

**Ms Cass-Gottlieb:** Yes. The competition recommendations have been the subject of—the government has announced support in principle. We are working as closely as we can with the Treasury to support that moving.

**Senator DEAN SMITH:** To be respectful, Chair, I think the question is not about closeness but speed. In your earlier remarks you reflected on how important it is for Australia to be aware of and keep up with significant international developments. The United Kingdom has recently passed—I think it may have just had royal assent.

**Ms Cass-Gottlieb:** Just last week, actually.

**Senator DEAN SMITH:** There's a bit of a pattern here of governments waiting for the eve of elections to act on certain matters.

**Senator Gallagher:** I don't think that's a fair representation at all.

**Senator DEAN SMITH:** I was talking about the British Conservative party. Who did you think I was talking about?

**Senator Gallagher:** You are talking about us being delayed with our response.

**Senator DEAN SMITH:** Why would that be the case?

**Senator Gallagher:** That's what you were putting earlier.

**Senator DEAN SMITH:** I was reflecting on the British Conservative party actually. In all seriousness, the European Union has legislated. The United Kingdom has now legislated. And we still don't have a legislated resolution to these issues. In his evidence to the House economics committee on competition issues, the former ACCC chair, Mr Sims, specifically drew out this issue, this particular report, and made the statement that Australian consumers, Australian families, are finding themselves missing out on the competition and consumer benefits that these sorts of recommendations could bring to the Australian economy.

**Senator Gallagher:** Is there a question, or is it a statement?

**Senator DEAN SMITH:** It was a pause for effect! My question to the chair is: do you agree with Mr Sims's view that Australians could be missing out on these competition and consumer benefits because the government has yet to legislate some of those recommendations?

**Senator Gallagher:** But we have been progressing our key recommendations, including the antiscam—

**Senator DEAN SMITH:** That's not my question.

**Senator Gallagher:** I think it's far enough that I put on the table the work that is going on—

**Senator DEAN SMITH:** I had a question for the chair, and you find it necessary to—

**Senator Gallagher:** because you're implying that nothing has happened, and that is not correct.

**Senator DEAN SMITH:** It's not happening fast is what I'm implying.

**Senator Gallagher:** Well, there's a significant amount of work that has gone into the antiscam response. An incredible amount of work has gone into the unfair trading practices, and legislation on unfair contract terms has been passed.

**Senator DEAN SMITH:** Senator Gallagher, even though you are sitting right next to the chair, you are not listening to what the chair has been saying. The chair has drawn a distinction between consumer and competition benefits. I'm focusing on the competition benefits.

**Senator Gallagher:** I'm just providing a balance to the information and the assertions that are being put.

**Senator DEAN SMITH:** Are Australians at risk of not being able to realise quickly the competition and consumer benefits from legislating those recommendations that were in that fifth interim report?

**Ms Cass-Gottlieb:** 2024 is a really important window for us. The legislative change in Europe took effect in March. The UK now has received royal assent. There are bills in Brazil, South Korea, Japan and being developed in India. We have an opportunity to be within the window, and it will be valuable to be so. The work is progressing. We will do all we can to assist for it to happen in that window, and we do think it will benefit Australian business through more interoperability and competition and Australian consumers.

**Senator DEAN SMITH:** If we act in that window?

**Ms Cass-Gottlieb:** Yes.

**Senator DEAN SMITH:** A matter yesterday came up in estimates, and we're hoping you might be able to clarify it for us. Does the requirement to make the food and grocery code mandatory require legislation?

**Ms Cass-Gottlieb:** There is a capacity under the Competition and Consumer Act for industry codes to be determined to be mandatory codes.

**Senator DEAN SMITH:** And that's the section 51AE mechanism?

**Ms Cass-Gottlieb:** Yes.

**Senator DEAN SMITH:** Meaning it can be done by regulation?

**Ms Cass-Gottlieb:** Yes. What I am not sufficiently sure about though is whether other aspects of the proposed reforms that were put out in draft may introduce elements—for instances, particularly if they have participated higher penalties that may then require a specific legislative reform. But I'll ask Mr Greiss, who's the executive general manager of that—

**Senator DEAN SMITH:** I think it might be the penalties that are the issue.

**Mr Greiss:** That's correct. My understanding is that to have the penalties at the levels that are contemplated in the interim report may well require legislative amendment rather than just amendment to the regulation. But that is a question we can take on notice if you'd like.

**Senator DEAN SMITH:** If you could provide some information to the committee on notice, that would be great. I will just turn to a slightly more niche matter if I can. Ms Wood, the chair of the Productivity Commission, shared with the committee today that she had had a briefing on e-conveyancing in Australia. When I asked her to characterise whether the e-conveyancing market was competitive, she correctly and succinctly said, 'Well, there's a monopoly provider, so that makes it uncompetitive.' First, are you familiar with the issues in e-conveyancing in Australia and the lack of competitive tension because there is only one provider at the moment? Second, are you aware that the regulatory body—I think it's called ARNECC—has been having some difficulty in progressing the necessary reforms to bring competition to e-conveyancing in Australia?

**Ms Cass-Gottlieb:** We're aware of both elements, yes, and we have been advocating for reforms to improve competition in this market for several years, including that the AusPayNet e-conveyancing industry payments code be adopted and activated and also that there be a national enforcement regime under the Electronic Conveyancing National Law, which would give ARNECC actual effective enforcement powers. This would need to occur in a COAG fashion because it would need to occur in state and territory law.

**Senator DEAN SMITH:** What is the advocacy pathway? How does the ACCC recommend what sounds to me to be a very, very specific course of action that could allow more competition—allow competitors a better opportunity to compete in what's a monopoly market at the moment?

**Senator Gallagher:** Can I just jump in. I'm not sure if you are aware—you may be—that Dr Leigh is a member of the national e-conveyancing ministerial forum, which is currently looking at e-conveyancing reform with a ministerial rep from the Commonwealth and each of the states and territories.

**Senator DEAN SMITH:** Again, Senator Gallagher, you're missing the point. We are talking about speed of reform; we're not talking about process—

**Senator Gallagher:** Well, I don't know if you knew that.

**Senator DEAN SMITH:** Sorry?

**Senator Gallagher:** Did you know that?

**Senator DEAN SMITH:** I did know that because people have been knocking on my door because they're not getting the necessary action from Dr Leigh and others. Did you not know that? Did you not know that you just had to ask me?

**Senator Gallagher:** No.

**Senator DEAN SMITH:** That's why people are coming to me and to Senator Bragg and—

**Senator Gallagher:** You were in government for 10 years and none of this happened. We have been in government for two years and you're seeing progress on everything. Just forget all that, won't you.

**CHAIR:** Senator, this is your last question and then I'll have a chat with you.

**Senator DEAN SMITH:** And then you can come back to me.

**CHAIR:** Last question, yes.

**Senator DEAN SMITH:** Apologies, Chair, for that parliamentary interruption. We're just talking about what the change is that is needed to bring forward that level of competition, or to allow other competitors a better chance in the market.

**Ms Cass-Gottlieb:** The change is that there has been a set of plans for interoperability and for the technical change to the PEXA architecture to enable interoperability. It has not—

**Senator DEAN SMITH:** 'It', as in PEXA?

**Ms Cass-Gottlieb:** 'It', being PEXA, has not taken these steps to enable it, and ARNECC has not considered that it has had the enforcement capacity to be able to take the necessary action. We participate in sectoral meetings, and that has included state and territory govts, each of which have at times had different appetites for moving at a particular pace, I'd have to say. There was a previous New South Wales minister, Minister Dominello, who was very active and did drive it actively.

**CHAIR:** I'll come back to you. Senator McKim.

**Senator McKIM:** Does the ACCC have any oversight of contracts signed to export gas? For example, Santos advised the ASX last week it had signed a 10-year contract with Hokkaido Gas. There's very little information

available on where that gas is coming from. Given Santos has already overcontracted gas exports and they're buying gas out of our domestic market, where there are flagged shortfalls, is that something the ACCC has an interest in?

**Ms Cass-Gottlieb:** We do. Through the upstream gas monitoring direction that we have from the Treasurer, we do require the reporting of contracting volumes in order to reconcile them against foundation contracts and then against new contracts in addition to foundation contracts. I can ask Ms Ross to add more detail, but we do regularly require the production of information.

**Senator McKIM:** Thank you. I'm interested in any more detail you have on that particular contract, including where the gas is coming from and what's the volume to be exported, if you have those details.

**Ms Ross:** We're primarily focused on the market of the east coast of Australia. I don't know if the Santos contract in question is coming from the east coast or the west coast.

**Senator McKIM:** I don't know the answer to that. But you obviously don't know the answer to that either.

**Ms Ross:** Not right now. We'll be issuing information notices to gas producers for our next report, and that is the sort of information that we collect.

**Senator McKIM:** In regard to that particular contract?

**Ms Ross:** We will be asking for information about gas contracts entered into over a particular period of time for both export and domestic sales contracts. Let me clarify; I mean export volumes to go overseas.

**Senator McKIM:** Thanks. I'm going to put some questions in on notice, because we're short of time, and we'll see what you're able to provide. There's been analysis done of public company statements in Japan that calculate Japan is actually onselling gas that they no longer need, a lot of which is in fact coming from Australia. If that's accurate, could that form a basis for Australia to negotiate its export contracts to ensure that more gas actually stays in Australia to prevent domestic shortfalls?

**Ms Cass-Gottlieb:** The heads of agreement places obligations on the LNG ventures, where there is excess gas—being gas that is not contracted under foundation contracts—to first offer it in Australia. You are raising an interesting question as to gas surplus to the customer's needs, as distinct from the contract here in Australia. I am not aware that that question has been considered in terms of the contracts. Other questions have come up about what excess gas is, but I'm not aware that that has come up.

**Senator McKIM:** I might provide some further information, if you'd be prepared to have a look at that and come back on notice. Does the ACCC expect the amount of gas taken out of our domestic market and exported to meet contracts will grow or shrink over the next decade? Do you project that?

**Ms Cass-Gottlieb:** Our forecast has been that there are additional reserves and resources which if brought onstream, particularly in the Queensland operations, will produce additional supply. We are aware—it is one of the reasons that we have forecast on the basis of currently operating production—that the foundation contracts in the latter ends, from 2027 and particularly 2028, will increase in volumes and therefore produce less available for domestic supply.

**Senator McKIM:** Thank you. Last question, because time's short: I know you referred to your supermarkets inquiry in your opening statement, and thank you for that. You've said that your final report will be provided to the Treasurer in February next year. Can I ask about the interim?

**Ms Cass-Gottlieb:** The interim report will be by 31 August. It will include detailed insights from the consumer survey, to which we had over 21,000 responses with a very good representation across all the states and territories, which we're very pleased about, and also across different demographic factors. We think it's important.

**Senator McKIM:** I want to cheat the chair on, 'One more question,' by asking a two-part question, so I'm going to ask the second part now. Will the interim report contain recommendations?

**Ms Cass-Gottlieb:** No, because we want to conclude the other parts of the investigation, which will particularly look at the farmgate-to-supermarket supply chain and margins and returns. We want to bring all that evidence together.

**CHAIR:** The committee will take a scheduled break.

**Proceedings suspended from 20:57 to 21:05**

**CHAIR:** The committee resumes with the ACCC.

**Senator DEAN SMITH:** I just want to be quite clear about this point. Apologies if I didn't hear you correctly. My question is: is it that, for want of a more accurate word, the ministerial council, the forum of state and territory ministers, do not have an enforcement power or is it that they are not using an enforcement power?

**Ms Cass-Gottlieb:** I think we would say it is both. They have some. It really does need to be supplemented to be able to be put into effect in a material way.

**Ms Proudfoot:** For example, New South Wales has enacted the Electronic Conveyancing Enforcement Act, but other jurisdictions haven't so far implemented that.

**Senator DEAN SMITH:** And it's necessary for the other jurisdictions to implement a form of that in order for the ministerial body to be able to act?

**Ms Cass-Gottlieb:** The body is exactly as you said—ARNECC—which is the regulators of each state and territory, yes.

**Senator DEAN SMITH:** Is there any means or mechanism whereby ACCC can add any power or effort to removing this sort of stalemate? What I have been told is that PEXA is unwilling, dragging its feet or obfuscating in providing necessary information to allow competitors to compete in the market to improve their position. That's my question.

**Ms Cass-Gottlieb:** There are two ways in which the ACCC has a potential contribution. One is that we meet with the sector. When the relevant senior officers from the various state and territories have got together we have met with them and we have contributed to considerations in that regard. In addition, if there were evidence, for instance, of a misuse of market power—

**Senator DEAN SMITH:** So, by refusing to come to the table with critical information, that could be characterised as a misuse of—

**Ms Cass-Gottlieb:** Yes. If there were evidence that we could pursue, we would have powers under part IV of the Competition and Consumer Act. That's under the powers that we hold.

**Senator DEAN SMITH:** That's under the existing powers. ARNECC has not yet invited you to be more actively engaged in this? Would you have to wait for an invitation from them or, of your own action, could you initiate discussion with various parties?

**Ms Cass-Gottlieb:** We could undertake an investigation, definitely, in terms of part 4. The reforms we have been advocating for are, in effect, ex-ante reforms, which set obligations. Rather than having to investigate, find evidence and, potentially, go to court, which is a lengthy process to get a result, the law that New South Wales passed—and you would hope for other cognate laws and powers—enables the setting of clear obligations and a clear requirement to provide information. This would address the problem in a more proactive way.

**Senator DEAN SMITH:** So the competitive landscape is stuck between a rock and a hard place. Here is a very, very dominant operator in the market—so dominant and so successful that it's now reaching out internationally; there has been recent coverage in the *Financial Review* about success in the United Kingdom market—and a significantly smaller and, perhaps, other smaller operators who just don't have the financials. Obviously, they have the commercial smarts, the technology smarts and the hunger to want to invest and make the market more competitive for home purchasers, but it's stacked against them. And the regulatory system is stuck. It brings us back to your thesis!

**Ms Cass-Gottlieb:** We do consider, and it's possible through reinvigoration through the National Competition Policy, that changes of this nature will be seen to be important across every state and territory.

**Senator DEAN SMITH:** Chair, perhaps the ACCC might be able to extend itself a little bit to include what it can do to bring those parties together—at least to say to the dominant party, 'You're on watch'—

**Ms Cass-Gottlieb:** Yes.

**Senator DEAN SMITH:** You spoke earlier about competitive behaviour and when people see good behaviour or bad behaviour. Thank you very much for your contribution on that. I now want to turn to the matter of the Consumer Data Right.

**Ms Cass-Gottlieb:** Yes.

**Senator DEAN SMITH:** Senator Gallagher gave a commitment last night that the government would bring forward the legislation for a vote in the Senate in—

**Senator Gallagher:** Well, subject to the parliament dealing with it, yes. I can't guarantee it through the Senate, but if it is, as you agreed, that everyone is on board then it shouldn't take any time.

**Senator HUME:** I think it was in non-contrary—

**Senator DEAN SMITH:** It was a non-contrary one once, I think. That might be the place for it. Chair, can we just have a view from the ACCC about the importance of the CDR legislation? The more substantive part of the conversation last night was commentary from Treasury officials about the length of time that's needed to consult

and concerns about and costs of implementation. Unfortunately, what I heard from the Treasury—this is my interpretation of what I heard from Treasury—were the banking and insurance industry's talking points. So just from the ACCC's perspective, what's the importance of this reform and the importance of it happening quickly? And where is the balance to be struck at the moment for which concerns are genuine and which are part of the commercial obfuscation and disruption?

**Ms Cass-Gottlieb:** Sorry, I'd like to give this answer in two parts: to look at the scheme as it is and then to look at the legislation.

**Senator DEAN SMITH:** Yes.

**Ms Cass-Gottlieb:** As the Kelly review said, the CDR implementation task is and was enormously complex and technically challenging. But it made the point that the foundations were well laid. We think they are. We think we have reached a point of maturity in the underlying technology and the process. We also see value for competition and consumers, and we are dedicated to performing our role diligently in supporting CDR. We know a key driver of uptake is use cases and providers of solutions to consumers, and we see some expansion of use cases.

We are hoping to see more and more compelling use cases. We have ones for budgeting and financial planning apps and for credit-lending loan approval apps, but we're seeing new innovation. We are seeing Xero, MYOB and Intuit looking with interest to supply more services to small businesses, to make more efficient business for small businesses and for their customers. We are also seeing some interesting use cases with an environmental application with the energy companies coming in. Greener uses CDR data to track and measure carbon emissions.

**Senator DEAN SMITH:** Indeed, the government itself has given \$46 million in the most recent budget for uptake around energy applications. On one level, there is a clear endorsement, and then, in other sectors of the economy, there is a less obvious endorsement.

**Ms Cass-Gottlieb:** We have Financial Counselling Australia, which is a not-for-profit helping people who are stressed in their financial commitments to take their data and give them the most effective—we can see some really valuable use cases. We also have expansion of CDR representatives and accredited data recipients. So we see real opportunity. In terms of the legislation, we provided a submission to Treasury in December 2022—I'll just make sure I have exactly the right dates here—

**Ms Standen:** It was October 2022.

**Ms Cass-Gottlieb:** October 2022, thank you very much, Ms Standen. Supporting the enabling of action and initiation, we did caution and say that we wanted to engage closely in relation to particular sectors for the rules—not for the legislation, but the rules. For instance, we were concerned about payday lenders. We're also concerned about joint accounts, particularly if there's financially coercive control happening. We supported the legislation. We do want, at the rules level, to give the benefit of our participation, understanding what we have seen, to ensure there are consumer protections. That's why it's a two-part step.

**Senator DEAN SMITH:** That's a very, very important contribution. Is the ACCC to be formally engaged with Treasury around the rules development?

**Ms Standen:** Obviously Treasury develop the rules. We have very strong opinions sometimes, as the ACCC, and contribute through formal mechanisms. Sometimes we put in submissions in relation to rules. In the case of action and initiation, we think there are lots of opportunities available for action initiation, but we want to make sure that we tread carefully, particularly around vulnerable consumers. We would be working with Treasury to ensure that those particular issues were dealt with through the rules process.

**Senator DEAN SMITH:** At what point do senators like ourselves get to see whether or not there's a uniform view between the ACCC and the Treasury over the rules or whether there are points of difference?

**Ms Standen:** You don't, I don't think. As the Treasury are the policy adviser to the minister, who ultimately makes the rules, it is really up to the Treasury to provide the advice that they think is relevant for the minister, in particular, for example, around action initiation.

**Ms Cass-Gottlieb:** Our submission—and we will send it to you, Senator—did set out our support but, in addition, set out the areas we would want to focus on. While it doesn't show where Treasury's consideration is at, it does show the areas that we had suggested. In some cases, it would be to make the decision not to bring the sector in—for instance, payday lenders—or to delay bringing that sector in would be one option. Others would be in relation to rules, particularly for the protection of vulnerable customers.

**Senator DEAN SMITH:** That's been very, very valuable. Thank you very much.

**Senator ROBERTS:** I'll just continue on the Origin merger. How did you assess the public benefit of Australians having to pay more expensive electricity bills?

**Ms Cass-Gottlieb:** It is not necessarily the case that it would be more expensive electricity bills.

**Senator ROBERTS:** Perhaps, to refresh your memory, I'd just say that, in the previous question, I pointed out—

**Ms Cass-Gottlieb:** We looked at the potential of it. It was not necessarily the case that it would be the case. In addition, we're aware that—and we know this through electricity retail monitoring that we do—there are ways in which consumers mitigate such prices, including through their own adoption of solar power for their household.

**Senator ROBERTS:** Did the ACCC ever receive any representations in relation to the Origin takeover from government?

**Ms Cass-Gottlieb:** So, no. We make those decisions independently.

**Senator ROBERTS:** Did the ACCC ever receive any representations in relation to the Origin takeover from Australian Super?

**Ms Cass-Gottlieb:** I'll see if Mr Leuner knows that. I do not recall it, actually. We're certainly well aware of the developments where Australian Super then led shareholders to resist the offer. Mr Leuner?

**Mr Leuner:** I can't recall either. But if there were submissions, they'd be public on the register. We can provide a link to those if they do exist.

**Senator ROBERTS:** Was the fact that Australian Super increased their share in Origin by eight per cent prior to the ACCC announcement brought to the ACCC's attention?

**Mr Leuner:** We were aware of it, yes.

**Senator ROBERTS:** Thank you. Were you aware that Origin's share price surged by 5½ per cent after the ACCC's decision?

**Mr Leuner:** Again, we were aware of it. We do look at share price impacts of our decisions.

**Senator ROBERTS:** Thank you. How much has Australian Super paid to the Labor Party over the last five years? You can take that on notice, Minister.

**Senator Gallagher:** Sorry? Who's taking it on notice?

**Senator ROBERTS:** How much has Australian Super paid to the Labor Party over the last five years?

**Senator Gallagher:** I'm not here representing the Labor Party, so—

**Senator ROBERTS:** But I'd like to know as a representative of the government.

**Senator Gallagher:** Well, no, we don't keep those records. I'm here in a role representing the Assistant Treasurer.

**Senator ROBERTS:** Okay, thank you.

**Senator Gallagher:** Anything—things like that—would be disclosed on the Electoral Commission.

**Senator ROBERTS:** I have a few questions on eConveyancing. I want to raise the subject of competition issues in the eConveyancing market that have been brought to my attention by some companies in the sector. I understand that this market is completely locked up by PEXA—the Productivity Commission confirmed that—a publicly listed company that's worth billions of dollars and making \$300 million a year in conveyancing fees. I'm told that the states are trying to open this up to competition, with a mandated date of December 2025, but are failing and need federal government intervention. What's your view on the need for competition in this space, and what is the role of the federal government?

**Senator Gallagher:** Senator Roberts, all of these questions have just been answered.

**Senator ROBERTS:** No, not that one.

**Senator Gallagher:** Yes. It essentially was. Senator Smith asked it. All of the questions about eConveyancing, I'm sure the chair—

**Senator ROBERTS:** Not on this one. This is in regard to the states and their interaction with federal.

**Senator Gallagher:** Yes, it was. But, anyway, I'm sure the chair is happy to repeat the evidence.

**Senator ROBERTS:** I'll defer to Senator O'Neill. Thank you, Chair.

**CHAIR:** Thank you, Senator Roberts. Senator Hume?



**Senator HUME:** The most recent digital platform interim report—which is the eighth—included a discussion around data brokers.

**Ms Cass-Gottlieb:** Yes.

**Senator HUME:** I want to understand a little bit of background on this, including who data brokers are, exactly what it is they do and why they appeared in this report.

**Ms Cass-Gottlieb:** We shifted our terminology from 'data brokers' to 'data firms', and we did so after submissions from the firms. The firms wished to make clear that they were not engaged in the sale or brokerage of data; they were providing value-added services that were informed by data. For example, they include Experian, illion and PropTrack. I'm just giving a few examples. They will provide credit reference advisory services for businesses. They will provide analysis of property data that will inform renters, landlords and persons seeking to borrow. Treasurer Frydenberg's direction actually included a reference to property brokers, and we did start our first issues paper using the term, but, because of the submissions, we wanted to use a more neutral term.

The critical point that we were seeking to look at is that the underlying asset that informs the whole produce of that service and those reports is a significant quantity of the data of Australians. That is gathered in multiple ways we may not be aware of. If a member of our family goes to inspect a property as a potential tenant, they give data. The data is provided to the proposed landlord but is held by the company. It may then be provided to a finance company. In multiple ways, this data is being gathered, and we feel that, while businesses benefit—and consumers can benefit by new services and more information—very few of us actually understand the vast amounts of data that are being captured. If we swipe onto public transport, not only does the payment system know it but the transport operator knows it. They can build up and store data on all the travel that we do between home and the childcare centre or into work.

So we wanted consumers to understand what is occurring, and we also wanted to identify the possibility for competition concerns if there are exclusive agreements being entered into, to reserve data to some players only when that data may be an important input for other competing companies.

**Senator HUME:** So is that happening? Are there bilateral agreements by the data brokers—

**Ms Cass-Gottlieb:** Yes.

**Senator HUME:** that are essentially cutting other players out of accessing what is data about you and me, which theoretically should be available to anybody? If you have those exclusive arrangements, it actually reduces competition in the market, doesn't it?

**Ms Cass-Gottlieb:** Yes. We have concerns that there are both agreements to that express effect and practices that create friction in other companies being able to obtain data or consumers being able to themselves share their data.

**Senator HUME:** I know there are multiple sources—thousands of sources—of data out there. My understanding is that this is particularly relevant to single touch payroll data. Is that something that came up in your report?

**Ms Cass-Gottlieb:** It is something that we did observe, and it is a matter that has also come to our attention in some other ways. Because that involves ongoing processes, I'm not in a position to talk more about it, but we have an interest in that.

**Senator HUME:** Okay. Can I just confirm, then, that the system works currently with the single touch payroll data that's sent to the ATO via sending service providers, who have to sign up to the ATO's end user agreement. Is that correct?

**Ms Cass-Gottlieb:** Yes, that is my understanding.

**Senator HUME:** So, a large recipient of data could have an exclusive single touch payroll sending service provider and then limit the data that those sending service providers can send to other data users. Is that right?

**Ms Cass-Gottlieb:** From a regulatory perspective, in terms of the structures put in place by the ATO and commercially possible, yes. There may be, depending upon the potential effect of such agreements, questions under the Competition and Consumer Act.

**Senator HUME:** Has the ACCC then considered ways in which single touch payroll sending service providers could require those large operators in data broking to support a marketplace for access to this data in a consented way?

**Ms Cass-Gottlieb:** That would be a policy question. One of the reasons we undertake those reports is to put information, evidence and findings before government, before the public and before parliament to consider policy questions. But that would require a policy deliberation.

**Senator HUME:** This is a reasonably complicated and quite niche issue; I understand. But clearly it's something the ACCC has looked at as part of this report. Can I ask whether you have shared that information with government and suggested that it requires some sort of policy response if we're going to maintain a competitive market that can access this data and bring in those smaller players with innovative solutions, rather than having your data or my data—everybody here's data—locked up by some of these big data brokers? And we don't even know it.

**Ms Cass-Gottlieb:** The report has been provided to the Treasurer, and we've made it public.

**Senator HUME:** Does the report have recommendations?

**Ms Cass-Gottlieb:** That report does not have recommendations, no. It has findings but not recommendations—which in many of our digital platform services reports is the approach we've taken. It's why with the middle report and the fifth report we paused to gather everything together and make recommendations, but it was partly because this area can be very complex and fast moving and we are subject, under the direction, to a requirement to provide reports every six months. It is actually a very tight timeframe in which to investigate and report.

**Senator HUME:** When is the next report due?

**Ms Cass-Gottlieb:** September.

**Senator HUME:** September—oh gosh: it is soon.

**Ms Cass-Gottlieb:** Yes.

**Senator HUME:** Okay. I understand. Well, when you next come back to estimates, I am going to ask you whether there has been any progress on this issue, because I hate the idea that there are a couple of big players out there holding on to data, which is essentially gathered by a government system, and not sharing it with little players, which would allow them to create new innovations and compete in a market that can essentially bring down the cost of financial services for all of us.

**Senator DEAN SMITH:** I have one very quick set of questions, which won't come as a surprise, just to follow up on the Armaguard-Prosegur, if there's anything the ACCC can share in terms of the current status. Peter Fox was reported in the *Australian Financial Review* last month, in April, confirming that Armaguard would seek regulatory approval for any change in their pricing. Has any request for a change in pricing been received by the ACCC?

**Ms Cass-Gottlieb:** No.

**Senator DEAN SMITH:** Is the ACCC satisfied that reports of supermarkets not receiving cash over the Easter weekend only for a cash injection to be made the next week are consistent with a healthy and competitive market? There was some public commentary about whether or not supermarkets had received cash on the eve of the Easter period. Are you able to clarify that point—of whether or not there are any issues that are of concern to the ACCC?

**Ms Cass-Gottlieb:** There are three different processes we have underway relating to this. We were aware of that concern before Easter. We made very specific investigations in relation to it. We have three formal processes and one informal process happening. The formal process is that we have granted authorisation to the ABA, to the Community Owned Banking Association, to their members, to the retailers and to Armaguard to hold discussions about reshaping to ensure sustainability, with particular focus on rural and regional provision and distribution of cash. To that, we have issued as a final authorisation—we are giving them until October because we want to see, and it requires, monthly reporting. It is to enable multilateral work on a solution, and, if they do reach one, they would then come back. The day before Easter, we also granted a continuity-of-business-planning authorisation to those parties without Armaguard. If there is a reasonable anticipation of an administration occurring, they can themselves move independently to be able to continue to assure the provision of cash. We also have been monitoring compliance with the undertaking and we have also been considering the conduct that has occurred since September in terms of our general powers. So there are four formal processes, and the informal one is about keeping engaged with the RBA, which is engaging in discussions, and also with Treasury, which is engaging in discussions.

**Senator DEAN SMITH:** Has it been necessary for the ACCC to put its mind to any alternative arrangements?

**Ms Cass-Gottlieb:** The business continuity planning enables banks and retailers to plan alternative solutions if either there is an insolvency or there is an apprehension of administration.

**Senator DEAN SMITH:** Thank you very much.

**CHAIR:** Thank you very much, Ms Cass-Gottlieb and the team, for answering our questions. You go with our thanks this evening.

### Commonwealth Grants Commission

[21:39]

**CHAIR:** We welcome Commonwealth Grants Commission and Mr Rollings. Firstly, I will just perform an administrative task. I table the opening statement of the Australian Office of Financial Management, and thank Ms Hughes, who was released earlier.

Now, we won't have any opening statements and will proceed straight to questions.

**Senator DEAN SMITH:** Can you confirm that the Commonwealth Grants Commission acts under instruction from the Treasurer when it comes to preparing the updated GST revenue sharing relativities?

**Mr Rollings:** Essentially, our task is prescribed in legislation in the Commonwealth Grants Commission Act, which is supplemented by other legislation that was introduced a few years back. There is also a terms of reference that we get from the Treasurer, but it references that legislation.

**Senator DEAN SMITH:** But it may also reference other issues for your consideration?

**Mr Rollings:** Yes, it may.

**Senator DEAN SMITH:** My question was: can you confirm that the Commonwealth Grants Commission acts under instruction from the Treasurer? Would the terms of reference issued by the Treasurer be a form of instruction in the preparation of the GST revenue sharing relativities?

**Mr Rollings:** I think that is probably accurate.

**Senator DEAN SMITH:** The terms of reference can be different from report to report.

**Mr Rollings:** They can, but the terms of reference couldn't override the legislation, for example.

**Senator DEAN SMITH:** I understand. There is no scope for the Commonwealth Grants Commission to operate outside the terms of reference by the Treasurer?

**Mr Rollings:** No, Senator.

**Senator DEAN SMITH:** Can the Treasurer's terms of reference tell the Commonwealth Grants Commission how to treat specific Commonwealth payments influencing the relativities?

**Mr Rollings:** Yes, it can.

**Senator DEAN SMITH:** Can you give examples of decisions the Treasurer has made via the terms of reference that influenced the GST relativities?

**Mr Rollings:** I can. I might refer to the most recent terms of reference from our last update of the GST relativities.

**Senator DEAN SMITH:** Dated 13 December 2023?

**Mr Rollings:** Yes, that's correct. The terms of reference start by specifying certain payments that we do have to include in our assessments: national specific purpose payments, national health reform funding, national housing and homeless funding and quality schools funding, for example. Later on in the terms of reference, there are some examples of payments where we were instructed to prepare an assessment on the basis that these do not influence the GST revenue sharing relativities. For example, payments to Queensland—

**Senator DEAN SMITH:** With the terms of reference, that is that items 5, 6, 7, 8, 9—

**Mr Rollings:** The first one I mentioned was item 5. That was just an example from item 5; it was not all of item 5. The second example I'm providing is in item 6, where there are, for example: payments to Queensland for the Olympics; payments under the Energy Bill Relief Fund; payments under the Social Housing Accelerator program; and payments to the Northern Territory for on-country learning.

**Senator DEAN SMITH:** The report is a report to the Treasurer, and he or she can choose to implement the Commonwealth Grants Commission's recommendations, or he or she can choose not to?

**Mr Rollings:** That is correct. We are just providing advice to the Treasurer. The normal process is that the Treasurer then consults with state treasuries on those recommendations and then, following that consultation, makes a decision to accept the advice.

**Senator DEAN SMITH:** Just to be clear: he or she can choose to implement the Commonwealth Grants Commission recommendations or he or she can choose not to, or even to amend them?

**Mr Rollings:** That is correct. In history, at least since the start of the GST there have been no examples where the Treasurer hasn't accepted—

**Senator DEAN SMITH:** It's a technical question, but thank you for that. Under questioning regarding his involvement in the Commonwealth Grants Commission relativities exercise, the Treasurer has repeatedly claimed the relativities are an independent decision of the Commonwealth Grants Commission. Do you agree with the Treasurer's characterisation that the GST relativities are a decision of the Commonwealth Grants Commission?

**Mr Rollings:** Our recommendations to the Treasurer are an independent exercise.

**Senator DEAN SMITH:** I think you just characterised it as advice?

**Mr Rollings:** Yes.

**Senator DEAN SMITH:** Thank you very much.

**CHAIR:** Thank you very much, Mr Rollings and team. You go with our thanks.

### **Australian Small Business and Family Enterprise Ombudsman**

[21:46]

**CHAIR:** Welcome Mr Billson and team. I have your opening statement here. We'll distribute it and table it in, the interests of time. Senator Roberts advises he's just got a couple of questions.

**Senator ROBERTS:** I've got six questions but they're pretty quick answers.

**CHAIR:** I'll go to you quickly, Senator Roberts.

**Senator ROBERTS:** Thank you for appearing. Firstly, I want to thank you for always being a very clear and articulate advocate for the small businesses in this country. Without them, this country dies. I think many people forget that. Is the ombudsman aware of the recent ABC coverage of small businesses who have suffered when entering business loans?

**Mr Billson:** Yes.

**Senator ROBERTS:** Are you able to elaborate on some of the key protections that are afforded to consumer borrowers under the National Consumer Credit Protection Act?

**Mr Billson:** I was a bit worried that after your opening sentence there'd be a 'however'—thankfully, not.

**Senator ROBERTS:** No. There's no 'however'.

**Mr Billson:** A lot of small business borrowings aren't covered by those consumer protections. There is a set of arrangements about diligence and a capacity to repay. To put it simply, a lot of small businesses borrow with the aim to change their circumstances, whereas the consumer framework looks at capacity to service. Having said that, there are then codes that sit around it—the banking code—and there's a code subcommittee particularly focused on small and agribusiness lending. AFCA is involved as well, where the lender has agreed to be bound by the AFCA scheme, so where a dispute or a grievance arises they can go to AFCA.

**Senator ROBERTS:** This is consumer?

**Mr Billson:** No, this is specifically about small business. And then we deal with what I call fringe financiers. There are quite a number of financiers who are outside the AFCA framework that can behave quite appallingly, and we try and seek a resolution to those circumstances, mindful we have no powers to direct a particular outcome.

**Senator ROBERTS:** Which of the key protections that are afforded to consumer borrowers are not available to small business borrowers?

**Mr Billson:** There's the responsible lending provision—capital 'r', capital 'l'—where there's a duty to look at expenditure patterns and the like for consumers. Those things aren't expressly required of lenders to a small business. Some apply a similar framework. There are certain diligence expectations, and then there are safeguards and protections captured by the banking code.

**Senator ROBERTS:** Are you aware of small business borrowers paying effective interest rates up to 140 per cent?

**Mr Billson:** We are aware of some examples. We've had other examples where punitive penalties have been applied. We've even had examples where some borrowers have approached a broker to look at finance options, not proceeded with the arrangement and then the broker's introduced them to a lender that's had quite extraordinary terms and conditions, and, even though they haven't proceeded with that interest in accessing

finance, the financier has then said, 'Here's a several thousand dollar bill you can pay, and if you don't pay that, we'll put a caveat on your home.' Some of that outrageous conduct, we raised through FRAG, the Federal Regulatory Agency Group—a group that I chair, looking at various regulators and what can be done about these things for those people that sit outside things like the AFCA scheme and aren't responsive to the banking code and other safeguards.

**Senator ROBERTS:** Are you aware of small businesses taking out high-interest business loans because of tax debts? Can you comment on that?

**Mr Billson:** I saw reports of that. If I could check with Ms Collins—I don't believe we've had any particular cases of that character, but we are aware of reports of it. We are also aware that a number of small businesses are feeling very distressed about the return to more regular tax debt recovery activities by the ATO. We also work closely with the Small Business Debt Helpline. Interestingly, 30 per cent of the small businesses seeking help from the Small Business Debt Helpline have been in business for more than 10 years, so there's something happening, and it's some of the headwinds I pointed to in my opening remarks, which I understand are being circulated.

**Senator ROBERTS:** In your experience in assisting small businesses, can you offer a view on what would be the consequences for small-business borrowers if the National Consumer Credit Protection Act were extended to cover small-business loans?

**Mr Billson:** My concern would be that it may further limit access to credit at a time when too many small businesses already explain that they have difficulty accessing the finance that they need. Finance is the oxygen of enterprise, and if we make it too hard to get, the consequence is that we constrain that economic activity. A number of other mechanisms provide some safeguards—the Australian Banking Association has lodged a proposal for a revised banking code. We're very active in trying to make sure that has appropriate safeguards in it for small-business borrowers. The other part of our concern is about lenders who operate outside those more established channels, and that's more often the type of matter that's raised with our organisation.

**Senator ROBERTS:** Thank you, I appreciate your succinctness.

**Senator BRAGG:** Do you have a view on the overall impact of the compliance burden on small business?

**Mr Billson:** Yes.

**Senator BRAGG:** What is it?

**Mr Billson:** We're concerned about it growing. We're concerned about the consequences of noncompliance also growing. Overall, we're concerned that the risk-reward balance for enterprising men and women is something we should be turning our minds to. I've touched on some of those factors in what I hope is a gripping opening statement, and there's some information in there that we can elaborate upon if that's helpful.

**Senator BRAGG:** We've heard from ASIC and Treasury that you may have held an event on ESG for small business—

**Mr Billson:** Correct.

**Senator BRAGG:** which discussed various initiatives, including the government's climate bills. Is small business concerned about the reporting framework?

**Mr Billson:** Some time ago, we took some steps to explore what ESG was meaning for small and family businesses. We could see a number of influences coming not just from government regulation examples in other jurisdictions but also from what we call 'white tape', where big businesses are imposing reporting obligations on smaller businesses that may be seeking to be suppliers. We saw a degree of untidiness around that. Small businesses were very anxious about the consequences of misstep, meaning, a loss of supply opportunities, in some cases, around representations—a familiar piece of the competition law but heightened around things like greenwashing and greenhushing. We are also aware that measures such as financial disclosures, and their connection with climate prudential requirements for lenders to be attuned to a range of other factors, were really putting pressure on many small and family businesses who, frankly, hadn't heard much about ESG but had heard some of the commentary about what the impacts might mean for them.

I took the initiative to think about what we could do to map a path through this so that small and family businesses could engage competently and confidently, make credible representations, and encourage regulators to be more right-sized in their thinking.

You touched on climate related financial disclosures—large entities have that responsibility to report, but the first thing they do is get onto their supply chain and say, 'Tell us what your emissions are, so we can deal with our reporting obligations.' So, we've brought together policymakers, regulators, small businesses, experts in the field

as well as some international expertise to work out how other jurisdictions had been navigating it. And, along the way, Minister Collins asked for some advice about what small businesses were experiencing, so we're working on preparing that advice informed by what we called a working symposium, which I think is the occasion that you were referring to.

**Senator BRAGG:** That's right. So, ASIC has said that there is a risk that large organisations will pass down to your constituents, effectively. This has been raised with you directly, has it?

**Mr Billson:** We've observed it and we've heard concerns about what it might mean, and I suppose we were keen to see, as we've seen before, where large corporates are expected to do certain things they quite quickly look to the supply chain to populate that reporting. We've seen this around things like modern slavery. We're seeing it now in climate reporting. There are issues around appropriate payment for suppliers. This has been sneaking up in a number of different ways over a period of time. Then we saw examples in the US where it's a contested set of concepts. In the EU, they've had a corporate social responsibility directive that's cascading down to smaller businesses. They're having a lot of problems with that, so we thought: well, what's relevant—what can we recommend in the Australian context informed by that international practice; and what can we also do to not have those reporting burdens yet another cost in compliance imposition right at a time when small businesses are really focused on survival and what the future looks like? The other thing we did was bring along some of—and I was very interested in your discussions earlier—those digital platform providers, some of the software providers. What information can be scraped or extracted with no additional effort, so we're using natural business systems to put relevant information there.

**Senator BRAGG:** Like RegTech, yes?

**Mr Billson:** Absolutely, or even 'aha tech', as I sometimes call it—insights that can be derived from that data, how AI might help, so we had the CSIRO participating. We also have regulators like the Fair Work Ombudsman that has self-audit tools that are quite analog. However, we're wondering: is there some scope for satisfying workplace requirements so there's a more automated, seamless way of producing that reporting, that attestation, with some evidence behind it without a whole lot of additional need to pay consultants, put in place extra systems, do workarounds, and give a small and family business owner something else to do at 10 o'clock at night?

**Senator BRAGG:** Are there examples in other jurisdictions where the big businesses are on the hook for reporting the impact of the small businesses?

**Mr Billson:** Not that I can recall. There are some examples, such as in Malaysia, where the supply chain reporting has a little bit of a bumper rail around it, where, at the early stage, there's a message that says to big businesses, 'Don't get too carried away.'

There's an example in the UK where a lot of data companies and financial companies—being mindful that a lot of this has come out of the finance world—are pooling data. I'm trying to remember—help me if you could, Dr Steen—

**Dr Steen:** Is it Perseus?

**Mr Billson:** That's right. There's Project Perseus where they're trying to bring data that's in the system into a data centre, and then large corporates can draw from that, but there's no additional obligation on smaller firms to report. And then there are some other examples where reporting dates have slid back as people have navigated what's often a double materiality—I'm sorry for the phrasing. But they're saying, 'What's relevant to your business and what's relevant to the impact, and if it gets through those gates, talk to us?' We've been looking at how you might navigate that sort of discussion in a smaller enterprise sense.

**Senator BRAGG:** How prepared do you think small business is to contend with the industrial relations reforms that are coming into force this year?

**Mr Billson:** Look, it's an additional challenge. We were pleased that there's some resourcing in the budget to help navigate some of that, but it is an additional burden. Even the tool that's being developed to guard against inaccurate payment of wages not leading to criminalisation if you've taken certain steps—we're involved in that discussion. Again, we're all about rightsizing these regulatory imposts. A decision's been made to introduce certain duties and obligations: how can we operationalise that or provide advice about how to operationalise it without a disproportionate cost, risk or new burden on already time-poor, resource-scarce small and family businesses?

**CHAIR:** Thank you very much, Mr Billson, for answering our questions. We've hit our hard marker of 10 pm. You've done very well to answer our questions. You go with our thanks this evening. The committee will resume at 9 am tomorrow. We now stand adjourned. Thank you.

**Committee adjourned at 22:00**