



COMMONWEALTH OF AUSTRALIA
PARLIAMENTARY DEBATES

SENATE

Official Committee Hansard

ECONOMICS LEGISLATION COMMITTEE

(Consideration of Estimates)

WEDNESDAY, 18 SEPTEMBER 1996

BY AUTHORITY OF THE SENATE
CANBERRA 1996

SENATE

Wednesday, 18 September 1996

ECONOMICS LEGISLATION COMMITTEE

Portfolios: Treasury; Industry, Science and Tourism; Industrial Relations

Members: Senator Chapman (*Chair*), Senator Sherry (*Deputy Chair*), Senators Cook, Minchin*, Murray and Watson

**Senator Minchin appointed to 8 October 1996; Senator Ferguson appointed from 9 October 1966*

Substitute members: Senator Crane to substitute for Senator Watson on matters covered by the Industrial Relations portfolio

Senator Coonan to substitute for Senator Watson for the period 16 to 20 September 1996

Participating members: Senators Abetz, Bishop, Brown, Carr, Jacinta Collins, Conroy, Faulkner, Forshaw, Gibson, Harradine, Kemp, Mackay, Margetts, Neal, O'Brien, Ray, Schacht and West

The committee met at 11.58 a.m.

DEPARTMENT OF THE TREASURY

Proposed expenditure, \$2,613,400,000 (Document A).

Proposed provision, \$231,054,000 (Document B).

Expenditure from the Advance to the Minister for Finance, \$7,530,836 (Document D).

In Attendance

Senator Short, Assistant Treasurer

Department of the Treasury—

Mr David Borthwick, Deputy Secretary

Mr Brian Cassidy, First Assistant Secretary, Structural Policy Division

Mr Mike Callaghan, First Assistant Secretary, Financial Institutions Division

Mr Alex Dolan, Acting Assistant Secretary, International Economic Policy Branch

Ms Jenny Goddard, Director, Debt Policy Section

Dr Barry Gray, Acting Assistant Secretary, Economic Conditions Branch

Dr Ken Henry, Acting Deputy Secretary

Mr Tony Hinton, First Assistant Secretary, Investment and Debt Division

Mr Geoff Clark, Director, Manufacturing and Industry Policy Section

Ms Veronique Ingram, Assistant Secretary, Companies and Accounting Branch

Mr John Jepsen, Assistant Secretary, State Finances Branch

Mr Paddy Jilek, Acting Director, International Finance and Development Branch

Mr Andrew Johnston, Director, Portfolio Research Section, Investment and Debt Division

Mr Vernon Joice, Director, Tertiary Industries Section, Investment and Debt Division

Mr Jim Livermore, Assistant Secretary, Infrastructure Policy Branch

Mr Peter Luxford, Assistant Director, Accounting and Finance Directorate

Mr Peter McCray, Assistant Secretary, Debt Management Branch

Mr David Parker, Assistant Secretary, Competition Policy Branch

Dr Martin Parkinson, Acting First Assistant Secretary

Mr Gary Potts, Deputy Secretary

Mr Alan Read, Assistant Director, Accounting and Finance

Mr Mick Shadwick, Assistant Secretary, International Economic Policy Branch

Mr Rod Shogren, First Assistant Secretary, Fiscal Policy Division

Ms Karen Spindler, Acting Senior Adviser, Economic Conditions Branch

Mr Chris Stevens, Director, Debt Finances Section

Ms Nina Woolf, Acting Director, Accounting and Finance Directorate

Mr Jim Wright, Assistant Secretary, Budget Policy Branch

Development Allowance Authority—

Mr Brendan Cox, Executive Director

Mr Peter Evans

Royal Australian Mint—

Mr Ian Hamilton, Acting Controller

Dr Prabir De, Engineering Manager

Mr John Power, Acting Director, Finance

Australian Bureau of Statistics—

Mr Brian Pink, First Assistant Statistician, Technology Services Division

Mr Graham Wauchop, First Assistant Statistician, Corporate Services Division

Mr Tim Skinner, Deputy Australian Statistician, Population Statistics

Mr Dennis Trewin, Deputy Australian Statistician, Economic Statistics

Mr John Dent, Assistant Statistician, Human Resources Branch

Mr Peter Harper, Assistant Statistician, Policy Secretariat Branch

Australian Taxation Office—

Mr Richard Highfield, Second Commissioner of Taxation

Mr John Landau, National Program Manager, Withholding and Indirect Taxes

Mr John McCarthy, Assistant Commissioner, Law Interpretation, Withholding and Indirect Taxes

Mr Mike Cebalo, Assistant Commissioner, Withholding and Indirect Taxes

Mr Tony Butterfield, Assistant Commissioner, Management Processes, Withholding and Indirect Taxes

Mr Bruce Jones, Chief Finance Officer,

Mr Bob Webb, First Assistant Commissioner, Corporate Services
Mr Mano Manoranjan, Assistant Commissioner, Business Tax, Legislative Services
Mr Paul McCullough, Assistant Commissioner, Large Team, Withholding and Indirect Taxes
Ms Cathy Argall, National Program Manager, Child Support Agency
Mr Neil Mann, Assistant Commissioner, Child Support Agency
Ms Sheila Bird, Acting Assistant Commissioner, Child Support Agency
Mr Michael Monaghan, First Assistant Commissioner, Superannuation
Mr Leo Bator, Assistant Commissioner, Superannuation
Mr Murray Hawkins, Director, Research and Development, Superannuation,
Mr David Butler, Assistant Commissioner, Large Business
Mr Rick Matthews, First Assistant Commissioner, Individuals Non-Business
Mr Chris Mobbs, Assistant Commissioner, Client Support Branch, Individuals Non-Business
Ms Catherine McPherson, Director, Parliamentary Business Unit
Ms Melissa O'Brien, Parliamentary Liaison Officer, Parliamentary Business Unit
Australian Competition and Consumer Commission—
Mr Hank Spier, General Manager
Insurance and Superannuation Commission—
Mr George Pooley, Commissioner
Mr Richard Smith, Deputy Commissioner, General Insurance Group
Mr Tom Karp, Deputy Commissioner, Superannuation Group
Mr Roger Frenay, First Assistant Commissioner, Superannuation
Dr Darryl Roberts, First Assistant Commissioner, Policy, Legal and Actuaries
Mr Craig Thorburn, Australian Government Actuary
Mr David Holmesby, Acting Assistant Commissioner, Corporate Services Group
Mr Pat McInerney, Director, Administration, Superannuation Group
Ms Jennie Dean, Acting Director, Financial Management, Corporate Services Group
Australian Securities Commission—
Mr Bill Robinson, Statutory Member
Mr Ian Mackinlay, Director, Corporate Policy and Support
National Competition Council
Mr Ed Willett, Executive Director
Ms Deborah Cope, Deputy, Executive Director
Industry Commission—
Mr Robert Kerr, Commissioner
Mr Dennis Mihelyi, Director, Finance
Department of Finance—
Ms Libby Kalis

CHAIR—I open this public meeting of the Economics Legislation Committee. Today the committee will resume its examination of the estimates of the Treasury portfolio and we will start with program 8, Australian Securities Commission. It is then intended that we will move to program 6, Australian Competition and Consumer Commission, and then back to Treasury subprograms 1.8 and 1.9 which were not dealt with the other night. I understand that that is the preference so that those agencies do not get detained in Canberra for an unnecessarily long period.

Senator SCHACHT—I thought we were going to deal with 1.8.

CHAIR—No, we will deal with the ASC first because they need to get away.

Senator Short—I have only just heard this as well, but apparently the ASC people have come from interstate and we want to make sure that they get heard and can get off.

Senator SCHACHT—You have not made that concession for others, but I understand it is a reasonable thing to do.

Senator SHERRY—Just one other thing. What about the luncheon and dinner arrangements for today?

CHAIR—I am suggesting that, because I have to host a lunch for a Turkish parliamentary delegation, we have a little bit extra time for lunch, from 12.30 until 2 o'clock.

Senator Short—It is okay with me.

Senator SCHACHT—And the dinner break?

CHAIR—Dinner from 7 o'clock until 8 o'clock.

Senator Short—I would have a preference for the dinner break to be from 6.30 to 7.30. Would that be possible?

CHAIR—The problem I have is that the Turks are here.

Senator SCHACHT—Do you want to make it 6.30 until 8 o'clock?

Senator Short—From 6.30 until 8 o'clock, that is all right by me.

Senator SCHACHT—I want to raise one thing, Mr Chairman, as one who participated in an estimates committee until five to six this morning, which is 14 hours non-stop with only an hour's break. Do you have any view, if we do not finish the Treasury today, as to whether we will knock off around midnight and come back another day or are you going to want us to slog it out until the last person drops?

Senator Short—I have had a discussion with Senator Sherry about this. I think your feeling, Senator Sherry, was that you would like to finish Treasury by, at the latest, early evening so that you can get a start on the industry portfolio.

Senator SCHACHT—I meant the whole portfolio. You are not doing the industry portfolio?

Senator Short—I am not doing industry, no.

Senator SCHACHT—I see, sorry.

Senator SHERRY—But I was not aware of this Turkish problem until we just came in.

Senator Short—You are talking potentially about losing three hours—1½ hours at lunch and 1½ hours at dinner time. It is a fair loss.

Senator SHERRY—I agree, but the first I knew about it was when I came in here five minutes ago.

CHAIR—Do we start again at 7.30?

Senator SCHACHT—Do you want to take us on parole—that if you want to be off during that period of half an hour, without an absolute promise, there will be no absolute chaos?

Senator SHERRY—No votes.

Senator SCHACHT—No votes during that period.

Senator COOK—Only partial chaos.

Senator SCHACHT—Only partial chaos, we will promise.

CHAIR—With a bit of work, I can probably get back at 7.30.

Senator SHERRY—We do not want to be going after midnight, so we will be aiming to finish by midnight.

Senator Short—But you are aiming to finish Treasury before then?

Senator SHERRY—If we can, but I did not realise we were going to lose three hours.

Senator CRANE—Chairman, why could we not have an agreement that we only have an hour for lunch? One of us can chair it.

Senator SCHACHT—There is an agreement that if there is a dispute we hold the vote off until you come back.

CHAIR—If someone is willing to act as chair.

Senator CRANE—I am quite happy to step in, otherwise we are going to actually lose three hours and we can limit it to two hours.

CHAIR—All right. So we will have lunch from 1 o'clock until 2 o'clock and someone else will chair the proceedings from 12.30 until 1 o'clock. So 1 o'clock until 2 o'clock and 6.30 until 7.30 are the two breaks.

Senator CRANE—And the same tonight, I will come back and fill in for half an hour.

Senator SHERRY—We will give an assurance that because of your social commitments we will not pull a vote—

CHAIR—Diplomatic commitments.

Senator SHERRY—Social and diplomatic. We will not pull any votes during that time.

Senator Short—To be fair to the chairman, Senator Sherry, if he is hosting an official lunch, it is not a social thing. Could I make a suggestion on how we handle super. At the moment we are going to do 8.1, the ASC, and then we are coming back to Treasury, superannuation, 1.8—

Senator SCHACHT—That is super, is it?

Senator Short—Well, 1.8 includes super. Could I suggest that when we do get back to 1.8 we do the non-super issues first.

Senator SHERRY—That is fine.

Senator Short—And then when we do super we ask the ATO people, who would have been here for super under 4.1, to join forces with the Treasury to get super as a whole out of the way, and then we can go back to the rest of tax after that.

Senator SHERRY—Yes.

CHAIR—We will commence with program 8.1, Australian Securities Commission.

[12.05 p.m.]

Program 8—Business Affairs

Subprogram 8.1—Australian Securities Commission—Executive

Senator SCHACHT—On page 144, subprogram 8.1, ‘Summary of Outlays’, the program costs actual for 1995-96 to the budget have gone up 2.6 per cent from \$33 million to \$34 million. Then you go to staff years. I see there is quite a significant drop. It is a 7.6 per cent drop, from 220 to 203 staff years. Can you give us more detail—I may have missed it here in the description—of the background to the change to those staffing levels? Have I missed something in those pages where there is a description about staffing levels? I cannot see it.

Mr Robinson—There has been a reduction in staffing in the agency. The agency has already undertaken a process of voluntary redundancy. That occurred prior to the end of June of this year. That has resulted in a reduction in staffing of the agency of approximately 180 persons. The budget expectations from here on is that we will need to look at the ability to staff the organisation for the future. Our estimate is that there may be a need for some further reductions in staffing. Those will be on a planned basis, and I am not able to indicate a specific number at this stage.

Senator SCHACHT—I am sorry, I missed that last bit.

Mr Robinson—I said any further staffing reductions would be on a planned basis. We have not determined a particular number at this stage and it will be a matter to review—

Senator SCHACHT—Can you explain to me how the program costs have gone up 2.6? You have said that 180 have gone and that the staff years have gone down 7.6. I accept the fact that this shows it might improve productivity efficiency, that fewer staff are running more program costs, but were the actual functions of programs reduced because of the reduction of 180? It is 180 staff out of how many?

Mr Robinson—The former staffing level was approximately 1,500. The current staffing level is approximately 1,330.

Senator SCHACHT—So what is that—a 10 per cent or a 12 per cent cut in staff?

Mr Robinson—Twelve per cent would be correct.

Senator SCHACHT—Was that cut imposed on you because of the government’s efficiency dividends policy of reduction in numbers or was it because something had changed in technology and the way you do things, et cetera?

Mr Robinson—It was a combination of those matters. The funding of the ASC, because it is a relatively new organisation, had always been planned for an initial start-up and then a reduction in funding over a period of time. That, coupled with the efficiency dividends that were imposed by the former government and the present government, caused us to review our staffing requirements, and we determined that there would be a need to reduce the staffing of the commission. We in fact arranged with the Department of Finance to borrow forward an amount to assist in financing the voluntary redundancy program, and that is in part the explanation for the increase in total program costs. It is anticipated that those will decrease now over the next two to three years.

Senator SCHACHT—So, of the 180 that went up to 30 June, can you separate those out? How many were a result of programs of the previous government or changes because of efficiency dividends of the previous government and how many were a result of the new target set of efficiency dividends, et cetera, by the new government?

Mr Robinson—It would be difficult to do that. We have not endeavoured to try to apportion the staffing reductions in that fashion. As I mentioned, it was a combination of circumstances that brought us to the decision that there would need to be a reduction. I am happy to take that on notice, but I think it would be somewhat difficult to give very direct proportions.

Senator SCHACHT—You got hit with the efficiency dividend of 2½ per cent that the new government put across all agencies?

Mr Robinson—Correct.

Senator SCHACHT—So, because of other things you were thinking of doing, the 180 redundancies cannot absolutely be attributed to the 2½ per cent efficiency dividend?

Mr Robinson—That is correct.

Senator SHERRY—Just before we go on, is it Senator Gibson's intention to answer questions?

Senator Short—No.

Senator SHERRY—Okay. I understand by resolution of the Senate he cannot. I have not encountered before a parliamentary secretary advising a minister. Do you have advice on that?

Senator SCHACHT—At the desk.

CHAIR—I do not believe there will be any difficulty in that. I think the minister can take advice from whoever he chooses. If he wants to take advice from a parliamentary colleague, whether it is a parliamentary secretary or anyone else, I do not see any problem with that.

Senator Short—Within the Treasury portfolio division of responsibilities, Senator Gibson has the primary responsibility for ASC; so I thought it would be sensible for him to be here. We will handle it in accordance with what I understand to be the proper rules.

Senator SHERRY—It is just that there was a considerable debate about my involvement as a parliamentary secretary—not on this issue of sitting next to the minister; we are not objecting to him being here at the moment—and perhaps we could just seek some advice or guidance on this matter for a later time or day. I am not going to object to it now.

Senator Short—Sure. My understanding was that there was not a problem. If there is, we can get clarification on it.

Senator SHERRY—Yes, fine.

Senator SCHACHT—How many more redundancies do you expect in this year?

Mr Robinson—I would find it difficult to fix a figure for that. The commission is looking at a redesign of some programs to, firstly, recognise the ongoing ability to provide service at the local level within all of the regions around Australia, to look at how we might change work practices to recognise that there has been some reduction in staffing already, and, flowing from that, we would then be able to make a more accurate estimate of how many additional staff, if any, it may be necessary to reduce. We are not there yet.

Senator SCHACHT—I am not going to encourage you to speculate, but is it possible to say another 20, another 50?

Mr Robinson—Looking at general budget availability and commitments over the next two to three years, it would be a figure probably a little higher than that.

Senator SCHACHT—Higher than 50?

Mr Robinson—Yes.

Senator SCHACHT—I see. I am talking here about the summary. This is the table with the summary of the outlays, and I just noticed, going through the subprograms, under ‘Regulatory Operations’ on page 147, staff years are down 16.2 per cent. When you go over to the next one at 8.3, it is 16.7. The Companies and Securities Advisory Committee has no change at all, but there are only four staff years.

Mr Robinson—That is correct.

Senator SCHACHT—That is three programs. You have got two at 16, which are the two biggest ones, yet this average staff year comes out at a 7.6 variation going down. Have I missed a table or something else? How can you get an average of staff years down 7.6 when the two biggest subprograms you have—Regulatory—

Mr Robinson—That is correct.

Senator SCHACHT—Sorry, 15.1 is the overall figure on the first page of ‘Business affairs’. That is the consolidated one.

Mr Robinson—That is correct.

Senator SCHACHT—Can you give us some reasons why the Executive was down 7.6, Regulatory Operations went down 16 per cent—I would have thought Regulatory Operations was the nuts and bolts of what the ASC ought to be about—and Information went down 16 per cent? I think the one that has four staff years, which is the Companies and Securities Advisory Committee, is almost irrelevant. There is no change. Why did Regulatory Operations take the biggest hit?

Mr Robinson—Principally because we believe that redesigned work practices in the Regulatory program area will enable us to provide the same level of service in the regional operations with a lesser number of staff in that area. In the first of the subprograms that is mentioned, it includes the office of the chairman, it includes our regulatory policy development officers, and we have made a decision that the amount or the size of the reduction in that area has to recognise the ongoing responsibilities of the people that are doing that work in that area.

Senator SCHACHT—So the actual regulatory performance in all areas will not be reduced as far as the regulatory performance is concerned? All this is going to be achieved by better work practices?

Mr Robinson—Yes. It may lead to a different approach to service delivery in some of the regions, and it may lead to a degree of specialisation in some of the areas of regulatory policies. Takeovers could be a good example of that—the administration of or dealing with takeover applications—

Senator SCHACHT—Could *Hansard* turn the sound up a bit?

Mr Robinson—I was saying that it will lead to a different form of service delivery and an additional amount of specialisation in how those services are delivered. In other words, a team based in one of the regions may assist in the delivery of services through another region.

Senator SCHACHT—You can assure us that so-called corporate crooks are going to have no less surveillance in the regulatory area under the provisions of the act; that the coverage given is not in any way being diminished as far as protecting the public interest?

Mr Robinson—I would prefer to put that in the way of saying that the surveillance programs that we operate will be targeted much more specifically on the basis of information received by the commission from various sources. We think the regulatory effect of the service

delivery will not change. We think that the ability of the commission to detect and enforce breaches of the Corporations Law will remain at an acceptable level.

Senator SCHACHT—When you say that it is more targeted, is that because of your experience? At the moment, by implication, it probably says it is less targeted, but do you think if it is more targeted you are going to get better outcomes in the regulatory function of dealing with people who may be breaking the law?

Mr Robinson—Yes.

Senator SCHACHT—By targeting, you will get a better outcome without diminishing the ability. You will get more success in convictions of people who actually break the law.

Mr Robinson—That is our belief, and we do that through much better developed associations with professional organisations, accountants and liquidators, who supply information. We have an information line which is a toll-free call service that is available for people now to bring to our attention matters that they think might require investigation for breaches of the Corporations Law. We have a better developed intelligence system within the commission to ensure that the information we do get from these various areas can be brought together, and any investigations that flow from those can be targeted much more specifically in relation to individuals.

Senator SCHACHT—About a month ago I re-read Trevor Sykes' book *The Bold Riders*, which is a 500-page tome and a very readable account of all the hanky-panky that a range of crooks got up to, which can only be described as that. Even to a lay person—and I am not an accountant or a lawyer—any definition of the performance during the eighties and early nineties across the board is that the shareholders took an absolute bath. Very few people as yet seem to have been prosecuted or actually have paid the penalty for what clearly was sheer robbery.

For example, in his book he describes how the Bond Corporation took over \$1 billion worth of assets out of Bell Resources and transferred it into Mr Bond's other companies. Bell Resources was a public company and shareholders had invested money. Basically they were done like a dinner. At the stage of writing that book, which is now two years old, Mr Bond had not yet been charged, as I understand it, or he did not know about what happened to Bell Resources, which was clearly a massive fraud. Someone else may have got him on a French picture, but that was unambiguously one of the biggest, if not the biggest, company frauds in Australia's history. The way I read the book, nobody, including Mr Bond and the people associated with the Bond Corporation, has yet been charged. Is that correct?

Mr Robinson—No, that is not correct. Bond and a number of other officers of that company have in fact all been charged with offences that relate to the Bell Resources matter. Mr Bond is due to appear before a West Australian court early next year to actually answer those charges.

Senator SCHACHT—So it has taken four or five years since the offences occurred?

Mr Robinson—Yes. There were a series of investigations prior to the creation of the Australian Securities Commission. A report was commissioned by the ministerial council, as it then was, and was undertaken by a senior South Australian silk.

Senator SCHACHT—Mr Sulan?

Mr Robinson—That is correct. Following that, there was a joint task force formed between the Australian Federal Police and the Australian Securities Commission. It is as a result of the task force investigations that the charges now preferred against Mr Bond have arisen.

Senator SCHACHT—Are you satisfied with the length of time that it has taken since the episodes I have just described in that book—and it is now pretty well public knowledge to those who have had an interest in it—and the laying of the charges? Are you satisfied that the resources and staffing levels that you have had available and still have available are capable of ensuring as far as you can a successful prosecution of the charges?

Mr Robinson—Yes, we are. The amount of resource required now, because the matter is before the court, is essentially a legal resource rather than an investigations resource. The prosecution of those matters is well resourced. One would always like to have these lengthy investigations concluded in the minimum amount of time possible.

Senator SCHACHT—From your point of view and from the ASC's point of view, has the length of time been due to legal delaying tactics by Mr Bond and his associates or because it has taken so long for you to get the case together?

Mr Robinson—Certainly there have been a number of legal proceedings which have affected the length of time required to prepare. It was a very complex set of circumstances. There was a very large volume of written records that were required. There were a number of records that in fact were not available and an investigation of those matters does take a considerable amount of time.

Senator SCHACHT—How long was it between when you got the Sulan report and you laid charges?

Mr Robinson—The charges were only laid last year, so there would have been a gap of three or four years between the Sulan report and the charges being preferred.

Senator SCHACHT—As a lay person, it seems a long time between the Sulan report being available and charges actually being laid.

Mr Robinson—The Sulan report did not produce material that was sufficient to enable charges to be laid. There had to be a further investigation following the Sulan report and that is what took the time.

Senator SCHACHT—Are you able to proceed with the preparation of this case against Mr Bond and others? With the reduction of the staffing numbers, are you still confident you would be able to proceed with a similar investigation and the laying of charges in no more than the time, which in my view is already rather lengthy at the moment? Is the reduction of staffing numbers going to affect your ability to handle such a big and complicated case? It may not be complicated, but it is a big case, and the other side has made every effort to legally delay, et cetera.

Mr Robinson—It is our estimate that we can handle a case of that magnitude. I make the point that we do not actually have one at the present time. If there were to be a matter that required that degree of investigative resource, then it would be a matter of the commission ensuring that the investigators that were required were made available. That may require them being taken off other projects to be placed on to a very large investigation. But I stress again that we do not actually have one at the moment.

Senator COOK—Can I ask you a question on this subject, too. According to the Australian Stock Exchange, the percentage of Australians who are shareholders—and I am relying on memory now—rose from about 15 per cent in 1990 to about 20 per cent in 1994, the biggest rise being in Western Australia, which is 28.8 per cent, and the lowest rise being in Tasmania, which is 8.8 per cent. This means that more Australians than ever are shareholders and rely

on regulation of companies for investment. Are you able to verify that change in broad terms? Is that right?

Mr Robinson—In broad terms, yes. Floats such as the Commonwealth Bank, for instance, have brought a much larger number of small shareholders into the market.

Senator COOK—And that is not counting the activities of people who are members of superannuation funds who are arms-length shareholders in the investment properties of those funds?

Mr Robinson—Yes. They would not be shareholders in the sense that the Australian Stock Exchange is using that term.

Senator COOK—No. They would be stakeholders in the shareholding entity of which they are a member.

Mr Robinson—Yes.

Senator COOK—Obviously this places a greater responsibility than ever—and that is not to say that if the percentage is small the responsibility is less—on the Securities Commission. I see in your report on page 145, under the national corporate regulation scheme, you say: However, alternative means of delivering core business programs will be necessary.

That is your concluding sentence, commenting on the fact that you have been able to maintain service levels, despite the reduction in outlays, according to you. Did the government ask you to report on those sorts of issues prior to it making a decision to cut appropriations?

Mr Robinson—I think in common with all agencies we were asked to speculate on the likely effect of budget reductions on service delivery in general terms. Yes, we provided some advice along those lines.

Senator COOK—What did you say?

Senator Short—The discussions, as you are well aware, Senator Cook, between agencies or departments or government in relation to policy matters of that nature are not ones that are normally canvassed in committee. I do not think Mr Robinson should feel obliged to—unless there is anything in particular he wants to say—disclose, indeed it would not be appropriate to disclose, the nature of negotiation or discussions between government or agencies on such a matter.

Senator COOK—Then this question might be to you, Minister. There is a way to trade off when an across-the-board cut is made in that the needs of particular agencies in an across-the-board cut vary—some can do it, some cannot. Did the government actually look at the impact on the Securities Commission of—

Senator Short—Yes, it certainly did. First, the government believes the ASC is well funded to carry out its responsibilities as corporate regulator. There were funds allocated this year of \$122.5 million. The reduction in ASC funding is as a result of the review of ASC operations. It was undertaken by my colleague the parliamentary secretary, Senator Gibson, following extensive consultations with business and professional communities. Those communities of course included the ASC.

That review indicated that productivity gains for the ASC can be obtained from improvements in work practices, the greater utilisation of information technology and increased recruitment of staff with market expertise from the industry. We believe that through ‘working smarter’ the ASC will be able to absorb the reductions in staffing and provide a better service to the business community while maintaining an appropriate level of investor protection.

To improve services to the business community, the ASC, in consultation with the Treasury, will be reviewing the ASC database to see how it can be enhanced to make it more useful for business. As well, the ASC, in consultation with Treasury, will be undertaking a review of its Information Division to see whether benefits could be derived for business from greater private sector access to the database.

Above all, we are committed to ensuring that the ASC does provide an appropriate level of regulation as well as service to the business community throughout Australia. We are very confident, following the discussions that have been held, including with the ASC, that the funding provided will certainly be sufficient to enable it to carry out fully its responsibilities in those various areas, including in particular the very important one that you are talking about—the regulatory area.

Senator COOK—You do accept, though, that investigatory work is labour intensive?

Senator Short—Mr Robinson will be better able to answer that than I, and I will ask him to do so. I can really only repeat that we regard the area of investigation as a very important one, as do you—although in making that point I do draw the committee's attention to the fact that most of the incidents that have been asked about up to date as to whether there were delays in processing investigations and so on all occurred at a time when Labor was in government.

Having made that point, I would accept the view that Labor as well as the current government are very conscious of the need for full appropriate regulatory compliance and investigatory operations and that the ASC is well equipped to continue those, I think as Mr Robinson said, at an acceptable level. In terms of the labour intensiveness, Mr Robinson may have something that he wishes to add.

Mr Robinson—In general terms, I agree with the proposition. It is labour intensive and some of these investigations are quite complex. It is a matter of ensuring that legal advice is available at an early stage of the investigation so that appropriate lines of inquiry can be identified and pursued. Perhaps the overall scope of the investigation can find a way to enable it to be completed as soon as possible.

Senator COOK—I take the political point that Senator Short made, which is true, that these investigations into the Bond case occurred when Labor was in government. The point is that you had greater resources then. Even if it was too slow by an objective measure, then with less resources in the future, if a case like this cropped up, it would be slower still and even more perhaps objectionable in the amount of time it takes to complete it. I just say that in relation to what Senator Short has said.

If I can just take it one step further, I noticed that the new government has continued the push which we started—which I approve of, I have to say—of looking at not so much a second board but a more deregulated listing procedure than the ASX, a Nasdaq version for Australia. This will impose even more responsibilities on the Securities Commission. When you were looking at your future staff needs and the accommodation of the cost cutting that the government is engaged in, did you do any projections as to what the extra responsibility you might have will be when these measures come to fruition?

Mr Robinson—Not in terms of trying to allocate a particular resource to that function. We have a well established policy statement which indicates the requirements of any such organisation to obtain either an exempt stock market listing or other form of stock market listing. That certainly does require some ASC input. In general terms, our expectation at this stage is that the resource we have will be sufficient to ensure that there is no delay by ASC

officers in enabling such an exchange to become either listed or to achieve the exempt market status.

Senator COOK—When you added to Senator Short’s answer of a moment ago, you made the valid point that quite clearly getting legal advice early on in an investigation is vitally important. What happens in the event that your funding does not permit you to get legal advice, that you are out of budget? What happens then?

Mr Robinson—Most of the legal advice that the ASC operates on is its own legal advice. We have legal officers in all of the regions and they are the ones that are principally providing that advice. It is not a question of having to buy in advice in that sort of context.

Senator COOK—But in a sense of an investigation you would check your advice by buying in, would you not?

Mr Robinson—Yes, depending on the size of the investigation and the stage reached. On occasions we do.

Senator COOK—So what happens if you run out of budget?

Mr Robinson—It has not happened yet. We have been able each year to ensure that enough money is available to obtain the amount of legal service that is necessary. The amount that we have allocated within the commission this year we believe will remain sufficient for that purpose.

Senator COOK—It has not happened yet, but your budget is lower in the foreseeable future. So the question is a reasonable one: what would you do in those circumstances?

Mr Robinson—It would be a matter for assessment and discussion with the government.

Senator Short—It is a hypothetical question. If something absolutely untoward and unexpected occurs in any area of administration, the government would have a look at it at the time.

Senator COOK—Are you able to say, Senator Short, since your government is more identified with the big end of town than ours—

Senator Short—I am not too sure about that, Senator Cook.

Senator COOK—If I may be able to complete my question.

CHAIR—I think actually the reverse—

Senator Short—I do not think the big end of town would necessarily agree with that seriously in terms of political involvement.

Senator SCHACHT—Who is giving you all the money for the election campaign, Senator? They certainly gave you more money than they gave us.

Senator COOK—Let us have that debate in the chamber.

CHAIR—That has nothing whatsoever to do with this.

Senator SCHACHT—It is a prima facie case of evidence, I would have thought, of who they want to get elected.

CHAIR—If you keep going, they will give us more money.

Senator Short—I think it is for debate on another occasion, but let me very strongly contest your proposition, Senator Cook.

Senator COOK—I hold to my proposition, doubtless you will hold to yours, and we will debate it continuously on the public platform and in the chamber. But what I am asking is this:

in the event of a serious investigation, and these matters—take the Bond example—involve big companies and big money and highly skilled lawyers to hide and conceal their activities, can the government give this committee an unequivocal guarantee that it would not starve the Securities Commission of funds which might inhibit any such investigations?

Senator Short—I think what I can give a guarantee on, Senator Cook, is that the government is very conscious indeed of the need for adequate resources for the type of situation that you are raising as a hypothetical possibility. We believe, and I think the ASC believes, that the funds that have been allocated to the ASC this year are sufficient and appropriate for them to carry out their activities in the way that the Australian community as a whole, and the parliament, would wish them to do. What you are raising is a hypothetical point. In the event that something cataclysmic happened, and the situation changed in a totally unexpected way that none of us at this stage might forecast, then of course government would look at that situation at the time, within the context of wanting to ensure and to have been determined to ensure that the ASC has the capacity to provide an appropriate level of regulation and investigatory activities.

Senator COOK—I take it that that is a yes.

Senator Short—As I say, you are raising a hypothetical situation and obviously, in a hypothetical situation, until you know what you are shooting at, you cannot give a definitive answer other than to say that, first, we believe that the ASC is appropriately funded to undertake the very important responsibilities and tasks that it is charged with; and, second, if there were a major change in the situation through some unforeseen event that might bring your hypothetical approach into reality, we would look at it at the time. But we would certainly continue to have the requirement and the intention to ensure that the ASC remains able to carry out its activities at the acceptable level. Quite frankly, I do not think that you can be more specific than that in attempting to answer what is at this stage a hypothetical question. We would not expect it to be a likely situation to arise.

Senator COOK—I am obviously looking for straightforward approval, but I accept that you have got to qualify it, and I qualified my question. But you do accept, though, do you not, Senator Short, that it is a reasonable concern for people looking at the optics of a reduction in funding to a key regulator like this? To the increasing number of people who are shareholders of an increasing number of companies, a reduction in funds and a reduction in personnel may well appear to be crimping the role of the regulator, and that is an issue for the efficacy of regulation per se. It has to be addressed.

Senator Short—I do not accept your proposition, Senator Cook, that a small—and it is a relatively small—reduction in funding reduces the ability or the capacity of an organisation—

Senator COOK—No, I am not saying that it does. The Securities Commission has assured us that it will not, and we will see. What I am talking about is the optics of a cut: how it appears and the perceptions that people have. In this area, confidence about the strength of the regulator is an important consideration.

Senator Short—I agree with that. Yes, I agree that the confidence that one has as a community in the corporate regulator—the corporate watchdog—is critically important. I believe that there is a high level of confidence in the ASC. I believe that its track record, particularly over recent times, is one of the reasons for that. For example, if I might just point out to the committee, in its 1995-96 highlights, its draft report points out that \$16 million was recovered, \$40 million in compensation orders was obtained and \$40 million was safeguarded for investors and creditors. Nineteen people were jailed on ASC criminal charges and the ASC

won 32 of 41 major cases. There are other highlights as well, including the fact—this is an important point as a general point, Senator Cook—that there has been a 60 per cent productivity gain for ASC company database operations since 1991. I think that reflects a lot of other developments and improvements that have been occurring within the ASC.

Productivity is improving, the ‘work smarter’ principle is very much to the fore and the ASC is unquestionably getting better at regulation and prosecution as time goes by. That, of course, enables it to operate within any particular level of resources more efficiently than was formerly the case.

Senator COOK—What arrangements or what funding has the ASC set aside to promote its watchdog role to its constituency as a result of these cuts and staff reductions?

Mr Robinson—We have not identified a particular amount of money. We have conducted a number of campaigns, Senator. You may recall that in the month of June we conducted a campaign inviting people’s attention to the downside of the tax driven investment schemes. We have recently—

Senator SCHACHT—Tax derivative?

Mr Robinson—Tax driven investment schemes. We have recently also run a campaign inviting people to give us information about what we are calling the ‘Phoenix company’ situation, where a company will fold and then rise again with the same people involved and many of the assets transferred. Those are campaigns that we do from time to time. In any one year, we believe probably three of four campaigns of that sort will help to keep the public perception of the ASC’s role at a reasonably high level.

Senator COOK—But, in the face of staff cuts and funding cuts, have you not made any arrangements specifically to address investor confidence in the role of the ASC because of those changes?

Mr Robinson—We have a media relations unit within the commission, and in any one week we would probably issue anywhere between six and 15 press releases advising of things that have occurred—prosecutions and other actions undertaken by the ASC. That does not always make front page, as everybody would know, but it does get a significant amount of media exposure. Last year the figure precisely spent in that area was about \$400,000.

Senator COOK—Page 145 reads:

However, alternative means of delivering core business programs will be necessary.

Does that mean that you have not worked out yet how to deliver core business programs in the face of staff and funding cuts or that you are working on them and have not yet resolved how you will do it. What does it mean?

Mr Robinson—As I pointed out to Senator Schacht a moment ago, it is the delivery of service available at a local level but perhaps occasionally using the specialist teams of specialist officers who will not always necessarily be located in that region. By use of the video equipment and telephones which the commission has available, we are able to provide an expert level of service on a national basis. But, as I said, it will not necessarily mean that each ASC officer providing that service will be located in each region.

Senator COOK—So if someone has a concern they go along and have a cosy chat to a television screen?

Mr Robinson—That is not what we mean. There may be, as part of a discussion with the ASC, several ASC officers linked by video, but there would be local officers involved in that

at the same time. So it is not talking to the machine in the sense that you are putting the question to me.

Senator COOK—It says ‘alternative means’; you have referred to one of them. At what state of consideration are you? You talk about this in a way in which a fair reader of that sentence would wonder whether you are in a state of readiness to actually accommodate the changes that you have made, given that it says that they ‘will be necessary’, which is future tense, not present or past tense.

Mr Robinson—We are still developing a business plan for the next several years on how service will be delivered in that time. The budget allocation for this year is sufficient to cover the staffing at current levels within the organisation, so there is some time to look at how we might develop those plans. We expect that within the next three months we would have developed the areas where change might be necessary, and that will involve ourselves really looking at the way we do things; in general terms, how we deliver service and deciding whether there are more effective ways to be able to deliver that same level of service. But we do not have all of the detailed plans developed at this stage.

Senator COOK—So at this point you are not certain about your future capacity to deliver in the face of further reductions in staff or funding?

Mr Robinson—With the measures that we intend to undertake, we opine that we will be able to continue to deliver the service at an acceptable level.

Senator COOK—You think you can, but you have not done the work to say that you can, have you?

Mr Robinson—No, we are doing that at present.

Senator MURRAY—Mr Robinson, targeting means leaving some things out and focusing on other things. Has your policy of targeting been driven by a lack of money or people?

Mr Robinson—No, Senator, it is a question of doing things better, and the development of better targeting techniques is something that has been occurring within the commission over the last two to three years in any event. It may perhaps be given an added focus because of the amount of funds now available to the organisation to do that, but it has not been driven simply by the availability, or the lack of availability, of funds.

Senator MURRAY—It is probably true that any regulatory agency never has enough funds. The ATO is one agency which has never had enough to pursue all its targets, and it has adopted the policy of an annual announcement of particular sectors of the market that it is going to audit or pursue intensively. Is it your intention to pursue a similar policy to that of the ATO and to target sectors of the corporate world intensively?

Mr Robinson—In some senses we are doing that already. Our community response program looks at areas such as insolvent trading by directors within companies and it looks at the phoenix company situations that I mentioned. That is an ongoing and constantly targeted program within the commission. Otherwise, we have not selected a particular area of activity to look at, with the possible exception of the building industry where the phoenix company situation tends to exist at a greater level. In that sense we are cooperating and consulting with state industry organisations and others to get more information to assist us in targeting in those sorts of areas.

Senator MURRAY—Would you concede that the ATO approach has been pretty effective and may well be appropriate for your agency, or is it inappropriate?

Mr Robinson—I am not sure that I could make that assessment. I think each agency has to decide what its priorities need to be after consultation and indications of areas of community concern and target those accordingly.

Senator MURRAY—It would be safe to assume that you would concede that you cannot and have not covered every possible area where you would like to be active. In this process of selectivity and targeting, what significant areas of corporate regulation have you insufficient money or people to take on at this stage?

Mr Robinson—We have not identified any area where we believe that our ability to provide a degree of regulatory supervision is inadequate. As you say, there are never enough resources to look at every matter that is raised with the commission. We have a set of criteria which are applied in relation to complaints and potential investigations which is designed to ensure that there is a proper priority given to the allocation of resources to particular matters.

Senator MURRAY—So there is no one area of corporate regulation which you, as an agency, believe you are neglecting as a result of a lack of money or people?

Mr Robinson—Correct.

Senator SCHACHT—Mr Robinson, I notice that your annual report talks about Coles Myer, an issue of corporate governance and it is about the so-called Yannon case. In the description you give you say there was about an \$18 million loss to Coles Myer as a result of these transactions, which are called the Yannon transaction, and then in a little box you say:

The ASC released new information about the Yannon transaction to the board of Coles Myer Ltd. The board was able to use transcripts of evidence from the ASC investigation to negotiate a fair and adequate settlement of its claims. ASC National Enforcement Coordinator, Andrew Procter, helped in the mediation which recovered \$12 million for the company's shareholders.

That still means the company shareholders lost \$6 million. Is that correct?

Mr Robinson—Senator, that is a commercial decision by Coles Myer as to the amount that they regarded as acceptable as a settlement of that action.

Senator SCHACHT—But the shareholders who own the company did not get back the full \$18 million, they got back \$12 million, so the shareholders still lost \$6 million.

Mr Robinson—My recollection is that the chairman of the company indicated publicly the reasons why they regarded the settlement as adequate in the circumstances, and that is their judgment.

Senator SCHACHT—That is their judgment. Do you think it is in the judgment of the ASC that you should say it is reasonable for the shareholders to get back two-thirds only of what was clearly Coles Myer money?

Mr Robinson—It reflects an agreement, to some extent, with the remarks of the chairman in as much as the action occurred a considerable time ago, there would have been significant legal costs involved—

Senator SCHACHT—It was within the statute of limitations. It was still within all of that area, was it not, even though it occurred a few years ago?

Mr Robinson—Only just.

Senator SCHACHT—Whether it is only just, it was still within the statute of limitations?

Mr Robinson—That is correct. But we are talking here of a civil action being taken by the company, not an action being take by the ASC.

Senator SCHACHT—That is the next point I come to. A civil action was taken. If somebody walked into a bank and robbed the bank of \$18 million, there would be a pretty sensational headline about the fact that there was a direct robbery and someone lost \$18 million and someone went into someone else's pocket. But this is company structure related and these things are often too complex for lay people like myself to work through—and that is why we have the ASC. In this case, shareholders still took a loss of \$6 million. You say it was a civil action. Did the ASC, at any stage, think of making an investigation that could lead to criminal charges being laid? Because, clearly, the shareholders have still lost \$6 million.

Mr Robinson—The ASC's investigation in this matter is not concluded.

Senator SCHACHT—It is not concluded?

Mr Robinson—That is correct.

Senator SCHACHT—That does not say that.

Sitting suspended from 1.00 p.m. to 2.08 p.m.

CHAIR—I welcome back the Assistant Treasurer, Senator Short, and officers from the Australian Securities Commission. We are still considering subprogram 8.1 of the Treasury portfolio. Any further questions?

Senator SCHACHT—Before we broke for lunch, I was asking Mr Robinson questions about the annual report which gives details of the so-called Yannon transaction with Coles Myer. It says in the report that the ASC participated in the mediation process which recovered \$12 million for the company shareholders, but this still leaves \$6 million not recovered for the shareholders. Mr Robinson, you said that the ASC had actually been carrying out its own investigation into Yannon/Coles Myer. Without in any way prejudicing your investigation, can you give us any more detail of the nature of that investigation?

Mr Robinson—I do not believe I can. It was to look at all of the circumstances which surrounded the transactions which were reported. That investigation is close to being completed. If there were to be any criminal action flow from any of those matters, that would be a matter for decision by the Director of Public Prosecutions based on the result of the inquiries that the ASC has undertaken to date.

Senator SCHACHT—The investigation started as a result of the information received about the so called Yannon transaction, did it not?

Mr Robinson—That is correct.

Senator SCHACHT—Was this a major investigation by the ASC in terms of resources put in, staffing levels et cetera?

Mr Robinson—We would regard it as a major investigation, yes.

Senator SCHACHT—Can you give us an idea of what you think the cost of that investigation would be?

Mr Robinson—No, we have not endeavoured to cost that but in terms of ASC staff involvement, there have been up to 10 people involved over a substantial period. There has been counsel employed to provide advice to the ASC and to assist in some of the examinations that were undertaken by some of the people in relation to those transactions. I cannot put a dollar amount on it, but it would be significant.

Senator SCHACHT—Do you put a dollar amount on any of your major investigations? Say at the end of the process, you have got it through a court and there has been a successful

prosecution at that stage, for your own records or your own assessment, do you try and put a value on the cost in staff hours? Do you actually do a cost assessment for the commission?

Mr Robinson—No, we do not formally assess the total cost of an investigation. We do assess and have information available to the ASC on the external costs of an investigation, if I can put it that way, which would—

Senator SCHACHT—You may want to provide this in camera or in confidence because it may affect an outcome of your investigation, but can you provide to the committee information on what those costs would be for the Yannon case?

Mr Robinson—For this particular matter?

Senator SCHACHT—Yes, and I will also ask for information on the Bond one as well. It seems to have been going on now for five or six years. I think the public might be interested with something like the Bond case where charges have now been laid to know what it has cost the Australian taxpayers to bring this case to justice.

CHAIR—Can I just point out before the officer answers that question that this committee is not empowered to receive commercial-in-confidence information. It would have to go to a legislation committee sitting as a legislation committee, but not to an estimates committee.

Mr Robinson—I am happy to take it on notice on the basis that we will look at what information can be made publicly available and I will bring it back to the committee.

Senator SCHACHT—Senator Cook has just pointed out that he is on the securities commission parliamentary committee. Obviously you have the power to provide it to that committee, so some members of parliament will have access to it if it is in confidence.

The way you have described it to me, would the Yannon case investigation be in size as big as the investigation in cost and resources as the Bond investigation?

Mr Robinson—No, the Bond investigation was larger in that it was a task force involving both Australian Federal Police and ASC officers. It occurred over a longer period so that the total cost would have been significantly larger.

Senator SCHACHT—You said that up to 10 people may have been involved at any one time doing the investigation in the Yannon case. How long has the Yannon investigation by the ASC been going on?

Mr Robinson—It commenced in September last year.

Senator SCHACHT—And you are now getting close to a conclusion?

Mr Robinson—That is correct.

Senator SCHACHT—With the amount of people you have put into it, would that imply that when you were pulling all the information together you were looking at a much broader range of the activities of Coles Myer?

Mr Robinson—No. The investigations that we undertook related only directly to the transactions that had been the subject of the complaints in the first place.

Senator SCHACHT—I raised this before lunch, but I did not get a chance to follow it through. I refer to this issue where you were mediating a settlement for the shareholders, which was \$12 million out of \$18 million that had been lost. Could it have in any way prejudiced your own investigation into what the Yannon transaction was about?

Mr Robinson—Our involvement in that context was on the very clear understanding that it would not prejudice, in any sense, any action that the ASC may take.

Senator SCHACHT—Can I now move to another case which I think is even more controversial. It is the famous case that has been going on for some time with the National Crime Authority, vis-a-vis Elders, IXL and Industrial Equity. It involves some well-known personalities in Melbourne, one of whom barracks for Carlton. I really do not hold that against him, as a Crows supporter, but I do not think we should get sidetracked into that prejudice.

People have raised the question of whether the NCA was the appropriate body to investigate this transaction where people claim some \$60 to \$70 million in a share transaction was a loss to the shareholders of particular companies. At any stage during that period did the ASC provide advice to the NCA?

Mr Robinson—No, the investigation was taken entirely by the NCA, using its own powers under its own act. The ASC had no involvement in that investigation.

Senator SCHACHT—There was a lot of publicity about the case and it was written up over a number of years. Even before it got to court hearings, there were press comments and stories about it, as there were on a whole range of these activities of *The Bold Riders*, as Mr Sykes describes them. Irrespective of the NCA's involvement, or whether you knew they had even been involved, did the ASC think that this might be a case, in view of the transaction that the shareholders' claims lost close to \$70 million, that ought to be investigated by the ASC?

Mr Robinson—The history of this matter is that a reference to the National Crime Authority was given by the former National Companies and Securities Commission, the predecessor of the ASC. There had been some public hearings conducted by the NCSC once the reference was made to the National Crime Authority. The ASC had no involvement at all in any of those proceedings.

Senator SCHACHT—But, once you succeeded the NCSC, you did not think it was necessary as a new entity to follow through; you just dropped any interest in the case.

Mr Robinson—I would not put it in those terms. On the basis that inquiries were being made by a law enforcement agency, the ASC was not invited to, nor did it choose to seek to, have any further involvement in those particular circumstances.

Senator SCHACHT—If there is speculation—I will put it no higher than that—that certain shareholders lost \$60 to \$70 million because of the supposed transaction and trading in shares, would there normally be enough interest or speculation around, to say the least, in the public domain and semi-public domain, to create an interest for the ASC now to have a look at such a case where people may claim that shareholders lost \$60 to \$70 million?

Mr Robinson—If a matter which had circumstances approaching those was raised with the ASC now, yes, the ASC would make inquiries.

Senator SCHACHT—There is another thing I want to raise. The case was thrown out by the judge on the basis of how the NCA prepared their evidence, about their powers and how they defined them and so on and that most of the evidence was inadmissible. But since then there has been some press publicity—speculative, I certainly emphasise—that the major shareholder, Fosters Brewing, may take a civil action to sue for their loss of the \$60 million or \$70 million. Would that be enough evidence now, were a company that may be considering civil action to find out where their \$60 to \$70 million went, for you to have an interest?

Mr Robinson—I understand that civil proceedings have already commenced in relation to that matter.

Senator SCHACHT—So it is more than speculation. It is by Fosters Brewing?

Mr Robinson—Correct.

Senator SCHACHT—And that in no way triggers your interest as the ASC? If a major company is willing to put up with what may be a very costly civil action but for a large amount of money, that would not attract your attention normally?

Mr Robinson—It may if circumstances were different. In these particular circumstances, the fact that another law enforcement agency has already made an investigation into this and there are civil proceedings being taken by one company against another individual or other companies, there is no reason in our view why the ASC should be making any further inquiries in relation to those matters.

Senator SCHACHT—So it makes no difference to you that the NCA case was thrown out on the definition of what was legally admissible as evidence and that the people who were charged were found neither guilty nor not guilty? The case was dropped because the judge ruled that most of the evidence that the NCA had was apparently inadmissible, and the evidence actually was not tested. That does not bring you to a view that, under the powers the parliament has given you, there may be a case that you could sustain that the NCA could not sustain?

Mr Robinson—The ASC certainly is not of that view. Without direct legal advice, I would venture a tentative opinion that, if we were to endeavour to take further proceedings at this stage, injunctive proceedings against another investigation covering essentially the same circumstances would very quickly occur, and that would be likely to be successful.

Senator SCHACHT—I suspect that the way our legal system works you are probably right. But doesn't that then lead to this other issue: if you have deep pockets and already have \$60 million stashed away or got it from other sources, in one form or another, you have a major advantage in protecting yourself by using the legal system as we know it to take out injunctions, delay hearings, et cetera over a long period and hope that other people lose patience and get exhausted by it, including Commonwealth agencies?

Mr Robinson—We may all speculate on that. The ASC operates within the law, as it obviously is obliged to do. That is the only comment that I can make.

Senator SCHACHT—I think it goes back to the old hearing when I was on a committee of this parliament about the cost of justice. People can threaten to take out injunctions and so on. An ordinary citizen who did not have access to large resources is in no position to take that sort of action to protect themselves whereas if you do have access to large amounts of money, however you have gained it, you are able to defend yourself.

Mr Bond, over the years, has transferred a lot of money to lawyers and QCs around this country as he has tried to keep himself from being charged. It took a lot of patience. So far you have not been successful on one case, but on the painting issue you have. I do not think anybody else in Australia who was similarly charged would be able to defend themselves and use all of those devices unless they had access to millions of dollars.

Mr Robinson—Rather than making a general comment about what we all acknowledge to be the high cost involved in the prosecution or defence of legal proceedings, I do not believe I can go beyond that.

Senator COOK—Do you think we will ever see Christopher Skase back in Australia?

Mr Robinson—I think it highly unlikely.

Senator SCHACHT—What about Abe Goldberg?

Mr Robinson—Warrants remain in existence for both of those individuals. They will remain unless and until, in respect of the Skase matter, the Australian government brought extradition

proceedings which were unsuccessful. So far as Goldberg is concerned, he is in a country where there are not extradition arrangements which enable us to take any proceedings at the moment. Until those circumstances change, there is really no further action that we can take.

Senator SCHACHT—I believe the law has now been changed about passport issuing. Mr Skase, who had hearings through the liquidator of his company, was able to still get a passport to leave the country. I think the law has now been amended so that he would not have been able to get his passport unless the judge approved. Is that correct?

Mr Robinson—I am not expert on those matters. The passport which enabled him to travel overseas was returned to him by, I think, a liquidator, in whom the court had vested the custody of that passport.

Senator SCHACHT—I think what some people might call the laxity is no longer available because of an amendment that the parliament put through in the last two years. On this issue of law, does the ASC have any view about the experience you have had with the Bond case, which has taken five or six years? Are there any areas about the proceedings of the law that you would want to see changed so that the charges could be heard more expeditiously and the issues resolved one way or the other?

Mr Robinson—Yes, there is always a need to balance the desire of a regulator against what is reasonable, natural justice for those who might be the subject of an investigation. We have put in our submission to the Wallace committee a list of matters where we think law reform would actually make more effective the enforcement particularly of the ASC but perhaps other regulatory organisations as well.

Senator SCHACHT—I mentioned earlier in my opening remarks on this area a recent re-reading of Trevor Sykes' 600-page book *The Bold Riders*. After the sorry, sad sagas are outlined—of how tens of billions of dollars in this period were lost through stupidity in some cases, and in some cases disappeared through criminal action—he made a few suggestions, and I just wondered if a couple of these would have any support from the ASC. For example, he said:

When a major company collapses, or when a company collapses under scandalous circumstances or holding large sums of public money, an investigation would be held. It would be carried out by a judge or QC with expert assistance from accountants and businesspeople. The purposes of the investigation would be (1) to discover the causes of the collapse and whether any crimes had been committed, and (2) to determine the claims of creditors and shareholders against the company and its directors. The investigating judge—

I emphasise the phrase 'investigating judge'—

would have the power to make criminal convictions and findings of civil liability. The criminal and civil findings would be subject to normal appeal proceedings as if they had been made by a Supreme Court.

This would be a vastly more efficient procedure than the present one. By combining the investigatory and judicial functions a great deal of time and expenses would be saved. By having the investigative tribunal staffed by experts we would—one hopes—be more likely to reach a just conclusion. By combining the civil and criminal jurisdictions we should eliminate the possibility of conflicting civil and criminal judgements being handed down.

He goes on a bit later to say that this means the loss of a jury trial, stating:

Would the tribunal be a kangaroo court? Any suggestion that would make the legal system work more quickly and certainly is usually attacked with this pejorative phrase. It is difficult to restrain the suspicion that lawyers have a vested interest in prolonging cases as far as possible, and making their outcomes as uncertain as possible, so that the maximum number of lawyers can be kept in work.

I suppose for those of us who were on the high cost of justice committee back in 1989-90, the last paragraph rings a very loud and clear, true bell on the evidence we had before us. I would say the general principle he is outlining is more like an inquisitorial system of western Europe. Would you see that there are advantages for the ASC in having such a system?

Mr Robinson—There may be advantages, Senator, but being realistic about it I do not see any prospect of the law being amended to provide for that at the moment. A form of special investigation existed under the legislation which the Corporations Law replaced, the old cooperative scheme. That meant an appointment of an eminent barrister usually to undertake a special investigation into a company collapse or a similar circumstance. It is fair to observe that that was not a happy procedure, that those investigations tended to drag on for a very long time, that they were often not conclusive in producing evidence which enabled a prosecution to follow from those.

I believe that, when the Corporations Law was enacted, the decision was made quite deliberately not to continue that form of special investigation. Now that was not presided over by a judge; it was presided over by a legal practitioner. But it had at least some of the elements that you have mentioned in the extract from the book there.

Senator SCHACHT—Apart from some tinkering and so on, and although I have not seen your submission for the Wallace inquiry, you by and large believe the present legal structure is appropriate?

Mr Robinson—We have submitted a number of ways in which we think our effectiveness can be improved by amendments to the law, but that is not a wholesale change of direction in the sense that you have mentioned in the extract that you have read there.

Senator SCHACHT—I think most ordinary Australians reading the book would have thought the suggestions of Mr Sykes are extremely modest in the extreme compared with the skulduggery that went on for a decade where ordinary Australians were robbed blind as shareholders.

Mr Robinson—This parliament, Senator, has inquired into the investigative powers of the ASC. That was a reference dealt with last year, I believe. The government is currently considering a report and whether any changes ought to be made to the law to take account of that. It is fair to say there is a divided view about how strong or intrusive the investigative powers of an organisation such as ours should be.

Senator SCHACHT—Do you think that ordinary Australians would, on balance, find it too intrusive that someone who had pinched a billion dollars got away with it? When you see the Abe Goldberg case for example, it is astonishing how much he got away with for so long and he got out of the country. A large numbers of shareholders took an enormous loss and, worse than that, a lot of people lost their jobs in factories that he acquired.

I have to say if I were a textile worker put out of business, rather than the niceties of the final point about a jury trial and a judge and so on, I would be a bit more interested in getting a bit of justice for those who suffered an enormous amount. I have been through these committees where these arguments are almost like 'How many camels can you put through the eye of a needle?'—meantime the barbarians are out there collecting billions off ordinary Australians. It seems to me that sometimes we lose; in the regulatory area we cannot see the wood for the trees, the trees from the forest.

I have to say Mr Sykes has done probably the most admirable job of any individual in putting this together in one report—I only wish an Australian parliament had done this—since

the Poseidon inquiry by the former Senator Rae from Tasmania in the 1970s exposed the collapse and the rorts going on then. A decade goes by and another great heap of rorts occur in the 1980s. As Mr Sykes says, it appears we have amnesia about every 10 years when the cowboys appear again, collect the money and disappear. Our regulatory functions—including, I have to say, parliament, we can be criticised—are always a decade behind while these cowboys rip and plunder ordinary Australian citizens. My final comment is: how could you have confidence in investing in shares on the Australian Stock Market when you read the examples that took place here where most of them got away with it?

Mr Robinson—I believe that is a matter for individuals to make a judgment about. It is the judgment of the ASC that the lessons of the 1980s, if I may put it that way, have been learned and we believe that in general terms business in this country is certainly more ethical than it was in times gone by.

Senator SCHACHT—If I may interject, they said that in the 1970s after the Rae report and within a decade they were back into it again.

Mr Robinson—I take that as an observation rather than as a question. I do not think I can—

Senator SCHACHT—It is an observation, but it is an observation of frustration. I am not making these points in a partisan way, Labor versus Liberal or anything like that. I just think the parliament could be criticised that we have not taken tough enough action and we always fall down on a particular issue of civil or human rights—justice of an individual—when the individual is trampling over the livelihoods of tens of thousands of Australians.

When you read of the collapse of Estate Mortgage, how many ordinary Australians lost their savings? One bloke got a two-year gaol sentence. Some people might say he should have gotten life because he destroyed the lives and livelihoods of so many. Look through this extraordinary list of 17 or 18 chapters and, at the most, some people got two years and then got out on good behaviour. A lot of them escaped and are still waiting. All the best to you in your Bond case, because I think that, at the very least, would be some example that you cannot get away with it. When you read this it is a bit humiliating for our country to have these characters, and every decade they get away with it again. I have said my piece about that.

I move on to another matter. In the report you talk about simplification of Corporations Law, a process that is going on. Is the process going to make that easier for you or for ordinary citizens to understand what the legal process is to get remedy?

Mr Robinson—The ASC is a participant in the simplification process. We do not drive it. There is a task force, which works to Senator Gibson, that makes those decisions. Certainly I believe the philosophy is to make application of the law simpler. I think there are some examples out of the first simplification bill where that has occurred. The ability for companies to buy back their own shares, for example, has been made quite significantly easier by the law as it now is. The extent to which that philosophy pervades all of the amendments which are suggested might be a matter, to some extent, for individual justice.

Senator SCHACHT—Do some of the amendments suggested in the second or third phase give you concern that it might make it easier for the people I have just described to get around regulation and take people down?

Mr Robinson—I do not believe so. I think that that would be a matter very much in the task force's mind, in the way they would approach the areas of simplification suggested. In

most cases, they are more procedural issues rather than issues of the overall philosophy underlying the law.

Senator SCHACHT—As I understand it, with regard to your relationship with the Australian Stock Exchange, in recent times certain regulatory powers were handed back to the Australian Stock Exchange that were for self-regulation. I may have this wrong. I am catching up to speed in this area again. Have there been areas in regulation of corporate good governance that now are the purview of the Australian Stock Exchange and their rules through self-regulation, rather than in the Australian Securities Commission?

Mr Robinson—No. There has been no fundamental change. The Australian Stock Exchange is a self-regulatory organisation in the sense that it supervises the companies listed on the exchange and it supervises the members of the exchange. There is an obligation under the law on the Australian Stock Exchange to bring to the notice of the ASC issues which arise which are not appropriate to be dealt with under their own disciplinary proceedings. In fact, they do that on a regular basis and they do it subject to a number of memorandums of understanding which exist between the ASC and the ASX, to ensure that information is given as circumstances require. Then, if it is necessary to do so, the ASC will use its coercive powers to require the production of documents and the appearance of individuals, if we need to make further inquiries into a matter.

Senator SCHACHT—If the Australian Stock Exchange believes there is some matter of good governance corporate impropriety, can they refer that to you to investigate? Could they take some disciplinary action themselves?

Mr Robinson—Yes. If it is a breach of the Corporations Law, they are required to bring it to the notice of the ASC.

Senator SCHACHT—Can you give me an idea of what would be a breach of the Corporations Law and of what they could handle as a disciplinary matter, that is not a breach of the Corporations Law?

Mr Robinson—An infringement of the listing rules by a company would be a matter that the Australian Stock Exchange would handle itself: shareholder spreads and things that go to the governance of companies and compliance with the listing rules in general terms. Minor infractions by members of the exchange, those which do not involve things such as client loss or direct breaches of the Corporations Law, could be dealt with by the disciplinary committees which the exchange operates. They are required to bring matters which do directly involve breaches of the law to our notice, such as insider trading and behaviour by exchange members which was contrary to the law; and those are the matters that the ASC would investigate.

Senator SCHACHT—Pardon my ignorance, but I have not fully read your tabled annual report. In the past five years, how many successful cases of insider trading have you been able to sustain?

Mr Robinson—There has been one case which was a plea of guilty. There is another case which is currently before the courts where there has been a plea of guilty, and the person is currently awaiting sentence in respect of those offences. There are in the order of another six prosecutions pending at the present time in relation to insider trading matters.

Senator SCHACHT—But since the ASC has been formed, have you successfully prosecuted an insider trading case?

Mr Robinson—The one that is before the courts now.

Senator SCHACHT—But he has pleaded guilty, right?

Mr Robinson—Sorry; if you mean prosecution in a defended case, no.

Senator SCHACHT—I mean where the person pleaded not guilty, but you took the case to the court and won.

Mr Robinson—No; there has been no case.

Senator SCHACHT—Is that just a particularly low strike rate? There are a hell of a lot of share traders in Australia. Proportionally, the figure would be as good as for any other country. Does that mean that we have very good ethics around, or does it reflect the fact that maybe in the law we are not tough enough about the arrangements and about the evidential rules to prosecute a successful insider trading case—compared, say, with America?

Mr Robinson—I think it would be fair to say that in the ASC's view, the proof of cases of insider trading is quite difficult.

Senator SCHACHT—Is quite difficult?

Mr Robinson—Quite difficult.

Senator SCHACHT—Did you make recommendations to the Wallace inquiry about changes to the law in that area?

Mr Robinson—Some of the recommendations that we have made would assist in that area. We have not directly recommended that there be a change in the law which governs insider trading as such.

Senator SCHACHT—You can take this on notice if you do not know the answer. What is the difference between our insider trading law and the United States of America's insider trading law? I have seen some speculation in the past that they are more successful at it because their law and the way it is applied means it is easier to get a prosecution?

Mr Robinson—I will take that on notice. There are certainly significant differences in the laws, as I understand. The Securities and Exchange Commission in the United States has the power, for instance, to require enforceable undertakings from people—that is one of the things that we have recommended to the Wallace committee. They are also able to impose civil penalties on people who have been found to have infringed the law or who have, in a sense, been prepared to negotiate the imposition of a civil penalty in exchange for information given to the SEC in relation to others who might also have offended against the law. The ASC does not have those powers.

Senator SCHACHT—Would you like to have those powers?

Mr Robinson—It would make us potentially a more effective market enforcer if powers of that sort were available.

Senator COOK—I want to look at the self-regulatory role of the ASX. Have you looked at the demutualisation proposal of the ASX from the point of view of what that means to their ability to carry out that self-regulation?

Mr Robinson—Senator, there has been close consultation between the ASC and the ASX on that. The changes to the ASX can only occur with the approval of the minister. The minister would seek advice from the ASC prior to indicating those approvals. Yes, we have been consulted and we have expressed a concern in relation to several areas of their proposal which they are, we understand, currently addressing. They will then need to approach the minister in terms of getting his concurrence and indeed having legislation changed to enable the demutualisation to proceed—and that will only be after they get the consent of their own members to do that, of course.

Senator COOK—Can you say what areas they are?

Mr Robinson—I do not believe I can. The discussions that we have had have been in confidence and on the basis that the ASX is only now providing some information to its members for the purpose of the vote. I believe it would be inappropriate for me to give further details on that at the moment.

Senator Short—Can I say in relation to that, as Mr Robinson said, the question of the future structure of the ASX is a matter for its members. It is my understanding that the proposal that is being put to ASX members seeks their approval to ask the government to prepare legislation that would change the nature of existing ASX membership rights and convert ASX from a company limited by guarantee to a company limited by shares. I would not want in any way to pre-empt the decision of ASX members, nor the parliament's consideration of the legislation. I think I could say here that the government is supportive of moves by the leadership of the ASX to ensure its continued success as a significant institution in the Australian capital market.

Senator COOK—Does that mean you support demutualisation?

Senator Short—The principle of demutualisation is one we support. We are waiting on the ASX to approach us.

Senator COOK—For the record, so do I.

Senator SCHACHT—Do you think the penalties, both in fines and in gaol sentences, for breaches of laws of the ASC are sufficient these days in view of the example of the 1980s?

Mr Robinson—It is our view that the maximum penalties are adequate. It is always a matter for a judicial official to make a determination about the precise penalty to be imposed. It is probably fair to say that it very rarely is the maximum which is imposed.

Senator SCHACHT—On the fines that are available, do you think that is an area that the parliament could look at—increasing the fines? Or are the fines suffering the same problem as the gaol sentences—they are always more towards the minimum level than the maximum?

Mr Robinson—I think perhaps it is not so much a matter directly of the maximum fine available. The parliament has enacted a civil enforcement regime which the ASC is now increasingly starting to use, which does allow a court directly to impose a money penalty and which can be conducted on the civil standard of proof rather than the criminal standard of proof, so that enables those proceedings to be brought more quickly and more effectively.

Senator SCHACHT—The question of insider trading, with only two people, or one person pleading guilty twice, I think you said—

Mr Robinson—No, it was two separate individuals.

Senator SCHACHT—Two individuals have both pleaded guilty; and they are waiting sentencing, I presume.

Mr Robinson—Sorry, can I clarify: one of those offences was several years ago. There is currently one matter where there has been a plea of guilty and sentence is due to be imposed very shortly.

Senator SCHACHT—And you have got six other cases of charges laid.

Mr Robinson—Approximately. There are at least another half a dozen.

Senator SCHACHT—With only eight cases in a number of years, do you think that genuinely reflects the amount of insider trading that may be going on?

Mr Robinson—That would only be my opinion, Senator. I am really not sure that I can tell you—I may have a personal view about it; the ASC has no organisational view and we can only operate on the basis of information provided and take action in accordance with the law.

Senator SCHACHT—When people ring up with information, et cetera, have you had information given to you that indicates some evidence of insider trading but where there was no way you were going to follow it through because you knew that the evidence was not strong enough to get through our normal legal procedure? Have you got a number of examples of that occurring?

Mr Robinson—Yes.

Senator SCHACHT—Would you care to say whether it was 10, 20 cases, 50?

Mr Robinson—It would be difficult to put a number on, but there would be a number.

Senator SCHACHT—Double figures?

Mr Robinson—Over a period of time, yes, that is probably a reasonable approximation.

Senator SCHACHT—Thank you very much. I have finished on this.

CHAIR—Any further questions on 3.1?

Senator Short—Can I just say, Mr Chairman, I do not wish in any way to truncate the questioning, of course, which has been pretty free ranging. We have got a long way to go. I do not know if there is any way in which we might be able to speed it up a little bit. We are in your hands, of course, but we have got a long way to go.

CHAIR—We have certainly been examining not only this program but the other preceding programs at considerable length. I would just ask members if they could make their questioning as economic as possible in terms of time. Without wanting to unduly restrict questioning, I think there is a time where questions do not lead to much.

Senator SCHACHT—Mr Chairman, I have finished my range of questions. I could have gone on a lot further. I would have to say there is plenty of material in the annual report that we received in the last week which is very useful, but it also raises another hundred questions—not so much in terms of the dollars spent here or there but issues in public policy terms that I think are quite legitimate to ask, and this is one of the best forums to do it. I have to say, Mr Robinson, I thank you very much for the information you have imparted quite openly about the ASC. It does not end all the questions I would like to ask, but there is a limit to the day's proceedings. I was here until 6 o'clock this morning; I do not want to do it again.

Senator Short—That was starting to worry me, actually, Senator Schacht.

Senator SCHACHT—I will not last until 6 o'clock again, I can tell you.

Senator COOK—On page 146, before the heading 'Performance Forecasts', the last sentence reads:

Revenue collected for government increased by 6.9 per cent and ASC running costs fell by 2.5 per cent. In the revenue collected, do you cover your costs?

Mr Robinson—Part of the overall cost to the scheme is when you take the payments to the states. When you take the direct expenses of the ASC and those which are attributed to the organisation through the DPP and other agencies, the total overall cost is in the order of \$262 million. The amount of collections, you can see, exceeds that by a small amount.

Senator COOK—Exceeds that by a small amount? So you do have full cost recovery in that sense?

Mr Robinson—It depends on whether you class it as full cost recovery. The amount of money collected for the government is of that magnitude—whether or not that is done as a cost recovery for the administration of the scheme. The budget papers, I think, attempt to put it in that context in general terms.

Senator Short—I am advised that something like \$120 million of that \$260 is, in fact, paid to the states. Is that correct?

Mr Robinson—One hundred and thirty million.

Senator COOK—It is just that I would have thought that, if there is cost recovery, this is an area that should be able to recover its costs. My only other question—which really grows out of the line of questioning followed by my colleague Senator Schacht—is that we would normally be dealing with the Australian Securities Commission under the Attorney-General's portfolio; since the change of government we are now dealing with it under the Treasury portfolio. The issues that my colleagues canvassed are issues of law and legal standing—issues of the strength of that law in following abuse of the regulations. It is a question to you, Minister: what was the reason for the government transferring, under the administrative orders, this agency from Attorney-General's to Treasury?

Senator Short—The reason for putting it into the Treasury was to enable a better coordination of the economic-business related activities and agencies.

Senator COOK—This is an agency which regulates business conduct and you have put it into an economic portfolio away from the legal portfolio.

Senator Short—It still has, of course, its legal input but, so far as the issues that it deals with, basically they are issues dealing with business and the business environment.

Senator COOK—Did you give any consideration to the proposition that, since this is a regulatory body which deals with investigations and corporate dishonesty, taking it out of a legal agency like the Attorney-General's legal department and putting it in an economic department may lead to some diminution of its ability to deal with the legal aspects of its charter?

Senator Short—I would not agree with that and I do not think the government would agree with that proposition. In relation to the fact that it is now located in the Treasury, there is no logical reason that I can see as to why it would diminish its regulatory, compliance and investigatory nature at all. Having it in the Treasury enables a better coordination of those agencies of government that are involved with the business community. I think you can do that without losing the legal requirement aspects of the agency at the same time. It was a conscious policy decision for those reasons.

Senator SCHACHT—By Mr Costello in the days when he was—

Senator Short—No, it was a decision that was announced prior to the election, and it was part—

Senator SCHACHT—I think he has done it before the election then.

Senator Short—Subject to confirmation on this, my recollection is that it was a pre-election commitment that we took. But it was not a decision by Mr Costello; it was a conscious decision by the coalition.

Senator COOK—I accept that. I think it is beside the point at what time it made that decision. It made that decision to remove this agency from the legal framework and put it into

an economic framework, when the burden of this agency is certainly a public role to prevent corporate corruption and the duping of shareholders.

Senator Short—Yes. You can have different views on this. Senator Gibson has just reminded me that it was your government that put the ACCC into the Treasury portfolio a couple of years ago.

Senator SCHACHT—That is substantially different.

Senator Short—They all relate to the environment within which business operates. The ACCC has a very important regulatory investigative role. We accepted the proposition that the ACCC should be in the Treasury portfolio, and I think you can mount similar arguments. We would put similar views in relation to the ASC, even though they have, obviously, some different responsibilities.

Senator SCHACHT—Senator Short, is there a group of officers in Treasury—as I presume there was in A-G's—that provides departmental advice on the ASC, as they see it, to the Treasurer or yourself or to Senator Gibson? Were those people transferred from A-G's to Treasury? How many were there? I think this reflects the fact that I do not think Mr Evans, who appeared on Monday night, could quite give us the figures on the staffing levels. It would appear that the Treasury levels had gone up, and he claimed that these extra people were the reason for it. I am a little suspicious that Treasury have played ducks and drakes with the figures to suit their own ends. Dr Henry would probably define—

Senator Short—Yes. I will get Dr Henry to answer this. The starting point is that the business law division of the Attorney-General's Department was transferred, as I understand it, basically in entirety to Treasury. Perhaps Dr Henry can enlighten us about what the relationship is between that division and the other aspects of Treasury.

Dr Henry—As the minister says, the business law division of the Attorney-General's Department has been transferred to the Treasury department. That division includes between 30 and 35 lawyers complementing a number of other lawyers—

Senator SCHACHT—That will tip the balance in Treasury a bit—35 lawyers turning up.

Senator Short—It would probably have that effect on everyone.

Dr Henry—It would probably be fair to say that there is a fair way to go. There were a number of other lawyers in the department before that, involved mainly with competition policy issues. The business law division has responsibility for advising the Treasurer—and, obviously, the Assistant Treasurer and Senator Gibson in relation to a number of issues, including the issue that you have raised.

Senator SCHACHT—So the business law division has now got 35 extra lawyers in it who have been transferred from the Attorney-General's Department?

Dr Henry—No. The business law division was transferred in its entirety from the Attorney-General's Department.

Senator SCHACHT—Before it was transferred, were there any officers in Treasury dealing with business law matters?

Dr Henry—In fact, there was some overlap between our financial institutions division and the business law area. But it could probably be described as marginal. We did not have officers in Treasury who had responsibility for the matters which were being discussed.

Senator SCHACHT—So you grabbed the extra 35, but did not get rid of other positions when you picked up the 35. So Treasury got an advantage in picking up extra numbers.

Dr Henry—As I say, Senator, the overlap was marginal. It certainly would not—

Senator SCHACHT—There were two or three positions?

Dr Henry—I would not be able to quantify it at this stage, Senator.

Senator SCHACHT—I think you should try. You are putting the sword through most other departments on duplication, but it always seems that Treasury escapes it. We had this discussion on Monday night and you could not provide me with the details: you have taken it on notice. But now we are getting the information that 35 came over from the business law division. There were two or three officers already dealing with advisory matters, probably business law and so on, and they were still maintained. Surely, you should have been able to save at least a couple of positions.

Dr Henry—I think the point was made the other night actually, Senator, that Treasury has, like other agencies, been subjected to the one and two per cent efficiency dividends.

Senator SCHACHT—But the numbers have gone up.

Dr Henry—The numbers have gone up not only because of business law but largely because the business law division was transferred.

Senator SCHACHT—You could not tell me on Monday night, and you still cannot, which numbers of positions had gone down because of the efficiency dividend. The best you could tell me was that six people have gone across to the Wallace inquiry and, when they come back, six people are going to disappear from the system in a year or so's time. That is the only area where you could say, in the whole of Treasury, that there were actually going to be staffing savings. You are saying to me that it is marginal. I ask you to take the question on notice: how many ASLs, average staffing levels, per year were working? Even if you have got three people at half-time or eight people at half-time, or quarter-time, how many equivalents were working on business law matters before the 35 lawyers turned up?

Mr Borthwick—I will speak on this.

Senator Short—Just before Mr Borthwick speaks on this, if there is anything useful to add, that is okay, but, in terms of the staffing levels, other than the area that we are now talking about, we really dealt with that part of the portfolio the other night.

Senator SCHACHT—It did not come out last night.

Senator Short—It has been crossed off and we are moving on. We cannot revisit all this.

Senator SCHACHT—Now hang on. Last Monday night, it did not come out about 35 lawyers coming across in the detail that we are now getting. It said there was a transfer. This is the first time that we have been told that there were actually 35. You could not tell us that on Monday night.

Senator Short—Well, I am not sure about that. I thought that was said clearly. Anyway, we will let Mr Borthwick speak.

Senator SCHACHT—So for the first time we have got figures, and I think it is a reasonable question. You do not have to go on at length. Take it on notice and come back and tell us how many people there were previously. I cannot believe that, in the bowels of Treasury, before the 35 lawyers turned up, there were not some people working on business law matters. I know for a fact that, when I was a minister, there were.

Mr Borthwick—I do not think it is accurate to say that there were officers in Treasury working on business law matters equivalent to those officers that transferred from Attorney-

General's Department. The responsibilities of the Treasurer include the oversight of the financial system, and some of the activities of the ASC relate to the financial system.

We had a financial institution's division that oversees the whole financial system, including the Reserve Bank and the operations of Insurance and Superannuation Commission, and there is a council of financial supervisors, which is chaired currently by the governor of the Reserve Bank and involves Alan Cameron from the ASC and George Pooley from the ISC.

It was in that overall coordination function, the responsibility of the Treasurer and the portfolio for the financial system, that we were involved in some of the activities. But they did not duplicate the current responsibilities that are undertaken by the business law division. They were quite separate matters.

Senator SCHACHT—I find that hard to believe. So we are just going to have to agree to disagree. I cannot believe that 35 people came over without some readjust in their tasks to account for some of the other positions that people were doing some work on, including the impact on Corporations Law.

Mr Borthwick—We were not looking at those aspects previously, Senator.

Senator SCHACHT—Every other department, other than Treasury, it appears, when changes like this are made, is asked to make readjustment and rationalisation of so-called duplication of positions. But what is good enough for other departments is apparently not good enough for Treasury.

Senator Short—Mr Borthwick and Dr Henry have explained the situation. It was taken on notice and we will come back to you on that. I think the essential point is that it was an addition of a new function to the Treasury; it was a new, discrete function that was transferred from one department to another. You have agreed to disagree with Mr Borthwick on his explanation. That is your prerogative but we will come back to you on the question you raised.

Senator SHERRY—I think the only observation I would make is that perhaps we should have borne this in mind when we were looking at times for estimates if Treasury is going to assume these greater levels of responsibility—

Senator Short—Looking at the time for estimates?

Senator SHERRY—Looking at the time for estimates. We are going to be here for a lot longer than we have been in previous years, as has been evidenced by the last 2½ hours. But that is something for the future.

Senator Short—Yes.

CHAIR—If there are no more questions on subprograms 8.1, 8.2, 8.3 or 8.4, we will now move to program 6.

[3.13 p.m.]

Program 6—Australian Competition and Consumer Commission

CHAIR—I welcome the officers from the Australian Competition and Consumer Commission.

Senator BOSWELL—Do we have anyone at the table who is familiar with the recommendations of the ACCC's inquiry into petroleum products?

Mr Spier—Yes, Senator.

Senator BOSWELL—Mr Spier, your recommendations were to increase competition in the petroleum industry, such as the development of independence and imports as viable

competitive forces. You also said that you were going to have an investigation by the ACCC of horizontal arrangements between the oil companies. Can you tell me when this investigation will take place and what it will involve?

Mr Spier—I should preface my remarks by pointing out that the report into petroleum prices is a report to the government and, of course, some of its recommendations are under consideration by the government as they are not things that the ACC can do itself.

In terms of your question about the ACCC's investigation into horizontal arrangements, that is already under way and in fact, as senators may know, the ACCC and its predecessor, the TPC, have often investigated various forms of anti-competitive conduct in the petrol industry, including horizontal arrangements, and that will now be stepped up.

Senator SCHACHT—Including horizontal arrangements?

Mr Spier—Yes, including horizontal, which is priced—

Senator SCHACHT—What about vertical arrangements?

Mr Spier—Yes, vertical arrangements as well. Not that long ago there was a court case involving Ampol where there was a fine of \$3.5 million, which included both horizontal and vertical, and we are looking into a number of vertical arrangements at the same time as horizontal because often they cannot be split.

Senator SCHACHT—On the horizontal structure in petrol industries, where are you at with the review of multi-site franchising, which some people might claim is a classic horizontal structure?

Mr Spier—Senator, we are still looking at certain aspects of that. It is actually part of our report to the minister.

Senator SCHACHT—You are taking your time on that.

Mr Spier—The report that we have recently given to the government, the one that has been published, talks about multi-site franchising as well as a lot of other issues. And in terms of multi-site franchising it concludes that in some cases there are efficiencies in multi-site franchising but that in some cases there may be breaches of the Trade Practices Act as well. A number of cases are getting very close to finality in terms of whether or not we will take proceedings.

Senator SCHACHT—When you look at whether there are breaches of the Trade Practices Act, if one company—one of the now four petrol companies apart from retailers—in my own city of Adelaide say they are going to put all their petrol outlets, maybe 60 of them across metropolitan Adelaide, into one multi-site franchise, they are still competing with the other three companies but there is only one franchisee for that particular brand of petrol, only one person dealing with the company itself at the refining and the distribution level. Is that an example where there could be a breach of the Trade Practices Act?

Mr Spier—There could be. The simple act of having a multi-franchise structure by itself is not a breach of the Trade Practices Act.

Senator SCHACHT—I understand that.

Mr Spier—It is how they then implement that scheme.

Senator SCHACHT—It is how they implement it.

Mr Spier—As you would know, most of the oil companies have their own service stations as well.

Senator SCHACHT—Yes.

Mr Spier—And it is a matter of whether, through a multi-site franchise scheme, the oil companies perhaps engineer a situation where there is effectively a price agreement between the oil company owned sites and the multiple franchise sites.

Senator SCHACHT—If you inhabit a city like Adelaide with the four companies basically each multi-franchising, site franchising—which I suspect it is not impossible to speculate may occur in the immediate future—one franchise has got all of BP, one has got all of Shell, one has got all of Ampol Caltex and one has got Mobil, so although they are still competing against each other as far as the brand names are concerned, with only four franchisees for the four different brands, would that be getting close to a breach of the Trade Practices Act?

Mr Spier—By itself, no. But, clearly, in a market that is more concentrated than before in terms of the ownership of the outlets it is easier to collude, it is easier to say tandem—

Senator SCHACHT—So the four franchisees could get together?

Mr Spier—They shouldn't.

Senator SCHACHT—They shouldn't, but it is easier?

Mr Spier—Yes. May I point out that, in terms of multi-site franchising, it is only Shell and Mobil—

Senator SCHACHT—I suspect everybody believes that after a few—

Mr Spier—Well, it may be.

Senator SCHACHT—If the efficiencies in distribution come to those who multi-site franchise it means the others will follow because they will be at a disadvantage.

Mr Spier—Except that Ampol cannot because the undertakings that were part of the Caltex-Ampol merger were that they can only have a maximum of five sites in any multi-site franchise.

Senator SCHACHT—What happens when Ampol say, in another three years, 'You have given us a competitive disadvantage compared with the other three and we are going broke'? Does the Trade Practices Commission then say to Ampol, 'Bad luck'? Aren't you discriminating against them compared with the other three?

Mr Spier—It may, but when Ampol entered into those undertakings they were not forced; they were voluntary—

Senator SCHACHT—Oh, come on!

Mr Spier—Well, that is right, Senator.

Senator SCHACHT—Give my regards to Allan! I mean, you don't honestly expect me to believe that?

Mr Spier—Having been at the meetings where those arrangements were settled, yes. They were heavily fought out—

Senator SCHACHT—We can basically say what we like because we cannot be sued because this is under privilege. But I have to say that, when I was a minister last year, the certain impression I got when talking to people from the Ampol-Caltex merger area was that it was: 'If you don't do it this way, you won't get your merger—bad luck.' That is not a bad sort of gun to put at someone's head. And I don't think Mr Fels would disagree that that is how he did it because—

Mr Spier—It was very much a negotiation. It was—

Senator SCHACHT—He says, ‘You can’t merge unless you reach agreement on the number you can put into a multi-site franchise and if you are going to dispose of a site you have to put it onto the market as an independent. You can’t take it off the market and reduce outlet numbers. And if you don’t agree to this, you don’t merge. If you don’t merge, individually the companies go backwards because they can’t compete with the other three on market size.’ I do not think literally that is a gun at your head. I think Mr Fels had a double-barrel shotgun pointing at their heads, but I think he had a very whimsical smile on his face when he said, ‘I think I have got you by the short hairs.’ Senator Boswell understands that, don’t you? It is a good National Party term. But that is true. It is just demonstrably absurd to say that this was voluntarily agreed to. They would not have got their merger—

Mr Spier—A lot of the detail was voluntarily agreed to.

Senator SCHACHT—They would not have got their merger if they had not agreed to this structure.

Mr Spier—Mainly, the most fundamental issue was disposing of some of the—

Senator SCHACHT—Of the independent sites—

Mr Spier—Of the terminals.

Senator SCHACHT—You said they have to sell them first offer to independents—right?

Mr Spier—That is right.

Senator SCHACHT—So that you could not reduce the number of sites. A lot of the industry, even some of the economic rationalists in Treasury—believe it or not—actually might believe this is not unreasonable. Now that you are in Treasury, maybe you can have a discussion with them.

Mr Spier—We were then, actually.

Senator SCHACHT—Oh, you were then. Well, maybe—

Senator Short—Yes, I think that was under your government.

Senator SCHACHT—Yes, I know, but the point was—

Senator BOSWELL—Who was the minister?

Senator SCHACHT—I was not, unfortunately.

Mr Spier—It was not Senator Schacht.

Senator SCHACHT—You are very lucky I was not the minister in this area. The minister in this area—trade practices—was George Gear.

Senator BOSWELL—You would have been better, Senator Schacht, I can tell you. You would have got my vote, I can tell you.

Senator SCHACHT—All I want to say is that the argument in the industry is that the return on capital for the investment is still at a very low level. Some people debate the argument about the return on capital. I think there is more than an arguable case that for the return on capital for the investment, the over-investment as this market structure is changed underneath, there are too many sites. As a minister who had half a hand on this, that was my view. I have to say that without any consultation with ministers Mr Fels says, ‘No, we are going to put more sites into it and if some go broke, bad luck, we are going to get more competition.’ I do not think in the long run you get more competition when people go broke, when you actually force people to go broke and end up with less outlets.

Mr Spier—Senator, as I am sure you are aware, this is a very vexed question and we can probably debate that for a long time.

Senator SCHACHT—That is a cop-out of the argument to say that that is a vexed argument. But for you to say that this issue was voluntarily reached is just not correct. Fels forced the merger under these conditions.

Senator BOSWELL—Professor Fels.

Senator SCHACHT—Professor Fels forced this and he was open about it; it was in the paper. These were the conditions and they all knew. If you talked to the petrol companies, by gee, they were spitting teeth about it. I have to say the rest of the petroleum industry was spitting their teeth about the fact that, as they were trying to rationalise and reduce under the sites act—the number of sites, which was government policy—the ACCC, as a statutory authority, does something counter to that. I have to say, Minister, good luck with this lot on this issue. You will find that it will be like standing in quicksand and as you disappear up to your neck do not wait for them to throw you a rope, because it will not appear from the ACCC as you get the petrol retailers getting onto your back. I just have a different view about how this has been handled and I get a bit agitated. I just want to get it clear that to say that the merger was voluntary is just not right. On the issue of competition—

CHAIR—This all happened under your government, Senator Schacht. You were responsible for some of it.

Senator SCHACHT—I have to say that when you set up a statutory authority, which I have not been always 100 per cent in support of, you have a statutory authority under the act of parliament, and now it is an ACCC which represents states' interests, and so on. Ask a lot of state governments what they think about petrol multi-site franchising, and so on, and where that is going—

CHAIR—I recall your tardiness in acting on the issue.

Senator SCHACHT—No, we acted. Then we found that the ACCC put a condition on the merger, which we could not change, that affected getting a rationalisation of sites under the sites act which was introduced by the Fraser government in 1980. Anyway, back to you, Senator Boswell. I have had my piece about it.

Senator BOSWELL—It generated a lot of heat, but I do not know about a lot of light.

Senator Short—I do not want to truncate things, but we are ranging pretty wide and I am not sure about the relevance of that last little debate to the estimates. I just repeat my earlier comment that we have got a long way to go. In that context may I say that I am not quite sure how we got onto program 6, because my clear understanding, that we had agreed at the start of the day, was that 1.8 would come after we had done the ASC.

For that reason there are a lot of senior people from both the Treasury and the tax office sitting next door on the undertaking we had required of them that they were going to be discussing superannuation. If that is not going to be the case for some time, I would like to get as clear a steer as I can as to just how we are going to progress this and what sort of timetable there will be. If we are not going to get onto superannuation for three or four hours, then they can go away and do something useful.

CHAIR—Can you advise me, Senators, how long you expect to take with the ACCC?

Senator BOSWELL—About 15 minutes.

Senator SCHACHT—Give me about another 15 minutes on top of that.

CHAIR—Half an hour then—I will keep you to that.

Senator Short—But what do you propose to do after that, Mr Chairman?

CHAIR—We have had a request from Productivity that they be dealt with because they are an interstate agency that needs to travel. I will take your advice and committee preferences into consideration in making a determination.

Senator SHERRY—I think we should go onto the superannuation issue after we have dealt with the ACCC.

Senator Short—Have you got many questions on the Industry Commission?

CHAIR—Can I have some advice as to your interest in the Industry Commission, et cetera—program 5.

Senator Short—Have you got many questions on program 5—productivity?

Senator SCHACHT—That is the amalgamation of the old BAE and—

Senator Short—That is right.

Senator SCHACHT—I have a few questions about that as it is coming out of the industry portfolio, and I am sure Senator Cook does too.

Senator Short—We have also got the NCC—program 9—who are here from Melbourne.

Senator SHERRY—We certainly are going to finish them tonight, I hope.

CHAIR—Do we get any idea how long productivity will take?

Senator SCHACHT—I have to say that I do not have many questions on the Mint unless the presses are working overtime—

CHAIR—Productivity is the one I want to know about.

Senator SCHACHT—I have got some questions on productivity.

Senator Short—I would just like to get as clear a steer as possible as to where we are going so that we can give some indication to the large number of people who are here on other issues as to whether they should stay or whether they should go. If we are fairly clear that we will start the superannuation and tax areas straight after dinner then it might be best to adhere to that program and get the rest out of the way before then. But can you give me a fairly clear undertaking that we will try and stick to that timetable?

CHAIR—The aim will be to finish everything else before dinner, including the ISC?

Senator Short—You will do program 2, program 3, program 5, program 6 and program 9—hopefully by dinner?

CHAIR—Yes.

Senator BOSWELL—In the ACCC report there was a recommendation that the major chains sell the retailers of fuel on the rationale that it would give more competition and reduce the price, particularly in rural areas. Was there any exercise done or any work done on the number of service stations this would replace or was it—

Mr Spier—I do not think that we recommended that Woolworths or anyone like that enter. We flagged the possibility that they may enter the market after our discussions with—

Senator BOSWELL—As I understand it—you can correct me if I am wrong—the oil companies had refused to supply the major chains up until your recommendation?

Mr Spier—I do not think our recommendation has anything to do with that. I am not sure whether the oil companies actually refused, but people like Jewel stores have actually got their

own service stations in some areas. And, of course, Jewel is now part of Davids, so someone is actually supplying them.

Senator BOSWELL—I distinctly remember reading only a couple of weeks ago ACCC's recommendation that major retailers or chains be allowed to sell—

Mr Spier—Be allowed: that they be free to sell petrol. The main comment was made about local government regulations and environmental issues: that perhaps they needed to be looked at so that they did not prevent some of the major retailers opening up a service station.

Senator BOSWELL—Whichever way you put it, your recommendations are 'to allow'.

Mr Spier—Not allow; we cannot allow. We just flagged it as a possibility that it should not be hindered.

Senator BOSWELL—If they had not up until now sold fuel, what was holding them back?

Mr Spier—Mainly supply. One of the issues, of course, we were saying in our report was that there should be more open supply, particularly of imports. I suspect that is what Woolworths is looking at.

Senator BOSWELL—We seem to be going round in circles. We have been retailing petrol in Australia for probably 100 years and up until now the stores have never sold petrol. There must have been some provision somewhere to prevent that. Your recommendations come down that they may or they can or there is no obstruction to selling fuel, and now the major retailers have made the decision to sell fuel. Did those decisions made by the ACCC take into account the loss of business or how many retailers or how many service stations would hit the wall?

Mr Spier—No, because we simply said—I know you are saying we are going round in circles—that people like Woolworths, although they of course were not named, should not be prohibited. It is their own decision and Woolworths were looking at that for a long time.

Senator BOSWELL—I am not arguing that—

Mr Spier—But we have not looked at—

Senator BOSWELL—Yes, that is okay.

Mr Spier—To actually answer your question, no.

Senator BOSWELL—Your recommendation is that the government has no role in monitoring fuel prices?

Mr Spier—That is our recommendation. In terms of the government, that is us.

Senator BOSWELL—Why did you make that recommendation?

Mr Spier—That was our assessment based on all the evidence at all the public hearings and that the market was now changing.

Senator BOSWELL—To pick up Senator Schacht's point on the multi-sites, if the Petroleum Retail Marketing Franchise Act and the Petroleum Retail Marketing Sites Act 1980 are abolished, as you recommend, what would prevent the oil companies owning all the sites?

Mr Spier—Of course, it is very much a matter for the government to consider whether they actually do that. But the answer is probably very little.

Senator BOSWELL—I understand that. I am not asking Senator Short the question; I am asking you the question. It was your recommendation to remove the sites act. My question to you is: if the sites act were abolished, what would stop the oil companies owning every site? And why would they not own every site?

Mr Spier—In theory, nothing would stop them, if they were prepared to buy all those sites. The evidence that was before us was that the oil companies would not buy all the sites. Even under the sites act, they own the big sites. They own a lot of very high volume sites and there is no clear evidence that they would go further than that.

Senator BOSWELL—I am sure Senator Schacht would have had the same experience over the past two years as I have had of having received representations from many service station owners that their leases were not being renewed and that in fact the oil companies were trying to buy the leases out before renewal. In other words, they are going and saying, ‘If you sell now, we will give you X, but if you run it out you will get X less.’

My question is: if that is happening now—surely the oil companies will not take over the unviable sites, the marginal sites or the sites that you have to put a lot of work in to get a little return—why don’t they take over all the viable, profitable sites and just remove the franchisees? Is there anything to prevent that?

Mr Spier—No.

Senator BOSWELL—You say there is nothing to prevent that. When you have the four oil companies owning all the sites that are viable—they own the fuel; they bring it in; it is vertically integrated; and it is sold through the sites—how does that guarantee any competition? Surely it must lessen competition.

Mr Spier—Our view was that, in many cases, it was the independents who brought in the strongest competition. It was important that they were guaranteed a supply, and the most likely form of supply was through imports. A lot of the action taken by the agency was to foster this alternative supply for independents so that they were not linked into their major competitors. It is the imports and the independents—in your state someone like Matilda—who hopefully will expand and be the real competitors.

Senator BOSWELL—What percentage of imported fuel is retailed in Australia at the moment?

Mr Spier—Very little, but it is starting to flow in through the sale of the ex-Caltex or Ampol terminals to others.

Senator BOSWELL—What is the percentage—is it three per cent or five per cent?

Mr Spier—There is a fair bit over in the west but, nationally, it is about six or seven per cent. It is starting to increase though—sharply.

Senator BOSWELL—Wouldn’t the natural thing to do—this is obviously what will happen the moment that fuel is on the water—wouldn’t the natural reaction from the fuel companies be to drop the price in Australia so the people that are importing are left with a boat full of fuel that is overpriced? That is what will happen, I would imagine, wouldn’t it?

Mr Spier—That has happened in the past. It has not been happening in more recent times where the fuel is coming in on a more certain basis rather than just the one-off tanker and where that imported fuel has been a real competitive factor. If you look at prices around Melbourne at the moment, they have come down quite sharply due to that reason.

Senator BOSWELL—You surprised me because one of your recommendations was that the Queensland government be responsible for putting on a state fuel tax or fuel excise. I would have thought that, for the ACCC that is hell-bent on competition lowering the prices, it seems completely out of character for the commission to recommend a provision that would increase prices. How do you justify that? That is, instead of bringing us down to the cheapest practice, you are asking a government to go to the worst practice.

Mr Spier—We accepted the reality, in our view, that the other states were not going to follow Queensland and that the current situation in Queensland caused a fair few distortions in the marketplace with lower priced fuel for tax reasons finding itself elsewhere.

Senator BOSWELL—I am certain that would not convince Senator Short, who is a person that pursues lower prices through competition. I am sure that Senator Short would not pick up your recommendation and ask the Queensland motorist to pay more tax to be on an equitable basis with the rest of Australia. Senator Short, can you respond to that?

Senator Short—No, I was just going to say in terms of the ACCC's report, Senator Boswell, as you are aware, the government has said that it will finalise a formal response after it has engaged in a lot of consultation. I understand those consultations are going on at the moment in various ways and that once we have got all that we will have a look at it and then produce a formal response, which I think is a few months down the track.

Senator BOSWELL—Your answer does not give me any comfort. Is there any way that a Commonwealth parliament or a Commonwealth government could force a government to put a state tax on fuel or any other commodity to bring it in line with the rest of Australia?

Senator Short—Mr Borthwick might have something to add to this, but my understanding is no, even if it wanted to—and that is a threshold question in the first instance—a federal government cannot require a state government to impose a tax. That is a matter for the state government within, obviously, the bounds of the constitution.

Mr Borthwick—That is exactly right.

Senator BOSWELL—Thank you, Minister. If the government accepts the recommendations to remove both the Petroleum Retailing Marketing Franchise Act and the Petroleum Retail Marketing Sites Act—

Senator SCHACHT—If you do that without the small business unconscionable conduct package going through, you had better jump off the edge of the bridge because mayhem will break out.

Senator BOSWELL—I will ask Senator Short this first and then I will ask the ACCC: what steps will the government take to ensure that you are not going to have vertical integration, you are not going to have people removed, as they are being removed now from their sites? There has to be some sort of safety provision put in there if the sites act goes. Personally, I share Senator Schacht's view on this.

Senator Short—In relation to the question that you asked me, Senator Boswell, first of all let me say that I think that the sites act is actually the responsibility of DIST, so I think it is a question that would be more appropriately put to them when you have that department before estimates, which is after this.

So far as the policy decisions that government has to take on this, the starting point from the government's point of view is that we believe that greater transparency and competition in the industry is very important—in fact, vital—and so any final decisions will be a matter for government to consider in due course.

What those decisions might be will be a matter for government, in due course, to consider. Bringing forward recommendations to government in this area is the responsibility of more than one minister, I think, and it will have to be a government decision in the end. We have a way to go in terms of consultations and getting responses to the ACCC report before government will be in a position to consider all the elements associated with this, to have a look at all the options and to arrive at a series of recommendations, whatever they may be,

that will have the overall interests of the industry and, in particular, of consumers and competition uppermost in mind.

Senator BOSWELL—Thank you, Minister. Mr Spier, in the event that the sites act is removed, I predict there will be very few independents in there and most of the sites will be owned by the four majors, which will reduce competition. Are you going to rely totally on the imported fuel to control the retail price or have you got any system of monitoring?

Mr Spier—Certainly, the commission's report does envisage further monitoring and also transparency, as the minister indicated. The people we are talking about are franchisees and, of course, although you used the term 'independents', franchisees are not really independents.

Senator BOSWELL—No, franchisees are not—

Mr Spier—They run a branded site and that is what we are talking about when it comes to the sites act.

Senator BOSWELL—Exactly, franchisees are very much at the beck and call of the oil companies, but at least they can put a bit of pressure on the oil companies.

Mr Spier—Most franchisees have told us that they have very little power when it comes to the oil companies.

Senator BOSWELL—I suppose you are right.

Mr Spier—To further answer that, one of the things we also stress is that, if the franchise act were repealed, it would be subject to satisfactory modifications to the Oilcode and a further self-regulatory code of conduct, which we see as very important, and the Oilcode has been working for some years and working very well.

Senator BOSWELL—You have more faith than me in—

Senator SCHACHT—Could you repeat what you just said?

Mr Spier—The Oilcode has—

Senator SCHACHT—Has been working well?

Mr Spier—That is what the industry tells us—including the retailers.

Senator SCHACHT—The code that was being renegotiated at the end of last year, have the retailers, the petrol companies and the distributors all signed off on a code and agreed on all the features? The code was being renegotiated at the end of last year and early this year. Have they all signed off to that new Oilcode for the franchisees and the operation of the industry—are you sure that they have all signed off publicly?

Mr Spier—Not yet, no.

Senator SCHACHT—No.

Mr Spier—Because they are waiting on the outcome of this report to the government.

Senator SCHACHT—It is a fact that things can change in the six months since I was there. I will concede that. But it is pretty clear to me that the franchisees would only sign off on the code, including the repealing of the sites act and the franchise act, if the amendments to the Trade Practices Act on unconscionable conduct went through because they saw those extra provisions as providing them with protection against the market power of the petrol companies. It was pretty clear to me that they were not going to sign off until that legislation was clearly going to go through.

Mr Spier—I cannot speak for them. Certainly, in the public inquiries, whilst that has been raised, it has not been raised as strong an issue as you are saying now. It is not almost a condition to signing up to an improved Oilcode.

Senator SCHACHT—All I can say is that the Oilcode that was being prepared had improvement in transparency and in all those arrangements. But they all say to you that if you take the sites act away and the franchise act away, even with a code that is voluntary, the company can withdraw and there is no remedy. But if there was an amendment to the Trade Practices Act on unconscionable conduct, there is some chance of a remedy. They were willing to say, 'If you put that in the package as well, we will sign off on the code. But we are not going to sign off on a new voluntary code which repeals the other two acts without an improvement to the Trade Practices Act.'

Mr Spier—I really cannot comment. That matter, of course, is before another committee of the parliament.

Senator SCHACHT—Yes, it is before a House of Representatives committee. But you are saying in your evidence that in the last six months both the Motor Traders Association of Australia, which represents petrol retailers, and APADA, representing petrol distributors, are now willing to sign off on the code without a condition of unconscionable amendments going through on trade practices?

Mr Spier—They have not put that as a firm condition. They still have views about the unconscionability.

Senator SCHACHT—All I can say is, 'Good luck as the quicksand comes up over your head.'

Senator BOSWELL—If the franchise act is repealed, franchisees cannot expect much protection from the Oilcode. Your report states:

Oil codes minimum terms and conditions of franchise arrangements have been based on those contained in the Franchise Act. Consequently, without the act, their force in the code is substantially reduced.

That is a quote out of your report, and I agree with you. How will franchisees be protected from duress exerted by some people as they believe that the individual franchise no longer fits in with their multi-site operation corporate plans? Do you understand that?

Mr Spier—Yes, I do. The commission was looking at a significantly improved Oilcode which would have more jurisdiction than it has now over issues such as compensation.

Senator BOSWELL—Could I interrupt you there. How does a code have more jurisdiction if it is unenforceable and does not have any legislation?

Mr Spier—It is agreed by all the participants in the industry.

Senator BOSWELL—What happens if someone fudges it?

Mr Spier—I am not sure.

Senator SCHACHT—That is a good question, Ron.

Mr Spier—That has not been the experience of the Oilcode.

Senator SCHACHT—Because since 1980 the experience is that there is a piece of legislation that outlines what you can do under the sites act and the franchise act. If you repeal those, which is what the petrol companies want, and have a code that has no legislative underpinning anywhere, no-one is going to believe it. The first time the companies want to move and drop it, they will fudge it, as Senator Boswell said.

Senator BOSWELL—I did not say that at all; I said, ‘What will happen if they do fudge it?’

Senator SCHACHT—Yes, and they will fudge it because there is no sanction on them.

Mr Spier—That has not been the experience to date, although, as you say, Senator, there is the franchise act.

Senator BOSWELL—My question is: if it does happen, what are you going to do about it? It is no good saying that it has not happened because, as Senator Schacht correctly put it, the legislation is there. If that goes, what are you going to do if someone fudges it?

Mr Spier—If someone fudges it and it amounts to unconscionable conduct, we can take action now, and do.

Senator BOSWELL—It will be the first time that it is used.

Senator SCHACHT—Which case have you taken so far on unconscionable conduct?

Mr Spier—Hamilton Island to Brisbane.

Senator SCHACHT—No, petrol stations.

Mr Spier—We have a number in the pipeline but there is no one case. The unconscionability legislation is still being tested. We are now taking cases. It is very hard to say that a simple termination of a franchise is unconscionable conduct. That, in most cases, is not unconscionable conduct.

Senator SCHACHT—That is why we proposed those amendments to the Trade Practices Act—to strengthen unconscionable conduct so that you would be in a much stronger position to take the case on behalf of small business against big business to protect them.

Mr Spier—That is now an issue in the parliament.

Senator SCHACHT—Yes, I accept that, and you cannot comment on that because it is a policy issue and the government has fudged it all over the joint. Senator Boswell hasn’t; he has been a strong supporter.

Mr Spier—What I was saying is that we are starting to make unconscionability work.

Senator SCHACHT—I must say that this is a big step forward. For the three years I was minister, getting you off the market on the existing act on unconscionable conduct for small business was like extracting teeth.

Senator Short—A change of government can work wonders sometimes.

Senator SCHACHT—I hope you are right, Minister. Again, I wouldn’t hold my breath.

Senator COOK—Have you made a submission for the government to surmount before others?

Mr Spier—Yes, we have.

Senator COOK—Is that public? Can we have a copy?

Mr Spier—Yes, certainly.

Senator BOSWELL—I have one more question. Can I just finish?

Senator SCHACHT—You keep raising good questions which I want to follow up, so keep going.

Senator BOSWELL—I might be raising good questions, but I do not seem to be getting the answers that I require.

Senator SCHACHT—I can't help you on that.

Senator BOSWELL—What was the answer when you said you haven't had a problem? That was basically the answer that you gave me. You said, 'If we do have a problem we will use the unconscionable conduct under section 52 of the Trade Practices Act.' So that is what you are saying?

Senator SCHACHT—But you would never test it. The point that ought to be made here is that you want to repeal the act—the two pieces of legislation—and say there is a voluntary code and if they rat on it or fudge on it or whatever, we will take them on on unconscionable conduct. But you have not had a test case yet on unconscionable conduct that you could say to the petrol retailers that there is actually a case that gives us case law that we are going to win on. Why don't you wait until you get some case law before you repeal the legislation? Then I think you have a chance of convincing the retailers that they have got a bit of protection. Until now the ACCC, and before that the Trade Practices Commission, has not exactly been up-front and enthusiastic in this area until you were kicked.

Mr Spier—I do not agree with that, Senator. Obviously you do.

Senator SCHACHT—I do because I have been through it for three years.

Senator BOSWELL—Senator Schacht, to be fair, we got a commitment that if any fudging does happen—Mr Spiers has made it clear—

Senator SCHACHT—I have to say that—

Senator Short—How about one at a time? It is very hard.

Senator SCHACHT—I think this is a pretty good union ticket I've got going here.

CHAIR—Order! The point of estimates is to ask questions, not to make statements.

Senator BOSWELL—I suppose this will depend on the Senate and the attitude of various parties in the Senate. But if the Senate complies and the government makes the decision to remove the two acts, my question, which follows the last question, is: for franchisees who wish to exit the industry, will the ACCC monitor the situation to ensure that they receive an equitable settlement? If an oil company goes to Fred Bloggs and says, 'We will give you X now but when your franchise or lease comes up, you will get X minus,' would you stand in the market to see that he gets a conscionable way out?

Mr Spier—If the conduct involved is unconscionable, that is not an easy issue. We would certainly look at it, we would certainly investigate it. There is also a private right of action which is taken under the Trade Practices Act a lot.

Senator BOSWELL—But no small business could afford it. You would have to be suicidal to take on the multinationals, so the only hope is the Trade Practices Commission.

Twenty years ago hotels used to be one-brand houses. The hotel was owned by the brewery and everything in that hotel, bar the crockery, the sheets and the blankets, was owned by the hotel. The Trade Practices Commission made a judgment that hotels could no longer be tied houses and had to sell two or three brands of beer. If that judgment was made then, why is not a similar judgment made for petrol companies where a franchisee can buy his petrol at the cheapest price, and that will give you competition? It will not pussyfoot around it, that will give you true competition.

Mr Spier—It is a very good question and I will try to be very brief because that has got a very long history. The Trade Practices Commission, in the late 1970s, on the then oil company agreements, brought in the so-called 50/50 rule that stated oil companies should allow

their lessees to take up to 50 per cent of their fuel from elsewhere, from other than their branded supplier. That was enshrined in law in Victoria and WA. It frankly did not work because of problems about so-called passing off of fuel and also because the oil companies owned the tanks.

Franchise agreements now have a 100 per cent tie and one of the things we say in the petrol report is that we will be looking at the effect of those ties to see whether or not they are anti-competitive and have the type of detrimental effect which I think you are hinting at, Senator.

Senator BOSWELL—If you say it was legislated for in Victoria and Western Australia but it failed because of the tanks, are not tanks similar to a hotel or a beer distribution system?

Mr Spier—You normally only have three tanks on a site—one for diesel, one for super and one for unleaded. In a hotel you can have a number of taps. It is physically easier.

Senator BOSWELL—You are saying that the only thing that prevents franchisees from having two or three or four brands of fuel is the fact that they cannot have the tanks. But if they did put the tanks in—

Mr Spier—That was the issue. Now, most of the franchise agreements have a 100 per cent tie and we are looking at those to see whether or not they are anti-competitive

Senator BOSWELL—But the pubs had a 100 per cent tie too and you overrode that.

Mr Spier—They were the leased hotels, they were not the ones that were owned by the hotels.

Senator BOSWELL—Sure, they were leased hotels and these are leased service stations.

Mr Spier—The 100 per cent tie on the service stations has only come in fairly recently—in the last couple of years—and only on the new image of franchise to service stations. There are two other points. The oil companies were very swift in taking action against anyone who sold—I will name a company that has gone—non-Amoco fuel through an Amoco pump. They said that that was a breach of the Trade Practices Act and it was misleading conduct. You can judge what you think about that. Of course, new ties are now 100 per cent and we are looking at those ties to see whether or not something can be done about those. If there is a service station which is big enough to have a set of tanks here and a set of tanks there, then, in theory, they could have different brands.

Senator BOSWELL—The next question—we will probably part company with Senator Schacht—is on the tankers agreement, the Laidley agreement. I would have thought that the removal of the Laidley agreement would have been another way to increase competition. For example, a group of farmers could have gotten together and hired or bought a truck and picked their own fuel up. That would have given—I know Senator Panizza is interested in saving a buck—a farmer or a group of farmers, or even a service station, access to cheaper fuel. Why did your recommendations not include the removal of the Laidley agreement?

Mr Spier—We actually discussed Laidley. It has long been the view of the commission—both the current one and the TPC—that Laidley, in more recent years, has not really existed.

Senator BOSWELL—Do you mean that Senator Panizza could drive his truck down—

Mr Spier—No. The oil companies also have rules about who can go to the terminal. One of the recommendations that we are saying is that there should be open access to terminals.

Senator BOSWELL—So you are not saying it, but you are recommending the removal—you are ignoring that the Laidley agreement is there?

Mr Spier—No, we are not.

Senator BOSWELL—Are you recommending that anyone can—

Mr Spier—Yes.

Senator BOSWELL—So you do not have to be a member of the Transport Workers Union?

Mr Spier—Exactly.

Senator SCHACHT—The petrol distributors are opposed to the removal of the Laidley agreement, as I understand it.

Mr Spier—There are some industrial issues involving the—

Senator SCHACHT—It is not just the Transport Workers Union. I think the thing has moved on. I do not think the union is as opposed. I think that the thing is collapsing under its own inertia.

Mr Spier—Yes, it is. There is still a bit of a state of mind that people do not seek access because they fear Laidley.

Senator SCHACHT—They what?

Mr Spier—Sometimes we get people saying, ‘We won’t try to get access to a terminal, because we fear the old Laidley agreement.’ It is probably more of a state of mind than a state of reality these days.

Senator SCHACHT—We were talking before about the Trade Practices Act and conscionable conduct. We gave money last year to the ACCC to establish a small business advisory unit to help small business get advice about their rights under the Trade Practices Act, in particular, and unconscionable conduct as it exists now, and we were anticipating a change in the law. Has that unit been established?

Mr Spier—It has been, but I need to correct you on one issue. Whilst it was certainly decided by the previous government that we should get money, that money was never forthcoming. So there was never any funding. The process was, ‘You don’t get that money that was agreed to until the next budget process.’ So it was never forthcoming.

Senator SCHACHT—I don’t have my own budget papers in front of me, but I thought there was an agreement, as Mr Fels indicated, that you would get the thing going anyway?

Mr Spier—Yes, and we have, but there is no money. What we have is a scaled-down version, because of the money. The money was a very major issue—it was a million dollars. We have started our small business unit. We have officers in all our offices around the country who have a special role.

Senator SCHACHT—And how many staff have you got doing that?

Mr Spier—In fact, we have the—

Senator SCHACHT—You put down—

Mr Spier—We have 11 staff, which we promised—

Senator SCHACHT—Seven.

Mr Spier—No, we have 11, which was what we promised initially, although it is coming out of our own funding. There is no extra funding.

Senator SCHACHT—Very good. I congratulate you. This is fantastic, and pass my congratulations to Mr Fels and all the rest down there. This is an outstanding achievement, that you did it in anticipation of the money coming.

Mr Spier—Yes.

Senator SCHACHT—Can I just—

Senator COOK—And the money came?

Senator Short—No.

Senator SCHACHT—The new government did not give you the money? That is a bit rich, I have to say, Minister. That really is a bit rich.

Senator Short—Well, the former minister, I thought it was—

Senator SCHACHT—Don't tell me Treasury got at you again.

Senator Short—No. I think Mr Spier said that you had announced this grand thing without providing any money for it. Was that right?

Senator SCHACHT—No. Announced this what?

Senator COOK—This is small business, Minister.

Senator SCHACHT—This is small business. This is—

Senator COOK—Your government may have said something about small business.

Senator Short—I thought that you were claiming credit for this initiative but didn't happen to put a cent in for it.

Senator SCHACHT—We reached an agreement to amend the act. In the meantime—

Senator Short—Did you do it?

Senator SCHACHT—No, because the parliament rose and you blokes would not agree to put it through in the last week of December. So you put it off to a committee in the House of Representatives to kill it because you were embarrassed, because your blokes at the big end of town in Melbourne said, 'Don't touch this unconscionable conduct bill because it might mean that Coles Myer, Shell and a few others have to front up with a bit more support for small business.'

Senator Short—I think you were the 'gunna' government, weren't you? You were 'gunna' do these things, but you never got around to doing it.

Senator SCHACHT—No. I will tell you what, I would be happy to accept—

Senator COOK—But you have got the chance now in any case. You fudged it.

Senator SCHACHT—You have got the chance. He is doing a great job, as he says. But when we announced the small business unit we got no support at the time from you lot. It just went right through in a big silence, except for Senator Boswell.

Senator Short—He is a very important member of the team.

Senator SCHACHT—Mr Spier, I wanted to go back to the question about the Oilcode. I have just had a message passed to me from Mr Michael Delaney from the Motor Trades Association of Australia which says:

Mr Spier is wrong. Whether he is misinformed or simply not telling the truth we do not know.

We have not agreed to anything and we do not support the repeal of the Acts until the unconscionability provisions are reinforced and strengthened in the Trade Practices Act.

Attached find extract from our submission to the Fair Trading Enquiry which sets out our current and longstanding view of Oilcode and its utility.

Then he says, 'Keep it up, you're doing a great job.'

Senator MINCHIN—Did I get a mention there?

Senator SCHACHT—No. I will make sure you do.

Senator COOK—He probably did not want to embarrass you.

Senator SCHACHT—Yes, but I do not want to get you expelled from the coalition. I quote from chapter 4 of their submission:

Reference is often made of the success of a voluntary Code of Practice for the oil industry known as Oilcode. The Industry Commission Report on the Petroleum Products Industry recommended that this be used as the basis on which to expand the use of and operation of self-regulation of the sector. MTAA's experience of the operation of Oilcode does not support any optimism in this regard. Oilcode remains an extremely limited avenue for the resolution of matters of concern and has remained so since the Industry Commission issued its report.

...

OilCode itself is, in MTAA's view, a flawed instrument of self or co-regulation largely because it is inhibited in discussing many system-wide issues of concern and limited therefore to facilitating the resolution of individual disputes. It is notable for instance that when the Industry Commission reported on the petroleum products industry and suggested that OilCode have an increased role in negotiation, no such role has been secured or allowed. Following the IC Report on petroleum products discussions over a range of matters including franchise disclosure and tenure took place. These talks occurred only at the instigation and under the supervision and direction of the then Minister for Small Business, Senator the Hon Chris Schacht.

That is in their submission. So I think he is making it pretty clear. He must be watching this on TV.

Mr Spier—I would like to make a comment. I was asked about the Oilcode and, say, franchisees and issues such as compensation. Mike Delaney is there talking about—in some of his submissions, including I think his discussions in the past—wanting to extend the Oilcode to talk about industry-wide rationalisation and other issues. I am talking about Oilcode as a dispute resolution mechanism for issues such as franchise termination.

Senator SCHACHT—He says here:

We have not agreed to anything and we do not support the repeal of the acts—
that is the sites act and the franchise act—

until the unconscionability provisions are reinforced and strengthened in the Trade Practices Act.

That does include those things that you raise but also the things that we were talking about, the sites act and the franchise act being repealed. It does not agree to them being repealed until the unconscionable provisions of the Trade Practices Act are strengthened.

Mr Spier—I did not say that he agreed they would be repealed. I said that Oilcode was working well.

Senator SCHACHT—I think he says in his submission, as I read out, that they disagree. They represent practically all the petrol retailers in the Motor Trades Association of Australia. I have been to several of their meetings. They represent hundreds of them. If you go to a meeting of theirs you have a pretty rugged time, whatever your views are of the world. It says here in the submission that they do not accept that Oilcode has been that successful.

Mr Spier—That is not the submission to us.

Senator SCHACHT—That is their submission to the parliamentary committee inquiry. You may disagree with it, but the point is that, as one the major players, they are putting the record straight as they see it. I think that is compelling evidence why you will not get anywhere down the track unless you deal with the unconscionable conduct provisions.

Senator BOSWELL—With respect, that is not Mr Spier's decision; it is the decision of the government.

Senator SCHACHT—Of course, but on the operation of Oilcode, in my view, the quicker your government takes up that provision and puts it through the better.

Senator BOSWELL—I am sure Senator Short will ask for your assistance from time to time.

Senator SCHACHT—We have got a private member's bill in the House of Representatives now which he can bring on next week and pass, and we would put it through the Senate in about three seconds flat because the Democrats and the Greens would vote for it. We would get unanimity on this. Certainly Senator Boswell would vote for it, I know that.

Senator BOSWELL—Mr Spier, you said before Senator Schacht asked you the questions that as far as you were concerned the Laidley agreement did not have any impact at the moment. Is that what you said?

Mr Spier—That is what we said in our report, yes.

Senator BOSWELL—Are you aware that about 12 months ago, or maybe even less, there was a group of service stations going through the Nullarbor which negotiated with Brambles to take their fuel out there and deliver it from Esperance and they were refused access to the terminal?

Mr Spier—I am not aware of that, Senator, but I can certainly see if we are aware of that detail.

Senator BOSWELL—If they were refused access to the terminal, providing they had trucks that met all the safety requirements, would that be a breach of the Trade Practices Act?

Mr Spier—It depends on what basis they were refused. The law does not say that anyone must deal with all-comers. That is not the law generally in any industry. So, if the oil company that ran that terminal said no, they are free to do that.

Senator BOSWELL—Therefore, you have a Laidley agreement.

Mr Spier—No, the Laidley agreement was not like that. If Shell says, 'I am not going to supply Senator Boswell,' Shell can do that. Laidley was involving the TWU in effect in boycotting. That was the allegation.

Senator BOSWELL—Let me put it to you in a hypothetical way: if I have a service station and that service station is out on the Nullarbor and I carry a particular badge and I buy my fuel from that oil company, but I decide then to get together with three of my colleagues up the road and we ask Brambles to negotiate a price, which is approximately half the price at which the oil company can deliver to my service station that is badged, half the transport cost, would it be in order for the oil company to refuse to fill that Brambles tanker up to go into my service station?

Mr Spier—The answer quite likely is yes, but we would like to know a lot more why the oil company is refusing and what is going on. But no-one has to—

Senator BOSWELL—I agree with that, no-one has to sell to anyone. But, using Amoco, if I am an Amoco badge site and I normally get my fuel from Amoco delivered by a TWU driver and I negotiate with three or four other Amoco service stations down the road, are you saying it is not in order for Brambles or whoever I contract with to deliver my fuel to be refused?

Mr Spier—No, I am saying we would need to know why they were refused. If there is no anticompetitive reason or no pressure from someone else, including the union, then anyone can refuse supply.

Senator BOSWELL—They cannot refuse supply if I normally buy my product from that refinery and I get it through a mechanism where an Amoco tanker normally delivers that. I do not want the Amoco tanker any more; I want Brambles to deliver that. Are you saying that it would be illegal for Amoco to refuse to fill the Brambles tanker up to take my petrol out?

Mr Spier—No, it would not be illegal unless there is some other reason for their refusal, like some anticompetitive reason or they are being pressured by a competitor or by the union.

Senator BOSWELL—So, if the union says, ‘No, don’t fill that Brambles tanker up,’ that is all right?

Mr Spier—No, that may not be right at all.

Senator BOSWELL—Are you saying that the union has the capacity to stop Amoco filling a tanker?

Mr Spier—This comes back to issues like section 45D, which is currently before the parliament.

Senator BOSWELL—But you virtually told us that the Laidley agreement had no effect, that you could go and do anything. I am giving you a specific instance and now you are running for cover.

Mr Spier—No, the Laidley agreement was where the unions put pressure on the oil companies. That was the allegation. If the oil companies, for their own reasons, say, ‘I am not going to supply Ron Boswell,’ they can do that.

Senator BOSWELL—But if Ron Boswell normally buys oil?

Mr Spier—It does not matter.

Senator BOSWELL—So they can cut my supply off?

Mr Spier—Yes.

Senator BOSWELL—Although I am badged and I have a contract with Amoco to use Amoco in those tanks?

Mr Spier—Yes, subject to your franchise arrangement or your contract. If you have a contract to, say, take a tanker a month and you suddenly come up and you want three or four tankers—

Senator BOSWELL—No, I want only one tanker a month but I want it delivered by Brambles.

Mr Spier—Subject to what the oil company contract says, it has to be anticompetitive conduct, and that is not necessarily anticompetitive conduct. Of course, Linfox now delivers for a number of the oil companies and for some of the service station operators. You are asking: must Amoco supply? I cannot see why they would not supply.

Senator BOSWELL—Because the unions might tell them not to supply.

Mr Spier—That is another issue.

Senator BOSWELL—That is the issue I am asking about.

Mr Spier—If they are under pressure, that comes back to the impact of section 45D, depending on what form it is in.

Senator BOSWELL—What you are saying is that the Laidley agreement is alive and well.

Mr Spier—No, you are giving a hypothetical. We are not aware, with the Laidley agreement, that the union pressure is still there, and we have tried and tried and tried.

Senator BOSWELL—I think we have danced around this one—

Senator SCHACHT—Can we have another go?

Mr Spier—Senator, we took action against the TWU and others some years ago when they tried to extend Laidley, in 1983, and our view is that the market has now changed, things have changed and it is no longer an issue.

CHAIR—I might say I think senators have had a fairly good go on this issue. I would ask you to economise your questions.

Senator BOSWELL—I have got one question on post offices. Can I ask that?

Senator SCHACHT—I still want to ask a couple.

CHAIR—Have we finished with the oil industry?

Senator SCHACHT—Generally, yes. I just want to go back to the Small Business Advisory Unit. Mr Spier, you said that eleven people are now working there. Are they full-time positions around Australia?

Mr Spier—They are largely full-time because an agency like us deals with small business all the time. It is hard to say you are only small business or you are only this—

Senator SCHACHT—Can you give us any indication of the number of queries these people are dealing with.

Mr Spier—I would have to take that on notice but I can tell you—lots.

Senator SCHACHT—I could imagine. Again, in allowing for some of the exaggeration of how people feel they have been dealt with, many of those complaints probably justify further changes to the Trade Practices Act to give them a better chance of protecting themselves. In the provision of the outlays and so on for the next 12 months, have you already taken account of the fact that, if the Telecommunications Amendment Act goes through by the middle of next year, the Austel people will be coming across? Is that in—

Mr Spier—No, it is not in those figures yet.

Senator SCHACHT—The next one is this vexed issue of newsagencies. The government at the election gave an exemption—or implied it gave an exemption—under the Trade Practices Act to newsagents. My colleague at the end of this table, I suspect, used a fair bit of his weight to trample a number of people into the ground to force the outcome that newsagencies were exempt from the Trade Practices Act.

Senator SHERRY—Senator Boswell—

Senator SCHACHT—Senator Boswell, I am sorry, my good friend. I congratulate him on having the influence to force that outcome, because if it had not been for him I do not think it would have come about. Is the position still the same? Is there a review under way? Are the newsagents exempt from the provisions of the Trade Practices Act?

Mr Spier—They are not exempt, but the commission for a while has been going through the process of reviewing the old authorisations which were authorised many years ago. The stage we are at the moment is waiting for a submission from the government.

Senator SCHACHT—You are waiting for a submission from the government, and until that submission arrives nothing much can happen?

Mr Spier—Yes.

Senator SCHACHT—Minister, do we have any idea when the government is going to provide this submission to the ACCC about the newsagency issue?

Senator Short—I cannot give you a specific day, Senator Schacht, but it is very shortly.

Senator SCHACHT—Who is preparing that submission? Which department?

Mr Borthwick—It is being prepared in Treasury, but it will be representing the government's views, not Treasury's views in particular. There is quite a difference. Sometimes Treasury puts its views. The views that we are drafting will represent the government's views.

Senator SCHACHT—And which poor Treasury officer has to sit there with a quivering pencil and put together these views that are the complete antithesis to everything you have argued for for the last 15 years? Can we have the man's name or woman's name so we can send them medicine—a Bex or Aspro or Valium—to overcome the shock of having to write something that is totally contrary to everything you have supported, Mr Borthwick?

Mr Borthwick—I do not think that is a fair characterisation at all.

Senator SCHACHT—Do you agree with me, Senator Boswell?

Senator BOSWELL—No. I think you are badgering the witness!

Mr Borthwick—Matters can be authorised by the ACCC if they are judged to be in the public interest.

Senator SCHACHT—Anyway, Treasury is compiling the submission on behalf of the ministers and government departments and you will put it together—

Mr Borthwick—We are drafting a document that will go to the ACCC to represent the government's views on the newsagency question.

Senator SCHACHT—But you are compiling that document which in the end, before it goes to the ACCC, will be approved by the appropriate minister?

Senator Short—It will have the imprimatur of the government.

Mr Borthwick—That is right. It will be a government submission, not a Treasury submission.

Senator SCHACHT—Compiling all the information to make that submission is Treasury's job?

Mr Borthwick—As usual, we are doing it in conjunction with our minister.

Senator SCHACHT—Someone somewhere has to sit down and cut and paste the submission together.

Mr Borthwick—Yes, we are doing that.

Senator SCHACHT—That will be available—

Mr Borthwick—Very shortly.

Senator SCHACHT—Would that be made available to the public when it goes to the ACCC?

Mr Spier—It must be on the public register.

Senator BOSWELL—That is going to be in a couple of days, is it?

Senator Short—I cannot give you the exact day, but it is very shortly.

Senator SCHACHT—In the compiling of this report, which is the government's view, have you received any information or representations from small businesses who believe they are being disadvantaged by the newsagents? For example, as a senator for South Australia, I have received letters from people who own shops that sell greeting cards, et cetera who say they are disadvantaged because of the restrictions. The newsagent's shop can sell greeting cards anyway, and when people go to the shop to buy a newspaper they are much more likely to buy their greeting cards while they are there, but the card shop cannot sell a newspaper or a magazine because of the current arrangements. They see this as a competitive disadvantage to their position which would not occur in straight competition. Have you or Treasury received submissions from such other small businesses?

Senator Short—I cannot recall having received too many submissions. I think I have had some correspondence sent to my office along those lines. I would need to check on that. I am not aware that I have been heavily—

Senator SCHACHT—You have not been deluged by them?

Senator Short—I am not aware that I have. But I will check on that. But, so far as the government is concerned, the main policy objective of the government is to ensure that there is free home delivery of newspapers, and that will be, as I understand it, the main issue. I am not sure.

Senator BOSWELL—I very carefully read the letters given by the Prime Minister, Mr Costello and Mr Fischer and what those letters clearly stated was that the system, as it now stands, which is a zonal system, will remain. It did not say it will only remain on the home deliveries. It was very clear, it was very concise, that the system as it now stands remains. I just hope there is no departure from the Prime Minister's guarantee to small business.

Senator Short—I cannot comment on that at the moment. As you say, the submission is still in the course of preparation. I think I would need to reserve that situation. Quite frankly, I cannot specifically answer your question until we receive the submission.

Senator SCHACHT—The way you expressed it—and you may only have expressed a part of it—was that the main emphasis is on free home delivery. From my recollection of the campaign, I think Senator Boswell is right—it was a public issue—that the zonal system would be preserved and exempt from the Trade Practices Act. I think what you have said indicates some difference in emphasis; that is true.

Senator Short—That zonal question is connected with the home delivery issue as a whole. But I cannot add anything to what I have said until the submission is completed and presented.

Senator SCHACHT—All right. I think that Senator Boswell, in particular, will be pretty interested in getting hold of a copy of the submission, and so will we in opposition. I now move on now to ACCC.

Senator BOSWELL—I will just intervene here on newsagents. Mr Spier, the government is committed to a position. The three leaders of the party—the Treasurer, the Prime Minister and the Deputy Prime Minister—have given a commitment to the newsagents and that will come to the ACCC. Are you the final arbiter on that or is there another overarching body in there somewhere?

Mr Spier—Any decision by the ACCC on an authorisation matter, which is what this is, can be appealed to the Australian Competition Tribunal.

Senator BOSWELL—If an elected government gives a message to the ACCC, I would imagine that the ACCC would listen to the will of the people through its elected parliamenta-

rians. Does the tribunal take into consideration the wishes of the people through an elected government?

Mr Spier—I cannot speak for the tribunal, but the tribunal would take note of what was before the commission.

Senator SCHACHT—Touchingly democratic, Ron. Let me go back to the professions. You might want to take some of this on notice, to save time. I am certainly a very strong supporter of removing all of those restrictive practices about so-called professional conduct and professional rules, which are basically rules rigged against the consumer for lawyers and doctors, including restrictions in advertising and all of those sorts of things. I think a lot of that has been done through COAG and probably the National Competition Council. Are we making real progress in getting the states to agree, where they have the constitutional power to remove those restrictions—for example, using land brokers rather than restricting it to lawyers to do real estate transactions? Are there any areas where a state has been suddenly pulled out of the program to remove the restrictions on the professions? If some states have, which one and what particular professions are we dealing with?

Mr Spier—That is really one for Treasury. That is regulation review and the COAG process.

Mr Cassidy—The professions and their various rules have two elements to them. One is various arrangements that the professions have had which, up until recently, have not been caught under the Trade Practices Act. Basically that is because the people involved were beyond the Commonwealth's constitutional reach. That situation has changed from July this year when, under the competition reforms, the coverage of the Trade Practices Act was extended by virtually all of the states and territories, with one exception, to cover unincorporateds as well as companies.

Senator BOSWELL—Which was the one exception?

Mr Cassidy—Western Australia is the one exception. They have the relevant legislation in their upper house, but as of when the upper house rose it had not been passed.

Senator SCHACHT—Is the Western Australia government, which has a clear majority in the upper house of Western Australia, supporting the bill as it was proposed by COAG, or has it amended it?

Mr Cassidy—The bill that is in the upper house in Western Australia is basically the template application legislation which was developed between the Commonwealth and the states. It has been introduced and it is being supported by the Western Australian government. There is an expectation that that legislation will pass the upper house in Western Australia as soon as the upper house sits again. That is the first aspect of the profession's rules which have, until recently, been outside the Trade Practices Act. The Trade Practices Act now basically applies to those rules.

A second is that various aspects of the profession's arrangements are enshrined in state government legislation in one form or another. Under the competition policy reforms each jurisdiction—the Commonwealth, the states and the territories—over the next four years is required to review any legislation which restricts competition. All jurisdictions are required to put out legislation review schedules by the end of June indicating what legislation they are proposing to review and what the timing will be for the next four years. I do not profess to be an expert on those schedules that have been put out; but in looking at them, as far as we could tell, a great bulk, if not all, of the professional arrangements that are enshrined in state

legislature are listed to be reviewed through that legislation review process over the next four years. Between those two, there is reasonable coverage of those aspects of the professions.

Senator SCHACHT—Can you give me an example of what professional arrangement the Trade Practices Act at the Commonwealth level can amend or change to remove restrictions? What state legislation would have to change? Are they mutually contradictory in that we could carry something at the national level but that unless special legislation goes through in the next four years the federal government's position is compromised.

Mr Cassidy—Let me try to give you an example. Let us say that members of a particular profession got together and decided to have some sort of quota arrangement or restriction on entry to the profession. That would be subject to the Trade Practices Act in the sense that it has no legislative support. It is simply an agreement between various private sector entities to restrict entry, if you like, and therefore restrict competition in their own profession. That would be something that would be caught up by the Trade Practices Act. I think I am right in saying that some of the medical college arrangements fall into that category.

Arrangements which fall into the other category would be where a particular piece of state legislation says that there will only be so many people in a particular profession. To pick one that I have discussed previously with Senator Boswell, there is state legislation which restricts the issuing of pharmaceuticals to particular situations involving a pharmacist. That sort of restriction, which is embodied in state legislation, cannot be got at by the Trade Practices Act because basically people are not getting together to agree to reach an agreement or an understanding. They are just complying with the law. That is the sort of arrangement which has to be got at, if you like, through the legislation review process.

Senator SCHACHT—Thank you. That is a very good description of the difference.

Senator BOSWELL—Mr Cassidy, you are saying that if any professional organisation—whether it be of pharmacists, chiropodists or whatever—is excluded by the state government then the ACCC cannot come in. Take the dairy industry: if the state government legislates a gate price or a quota system, then the ACCC cannot override the state.

Mr Cassidy—That is right. But, under the competition policy reforms, with that form of legislation the particular jurisdiction would need to review it to establish whether the benefits from having that restriction, whatever they might be, offset the costs.

Senator BOSWELL—No, that is not what I asked. Has a sovereign government the right to exempt any industry that it sees so fit to do—the taxi industry, the bus industry, solicitors, the dairy industry?

Senator SCHACHT—Can a state government, say, in Queensland say, 'You have to get a licence to be a dairy farmer and we are only going to have 500 licences producing 2,000 tonnes of milk a day and that is it'?

Mr Cassidy—It can if it wishes.

Senator SCHACHT—I think this is a bipartisan policy, Minister. By and large, we have all said we do not support—I do not think Senator Boswell is quite on the same tram car as we all are on this—these arrangements and that we ought to get rid of them. At the end of the four years, state governments, for whatever reasons, leave various industries under their state legislation, as Senator Boswell described. For example, the dairy industry in Queensland is left in or the sugar industry is left in. There are some licensing arrangements there which are pretty well known. Within the policy of COAG, will there be ongoing monitoring of what states are doing during that four-year period? If some states are dragging their feet, will the

federal government use any of its financial power, which I think is the only thing left, to say to state governments, 'Get rid of it or we will impose a financial penalty on you because you are not carrying out these economic reforms'?

Mr Cassidy—Firstly, the competition arrangements do not require that anticompetitive legislation be gotten rid of. What it requires is that it be looked at to establish whether there are benefits which offset the anticompetitive effect. Each jurisdiction is required to go through that process of reviewing their legislation which impedes competition to establish whether there are offsetting benefits or not. They are required to report on an annual basis of their progress against their published review schedules. The National Competition Council has the job, if you like, of scrutinising what jurisdictions are doing and whether they are, in fact, complying with their schedules. There are, under the agreements, certain amounts of money which are to be paid by the Commonwealth to the states and territories.

Senator SCHACHT—That is actually what I was alluding to: the payment of compensation to the states.

Mr Cassidy—The first tranche of that money is due in July next year. The way which the agreement works means that before that money is paid to jurisdictions the NCC is required to make an assessment, amongst other things, of whether the jurisdiction has complied with the competition policy requirements, and that would include whether they have complied with the legislation review.

Senator SCHACHT—Big trouble coming, Ron, I think.

Senator BOSWELL—In parliament today, a question was asked of the Deputy Prime Minister on the sugar industry. His reply was—and I want to put this on the record so that it all goes together for people who are reading this—that the Howard-Fischer government would never override any state government on any exemptions from the Trade Practices Act if the state government went down that track.

Senator SCHACHT—But is that the policy, Minister?

Senator Short—I have not seen what the Deputy Prime Minister said today. It was the Acting Prime Minister, actually.

Senator SCHACHT—Could we take that on notice?

Senator Short—I would like to see what he said today, but I would certainly accept what the Acting Prime Minister said in the parliament.

Senator SCHACHT—Although the Acting Prime Minister said, 'I would not override it,' from the way that you reported it, Senator Boswell, that phrasing does not exclude the government saying, 'We are not going to override you but, instead of getting \$600-odd million over the next five years, you are only going to get \$400 million.' Is that right, Mr Cassidy? Is that the way it would be done? You are not overriding them; you are just not giving them the agreed amount of money.

Mr Cassidy—As the minister said, none of us has had the benefit of seeing what the Acting Prime Minister has said, so it is a bit hard to comment. There is a joint Commonwealth-state review of the sugar industry under way at the moment, which is very much in the context of the competition policy reforms. It may be that the Acting Prime Minister was alluding to the fact that, if that review ends up establishing that there are offsetting benefits for various parts of the sugar industry arrangements and therefore they stand, the Commonwealth government would not be seeking to overturn them.

Senator SCHACHT—I understand that. I am saying that, if they do identify that by not removing those restrictive arrangements the economy is identified as losing X amount of value, therefore some formula is applied, such that the money coming out of the competition pot is reduced by an appropriate amount, not as a punishment but as a recognition.

Senator BOSWELL—The carrot and the stick.

Senator SCHACHT—Yes. Ron, I think they are going to get you anyway, about this. That is true, though, isn't it? That is not contrary to what Mr Fischer may have said today in the parliament.

Senator BOSWELL—Who will then determine that decision? Is that a government decision to say that we will penalise Adelaide or South Australia for not complying? Or does that have to be made by the Treasury? Has the Treasurer got any input into that? Or is he at arms-distance? Will he have any influence?

Mr Cassidy—The way in which that process will work is that the NCC will make a recommendation to the Treasurer on whether they believe each jurisdiction has complied with requirements or not. The Treasurer, and therefore the government, will then decide.

Senator Short—It is a government decision.

Senator SCHACHT—It is in the Commonwealth's power for the Treasurer to either accept or reject the recommendation of the NCC.

Mr Cassidy—That is correct.

Senator SCHACHT—Irrespective of what a state may feel, if the state accepts it, there will be some financial penalty.

Senator BOSWELL—No, that is not correct.

Senator SCHACHT—Yes, it is.

Senator BOSWELL—Only if the Treasurer wants to penalise.

Senator SCHACHT—Yes, of course. That is what I am saying. As I understand it, there is no power left with the state to say, 'When we opt out, we still get our same percentage as agreed over the period of years for the competition money.' If you opt out, and it is shown on advice that you have reduced the amount of improvement in the productivity of the economy by leaving that in, there will be some arrangement that says, 'Queensland, you lose \$32 million.' It is, without caveat, the power of the Treasurer to say that on behalf of the federal government, if they so choose to make that political decision.

Senator BOSWELL—Yes, that is right, if they so choose.

Senator SCHACHT—What I want to make clear is that the state government has no power of veto over that allocation of money.

Mr Cassidy—That is correct. I suppose I would make two comments. The first is that there is going to be a question of what compliance actually means, in the sense that there are quite a number of requirements that the states and territories have to meet in order to qualify for their financial assistance from the Commonwealth. Senator Boswell has asked me on previous occasions whether a state which had 99.9 per cent but which also happened to have a blemish on the remaining 0.1 would therefore not qualify for their money.

Senator SCHACHT—If the Treasurer was here, you would probably say yes, and keep the lot.

Mr Cassidy—Basically, my previous response has been that it is going to be based on a substantial compliance notion. The second comment I would make is that I do not think it is really envisaged that there will be, in a sense, partial payment because then you start to get into some tricky issues about what equates with what and how much various things are worth. It is whether a jurisdiction substantially complied with the requirements of a policy. If they have, they get the payment they are entitled to. If they have not, they do not.

Senator SHERRY—Just on that issue, is there any provision to reappportion the money that is not paid to other states?

Mr Cassidy—No. If money is not paid, it goes back to consolidated revenue.

Senator SHERRY—Treasury does get it.

Mr Cassidy—It goes back to consolidated revenue.

Senator SHERRY—Do you have contact with various consumer organisations throughout Australia?

Mr Cassidy—We do; it varies a bit. We do not have a regular process of meeting with them, for example, once a month or once a quarter, but we do discuss various issues with them on an ad hoc basis.

Senator SHERRY—Do you regard that contact as important?

Mr Cassidy—We find it useful. We tried to contact the various groups on a number of issues. I suppose as a general comment I would say we find all that contact useful. We have had, say, during the Hilmer process, quite extensive discussions and consultations with the consumer movement which we found to be helpful in the process.

Senator SHERRY—Senator Short, in view of that contact that the ACCC has with consumer organisations and in view of the—

Senator Short—I think it was Treasury contact.

Senator SHERRY—And in view of the government's stated aim of wanting a more competitive economy, do you think it was appropriate to cut the funding to consumer organisations in this budget?

Senator Short—We have had these sorts of debates on many occasions, Senator Sherry. I am not sure actually what the funding arrangements are—

Senator SHERRY—I do not have the figures in front of me, but I do know that they have been cut.

Senator Short—I do not have the figures in front of me. I am not sure that you will accept this, but you left the budget in a pretty awful hole—about a \$10 billion deficit.

Senator SCHACHT—Of course, we have just fixed the figures for you, Jim.

Senator Short—To try to repair that so that we can get a decent structure in the nation's account and so that we can get interest rates down and job growth up, we have had to take some decisions of a funding nature that we would prefer not to have done.

Senator SHERRY—So you prefer not to have done it?

Senator Short—We have tried to do that in the most fair and equitable way that we can, and that means that some levels of funding are not at the extent that, in an ideal world, any of us would like them to be. But, as I say, that has been occasioned entirely by the fiscal legacy that you left us.

Senator SHERRY—Do you accept the principle that it is important to have active consumer organisations in our society?

Senator Short—Yes, absolutely. In relation to that earlier conversation you were having with Mr Cassidy—we might come back to it—I want to put on the record that the present competition policy arrangements were bipartisan. So I am not making a political—

Senator SCHACHT—Neither am I; I just wanted to go through the process so that I was refreshed on the matter.

Senator Short—But it is worth making the point that it was bipartisan at the federal level. Also, all the states and territories signed on to it as well. I just want to put that on the record.

Senator SCHACHT—I think that the one person who is probably not quite bipartisan about it is our good colleague in the corner down there.

Senator BOSWELL—Some have reservations.

Senator SCHACHT—To say the least. I decided to use the opportunity to get refreshed about the structure, which has been quite useful.

Senator SHERRY—Mr Cassidy, could you provide us with an indicative list of the nature of the contacts you have had over the last year with consumer organisations and the sorts of issues on which you have had to consult with them—the names of the organisations and those sorts of issues? I do not need it now.

Mr Cassidy—My division consult with them on various things, but then there are other areas of Treasury which also have consultations with them.

Senator SHERRY—No, I am concerned just about your division. I understand from media reports that the ACCC submission to the Wallace inquiry has expressed concerns about bank mergers.

Mr Spier—Senator Sherry, they are not so much concerns. Of course, the issue of bank mergers is one of the things that is being looked at by the Wallace inquiry, and the commission's submission to Wallace discusses the commission's attitude to bank mergers. It makes two important points. One is that bank mergers need to be looked at on a case by case basis to see whether or not a particular merger substantially lessens competition, and hence is caught by the merger law, and the other is that markets are dynamic, things change, and it may be that in the future, if a lot of the current regulatory frameworks change, some of the past attitudes of the commission to a particular merger will change. But basically it is, case by case, looking at the current situation and the perceived future situation in a market.

Senator SHERRY—What about mergers with banks and other financial institutions, such as life companies?

Mr Spier—We say, and the commission has always said, that there should not be any regulatory barrier to that, but again you look at a particular merger on a case by case basis to see whether it substantially lessens competition.

Senator SHERRY—Do you have any particular view on the necessary number of major financial institutions to ensure a competitive capitalist economy?

Mr Spier—No, Senator. Again, it is case by case; you look at the marketplace.

Senator SHERRY—Have you expressed a view on mergers with foreign banks?

Mr Spier—No, we have not. That is very much a matter for government policy. We do not differentiate between foreign or domestic banks when it comes to a takeover.

Senator SHERRY—What about takeovers of Australian banks by foreign banks?

Mr Spier—That is more an issue for FIRB and the Treasurer than it is for us. We look at whether the particular merger substantially lessens competition in the Australian market.

Senator SHERRY—Do you have a view on what effectively will be competition in the financial sector?

Mr Spier—Again, it needs to be looked at on a case by case basis when a particular merger happens.

Senator SHERRY—Do you have any data on OECD economies or eastern Asia economies and the range and size of financial institutions in those markets?

Mr Spier—We certainly would.

Senator SHERRY—Could you provide that data to this committee?

Mr Spier—Yes.

Senator SHERRY—Thank you.

CHAIR—Can I just remind senators that we agreed that we would finish all sections except 1, 8 and 9, plus taxation and insurance and superannuation, and we are still on the ACCC. We have productivity, the Royal Mint and ABS still to do. Can we just push along a little and perhaps only ask those questions that are absolutely necessary?

Senator SCHACHT—Mine are always absolutely necessary.

CHAIR—Well, there have been a few this afternoon that have not been.

Senator SCHACHT—Several months ago, Professor Fels made it pretty clear that he was not enthusiastic about bank mergers, but at about the time the Wallace inquiry was announced and just after I noticed that his position changed somewhat. Was that as a response to anticipating that the Wallace inquiry may move in this area? Was it other pressures other than the fact that I think Don Argus and the NAB were enthusiastically thumping the table in favour of mergers, as were most of the other banks? Did Professor Fels feel that it would be astute of him to back a few steps away from the issue when he had been so vehemently opposed six months to nine months ago?

Mr Spier—It goes back to my earlier comment. Markets are dynamic. A lot of the submissions to the Wallace inquiry do indicate that there may be changes to the financial sector markets. There may be regulatory changes and there may be other changes. If that happens, then some of the commission's previous views on the banking market may change too.

Senator SCHACHT—Does ACCC believe that there should be any further major amendments to the Trade Practices Act to strengthen your arm in dealing with non-competitive actions, collusion, et cetera, either on penalties, on definition or on expansion of the powers within the limits of the constitution?

Mr Spier—As you realise, that is very much a matter for the government. We have no proposals that we have put to the government in that regard.

Senator SCHACHT—I remember quite a few years ago, when Mr Fels—your predecessor, of course—was chairman of the Trade Practices Commission, he was not unenthusiastic about looking at strengthening the powers of the act to have a permanent power of divestiture, not just at the time of a merger. Has there been any further consideration of that in recent times?

Mr Spier—No.

Senator SCHACHT—Does he think the penalties presently applying, though they look spectacular—in recent times people have agreed to pay a few million dollars here and there, which I think is very good—should be reviewed?

Mr Spier—Certainly that has not been raised by the chairman of the ACCC. I think the current examples in the courts show that for the current penalties, which are a maximum of \$10 per offence, we are now getting around—

Senator SCHACHT—Ten million dollars.

Mr Spier—Sorry, \$10 million.

Senator BOSWELL—Ten dollars is very cheap.

Senator SCHACHT—Ten dollars would be pretty cheap.

Mr Spier—It would be \$10 million per offence.

Senator SCHACHT—I think everyone is very pleased with that, that ordinary Australians can see that the penalty is severe enough to hurt even a big company. At the moment, do any of these penalties also carry a gaol sentence?

Mr Spier—No, they do not.

Senator SCHACHT—Is there any suggestion that on some of these penalties, where clearly the public good has been severely damaged, there ought to be a gaol sentence imposed as well as a major fine?

Mr Spier—It has been raised as a discussion point from time to time, but I do not think it is being seriously considered.

Senator SCHACHT—Does America have gaol sentences for similar offences?

Mr Spier—Yes, they do. But their anti-trust offences are actually criminal, ours are not. Ours are civil penalties.

Senator SCHACHT—I thought that maybe if we had—looking back at that book *The Bold Riders*, most of it is not in your area—one thing we might get out of having criminal penalties is a big increase in the corporate sector and prison reform.

Senator SHERRY—Mr Spier, do you have much contact with consumer organisations?

Mr Spier—Yes, we do.

Senator SHERRY—What sort of contact?

Mr Spier—We have regular contact through all our operations, through talking to them about some of our programs. We have various consultative committees. We have regular meetings with the Consumers Federation of Australia, with ACA and with the consumer credit people. Because we are a consumer agency as well as a competition agency, we have constant dealings with the consumer end of it.

Senator SHERRY—Do you think that sort of contact is productive in a modern capitalist society?

Mr Spier—We deal with all of industry and all of society. The consumer groups are a very important factor to bring in different views and, of course, community attitudes. After all, they are representatives of consumer groups and of consumers.

Senator SHERRY—Would it concern you if they were not able to maintain that level of contact—submissions, correspondence, meeting attendance?

Mr Spier—Yes. We tend to contact them.

Senator SHERRY—Are you doing any work in monitoring bank fees and charges?

Mr Spier—We have a general watching brief on bank fees and charges.

Senator SHERRY—What form does that take?

Mr Spier—Some very informal monitoring to keep an eye on what is happening in the marketplace, but there is no formal role.

Senator SHERRY—Do you publish the results of that monitoring?

Mr Spier—We have not considered whether we will do that yet.

Senator SHERRY—I would ask that you make the results of that monitoring available to us.

Mr Spier—Sure.

Senator BOSWELL—I have a couple of questions. We raised the point that the Prime Minister and various other leaders gave a commitment to the newsagencies. There was also a commitment given to the chemists. Would that commitment have to be fulfilled through the state legislation or could the federal government somehow tell the ACCC that chemists had to be exempt?

Mr Spier—Chemists are quite a different issue. When we talk about newsagents, we are talking about a private scheme that has been in the industry for a long time which, in turn, was authorised by the Trade Practices Commission some years ago. With chemists, you are talking about state legislation.

Senator BOSWELL—So the Prime Minister cannot really give a commitment to chemists. There is no way a federal government could say that the chemists regulations stay in place?

Mr Spier—Not really.

Senator BOSWELL—Senator Schacht raised a question about decisions of the ACCC. What happens if a decision on, say, the distribution of petrol was not seen to be meeting the requirements that you had envisaged after two or three years? This has happened in other industries too. What provision is there for the ACCC to reverse its original decision if it said, 'We made this decision, it isn't working; it is not providing competition' or 'not letting the amalgamation go ahead will cause an industry to collapse'?

Mr Spier—There is no inhibition to do that. Take, for example, the Caltex-Ampol merger undertakings that we were talking about. They can be varied. They would have to be varied by consent.

Senator BOSWELL—Could the Caltex-Ampol merged company come to you in three years time and say, 'This is not working, we are going down the shute, we can't get market share; your decision is wrong and you will need to look at it again'?

Mr Spier—Yes. In fact, we have already varied the Caltex-Ampol merger undertakings in certain ways on some of the processes, on some of the time frames, because things have happened in the marketplace that no one foresaw.

Senator BOSWELL—In regard to the mergers of—

Mr Spier—If you are asking about sugar—

Senator SHERRY—You might get a lot of debate from Senator Boswell.

Mr Spier—I know. We have talked to Senator Boswell before about this issue. If it is a merger which the commission did not authorise at some point, there is no reason why the parties cannot come back.

Senator BOSWELL—You would know the conditions in the refined sugar industry at the moment. It is just mayhem out there. Someone is going to get caught for a lot of money. That may come under confidentiality, and I do not want to raise that issue.

My second last question is on mergers. If the Wallace inquiry came down with a recommendation that we get down to two banks or two insurance companies or something like that, and the government accepted that recommendation, would the trade practices legislation with the substantial market tests now preclude that merger taking place, or would you need other legislation to override that legislation?

Mr Spier—That is very much a hypothetical, Senator. It is hard to judge, depending on what the Wallace inquiry says. Under the current law, of course, you would look at a particular merger on a case by case basis to see whether it would substantially lessen competition. If the government felt that it was the right thing that there only be two banks, that may need special legislation.

Senator BOSWELL—That was my question. Would you need special legislation?

Mr Spier—It may. It really depends upon the recommendations.

Senator BOSWELL—You really have legislation there that prevents mergers, takeovers and acquisitions.

Mr Spier—If they substantially lessen competition.

Senator BOSWELL—Naturally, if you get down to two banks from four, you would substantially lessen competition. My question is: would you need legislation to override section 50?

Mr Spier—You may do. It depends upon the market at the time.

Senator BOSWELL—It does not really because you are down to two banks. By that definition you must have lessened competition.

Senator SHERRY—Just on that issue, I think the NAB is the 60th largest bank in the world. In theory, if it were taken over from overseas, do you have any view on the effect that would have on the market in Australia?

Mr Spier—We would have to look at that at the time as to who was the acquirer and whether it substantially lessened competition.

Senator SHERRY—If a bid was made from overseas, obviously it would have to go through FIRB. Would you be consulted on that?

Mr Spier—Yes.

Senator SHERRY—I am not suggesting there is anything impending. I do not want the financial markets to shake tomorrow, as I am accused of doing with superannuation. I am just putting a hypothetical question to you.

Senator Short—In relation to FIRB, there are a large number of foreign investment proposals that come FIRB's way that the ACCC automatically has their advice sought on.

Senator BOSWELL—Australia Post has recorded a profit, or revenue up to \$2.9 billion. It is now setting itself up as a retail store and I would imagine it is using its offices, premises and electricity and has a complete advantage over the small business sector. It must have enormous buying power. Would you consider that unfair competition?

Mr Spier—I think this raises the issue of a competitive neutrality. Again, that is more for Treasury.

Senator BOSWELL—I will direct my question to Mr Cassidy.

Mr Cassidy—Senator, off the top of my head I would not like to say whether or not that is unfair competition. There is certainly an issue there that needs to be looked at. It is the sort of issue which comes under the competitive neutrality requirements of the competition policy reforms. The previous government indicated there would be a further review of Australia Post in 1996-97. That has been confirmed by the current government and those competitive neutrality issues will be one of the things we look at in the review of Australia Post.

Senator BOSWELL—Are you saying you are looking at it and you will come down with a decision?

Mr Cassidy—I am saying there is an issue there to be looked at and it will be looked at in the course of the review of Australia Post.

Senator BOSWELL—When will that decision be made?

Mr Cassidy—It probably will not be until towards the end of this financial year. The review of Australia Post has not commenced yet, but it probably will fairly shortly. It would be a matter of the review being held, recommendations being made to the government and the government then deciding what it wishes to do in response to those recommendations.

Senator BOSWELL—Thank you very much. Just for the record, I have from my office the ACCC's report which says that 1994-95 imports of fuel were 3.4 per cent of the market and that you believe only one per cent of that is supplied by independents.

Mr Spier—Since then the Hastings terminal in Victoria has opened up and there is a fair bit of fuel coming in.

Senator BOSWELL—Thank you very much for your time and the way in which you have answered the questions.

Senator COOK—Does the ACCC do any work in respect of quarantine regulation within Australia?

Mr Spier—No, we do not.

Senator COOK—Do you have any legislative guidance as to restrictions put in place on the movement of fruit and vegetables within the country? Some states impose state barriers.

Mr Spier—Yes, I know that, but that is not something we have been involved with at all.

Mr Cassidy—That is something that will be brought up in the regulation review process because it is certainly arguable that those restrictions restrict competition and therefore need to be looked at.

Senator COOK—Can I direct your attention to page 109 of the appropriations. In that table there, table 2.1, 'Summary of outlays', total appropriations for this year are down by 0.5 per cent on the actual outcome for last year. Total outlays are up by 294.1 per cent and staff numbers have increased. It would seem that while the Expenditure Review Committee was putting a razor through a lot of other departments and agencies, they did not do it to you. What is the explanation for this, given that as well in the last year when you all amalgamated into the ACCC there must have been some savings by the abolition of functions or the overlap of functions?

Mr Spier—I will start with the last part of the question first. The actual savings of the merger of the TPC and PSA were minimal. There certainly were some, although they were both fairly small, stand-alone agencies. They were both very lean and there was very little overlap. There were savings of about \$200,000.

The ACCC in the current budget process was subject to the two per cent cut plus the efficiency dividend of 1.25 per cent and we lost something like 15 staff, but there were no additional cuts to the normal across-the-board cuts. The basic reason for that is that the commission is a new agency, it has new functions, and it has not been able to staff up to the level it had expected after the whole competition process had gone through and the new competition policy act was brought in late last year.

As was mentioned earlier, all the states except WA, and they are coming on-stream soon, have passed their state application acts. As of 21 July this year we also have had to enforce similar state law to a Trade Practices Act which means a lot more industry areas are subject to the commission's jurisdiction but in a climate of somewhat reduced resources.

Senator COOK—And the Commonwealth is carrying that extra cost; the states are not paying for it?

Mr Spier—Yes.

Senator COOK—Is that why in the compliance subdivision there is an increase of 12.2 per cent in staff?

Mr Spier—Yes.

Senator COOK—Is it because of the extra responsibilities we have taken on from the states?

Mr Spier—The extra work that came out of the creation of the ACCC, the extended jurisdiction of the act and also the new access regime in relation to natural monopolies, things like gas and electricity, meant that the ACCC had new functions over and above what the TPC and PSA had.

Senator COOK—Yes, but this is this year. You had those functions last year as well but the increase occurs this year.

Mr Spier—The increase last year, of course, was from November last year. We had them for only a very small part of the year.

Senator COOK—Where are the extra staff you have in the compliant section located?

Mr Spier—Mainly in the regions. We have offices in all state capitals, plus Townsville, Darwin and Tamworth, and they are spread around the regions.

Senator SHERRY—Are there any in Tasmania?

Mr Spier—Yes.

Senator SHERRY—How many extra?

Mr Spier—In Tasmania we have one extra, which is 25 per cent.

Senator SHERRY—That is the first additional staff I have heard of across any department in Tasmania. Congratulations.

Mr Spier—We tend to look at where the workload is. You may have noticed recently in Tasmania that there was a court case where there was a \$1.3 million fine. There was a lot of work—

Senator SHERRY—That was the cheese industry, was it not?

Mr Spier—No, that was in frozen food wholesaling. There is a lot of work in Tasmania at the moment for us.

Senator COOK—What is the reason for the reduction in staffing in the improvement in market conditions?

Mr Spier—It is mainly a slight readjustment of some of our programs. There is no reduction in staffing overall, except the 15 which we expect to lose by natural attrition. Some of the people who were previously working in the pricing area have been moved to the more direct compliance area.

Senator COOK—And you have boosted staff by 13.2 per cent in education and information?

Mr Spier—Yes, because we felt that, in the current climate, particularly with the new legislation and new agency, there was a greater need than ever to educate the marketplace, particularly those industries that were recently subject to the Trade Practices Act.

Senator COOK—So where are those staff located?

Mr Spier—Again, all around the regions.

Senator COOK—What is the nature of them? Are they just PR people?

Mr Spier—No, they are not PR people. Often they are also the same people who are doing our investigations. They are all multi-skilled and multi-purpose. They are not PR people; they are people who go out and talk to the people who do the publications. Because of the new agency, we had to do a whole lot of new publications—that is, redo all the old ones. So there was a much greater compliance. The small business people are in there, too.

CHAIR—Are there any more questions on this program? If not, I thank the officers for their patience over an extended period of time. We will now move to program 2, the Royal Australian Mint.

[5.35 p.m.]

Program 2—Royal Australian Mint

CHAIR—I welcome the officers from the Royal Australian Mint. Are there any questions?

Senator SHERRY—When will the annual report for the Mint be available?

Mr Hamilton—It will probably be available in early October.

Senator SHERRY—Why the delay?

Mr Hamilton—There is no delay. The audit only signed it off late August, and it is now in Treasury for final vetting. Then it goes to the publisher and to the Treasurer.

Senator Short—I think there is a requirement nowadays—certainly for departments and it may be for agencies as well—that the end of October is the standard.

Senator SHERRY—I asked that only because most other annual reports are available, at least in draft form. Treasury have given an explanation why theirs is not available. I just wondered what the reasons were in the case of the Mint.

Mr Hamilton—The Mint's report is with Treasury at the moment.

Senator SHERRY—Is the size of the 'profit' available or do we have to wait for the—

Mr Hamilton—That has been audited and been signed off for \$1.3 million. So we are \$200,000 ahead of the previous year's profit.

Senator SHERRY—What sort of turnover is that based on?

Mr Hamilton—A turnover of \$10 million. Are you talking about return on assets at this point?

Senator SHERRY—Yes.

Mr Hamilton—We have a \$13 million equity balance sheet, but we discount the number forming asset of the coin museum worth \$3 million. So we are talking about a \$10 million asset return. It is \$1.3 million this year as opposed to \$1.1 million in the previous year. Our estimates show, with the actions that we have taken, that we should score about \$2 million for 1996-97.

Senator SHERRY—How would you rate the level of the technology compared to other countries' mints?

Mr Hamilton—We are on a par with our fellow mints. Our quality is outstanding compared to other countries. Our technology is ahead of the other mints in what we call our FADS system, which is the coating of dyes and which is not fully commercial at this point. Part of the business plan in 1996-97 is to make it fully commercial, and that will then eliminate some of the dye polishes in the proof coin industry. We would be able to really answer that question thoroughly by this time next year because that is the window of opportunity we have given on that FADS system.

Senator SHERRY—Do you plan any substantial capital investment over the next couple of years?

Mr Hamilton—No.

Senator SHERRY—Why is that?

Mr Hamilton—We are still gearing up for the future and looking forward to the Olympic program of 2000. These are futures that are not signed up yet. Until we are signed up in some sort of future contract, we will not commit the public purse to a program that is not on the books. Our actual future at the moment with circulating coin is in demise. The industry is on a downturn, so there is no point in putting capital into the circulating coin. The numismatic industry is also going quietly. So we have no real need for capital investment.

Senator SHERRY—My last question is to Senator Short. Does the government have any plans to privatise the Mint?

Senator Short—No. I was going to make this general comment because the controller of the United States Mint was out here a couple of months ago when they launched those Atlanta coins that you were marketing. I must say he was quite adulatory of both the performance and the quality of the Australian Mint. At this stage, the government's concentration is on supporting the Mint in becoming a more efficient operation within the present framework of government.

Senator SHERRY—Any plans to move the Mint physically?

Senator Short—Not that I am aware of, no.

Senator COOK—Just picking up on questions on the Mint's efficiency, I understand that it is close to or actually world leading best practice.

Mr Hamilton—It is.

Senator COOK—And something that other mints use as a benchmark to assess their performance. That is my understanding. I take it that you are confirming that.

Mr Hamilton—Yes.

Senator COOK—Does this mean that there are some opportunities for the Mint to contract some of its services or to seek work for other countries in minting their coinage or notes?

Mr Hamilton—The answer is really negative. We pulled back from trying to compete with other mints in circulating coin, in particular. Because the blanks are made overseas, the blanks have to come into Canberra so we pulled back from the industry of competition in circulating coin. In numismatics, we have improved our international standing in the last two years.

Senator COOK—What about in areas of design? I notice that a lot of other nations still use the old paper currency, which we abolished because it was more efficient to go to coins in place of paper and then go to what I guess the consumers have complained about but nonetheless have accepted over time—the plastic note. With the technology that underpins those things and those design changes, as well as changes in the sequence of denominations of currency, is there any market opportunity for you to contract your services or seek to win contracts?

Mr Hamilton—We are purely in the metal industry. We are not into the notes. You keep saying the high technology in the polymer note.

Senator COOK—Who does the notes?

Mr Hamilton—Note printing is part of the Reserve Bank and done at Craigieburn. We are purely a metal basher.

Senator COOK—To that part of the question then, you have got more metal to bash now, I think, because we have got more coins than we used to have, have we not?

Mr Hamilton—We still have a demand for coin. The estimate shows that from the \$63 million we paid in seigniorage this year, the figure was down to \$59 million. The main reason for that will be that the dollar coin is no longer required for the poker machine conversion. There is a real market there for those figures. That is the way we see it this year. That is the way we see it for the near future.

Senator COOK—Is there any market opportunity for the Mint to pick up work elsewhere in the world because of your efficiency levels and so on?

Mr Hamilton—We are efficient within our own country, but I was trying to explain that when you import the blank from overseas it puts you behind the competition.

Senator COOK—I also have in my mind that the Mint early last year, or maybe even earlier than that, obtained some favourable publicity for itself nationally because it concluded a workplace agreement that improved productivity. Is that so?

Mr Hamilton—Yes, and we paid out about \$65,000 in that year. We did not pay in the year 1995-96 because our enterprise bargaining agreement had been replaced by the overall umbrella of the Public Service agreement. You could measure the increase in performance of our workers.

Senator COOK—Going to that enterprise agreement that you struck, there was no legal constraint on you within the wage fixing guidelines or the Industrial Relations Act to prevent you from doing a deal directly with your own employees, was there?

Mr Hamilton—No, that was part of the rules at that time. There isn't at the moment and we are waiting for changes.

Senator COOK—And the law was changed under the former government to enable you to—

Mr Hamilton—The Public Service umbrella, where we all got the four per cent, overrode the enterprise agreements that we struck.

Senator COOK—I see what you are talking about. It is the Public Service rules you are referring to, not the law in the Industrial Relations Act.

Mr Hamilton—Correct.

Senator COOK—Going to that agreement that enabled you to have this workplace flexibility, what were the productivity gains that you achieved through that?

Mr Hamilton—I can definitely say from our annual report—I am talking purely from financials—that you can measure the performance through the bottom line and the bottom line is a very positive result. That is one thing they can do with the Mint. We can measure our performance because you can measure the real inputs and outputs. We have fewer staff today. Going back three years we had 240 staff. Today we have 133 on the books. We are still performing and producing what we were asked to do three and four years ago. I think somewhere along the line we have picked up our performance.

Senator COOK—Do you have any formal productivity achievements that you can refer to?

Mr Hamilton—Not available, but I could take that on notice.

Senator COOK—Sure.

Senator SHERRY—Have you had any plans to move to a \$5 coin?

Mr Hamilton—The Mint always has plans, but we have to work through our Treasury and we have to work through the system with the Reserve Bank. Yes, we have plans, but—how can I say it?

Senator SHERRY—Could I ask Dr Henry whether he is aware of any date for a \$5 coin. Perhaps he could take it on notice and let us know later.

Dr Henry—I think I can be pretty safe in saying that there is no date for the introduction of the \$5 coin, if that is the question you are asking.

Senator SHERRY—Thank you.

CHAIR—That completes questioning of the Royal Australian Mint. Thank you very much to the officers concerned.

[5.47 p.m.]

Program 3—Australian Bureau of Statistics

Senator SHERRY—Looking at the table on page 67, I notice there is a significant increase in salaries. Could you outline why that is so?

Mr Wauchop—The increases shown in that table are almost exclusively attributable to the extra funding that has been allocated for the population census which was conducted on 6 August.

Senator SHERRY—You say ‘almost exclusively’. If we took that out, what would the situation be?

Mr Wauchop—An almost unidentifiable minimal amount in respect of any other expenditure across the organisation.

Senator SHERRY—The same response in respect of running costs?

Mr Wauchop—Running costs are shown as an increase. The summary of outlays on the following table shows that total appropriations have increased by 26 per cent. That is in column 5 of table 2.1 on page 68. There again, effectively, the sum total of that increase is attributable to the population census.

Senator SHERRY—In respect of your statistical collection over the next year, are there any plans to change the currently collected and published data—to either delete any of it or add to it?

Mr Wauchop—I refer that question to Mr Trewin.

Mr Trewin—There are a few minor changes. Most of the reduction in our funding we can absorb through productivity increases. The reductions we are expecting are, firstly, the cessation of the monthly building commencements collection. We still will have quarterly building commencements data, which is derived from a different source. Secondly, we are contemplating reducing the frequency of balance of payments statistics, but that is subject to a consultation process.

Senator SHERRY—Why a reduction in the balance of payments statistics area?

Mr Trewin—The monthly data is unreliable. It is very volatile and it is subject to large revision. We believe it is misinforming rather than informing the market. It is something that we have been contemplating for a few years. Informal consultations we have had with the market economists have given us support for that position, but we want to go through a formal consultation process before making the final decision.

Senator SHERRY—When will that consultation process be completed?

Mr Trewin—We are issuing a discussion paper next month and asking for comments—I think about 5 November. We would expect to make the final decision some time in December. We will discuss the issue with the Australian Statistics Advisory Council, including the comments that we have had from the public consultation, before we make a final decision.

Senator SHERRY—Are there any other areas of change?

Mr Trewin—No, most of the other means of meeting our budget requirements have been achieved through productivity improvements.

Senator SHERRY—You were going to publish a labour cost index. Is that the only new publication?

Mr Trewin—No, it is not. We are aiming to have some other improvements in our statistical areas. I am not sure whether I can give you a complete answer, but—

Senator SHERRY—You can take it on notice, if you like.

Mr Trewin—One area where we are making significant improvements is in the area of service industry statistics. We are increasing the availability of quarterly, annual and less frequent data on service industries, which is an area of not only high growth, but increasing interest.

Senator SHERRY—What would a labour cost index involve?

Mr Skinner—The labour cost index, as the title implies, is an index which will attempt to map labour costs over time, allowing for the maintenance of quality in the labour component. The indexes we have at the moment, particularly something like AWE, are affected by the compositional changes in the labour market. The intention in the labour cost index is to come up with a basket, as indeed the CPI does, of jobs and to monitor those jobs and the price or the labour costs associated with those jobs over time, maintaining a constant quality.

Senator SHERRY—Will that include direct labour costs as well as indirect labour costs?

Mr Skinner—Yes, indeed: it will start with wages and salaries and some supplements in the first wave, which will be towards the end of this year when data collection will start. In

the following 12 months we will build that wage cost index up to a full labour cost index involving other non-wage elements.

Senator COOK—Will it go to the question of what the origin of those cost pressures might be, for example, scarcity of labour leading to the market rate being bid up, or flow on of an award rate if there is such thing in the future, or—

Mr Skinner—No, it will merely record the growth that is occurring within the labour market.

Senator COOK—Over the years, small businesses from time to time criticise the amount of form filling they do. This criticism has often been—I am not judging it—directed at the ABS: they have to comply with surveys that you take. They say that there are too many forms. As you would have seen, the government has set up a committee of inquiry into the compliance costs for small businesses. Have you made a submission to that inquiry?

Mr Trewin—Yes, we have. We actually have one of our officers seconded to the secretariat to the task force, so we have worked very closely with them over the last four or five months. One of the interesting things is that the perception of the cost of filling out statistical forms is much greater than the reality. The contribution of statistics to government paperwork is only three or four per cent. I think a lot of people have trouble believing it, but of the 350 public submissions that were made, less than 20 actually complained about statistics.

Senator COOK—When you say that you have someone seconded to this inquiry, is that in addition to a submission that you would have made?

Mr Trewin—Yes. We made a submission.

Senator COOK—Is that submission public?

Mr Trewin—Yes.

Senator COOK—I have not seen it; could I have a copy of it?

Mr Trewin—Yes.

Senator COOK—Apart from the point you just made, about the perception of too much form filling, what types of issues did you cover in your submission? How did you argue your case?

Mr Trewin—Before we made the submission the Prime Minister had actually announced that, as a down payment, the ABS would be reducing the cost it imposes on businesses by 20 per cent. The submission outlined how we were going to achieve that. It also outlined steps we were taking to try to make our forms easier to fill out by businesses.

The task force had actually had some interaction with us before we made the formal submission, and one of the things that it was particularly interested in was whether the ABS should act as a clearing house for government forms because we are not the only collector of statistics within government. Other departments and agencies do so, and so part of our submission actually commented on the clearing house function and how it might work. There are a few other bits and pieces, but I cannot remember them all.

Senator COOK—That question about making your forms more user friendly is an issue that has been under review for a long time, isn't it? It is an interactive, ongoing concern.

Mr Trewin—It is, yes. We started work on this nine or 10 years ago and, if you look at our forms now compared with 10 years ago, they are much more user friendly, but I think there is still more work to be done. One of the things we have found out through interactions with business from the task force is that one area where we do need to make improvement

is to explain why the data is actually required. We tend to be a little bit, I guess, cryptic in the way we do that at present and it appears that a lot of businesses would like us to provide more information on how the data is going to be used.

Senator COOK—Going to the imposition on you by the Prime Minister of a reduction of 20 per cent, that was a reduction of 20 per cent in forms you send to business, is it?

Mr Trewin—Actually it was 20 per cent on the cost imposed on small business, so it could be a combination of things. It could be made up of a reduction in forms or it could be through reducing the size of forms. It could be done by collecting data by other means. For example we are moving towards trying to use taxation data more often rather than directly collecting data from a business and we—

Senator COOK—So it is a cost to them that you have to reduce?

Mr Trewin—Yes, it is a cost to business.

Senator COOK—Right.

Mr Trewin—Not the cost to us.

Senator COOK—Given what you have just said earlier about the perception that there are too many forms and that in reality the amount of form filling is a lot less than people believe and on the figure you gave of something like eight per cent, was there any interactive discussion or was there any review conducted by you or the Prime Minister in arriving at the 20 per cent?

Mr Trewin—It was something that we agreed to. There was interaction between us and the Department of Industry, who were doing this work on behalf of the government. We thought that we could achieve a reduction of 20 per cent without unduly affecting statistical output, so we agreed to that.

Senator COOK—Is this a target or is this a mandatory requirement?

Mr Trewin—We are treating it as a mandatory requirement.

Senator COOK—Have you got there yet?

Mr Trewin—We will get there. The target is imposed on the 1996-97 financial year and we will get there over the course of that year.

Senator COOK—What fears does that hold for the quality and completeness of the survey or other work that you do—the reliability of the statistics you collect?

Mr Trewin—In our consultation with users to date there have been only two real areas of concern that have been expressed. Perhaps I should go back a step. There are two of our collections that impose by far the largest load on small business, and that is our annual agriculture census and what we refer to as a quarterly survey of tourist accommodation—in fact it is a quarterly census of all accommodation establishments above five rooms.

They are both very extensive collections and between them they comprise 60 per cent of the cost we impose on small business, so our efforts in reducing costs have concentrated on those two collections to a large extent, and there have been some concerns expressed by the users of that data. In the agriculture census we actually have not come to a final decision on how we are going to do it yet because the census is not run until March next year, but it looks like it will be a combination of some reduction in the content of the census form and raising the cut-off above which we will include people in the census.

With the tourist accommodation, we plan to reduce the number of items we collect in the survey. Of course some people use these data items but, in terms of the value of the collection, it is not being reduced by 20 per cent.

Senator COOK—It is a reduction in costs to business rather than—

Mr Trewin—Yes.

Senator COOK—Does it imply an increase in costs to you?

Mr Trewin—Our costs will also come down marginally—not by 20 per cent because we have still got to send out forms to all the businesses. It is just that they will be shorter forms.

Senator COOK—What I am trying to get at is: it is quite a good achievement if you can reduce costs to your constituency while reducing costs to you without in any way endangering the quality and completeness of the work that you do, and, as I understand it, you think you can do that?

Mr Trewin—Yes, we do. There will be some minor reduction in the usefulness of the statistics, if you like, but it is at the margin rather than a significant reduction.

Senator COOK—Can you give us an example of such a reduction in usefulness?

Mr Trewin—If I can use the tourist accommodation survey as an example, we will not be collecting data on arrivals in future now—

Senator COOK—That is arrivals in Australia?

Mr Trewin—No, sorry, this is arrivals in individual accommodation establishments. One of the data items we collect is the number of people that actually stay at the hotel or motel in a particular period. That data is mainly used to calculate average number of nights people stay. In reality, it has hardly changed over the period of the survey so we do not believe that there is a great data loss in not collecting that information. But it will reduce the cost to the business because, to provide that data, they have actually got to go through their booking sheets and count the number of separate arrivals that they have had. So it is a significant reduction in the effort that they require to complete the return. And there is some reduction in the usefulness of the statistics, but not a significant reduction.

Senator COOK—So if you do not collect figures on how many arrivals per resort or establishment, how do we get an aggregate figure of what the tourist flow is?

Mr Trewin—The number of arrivals that I think you are referring to is the number of overseas arrivals.

Senator COOK—No. One of the things about tourist statistics is—if it is overseas—the nation of origin of the tourist and the per capital expenditure range of each of those tourists from that type of country.

Mr Trewin—Yes.

Senator COOK—The Tourist Commission needs to know that in order to target its promotional effort. But here you are talking about tourists from all sources, both domestic and international.

Mr Trewin—Yes.

Senator COOK—My question is, really: if we do not collect statistics per establishment, how do we then have an aggregate figure of what the graph on tourist behaviour would be in a year?

Mr Trewin—We do collect on a monthly basis the origin of international tourists. They are published on a monthly basis. For domestic tourists, we are still planning to run a supplementary survey of the survey tourist accommodation from time to time, which would give a profile of the people who are actually staying at tourist accommodation establishments: whether they are from overseas; whether they are from Australia and, if they are from Australia, which state. So we do plan to collect origin of guests data, possibly every year or possibly every two years, so that we can maintain some sort of profile.

Senator COOK—So we do have some way of working out how many tourists from whatever source visit tourist establishments in Australia in a year?

Mr Trewin—Yes.

Senator COOK—Okay.

Senator SHERRY—Just on that issue: would you still have the ability to determine the rise and fall of tourists in a particular region or state in Australia?

Mr Trewin—In this survey we collect what is referred to in the trade as room nights and also person nights. And that data will continue to be available on a quarterly basis and for very small regions. We actually produce it for local government areas. And that data will continue to be available.

Senator SHERRY—Right, good.

CHAIR—No further questions? I have got one question. Is it true that some of the data that you collect for which there is reasonably frequent demand you are no longer publishing but in fact providing on a consultancy basis?

Mr Trewin—Our policy is to try and provide what we refer to as ‘public good’ statistics in publications. We also make it available electronically on a home page and we also provide copies of our publications through the public library system. So there is a lot of information that is out in the public domain which is available either at a small charge, if people want their own publication, or free of charge if they want to use the library. On top of that we do make some data available as a special data service. It may not be a publication as such, but it is freely available to everyone and we try and keep the cost to a reasonable level.

CHAIR—Is that information that is reasonably readily available to you?

Mr Trewin—Yes.

CHAIR—So it is not information that you have to go away and do a lot of research to provide for the person?

Mr Trewin—It depends on the nature of the request. We are generally reasonably well aware of the nature of most requests we are likely to get for special data services and we have our computer system set up so we can respond very quickly. But if it is a very novel, very complex request that would require the pulling together of data from a number of different statistical collections it may take a bit more time.

CHAIR—It has been suggested to me that some data that was previously available on a published basis is now only provided on a consultancy basis. Is that correct?

Mr Trewin—There would be some examples of that, but I suggest that is the minority rather than the majority of data.

CHAIR—There was also a suggestion that this is being done for revenue reasons—to generate more revenue for the bureau?

Mr Trewin—We are in the situation where, if the amount of revenue we raise reduces, the volume of services we provide also reduces. Effectively, we are funded on a net budget basis. So we have to take care to get our revenue raising and public good activities in the right balance.

Mr Skinner—I think it is fair to say that that has not been one of incentives for the changes we have introduced into our publications program.

Mr Trewin—What we have found is that, through our market revenue raising activities, we have a much better feel for the real uses of our data. It has enabled us to rationalise our statistical programs to a much better extent that we had previously.

CHAIR—No further questions?

Senator COOK—Do you have a web site?

Mr Skinner—Yes.

Senator COOK—How many visits do you get?

Mr Skinner—It now is running about 80,000 a month.

Senator COOK—Have you worked out into which areas the visits occur?

Mr Pink—Our web site has been up fully for about four months now and the volume of visits to the site has been increasing quite significantly. It is actually well above the 8,000 a month now. We are up to probably about 28,000 a week. In terms of understanding where the access is coming from we are starting to collect data that will allow us to do some analysis, but we have not yet got any information.

Senator COOK—Do you advertise what your web site is on your publications? I have not noticed it, but maybe it is there and I have not seen it.

Mr Pink—In a number of publications it has started to appear. It is intended that progressively right across the publications program, as a new publication or the next version of a publication come out, they will have that address. Not all of the data that appears in a publication is there in the web site at present because some of the publications have a very detailed set of data.

Senator COOK—You have not got these figures at the moment obviously. It is not appropriate—given the shortness of time that you have been up—for this estimates committee, but for the future I would not mind if you could let us know what the number of international visits are compared to domestic visits? How many foreigners want to know what the statistics are in Australia?

Mr Pink—Certainly.

CHAIR—I thank the officers for their attendance. We will now move to item 9.

[6.11 p.m.]

Program 9—National Competition Council

CHAIR—Senator Harradine has provided some questions on notice relating to subprograms 1.9 and 8.2 and program 5. Is it agreed by the committee that they be incorporated? It is so ordered.

[The questions appear at the conclusion of today's proceedings]

CHAIR—I welcome the National Competition Council. Are there any questions?

Senator SHERRY—There has been some public comment about the linking of the Queensland electricity grid to the eastern Australian network. What is the latest update on that?

Mr Willett—Senator, the council has had a number of meetings with the Queensland government, from the Premier down, from earlier on in the year. We have made it clear that the council regards interconnection by Queensland with the national electricity grid as an important part of the agreed package of reforms. Our understanding is that Queensland plans to participate in the national market, but we are awaiting further information on the timing and capacity of that interconnection. They are both important elements in whether Queensland will be fully compliant with its obligations under the COAG agreement on electricity.

Senator SHERRY—When do you expect to get an indication from the Queensland government?

Mr Willett—We have not had an indication of a date. That remains to be seen.

Senator SHERRY—What are the reasons they do not favour connection?

Mr Willett—It is probably not appropriate that I go into the detail of discussions we have had with the Queensland government. I think those sorts of questions should be addressed to the government in question.

Senator SHERRY—Are you aware of the reasons, Senator Short?

Senator Short—Not in entirety, I would have to say. But I think Mr Willett is right, that to get the real reasons you would probably need to address questions to the Queensland government.

Senator SHERRY—We do not have the opportunity of a Queensland government appearance. If you are aware in part, do you know in part those reasons?

Senator Short—No. It is a decision that has been taken by the Queensland government. Negotiations will continue, as I understand it. But I think it would be inappropriate for me, even if I could—which I cannot—to give you the detailed reasoning behind the Queensland government's own decision.

CHAIR—It is not a matter for the Commonwealth parliament or this committee as to the reasons a state government makes decisions.

Senator SHERRY—Okay. Well, do you believe that the timetable that was agreed upon should be adhered to by all governments?

Senator Short—There is an agreement between all governments, and certainly the federal government would be hoping that, unless there are very strong reasons for not being able to adhere to it, the agreement be adhered to. It is an agreement that has been agreed between the federal and state and territory governments.

Senator SHERRY—If it is not, if there is a case of a breach of that agreement, then the agreed payments to the states will not proceed?

Senator Short—I cannot answer that. The whole thing is pursued in the context basically of COAG, and the competition policy and the like, and that would be a matter for a discussion in that context.

Senator SHERRY—In relation to the running costs, salaries, I know you have been in operation for eight months, I think it is. Over a full year, would that represent an increase in staffing or a decrease?

Mr Willett—The allocation for staffing for the new year is consistent with the 1995-96 year.

Senator SHERRY—So no increase.

Mr Willett—No increase; that is right.

Senator SHERRY—No change. And the same with running costs?

Mr Willett—Running costs are down somewhat, and that reflects a reduction of moneys associated with the establishment of the office and, in particular, setting up the office itself.

Senator COOK—Just going back to Senator Sherry's questions about Queensland, I hear what you say by way of answer to those questions but let me ask you this question: in view of what you understand to be Queensland concerns, have you given some thought to strategies to deal with them?

Mr Willett—I think it is fair to say the council is pretty optimistic that Queensland will fully participate in the national market.

Senator COOK—Why are you optimistic?

Mr Willett—Without going into the details of the discussions we have had with Queensland, the council's understanding is that participation in the national market is in Queensland's interests.

Senator COOK—And is that understanding grounded in any positive sign from the Queensland side?

Senator Short—Mr Willett can choose to answer that just as he likes, but I think you are really asking him to go into matters of discussion and negotiation on what obviously is an issue that is of a policy nature so far as Queensland is concerned. I think you have put him in a somewhat difficult position. Mr Willett may have something to say within those parameters.

Senator COOK—I am asking Mr Willett to answer, not for the Queensland government but for this government for whom there is an appropriation in the budget. I think that is information we are entitled to know.

Mr Willett—My difficulty, Senator, is that I guess the line of questioning is leading to me providing a response that goes to discussions we have had with Queensland. As I said earlier, I think it is inappropriate that I go into the detailed discussions we have had with the Queensland government on this issue—or any specific issue.

Senator COOK—You are optimistic that you will settle the arrangements with Queensland. Have you made fall-back plans in the case that you don't?

Mr Willett—No, no specific plans at this stage.

Senator COOK—So at this stage you are trusting your optimism.

Mr Willett—At this stage, given that the deadline in the agreements on this matter are a little down track, I do not think contingency plans are required.

Senator COOK—I would suggest you think Queensland is bluffing.

Mr Willett—No, I did not intend that meaning at all.

CHAIR—There being no further questions, I thank the officers for their attendance.

[6.21 p.m.]

Program 5—Productivity

CHAIR—Let us go to program 5 questions.

Senator COOK—At what stage is the formation of the productivity commission? Is it an entity or is it still three separate participating parts?

Mr Kerr—The legislation has not yet been introduced for the productivity commission. In a formal sense, we are operating under existing statutes—that is, the Industry Commission Act and the EPAC Act.

Senator COOK—Yes, but you assume the appearance of one entity calling up three separate heads of statutory responsibility in anticipation of the passage of the act—or are you still genuinely three different units that have this overarching title?

Mr Kerr—We have gone through a process of administrative amalgamation and, in that sense, we are operating as one unit in a resource sense. Where there is existing work being undertaken, which was commissioned under the existing acts, we are continuing to work under those acts. For example, as Professor Withers could comment on, the child care task force was commissioned under the EPAC Act and is continuing under those powers.

With respect to the Industry Commission, we are currently holding public inquiries into state and local government assistance to industry, the passenger motor vehicle industry and one dealing with health insurance, which has just commenced. The instructions and terms of reference for those have been issued under the Industry Commission Act. Where we are producing other research reports, we are indicating that they are being represented as the productivity commission but the current position is explained within the reports.

Senator COOK—So you are operating as an administrative whole but using the heads of statutory power that the individual acts give you. Under that format, have the three separate constituencies reviewed their forward work program as it was before the election and modified it?

Mr Kerr—We are in a transition stage. The existing work programs that were under way at the time the administrative amalgamation began are being continued.

Senator COOK—Is that the case for each of the constituency parts, each of the three entities?

Mr Kerr—That is largely the case. One or two things have fallen by the wayside but that is not unusual in a fairly large research agenda, and might have occurred in any case under the individual organisations.

Senator COOK—What were they?

Mr Kerr—I do not recall a specific example. But, at any one time, the Industry Commission has about 80 research projects under way. It is in the nature of research that it is risky and sometimes it does not pay off and does not warrant continuing. But the larger exercises that organisations were undertaking at the time the administrative amalgamation commenced are being continued.

Senator COOK—Has the forward work program for the BIE in any way changed because of this amalgamation?

Mr Kerr—That answer also applies to the BIE. Its major activities have been continuing. I did not complete my answer to your earlier question.

Senator COOK—Go ahead.

Mr Kerr—At the same time, the government is considering the forward work program for the organisation. No announcement has been made on that yet but we might expect one in the next month or so.

Senator COOK—When you say that the BIE's forward work program is continuing, that is not true in a perfect sense, is it? I mean, one of the items for the BIE was a national benchmarking study of micro-economic reform and the government has discontinued that.

Mr Kerr—I think you may be referring to either one of two things, both of which are in fact continuing. The first is the international benchmarking work and we are continuing with that. A report on electricity is due out either next week or the week after. The second thing you might have had in mind is a series of work on measuring or trying to assess the impact of micro-economic reform on particular industry sectors and that is also continuing. One report has already been produced since the amalgamation and that was on the agrifood sector. Another one will shortly be ready for publication on the automotive sector.

Senator COOK—The part that I was referring to was a part commissioned by the former government, in which it looked at each industry sector and benchmarked it against world best practice to see how it was performing. A number of publications for the BIE dealt with those last year. I take it that that is the last part of your answer.

Mr Kerr—I am not sure that we are talking about the same thing. I was referring to an attempt to analyse at industry level the impact of micro-economic reform through a survey methodology. That was what was launched towards the end of last year. The first products from that have been continued—that is, the agrifood sector and the PMV sector. We will look at others—

Senator COOK—Maybe we are not talking about the same thing because what I have in mind is what the BIE did last year. At various points last year it brought out reports benchmarking the Australian transport sector, the electricity sector and a range of other sectors against world best practice.

Mr Kerr—That work is continuing. That was the first part of the answer I gave and we are about to produce a report on electricity in the next couple of weeks.

Senator COOK—But I see the appropriation for that work has been discontinued.

Mr Kerr—That is not quite correct. That had a separate program funding, which was due to expire. The forward estimates show it expiring on schedule. I think it is due to expire in 1998-99.

Senator COOK—I will check that but it is not my understanding. My understanding is that this budget cut all of that funding from the DIST portfolio, which was the home department of the BIE. But I do not see here where it has added it in.

Mr Kerr—The process of amalgamation has seen the BIE's resources folded in under the Industry Commission hat for the time being. All the resources that were available to the BIE have been folded in. The next stage was to extract some savings from the total and those savings are as laid out in the forward estimates here. It is our intention, within the available resources that we have, to continue that stream of work.

Senator COOK—With the same frequency?

Mr Kerr—We are reviewing the frequency, the content and the methodology. There will be regular reports on the core sectors, including electricity, the waterfront and roads. Did you mention roads?

Senator COOK—Roads, rail and aviation.

Mr Kerr—Yes. On roads, for example, we are thinking we might look at the issue of road provision, rather than road freight—because the last report in that area indicated that road

freight in Australia is pretty competitive and we do not think there is an awful lot more to be learnt by re-looking at that aspect.

Senator COOK—I am going on memory here but the report I have in mind from the BIE did a benchmarking study which found that for long haul road freight Australia was at or close to being world's best practice. It did a study on port facilities—I think the outcomes were reported in the same study—that showed that for bulk loading of ships Australia was at or near world's best practice. In fact, in relation to wheat, I think it was world's best practice. None of those, of course, got much publicity at the time but that is another point entirely. Its studies into electricity generation and supply, and in aviation, all made various comparisons, as did its study into container movement from ports. I am sorry to be difficult about this but I just want to tie down that those studies will continue.

Mr Kerr—Yes.

Senator COOK—With the same frequency or near enough?

Mr Kerr—Broadly, the same frequency.

Senator COOK—So we can get a time series to see how each of those sectors have performed?

Mr Kerr—In the core areas, yes. There is also the capacity to do ad hoc benchmarking studies on particular activities. For example, one of the reports we have produced since the amalgamation, which was done by the BIE staff, was on aspects of government services to industry, including regulation making. That is a study which we probably would not have cause to repeat for many years.

Senator COOK—Okay. Now, what I used to receive from the BIE—for example, when the balance of payments came out—was a regular commentary on the balance of payments figures and, because I was a representational minister, I would get a regular commentary on those figures from Treasury as well: not always were the commentaries or the emphases and the commentaries the same. What will this new amalgamated body do? Will each of those constituent parts still produce their same commentary, and, if they do, how will we access that, or will there be one standard line?

Mr Kerr—We will not be producing short-term commentary on conjunctural issues such as balance of payments releases. The Treasury Department will be providing advice to its own ministerial team and the industry minister would receive advice either from his own department and or both from his own department and from the Treasury if there is such an arrangement between the two portfolios. We will not be doing work on short-term economic trends. We will be producing material on some sectoral issues—for example, small business, where the BIE had a good core of work under way which we are intending to maintain.

CHAIR—To interrupt, it is past the hour of 6.30 and the committee did agree that we would have all of these sections other than the Taxation Office and the Insurance and Superannuation Commission and subprogram 1.8 concluded by 6.30. I just ask how many more questions there are?

Senator COOK—I do not have much more to go.

CHAIR—Can we knock this off in 5 minutes?

Senator COOK—I think so.

CHAIR—Okay; another 5 minutes.

Senator COOK—The intention is, always assuming the act is passed—and I think you could probably give it a reasonable chance of passage—to amalgamate all of these three units. I do not quite understand how the BIE blends into EPAC and the Industry Commission. Can you just give me some view of that. You must have thought about it?

Mr Kerr—Yes. The BIE had a separate basis for existence in the sense that it had no statutory form. It was a division of a department and the amalgamation was affected by the usual administrative arrangement orders and the staff and resources were transferred across to the Industry Commission, being the current statutory base. If you are talking about blending the work programs and the activities of the organisation, this is simply a matter of assembling the research streams and looking at opportunities for removing duplication and bringing them together in that fashion. That process is still going on and we are waiting for further instructions from the government on a more formal forward work program which will further inform that process.

Senator COOK—Have you got a hierarchical structure in which we can see how this takes place in terms of positions and responsibilities?

Mr Kerr—I am not quite sure I understand your question. We have a pyramidal structure which is relatively flat and, from that, we pool research staff and we form project teams for particular exercises, and we are doing that from the staff as a whole. For example, the report we did for the government on the stocktake of micro-economic reform drew the staff resources from all three organisations. Does that answer your question?

Senator COOK—Yes. You obviously have got a structural plan.

Mr Kerr—Yes.

Senator COOK—If you have got that, would you please provide it to us?

Mr Kerr—Yes, certainly. Do you mean a branch plan?

Senator COOK—Yes. Are you doing any new work? When the idea of the productivity commission was first mooted, the inference was that it would do work on issues of labour productivity and surveys of the productivity improvements related to the spread of workplace agreements, for example. Are you doing any of that work?

Mr Kerr—Yes, we have provided to the government a scoping report on labour market research issues on which we expect the government will draw when it gives us our forward work program.

The second example is that we are expecting, on the basis of public statements, that part of the enhanced function will relate to the competitive neutrality complaints mechanism. The government has announced that the productivity commission will function as the complaints mechanism in that area. So when people have complaints to make about those issues under the competition policy processes, they would send them to us and we would review the merits of the complaint and recommend whether or not a full-scale inquiry was required.

Other than that, it is in the nature of the organisations that they have rolling research programs, so it is a question of making sure the research is relevant as we perceive it and as guided by the government, to the issues of the day.

Senator COOK—The view was always, with EPAC, BIE and the Industry Commission, that if you set all those three agencies the same question, you would get slightly different answers from every one of them. The disparity in the answers was something to be valued, not to be dismissed, on the basis that it can challenge thinking from a policy making point of view more widely.

In your structure and in your reporting, will that disparity of emphasis or different point of view be lost and will you just become one agency with one point of view, or do you have any provision for other views to come forward rather than perhaps just one point of view?

Mr Kerr—We value diversity in the debate process and clearly it is self-evident that if you reduce three bodies to one you are going to get fewer voices. So we think it is incumbent upon us, in our research processes, to try to encourage diversity of view on particular issues within the organisation. But when push comes to shove and we are putting out a report, it needs to be clearly enunciated; we may say there are arguments this way and that way, but if we have a view to give, we shall give it.

Senator COOK—Whichever is the predominant agency will win?

Mr Kerr—Sorry?

Senator COOK—In that sense, whichever is the predominant agency will win.

Mr Kerr—Not necessarily. It depends how the project team is made up. It depends on the issue. Looking at us from the outside, you may think it is all rather uniform and predictable, but I can assure you that within each of those organisations there are some pretty fierce differences of view before we come to—

Senator COOK—But as you have said, when push comes to shove, there will be one view.

Senator Short—Can I just say in that respect, Senator Cook, the government seeks and receives advice and views from a wide range of sources, both inside and outside the Public Service. That has been increasingly the case over recent years. I think your government did, we certainly will, and the productivity commission will obviously be a very important and powerful source of advice, but the bringing together of these three agencies is not going to mean that there will be a monopoly of advice going to government. We will be very consciously seeking diversity in the range of organisations and sources that we seek advice from.

Senator COOK—While hobbling your in-house advice?

Senator Short—No. Just because the BIE has gone into the productivity commission does not mean that there is no resource for providing advice from within DIST. The BIE happened, as I think you said, to be a part of the department. Transferring BIE across to the productivity commission does not mean that you have suddenly neutered all sources of information and advice from within DIST. There has always been a range of other advice inputs from other departments and agencies anyhow.

Senator COOK—Which minister will be giving the work program to the productivity commission?

Senator Short—Will be giving the work program?

Senator COOK—The Treasurer?

Senator Short—I would imagine it would be the Treasurer, but he may well do that after consultation. But apart from that, the fact that that work program is centralised within the productivity commission does not mean that, at the end of the day, when the government is considering the views of the productivity commission on a particular aspect within that work program, that will be the only view that it will receive. We will consciously be looking for input and advice from a range of sources.

Senator SCHACHT—The head of the productivity commission reports to a deputy secretary in Treasury?

Mr Kerr—No. The head of the productivity commission will be a statutory appointee—

Senator SCHACHT—Reporting to the minister?

Mr Kerr—Under the Treasurer's portfolio, yes.

Senator SCHACHT—So he reports to the minister. Within the productivity commission, will there effectively be—you may have answered this before I got back—an Industry Commission section, and a Bureau of Industry Economics section?

Mr Kerr—No.

Senator SCHACHT—So the whole thing is going to be merged?

Mr Kerr—We have thrown it all into the same pot.

Senator SCHACHT—Put the blender in, homogenise it all and we know what will come out at the end: it will be the Treasury view. There will be no diversity of opinion. It is a contradiction in terms to say that there will be.

Mr Kerr—I think that the proof of the pudding will be in the eating.

Senator SCHACHT—It probably will be in the eating. All I can say is, cynically, that it is not a bad idea for the opposition that the government has done this because I think, in the end, the government will be weakened by not having different sources of information within government structures.

Mr Kerr—But it will have.

Senator SCHACHT—Where?

Mr Kerr—It will continue to have—

Senator SCHACHT—Apart from the Bureau of Industry Economics—

Senator Short—It is not right to say—and this is the assumption behind your question—that the only source of information and advice and input to government on these sorts of measures in the past was EPAC, the Industry Commission and BIE. There is a range of other things.

Senator SCHACHT—But where else are you going to go? Are you going to ring up ANU or something and say, 'Send us down a couple of papers'—or the Business Council, or the Farmers Federation? It is going to be a pretty rickety old show if you are going to be doing that all the time.

Senator Short—When governments are making decisions, they take account of a range of views from a range of sources. It has always been thus and it always will be.

Senator SCHACHT—This is giving commissioned work to go off and do certain projects. You said before, Minister, that the industry department, or DIST, will still be able to provide advice. That is true. But it will not have access, as a department, to its own Bureau of Industry Economics to provide more detailed work. It has to get that advice now through Treasury.

Senator Short—It depends upon what departmental arrangements are the case within DIST.

Senator SCHACHT—You can have departmental and ministerial arrangements, but the way this is going to work is that it is a centralisation of thought into the Treasury portfolio.

CHAIR—I think we really are drifting very much into policy issues here.

Senator SCHACHT—That is why I am asking the minister.

Senator Short—We obviously have different views.

Senator SCHACHT—All I can say is, good luck with it. I think you have made a decision that might be great for Treasury, but I do not think it is good for your own government.

Senator Short—I think, as Mr Kerr said, the proof of the pudding is going to be in the eating. I think that, again, you are being fairly prejudging in terms of how this will work out. We are very confident that it will be a very definite improvement.

Senator COOK—When will this happen?

Mr Kerr—We do not know. But we expect the government may make an announcement on it in the next couple of months.

Senator SCHACHT—Will that suggested work program be circulated as a matter of course to a number of senior ministers for discussion as a cabinet decision?

Mr Kerr—The conventional way of handling it in the past—and I suspect that will also be the case this time, but that is up to the ministers concerned—is for the Treasury to discuss with other portfolios their ideas for the forward work program, and for that to then be worked into a cabinet submission, which the Treasurer takes to cabinet, which other ministers can debate, and from that flows a particular decision.

At the same time, as far as our own internal research is concerned, we are intending to set up mechanisms to consult with the other key portfolios so that we can sensitise the choice of work that we do with their views. One example of that is that next week we are putting out a joint publication with the department of industry on a longitudinal study of a small and medium sized enterprises.

Senator Short—I rest my case.

Senator COOK—You have got the automotive inquiry that the Industry Commission is addressing now. The normal thing would be that BIE would do some sectoral studies of the automotive industry, which may not be necessarily what the Industry Commission is looking for but would be an independent study of the BIE and what they think are the important issues in this industry sector and would be adduced in the hearing of the Industry Commission. I do not see how in this set-up that you have got, you will get that type of in-house attention that you need for good decision making. One will become the master of the other.

Mr Kerr—It is true that other agencies make submissions to our inquiries. The BIE has done so in a minority of cases. But if you are looking for diversity of view, the public inquiry process itself is intended to engender those opportunities by making submissions public and by putting out a public draft report to which people can react.

Senator COOK—There is no point in continuing discussions if we are going back over the ground, but I am making the distinction between views and studies which give rise to analysis. It is how you go about studying something, what particular criteria you set down as important, that in many respects determines the outcome of those studies. In a blended situation the difference of view which you will get across the sweep of government will be lost. I agree with Senator Schacht that there will not only be a problem for the government—and that is no criticism of any single department or agency—but it will weaken the government and it will also weaken public policy decision making in Australia, because the only authoritative text out there in the public will be the productivity test.

CHAIR—There being no more questions, the sitting is suspended.

Sitting suspended from 6.54 to 7.40 p.m.

ACTING CHAIR (Senator Crane)—I call the committee to order. As there are no questions on subprograms 4.2 and 4.3, we are now going to subprogram 1.8. Can we have the officers who will be dealing with the superannuation aspects of 1.8 now, please?

[7.40 p.m.]

Program 1—Treasury

Subprogram 1.8—Financial and currency

Senator SHERRY—My initial questions are addressed to the Department of Treasury. If I go to tax, I will indicate before I go to the questions that I am addressing them to the Taxation Office. Page 49 of the Treasury portfolio statements deals with the performance outcomes of 1995-1996. I note that the superannuation policy responsibility of the former financial sector policy and administration subprogram was broadened to include both taxation and budgetary policy on savings, retirement income and aged pension matters. What is the staff breakdown for this section, in terms of gender, age, experience and qualifications? You may like to make a general comment about it and take that question on notice, in terms of the full detail.

Mr Callaghan—Yes, Senator, to provide a detailed answer, we would have to take that on notice. In terms of the section that handles it, what you have asked covers two sections essentially. At this stage, I can say both sections are headed by a female. They have been operating within the Treasury for a long time and are experienced officers within the Treasury. The two sections are relatively small. The one that essentially transferred, I think, has approximately five people dealing with savings and retirement income. The section dealing with superannuation, which incorporates the policy aspects of superannuation that were done within the financial institutions division and the other budgetary aspects that were brought down from this subprogram within the taxation policy division, at this stage, has about five people. Certainly we will take on notice the exact breakdown in terms of age and gender.

Senator SHERRY—In terms of the consolidations, is the total the same as the total before? Have there been any reductions in the staff as part of that process?

Mr Callaghan—No, I do not think so, Senator.

Senator SHERRY—What is the difference between a surcharge and a tax?

Mr Callaghan—I am not sure how to approach that one, Senator. Obviously you are talking about the surcharge that has been introduced. It is in many respects equalising concessions that have been there. I suppose there is very little I can say beyond that except to say that it has been called a surcharge and it is intended to be equalising superannuation tax concessions that are there. I think that would be my answer, Senator.

Senator SHERRY—Is it not true the terms can be used interchangeably?

Mr Callaghan—Again, I am sure that people use terms always very loosely. Like anything, it requires the definition of what you are referring to.

Senator SHERRY—Just following up that ‘loosely’ description, the Treasurer was very careful in the budget announcements and the press releases and speeches to refer to a surcharge and not a tax. There is a reference to this 15 per cent surcharge at the bottom of page 10 of the Treasury portfolio documents. It says:

Running costs associated with increased tax on superannuation contributions of high income earners . . .

Why is it referred to here as a tax?

Mr Callaghan—That is program 4 I think you are referring to, Senator, of the ATO.

Senator SHERRY—Yes, but why is it referred to here as an increased tax on superannuation and not the increased surcharge on superannuation?

Mr Callaghan—I do not think I could answer in terms of what is the breakdown of that program within the tax office and how it is described and what is covered within that, Senator.

Senator SHERRY—Was there any discussion within the department about when to call it a surcharge and when to call it a tax?

Mr Callaghan—I think the only way I can answer that, Senator, is to say that there is always a degree of discussion with the minister on a wide variety of things and the convention is that we have a set of matters that we do not normally address here.

Senator SHERRY—Do you know why the minister has chosen to refer to it on public occasions and in the press releases as a surcharge and not a tax?

Mr Callaghan—Again, Senator, that is an issue that you should take up with the minister.

Senator SHERRY—Has your section provided any advice within the department as to the administration and collection of the increased tax in superannuation contributions?

Mr Callaghan—Again, we are obviously advising the minister all the time on the whole variety of issues dealing with superannuation that are part of the responsibilities under the program.

Senator SHERRY—So when considering the option of a 15 per cent surcharge, what other options did the department consider?

Mr Callaghan—Again, I am afraid my answer will have to be the same as before. The advice that we give the minister is not normally discussed in this committee.

Senator SHERRY—So you did consider other options?

Mr Callaghan—Again, I cannot answer that. That is a leading question, Senator. The policy advice that is given to the minister is something that we do not go into.

Senator SHERRY—In considering this 15 per cent tax, did you carry out research and actuarial modelling?

Mr Callaghan—Again, I am afraid it is the same question you are asking about the nature of the advice that we give the minister.

Senator SHERRY—I am specifically referring here to the 15 per cent tax that was adopted; I am not referring to other matters. Did you carry out any actuarial modelling on this 15 per cent surcharge or tax?

Mr Callaghan—Within the Treasury we have the retirement income modelling task force that does a degree of modelling of all aspects associated with superannuation, and certainly it included the measures that were announced in the budget.

Senator SHERRY—Senator Short has now joined us. Senator, could you explain the distinction between a surcharge and a tax?

Senator Short—Senator Sherry, you are talking about the superannuation surcharge?

Senator SHERRY—Yes, in reference to the 15 per cent surcharge.

Senator Short—It is a surcharge and that is it. It is a surcharge. The whole purpose of the surcharge is to produce a fairer and more equitable superannuation system.

Senator SHERRY—That is the reason why, and we agree with you, but why call it a surcharge and not a tax? It increases income.

Senator Short—There are a lot of things that increase income that are not taxes.

Senator SHERRY—Why did you call it a surcharge?

Senator Short—Fees and charges increase income.

Senator SHERRY—The distinction between a fee and a charge is there is a service in return for a charge and a fee. What service do people get in return for the surcharge?

Senator Short—What service do they get?

Senator SHERRY—Yes. Directly correlating to the money raised.

Senator Short—I think that is a tunnel visioned way of looking at it because what the system as a whole gets is a fairer and more equitable system.

Senator COOK—Senator Short, just concentrating for a minute not on the politics of this but on the proper use of English, would you define for me the difference between a surcharge and a tax? What are the definitional differences or distinctions you would draw between both of those?

Senator Short—I don't have a dictionary in front of me at the moment, Senator Cook. But to me a surcharge is a charge of the nature that the 15 per cent surcharge is.

Senator SHERRY—We know that.

Senator Short—That is good.

Senator COOK—And how does that differ from a tax?

Senator Short—As I have said to you, Senator Cook, this is a surcharge. The whole of the superannuation system in terms of the benefits that are reached are through a form of tax expenditures, as I assume you would know. What the surcharge is doing is, I guess, reducing the concessionality of the superannuation system so far as it relates to high income earners through the imposition of the surcharge.

Senator COOK—That is what you do with taxes, too, is it not?

Senator Short—You can quibble with words if you like but—

Senator COOK—I am not. I am just asking you to define it and you seem to be labouring. That is all.

Senator Short—No, I do not think I have. I have not got anything more to add to it.

Senator COOK—I am sure you haven't, but let us just explore it a bit further.

Senator Short—You can explore it as far as you like, Senator Cook, but you will not get a different answer.

Senator COOK—That is because you refuse to answer.

Senator Short—Not at all.

ACTING CHAIR—We are getting into semantics now. I think we should move on.

Senator Short—It is a ridiculous approach—

Senator COOK—Since we are into semantics, then there is no material difference, is there? It is just a question of how fine you want to cut it.

Senator Short—No. If that is your view, that is your view. I am saying to you that it is a surcharge. It is a measure which has—

Senator COOK—It is a surcharge because you choose to call it a surcharge when in fact it is a tax.

Senator Short—Hang on. You asked me a question. Do you want an answer or not?

Senator COOK—I am not getting one. Would you try and improve your performance? You choose to call it a surcharge, but we all know it is a tax.

Senator Short—You might call it a tax. I call it a surcharge.

Senator COOK—You cannot define the difference, Senator Short. Try your hand again. Just have another shot.

ACTING CHAIR—Senator Cook, would you please let the minister answer the question and then we can move on. You have asked the same question five times now and you have got five answers.

Senator COOK—Would you insist that he answers the question?

ACTING CHAIR—He has answered it five times.

Senator COOK—No, he has not.

ACTING CHAIR—That is your view. My view is that he has answered it five times and the officer, Mr Callaghan, has also answered the same question prior to Senator Short coming in.

Senator COOK—Would you try your hand one more time with feeling? What is the difference between a surcharge and a tax—a definitional difference?

Senator Short—Senator Cook, as I have just said to you, I have answered your question.

Senator COOK—Would you do it again for me?

Senator Short—Even you, I would have thought, would have comprehended what I said.

Senator COOK—Well, I did not. Even I am so slow. Do it again, just one more time—the definitional difference between a surcharge and a tax?

Senator Short—The surcharge that the government has imposed on higher income earners in relation to—

Senator COOK—That is not answering the question. What is the definitional difference between a surcharge and a tax?

ACTING CHAIR—Senator Cook, this question has been answered five times now.

Senator COOK—It has not, Mr Chairman, with respect. With respect, Mr Chairman, your intervention is making this more difficult.

ACTING CHAIR—I do not believe it is.

Senator SHERRY—We are going to be here a long time tonight if this is the pace.

ACTING CHAIR—We will be. They answered the question. If you read *Hansard*—

Senator COOK—They have not answered the question, which is the entire point, Mr Acting Chair. If you want to interfere in the line of questioning, you will just delay the proceedings. Senator Short has a simple question before him.

ACTING CHAIR—I am not interfering; you are interfering. I have said that this has been answered five times. I want the committee to move on and get to some other business.

Senator COOK—You are protecting the witness, are you?

ACTING CHAIR—I have a right to protect the witness from repetition. I have every right to do that.

Senator COOK—No. It is your job to serve the needs of this committee. Minister, would you try one more time, please? Would you give us a definition of the difference between a surcharge and a tax?

Senator Short—I am saying to you, Senator Cook, and I will say it one last time, but I will not say it again because the repetition becomes extremely boring, that the surcharge that the government has imposed on higher income earners in relation to their income—

Senator COOK—So you won't give us a definition.

ACTING CHAIR—Please let the minister answer the question.

Senator Short—I will tell you what it is: it is a measure designed to reduce the extraordinary unfair concessionality that your government—

Senator COOK—This is a political debate.

Senator Short—So yours is not a political question?

Senator COOK—No, mine is a question of what is the proper use of English? What is the definition?

Senator Short—That is a very interesting difference. Let me just say again that the surcharge on higher income earners in relation to employer contributions and self-employed contributions is a surcharge to reduce the extent of tax concessionality in the system, to reduce the dependence of the superannuation system on tax expenditures, or tax concessions, whatever you want to call it. The result will be, for higher income earners, and for the system as a whole, to produce a fairer and more equitable superannuation system.

Senator COOK—How does that differ from a tax?

Senator Short—I cannot explain it to you in any more detail than I have.

Senator COOK—You could if you wanted to try.

Senator Short—You can go on like this as long as you like, Senator Cook, because I have all night and I have tomorrow.

Senator COOK—So have I.

Senator Short—If you want to spend all night on this, that is fine. But I will not be saying anything more on it.

Senator SHERRY—Senator, is it not true that this is the largest single revenue raising measure in terms of a surcharge, tax, levy—whatever you choose to call it—in the budget?

Senator Short—I am not sure of the actual figures. I would not necessarily dispute that, but I would need to check the figures in terms of the revenue implication.

Senator SHERRY—Is it the largest, yes or no?

Senator Short—It would have to be close to the largest, if not the largest.

ACTING CHAIR—That is going to require research. Can I suggest, Minister, that you take it on notice?

Senator Short—Whether it is or whether it is not is irrelevant to the question at issue.

Senator SHERRY—Have you got the Treasury portfolio document there?

Senator Short—Yes.

Senator SHERRY—Could you look at page 10, sub-total 80, taxation administration. It refers to:

. . . running costs associated with increased tax on superannuation contributions of higher income earners
. . .

Why is it called a tax there and not a surcharge?

Senator Short—This is just a compilation put together by the Department of Finance on an element of portfolio by element of portfolio basis.

Senator SHERRY—But why is it referred to as an increased tax on superannuation contributions and not an increased surcharge on superannuation contributions?

Senator Short—I cannot tell you. As far as I know, it is a Department of Finance paper—or Treasury, I am not sure—but the fact that that is there does not really change my view on the question of the surcharge.

Senator SHERRY—Why is it being described interchangeably as a tax in some areas of the budget papers and in other areas as a surcharge? There are some other examples that I will be coming to on this issue. Why is it referred to here as a tax?

Senator Short—To be honest, I am not too sure why it is referred to as a tax there because it is quite clearly in the government's mind a surcharge and it has the purpose of producing the results that I have mentioned before, namely, a fairer and more equitable superannuation system.

Senator SHERRY—Senator, in considering the options of the 15 per cent surcharge for higher income earners—we will use your terminology—what other options did the government consider?

Senator Short—That is a matter of policy in terms of internal consideration by the government in the preparation of the budget, and I am sure you would not expect me to answer that question, Senator Sherry, because that goes to the heart of the government consideration of budget policy and budget policy formulation.

Senator COOK—Just before we leave the surcharge tax distinction entirely, Senator Short, in answer to a question from me the other night, you said that although these papers are circulated under the name of the minister, the Treasurer, they are documents of the Treasury. Do you recall that?

Senator Short—Yes, I did. At least I said something along those lines; I cannot remember exactly. What I should have perhaps said and what I meant that was that they are prepared by the Treasury and they are, of course, issued with the authorisation of the government. But they are prepared by the Treasury. That is what I meant to say the other night, if it was not quite specifically those words.

Senator COOK—I think you have accurately reported what I understood you to be saying. So when the word 'tax' appears there rather than 'surcharge', do you think that that is not true—that Treasury has got it wrong?

Senator Short—I think the correct description should have been 'surcharge'. It is not an increased surcharge; it is a surcharge.

Senator COOK—But Treasury are reporting as they see it and you are talking as a minister.

Senator Short—Yes.

Senator COOK—And in these circumstances, one would take Treasury's word to be closer to what impartially would be true, given that ministers do tend to speak politically, don't they?

Senator Short—I would hope that ministers, certainly in this government, would speak as accurately as is possible, obviously with a view to the politics of what they say. But we are

concerned with being as accurate as is possible in our statements. And I think that has come through since we were elected to government.

Senator COOK—But your reticence on this point is basically because—

Senator Short—I am not being reticent. I am not being reticent at all.

Senator COOK—You are.

Senator Short—Not at all.

Senator SHERRY—Why is it that the vast majority of financial commentators on this issue continually refer to it as a tax, despite your continuing to reiterate it is a surcharge? Why have they got it wrong? Why have all the financial accountants got it wrong?

Senator Short—I cannot speak for the financial commentators, other than to say that one possible reason for that is that you have been going around for months now, since before the budget, scaremongering about this whole area of superannuation and spreading the most massive misinformation. If I may say so—and I hope I do not breach parliamentary privilege—you have been not telling the truth in this area.

Senator SHERRY—Nor are you on this issue.

Senator Short—You have caused, as I have said many times in the Senate, and I will continue to say—

Senator SHERRY—I have avoided it so far, but it is going to be one hell of a long night if you want me to respond in kind the way you are now. I am happy to do it.

Senator Short—You can feel free to respond whichever way you like, Senator Sherry.

Senator SHERRY—Fine. You are in for a long, long night.

Senator COOK—So you are saying that Senator Sherry is, in fact, destroying the independent commentators and you have—

Senator Short—No, I am not saying that at all. First of all, I said that I cannot speak for the commentators; they speak for themselves. But they have not been aided in an objective assessment of this whole issue by the misinformation spread deliberately by Senator Sherry.

Senator COOK—Have you told that to the commentators?

Senator Short—I said they had not been helped in their consideration of this issue. Senator Sherry knows that he has been deliberately spreading misinformation and is continuing to do so.

Senator SHERRY—Do you seriously believe that independent financial commentators out there in the financial community have picked up the terminology ‘tax’ as a consequence of suggestions I have made?

Senator Short—No, but I would think that they would find this discussion extraordinarily esoteric.

Senator SHERRY—The difference between a surcharge and a tax is esoteric?

Senator Short—I doubt that commentators would see these matters—and it is understandable; I am not being critical of the commentators—in a quite different way to how we politicians do in the bearpit of politics here in Canberra.

Senator COOK—That is possible, because they have written you off you already when you said that there would be no new taxes. They don’t believe you. They argue that this is a tax—

and rightly, by any objective test. So when you continue to prance around the country saying it is a surcharge, they laugh.

Senator Short—I will tell you what they don't laugh at, Senator Cook. They don't laugh when we go around the country explaining to people that in maintaining the core commitments we gave to the Australian people—

Senator COOK—They do laugh at the idea of core commitments.

ACTING CHAIR—Please let the minister finish.

Senator Short—The core commitments that we gave before the election, and that we have had the courage to take decisions which will over the next two to three years go a major way to repairing the absolutely massive damage that you did to the whole structure of the nation and of the federal government's accounts. They understand that very well and they give us very full credit for that.

Senator COOK—You are opening another debate, a debate I am happy to have at any time and don't shrink from in the slightest. But implicit in the way you have answered that question is that they do laugh at you when you claim that you have not increased taxes because—

Senator Short—No, I don't think so.

Senator SHERRY—This is probably the largest revenue raising measure in the budget. Where, in your election manifesto, did it refer to a 15 per cent surcharge on superannuation?

Senator Short—The election manifesto did not refer to a surcharge on superannuation; but, equally, not everything that governments do is necessarily reflected, word for word, in pre-election or any other documents. What we did produce before the election was a pretty comprehensive retirement incomes policy document which ranged over a large number of issues and commitments, which basically have been or are in the process of being fulfilled. Part of that was to produce a fairer, more equitable and more efficient system. You are quite right. This particular measure was not contained in the pre-election documents, but no-one is suggesting that it was.

Senator SHERRY—So in terms of the terminology you used in the election manifesto 'Fairness and Equity', you are able to introduce a new \$1.48 billion revenue raising measure over three years. Do you believe that is consistent with your election manifesto?

Senator Short—It is a policy which produces greater fairness and equity in the system—something which I thought, Senator Sherry, that you and the Leader of the Opposition have actually said on the public record that you agree with.

Senator SHERRY—Correct; but we are discussing you, Minister, as a representative of the government. I am not here answering the questions; you are. You are the minister that we question.

Senator Short—Well I am delighted to put on the record my acknowledgment of the support from you and the opposition as a whole for this very important policy measure, and I look forward to you cooperating with the government in its implementation.

Senator SHERRY—Returning to the implementation, did you consider any other options for the administration of this new 15 per cent tax surcharge?

Senator Short—As I said before, that question goes to the area of the government's internal consideration of issues. Certainly it is true, and we have said this publicly, that there are various options and ways you could move in terms of the implementation of such a policy decision.

Senator SHERRY—What are they?

Senator Short—I have said publicly, and the Treasurer and the Prime Minister has said publicly on numerous occasions, that we were determined to follow an implementation procedure which did not impact on either employers or employees.

Senator SHERRY—But it does.

Senator Short—No, it does not. Hang on! Given that that was our basic bottom-line consideration, then various of the other options that may have existed fell out.

Senator SHERRY—What were the other options?

Senator Short—I am not prepared to go into all of those, other than—

Senator SHERRY—Some of them? Any of them?

Senator Short—No; other than to say that some possible options have been canvassed in the media and elsewhere. I think you have raised some. For example, one that has been proposed was that we should do it through the PAYE system, but there are some basic problems with doing it through the PAYE system, and that idea was rejected. There are some significant technical reasons why that would not work. If you want any elaboration on it, we can talk about it later on.

Another important factor was that it would have imposed an additional effort, for want of a better word, on employers and probably employees, and it was therefore ruled out for that reason, although it would have been ruled out on technical grounds as well. That was one suggestion; but I will not go into it any further. Our policy parameters, as we have said publicly, were that we wanted an implementation procedure that did not impact on employers and employees. Of the various ways of implementing it which met those policy parameters, the procedure that we have in mind is, in our view, the most efficient way of doing it.

If you are really serious about this subject, as distinct from playing politics, we will get the technical experts who are here with me tonight to take you through some of that. I would suggest that, if you really are serious, you might want to move on to having a look at those aspects.

Senator SHERRY—I take it, from that offer, that you have carried out some forms of research and actuarial modelling of the various options for administration of this proposal, have you?

Senator Short—Most of the work of a technical nature has been done within the ATO. Mr Monaghan, in particular, as a senior officer of the ATO, has the basic task of—

Senator SHERRY—Is the proposal—

Senator Short—I haven't finished the previous question. I stopped because you obviously were not interested in the answer.

Senator SHERRY—If you are going to be smart, you know there is often interchange, and I could make the same comment to you when you are conferring with Dr Henry or the officers. If you are going to be smart, we will still be here next week.

Senator Short—Did you want an answer to the question or not?

Senator SHERRY—Yes, I would like an answer.

Senator Short—What about listening, then?

Senator SHERRY—If you are going to be smart, then the next time you refer to an officer, I will ask you to listen.

Senator Short—Would you like me to finish?

Senator SHERRY—So cut the smart-arse tactics out and give me the answer.

ACTING CHAIR—Let him get on and answer it.

Senator Short—Would you like me to finish the answer to your question or not?

Senator SHERRY—Yes. Give me the answer and cut out the smart-arse tactics.

Senator Short—I will not respond in kind to you. If you want to get into the technical details, Mr Monaghan, a senior officer in the ATO, has the prime responsibility at the bureaucratic level for putting together the details of the implementation. That has been done, as I have said on numerous other occasions, in conjunction with industry and the key stakeholders in all of this, so that we can have extensive consultations and at the end of the day arrive at the most cost-efficient and least burdensome implementation procedure possible.

In saying that, let me acknowledge again freely that we accept that, if we are going to make a change of this nature to produce the fairness and equity in the superannuation system that we seek—and that I am glad you seem to endorse—then there will be additional administrative procedures involved, and they will have a cost. We acknowledge that, because it would be stupid to do otherwise. Obviously, it will have administrative costs—

Senator SHERRY—We intend to get to that, Senator Short, and I thank you for saying it.

Senator Short—I am saying that we are going to do that in a way which is going to produce the minimum additional burden and cost to the players involved in the whole of the industry.

Senator SHERRY—You were not here when I commenced, but my questions at the moment are to Treasury. Before I continue, is it correct to describe the surcharge as a compulsory monetary contribution demanded by government and enacted by law?

Senator Short—The surcharge will be enacted by law. That is for sure.

Senator SHERRY—Is it compulsory?

Senator Short—Well, it is not compulsory across the board. It is, of course, only applied to a certain group of people.

Senator SHERRY—It is compulsory for people over \$70,000.

Senator Short—Therefore, there is a definitional question there of what you mean by compulsory—

Senator SHERRY—Is it going to be voluntary for people over \$70,000?

Senator Short—There are between six and eight million persons with superannuation accounts in Australia. We expect this will apply to 350,000 of these people, or thereabouts.

Senator SHERRY—It will be compulsory for those people for whom you have stated it will be compulsory—for those 350,000.

Senator Short—Yes, but it is a critical point that it does not apply to the overwhelming majority of superannuation contributors.

Senator SHERRY—I accept that, but it is compulsory to those 350,000-odd.

Senator Short—Yes, it is.

Senator SHERRY—Is it monetary?

Senator Short—Yes and no. It does not impact on them in an immediate sense. The answer in—

Senator SHERRY—It will eventually affect them.

Senator Short—I could answer that by saying, ‘No, it is not’, because it will not affect the amount of money that a contributor has in his pocket at the end of his pay period.

Senator SHERRY—So, it is not monetary?

Senator Short—Well, it is not monetary in that sense.

Senator SHERRY—Is it monetary for government?

Senator Short—Yes. It will produce money for additional revenue for government from a small group in the community.

Senator SHERRY—Is it a contribution from those people that you choose to collect the money from?

Senator Short—It depends on what you mean by the word ‘contribution’. Tell me what you mean by the word ‘contribution’, then I might be able to answer you more specifically.

Senator SHERRY—A payment made by people.

Senator Short—No. It is not a payment made by the contributors.

Senator SHERRY—I am not trying to trick you about it applying to seven or eight million people—just the 350,000 people.

Senator Short—Why do you not tell me what the *Macquarie Dictionary* says, and then we can get on to something a little bit more serious.

Senator SHERRY—This is like extracting teeth, Senator Short. It would be much easier if you—

Senator Short—It would be much easier if you just read out whatever you have got there from *Macquarie Dictionary*.

Senator SHERRY—We will get to the definition of the tax in a moment, Senator.

Senator Short—And then we can agree to disagree.

Senator SHERRY—But is this a contribution?

Senator Short—And then we can get on to something that hopefully relates even vaguely to the estimates.

Senator COOK—If it was read out, would you accept it?

Senator Short—I will believe what you read out from the *Macquarie Dictionary* without me having to see it.

Senator COOK—Thank you for that.

Senator Short—I have got to say that is quite an admission on my part.

Senator COOK—Thank you for the implied criticism, but would you accept the *Macquarie Dictionary*’s view?

Senator Short—Whatever it is in the *Macquarie Dictionary* will not affect the answer that I gave you before.

Senator COOK—So, the Department of Treasury is wrong and the independent commentators are wrong and, potentially, without us going to it, the *Macquarie Dictionary* is wrong in advance.

Senator Short—No, I am just saying that I will not give you—

Senator SHERRY—Which dictionary will you accept?

Senator Short—I will not give you a different answer from the answer that I gave you before on several occasions.

Senator COOK—Why, will facts not change your mind?

Senator Short—I have stated the government's view on the surcharge, and that is it. I cannot and will not, and need not, resile in any way from that.

Senator SHERRY—Will you accept any dictionary? Can you name us a dictionary that you will accept a definition from?

Senator Short—Why do you not get this bit of your fun and games over, and then let us get on with something serious.

Senator SHERRY—It is not fun and games; it is a very serious issue, Senator.

Senator Short—You seem to think it is.

Senator SHERRY—Well, it is a serious issue.

Senator COOK—I think Australian electors may have thought it was when you made an undertaking about tax to them.

Senator Short—I think the Australian electors had a pretty clear eye on the situation in the country when they threw you lot out because of your absolute economic and fiscal vandalism.

ACTING CHAIR—I think it is time to read that out: we will get the *Collins Dictionary*, the *Oxford Dictionary*—

Senator Short—Let us get it out: is it Collins or Macquarie?

Senator COOK—Prompting the witness is not your role, I might say.

ACTING CHAIR—No, I am not.

Senator Short—Well, whichever one it is, why do you not read it out, get it on the record, and let us get on with something a bit more constructive.

ACTING CHAIR—It is time to get on with the estimates.

Senator SHERRY—Do you accept it as a compulsory monetary contribution demanded by government?

Senator Short—We have gone through all of that.

Senator SHERRY—You do not accept that that is what it is?

Senator Short—Look, we have just gone through all of that and we—

Senator SHERRY—Yes or no—do you accept it?

Senator Short—Senator Sherry, I have answered that. Go back tomorrow and read the *Hansard* of the last five minutes.

Senator SHERRY—It is the last 40-odd minutes.

Senator Short—Yes, you are wasting an enormous amount of time.

Senator SHERRY—No, you are the one who is wasting the time by embellishing your answers with political polemics and not answering the question.

Senator Short—Come on, let's get serious.

ACTING CHAIR—Can I say something. Let's get serious. The minister has answered it word by word as you have gone through it. Read out your definition, please, out of the dictionary—

Senator COOK—Senator, are you trying to inhibit our line of questioning?

ACTING CHAIR—No, I am not trying to. I am just saying—

Senator COOK—Well, why are you interfering?

ACTING CHAIR—There are rules and orders, and you are supposed to get on with asking questions about this—

Senator COOK—And that is what we are asking. And your interference is only preventing us doing so, with respect, Mr Chairman.

ACTING CHAIR—No, I am here to chair this meeting. You have asked that question and you have had it answered on numerous occasions, as with the other questions—one question up to seven times—and I think it is time to get with the business.

Senator SHERRY—Could I ask Dr Henry or Mr Callaghan: are you aware of any international definition of a surcharge or a tax?

Mr Callaghan—No, Senator, I am not.

Senator SHERRY—Could you obtain for us a definition of a surcharge and a tax from internationally accepted definitions? Could you attempt to obtain that for us?

Mr Callaghan—We can obviously attempt, Senator.

Senator SHERRY—Why is it that it is not defined in the budget statements? There are definitions of other matters in the budget statements, but not on this issue.

Dr Henry—The budget is concerned with revenue and outlays. For budgetary purposes it does not matter very much at all, frankly, whether something is a tax or not a tax. The issue is whether it raises revenue or whether it is an outlay.

Senator SHERRY—Do you accept it is a compulsory monetary contribution demanded by government?

Dr Henry—I do not think I really have anything to add on this point.

Senator Short—The really big issue in all of this is whether the opposition does support or does not support—

Senator COOK—No, that is your definition of things.

Senator Short—the surcharge. That is the big issue. That is what people want to know, because there is a lot of evidence flying around that there is a major split in Labor's ranks on the question of support. Kim Beazley is going one way, you are going another way, and yet—

Senator KEMP—Well—

Senator SHERRY—It is going to be a long night, Senator Kemp.

Senator Short—It would greatly help the process—

Senator SHERRY—We did not ask the minister this question. I do not know what he is answering at the moment.

Senator Short—It would greatly help the process if Senator Sherry could put on the record, absolutely unequivocally, that Labor will support the legislation when it is introduced to impose the surcharge on high income earners for superannuation. Senator Sherry, will you unequivocally put that on the record tonight, because it would remove an enormous amount of uncertainty and confusion within the industry and community if you do?

Senator SHERRY—I confirm the public comments I have made on that matter here tonight—

Senator Short—What are they again?

Senator SHERRY—and in the Senate chamber.

Senator Short—What are they again then?

Senator COOK—Are you questioning now, Minister?

Senator Short—Yes, I am.

Senator SHERRY—Are you moving into opposition?

Senator Short—I was not aware I was not allowed to ask you a question.

Senator SHERRY—Listen, is Senator Kemp entitled to interject in this way?

CHAIR—Are you a participating member, Senator Kemp?

Senator KEMP—I am.

Senator SHERRY—Don't complain how long this takes!

Senator KEMP—I have been told by the acting chairman that this question has been asked and answered eight times.

Senator COOK—It has not been, though. You have been misled.

Senator SHERRY—Why are we getting this answer here? It is not a response to any question I have just asked. Senator Short—

Senator Short—I asked you a question.

Senator SHERRY—Senator Short—on a new issue—are you aware of any instruction to the estimates committee conducting the questioning in respect of Prime Minister and Cabinet and their refusal to answer any questions whatsoever on superannuation?

Senator SHORT—To Prime Minister and Cabinet?

Senator SHERRY—To the Prime Minister and Cabinet estimates committee.

Senator Short—No, I am not aware of any such instruction.

Senator SHERRY—With respect to the research and actuarial modelling referred to earlier in relation to this measure, was there any research and actuarial modelling carried out on any other options of administration with respect to this matter?

Senator CRANE—A new question after 20 minutes.

Senator Short—Yes, that is in advance. The answer to your question, Senator Sherry, is that whether there was or was not is a matter for government, because various work is done in a whole range of areas across the board—in superannuation and a vast range of others—in terms of the internal work that departments and agencies do before they provide advice to government. And that, of course, has traditionally been regarded as something which would not be before an estimates committee.

Senator SHERRY—Has the department examined the possibility of taxing superannuation contributions at marginal tax rates?

Senator Short—Let me answer that by repeating the answer that I have just given, that the decision that was taken and announced in the budget was a decision of the government. Obviously, advice is received from departments and agencies on these matters, as well as on the whole gambit of government. But as I said before, Senator Sherry, it is not the place, and it has never been the place, of estimates committees to have officials canvass the various policy considerations or policy options that may or may not have been considered in the advice provided to government.

Senator SHERRY—Did Mr Callaghan's section in Treasury—and, if not, which section—prepare the cabinet documents in relation to this measure?

Senator Short—Same answer as last time.

Senator SHERRY—Did any section in Treasury prepare coordination comments to be attached to the cabinet document in relation to this policy proposal?

Senator Short—As you would know from your own experience in government, coordination comments are generally attached to documents that go forward for cabinet consideration. There are normal coordination comments. I do not know whether there were in this particular case, but I—

Senator SHERRY—Can the officer inform us?

Senator Short—No. With that statement I have made, it is the same answer as I have given to your other question. We will not answer these questions because they are going, as you well know, to the heart of consultations and the toing-and-froing of advice that comes to government from departments and agencies. As you well know, and I am sure you accept, they are not questions that are appropriate to be answered in estimates committees, and they will not be.

Senator SHERRY—Does the retirement incomes modelling task force still exist within Treasury?

Senator Short—Yes.

Senator SHERRY—Did they prepare any data relating to the impact of this measure on the end retirement benefit of a superannuant?

Senator Short—That task force does a range of work on a range of issues. It continually does such work. In terms of your particular question, I cannot specifically answer. But even if I could, I will not.

Senator SHERRY—You will not take it on notice?

Senator Short—No.

Senator SHERRY—You are just refusing to cooperate, Senator?

Senator Short—Yes—for precisely the reasons that I have already given you.

Senator SHERRY—Okay. Has the retirement income modelling task force undertaken research in respect to the 15 per cent surcharge tax on contributions made on behalf of high income earners who earn \$70,000 or more?

Senator Short—Same answer as last time.

Senator SHERRY—Senator, what is the difference in end retirement benefit for someone earning \$62,000 and not subject to the 15 per cent tax, and someone earning \$62,000 who is subject to the 15 per cent tax?

Senator Short—That is a factual sort of question. Have you got answer to that?

Mr Callaghan—Not off the top of my head, no.

Senator Short—We will take that on notice.

Senator SHERRY—So you will provide an answer?

Senator Short—Yes.

Mr Callaghan—Sorry; can we clarify that one? You said \$62,000 and not subject to it; and \$62,000 and subject to it?

Senator SHERRY—And subject to it; yes.

Mr Callaghan—How is the \$62,000 below the \$70,000 threshold subject to it?

Senator SHERRY—No; I am looking at a person whom the tax applies to.

Senator Short—It does not apply to someone with a taxable income of \$62,000.

Senator SHERRY—What about other forms of income?

Mr Callaghan—Again, that \$62,000 is the total—

Senator SHERRY—No; what about other forms of income? There is a series of questions here. If \$62,000 is their base salary or wage, are there other forms of income that would be taken into account, to lift the \$62,000 to \$70,000?

Senator Short—All forms of income are taken into account. The surcharge applies to taxable income from whatever source, including the super contributions.

Senator SHERRY—Has the retirement income modelling task force undertaken any modelling on what the loss of retirement benefits will be for a woman who is 34 and earning \$500 a month and chooses to opt out of superannuation?

Senator Short—It is the same answer as before.

Senator SHERRY—Can you request the retirement income modelling task force to carry out that research?

Senator Short—No; I do not know that I will request them to do that.

Senator SHERRY—Okay, if you want to be uncooperative. Will you request the retirement income modelling task force to undertake research as to the impact that the opting out policy will have on the take-up of full social security benefits in 10, 20 and 30 years time?

Senator Short—Could I say that, if you have a series of questions like this, why do you not put them on notice and we will have a look at them and respond in due course, or as soon as we can? I say that without commitment as to the extent of the answer that we will give you, in the light of the earlier generic answer that I have given you. If there is a whole series of these sorts of questions, it really would save our time a great deal if you would put them on notice. I am happy to take them on notice, with that proviso.

Senator SHERRY—We look forward to the answers, and there are a number of those matters we will put on notice. Has the department sought advice or research as to the legal implications of this policy for trust, contract and SI(S) law? This is a question to the department.

Mr Callaghan—Which policy: the surcharge or the opting out?

Senator SHERRY—I am referring to the new surcharge/tax. There are clearly legal implications vis-a-vis the trust, the policy or contract that persons have, and SI(S) law. Have you carried out any research in this area?

Senator Short—Wasn't your question whether the department had sought legal advice?

Senator SHERRY—Yes; as to the legal implications of this policy for trust, contract and SI(S) law.

Senator Short—That is a yes or no answer.

Senator SHERRY—What is the answer?

Senator Short—I do not know.

Mr Callaghan—I am afraid, Senator, that instead of saying a yes or no, I think your question is going to aspects of the implementation of it, and that is the process that is taking place now.

Senator SHERRY—So you have sought advice? The minister is giving you permission to say yes or no. I do not think he is going to shoot you if you say yes.

Mr Callaghan—I realise that, Senator. I am not trying to dodge it, I am just trying to understand the question in the sense that dealing with the implementation of it is going to involve legislation; and, within the context of the Australian Taxation Office preparing that legislation, it certainly becomes a legal matter.

Senator Short—And there is the legislative preparation process to go through, with the normal checks and balances and so on that, as you know, Senator Sherry, take place in those circumstances.

Senator SHERRY—This question is to Treasury again. Has any research been undertaken as to the impact of the introduction of retirement savings accounts for national savings?

Mr Callaghan—Again, my answer would be same as before, in terms of various aspects of advice and research being undertaken in all policy matters relating to the budget. Those are issues that are not normally addressed in this committee.

Senator SHERRY—Has the department carried out, or does it intend to carry out, any education campaigns relating to the introduction of RSAs?

Mr Callaghan—A discussion paper has been issued. It was issued with the Treasurer's announcement on budget night of the introduction of RSAs. At this stage, it is waiting for the response of submissions that are due on 4 October in regard to the RSAs.

Senator SHERRY—What does it say in respect of an education campaign for RSAs?

Mr Callaghan—I do not think it specifically addresses an education campaign.

Senator Short—The government would be expecting the potential RSA providers to certainly be conducting their own education campaigns in that respect. It is more a matter for the providers than for government. That is not to say that government will not do anything, but that is one of the elements that we will be looking at as we progress. As you know, we are hoping that the legislative process will enable us to have RSA providers able to offer RSAs as from 1 July next year, but there is some way to go yet before we have to finalise all those arrangements.

Senator SHERRY—So you believe it is desirable that there be an education campaign?

Senator Short—Yes, but the main education campaign should quite rightly—and in fact, probably will—lie with the industry and, in particular, with the providers themselves.

Senator SHERRY—Do we have any likely date—and I know you cannot give a precise day or even a week—as to when we will see the RSA legislation?

Senator Short—I cannot give you a precise date. As you are aware, we have called for submissions on it and 4 October is the closing date for them. We are, as well, doing a lot of consulting at the moment with the various stakeholders in the industry. The government's aim is to have the legislation introduced into the parliament before the end of this session so that people can have a look at it over the summer recess, with it being debated and hopefully legislated in the first half of next year, if at all possible.

Senator SHERRY—Obviously your aim is not to have it pass through the parliament this year, is it?

Senator Short—No.

Senator SHERRY—There would be a cut-off motion in the Senate, obviously?

Senator Short—That is right. No, we are not aiming to have it passed this year. We are aiming to have it introduced this year and hopefully, with your cooperation, passed in sufficient time in the first half of calendar year 1997 to enable that education process to happen that you are rightly talking about and the service providers to make the necessary arrangements, and the ISC and so on to do what needs to be done so that we can get a smooth start to it on 1 July. But to meet that aim, there are some pretty tight timetables to be met.

Senator SHERRY—In respect of this education campaign, have you carried out any research about whether or not a campaign will be needed?

Senator Short—No, I do not think there has been any specific research as to whether a campaign would be needed. I might defer to the officials on that. It is important. We regard RSAs as an important complement or new product within the range of superannuation products; and, therefore, it is important that the potential RSA account holders be as well-informed as possible. It depends on what you mean by an education campaign, but the more that information about the RSAs can be widely disseminated, the better.

Senator SHERRY—Is it your view that the general public does need to be educated in this area?

Senator Short—With any new product that is coming on stream—particularly in this industry, but not just in this industry—if you are going to launch it properly, so that it is going to be properly appreciated and recognised and people can make up their minds whether they want to buy the product or not, the more widespread the understanding is amongst potential RSA account holders, the better.

Mr Callaghan—A point I would add is that, within the announcement of it, it was stated that there would be a requirement for a disclosure regime, so that potential consumers understood the returns and the attributes of an RSA.

Senator SHERRY—Have you consulted with the ISC or the ATO as to the necessity for this education campaign?

Mr Callaghan—The legislation will be prepared by the ISC. Certainly, the ISC and the ATO are always consulted in terms of the policy advice that goes to the government.

Senator SHERRY—Has the department consulted with industry as to the need for an education campaign?

Mr Callaghan—There has always been a series of consultations with industry prior to the announcement. It was in the coalition's election proposals, and a considerable amount of consultation took place. As I said before, there is now a discussion paper out that has invited submissions from the industry in terms of the implementation of RSAs.

Senator Short—And there has been a lot of contact with industry since the election: with peak bodies, potential providers, banks, life offices, building societies, credit unions and the like. That consultative process is very important. It has been fairly active and will continue to be.

Senator SHERRY—Has industry indicated a view on a government sponsored education campaign in respect to RSAs?

Senator Short—Not to my knowledge. There has been some discussion of it in the discussions I have been involved in, but it has not really been a big issue in any discussion I have been involved in. I am not sure about Treasury or Tax or ISC.

Mr Monaghan—I am aware of discussion with industry about education in general in this superannuation area. But I personally am not aware of particular issues around RSAs, in isolation of the more general point.

Senator SHERRY—In respect to the financial and social implications of the introduction of RSAs, has there been any research carried out?

Senator Short—The financial and social implications are two different things. I am not aware of any research that has been carried out in that sense. The government's announcement of RSAs, which of course was a pre-election undertaking, has been overall very warmly welcomed.

Senator SHERRY—I know it was a government election commitment, but surely research into social and financial outcomes through the introduction of RSAs could have been carried out since the election.

Senator Short—I suppose it could have. But in terms of the social impact of RSAs, I really think that you are getting—

Senator SHERRY—Let us just deal with the financial impact.

Senator Short—I am not sure what you have in mind. It is hard to envisage that the introduction of RSAs, which will be one additional product in a whole range of retirement income products, is going to have a profound social impact, one way or the other.

Senator SHERRY—Let us just take the financial outcomes. I am referring here to Treasury, not to the tax office or the ISC. Have they carried out any research in this area?

Mr Callaghan—Again, this goes back to the answers we gave before on the nature of the research that we have done or policy advice we have given across all the budget measures and matters that we have given the government.

CHAIR—I did not quite hear that.

Mr Callaghan—In terms of any of the work that had been done on the measures announced in the budget, the policy advice had been prepared. These are issues of the policy advice that we have given the government and, again, they are not issues that we would normally talk about in these committees.

Senator SHERRY—The issue of trust structures and RSAs—has the department a view on that?

Senator Short—There has been a policy decision that RSAs will not be subject to a trust structure. That is a policy decision, and that is that.

Senator SHERRY—What is the legal precedent to underpin this approach of a non-trust structure for RSAs?

Senator Short—The legal precedent? I would have to ask officials to comment on that; but, as far as RSAs are concerned, we are looking for a product that is low cost, low risk and simple. It is felt for good and valid reasons that a trust structure is not appropriate, particularly where it is going to be a matter of individual choice. I think this is one of the reasons why you have some difficulty coming to grips with RSAs, Senator Sherry, because what we are really very much on about in this government is providing increased choice to consumers of retirement income products or of anything else. That is really what RSAs are about: increasing

the range of choice. I know that is something that is anathema to you, but we regard that as important.

Senator SHERRY—I will ignore the embellishment! You did indicate that the officers may have a comment; do they?

Mr Callaghan—The legislation will be introduced allowing for RSAs, so I do not quite understand the legal precedent part.

Senator SHERRY—Were any international examples of retirement savings accounts considered, in consideration of the non-trust structure?

Mr Callaghan—Again, I am not sure what are the different arrangements around the world are in terms of the prudential supervision of retirement products. Each of them depends very much on the legal system of each country. As I understand it, the concepts of the trust structure and the beneficiary duties that apply to it are very much ones of the English legal system, and are very different to those in other jurisdictions operating under a very different approach and a very different legal structure.

Senator SHERRY—Is there anyone here who has any knowledge of the international area?

Senator Short—It is essentially there, if I might say, for the reasons that Mr Callaghan has outlined. It is an irrelevant question.

Senator SHERRY—It is not; but you might think it is.

Senator Short—I think it is.

Senator SHERRY—It is not, and I will not go into the political argument that you resort to.

CHAIR—A lot of the issues that are being raised here could be raised in a briefing from the department. They are really not pertinent to estimates—to the department's administration of its responsibilities. They are matters of information that would be better obtained in a briefing.

Senator SHERRY—These questions are no broader than any of the other questions asked so far today. For some reason, the government and the department are particularly sensitive. To Treasury's knowledge, how would you rate in world terms the SI(S) regulations that we currently have? Are they the best in the world? Are they adequate? Can they be improved?

Mr Callaghan—They are questions that I think the ISC would be more qualified to be able to comment on; but, from my knowledge, they are very suitable in terms of achieving the purpose of supervision of the superannuation industry.

Senator SHERRY—Do you have any knowledge of the Maxwell disaster in the United Kingdom?

Mr Callaghan—I do not have detailed knowledge of that.

Senator SHERRY—Does anyone in Treasury have that knowledge?

Mr Callaghan—Again, I think that the best source of that knowledge may well be the ISC. Within the department I think that it is an issue that is more likely to be addressed within the ISC.

Senator SHERRY—In formulating a submission to the financial system inquiry, how is the department able to determine that the nature of the RSA product should be determined prior to the conclusion of that inquiry?

Senator Short—Would you repeat that question?

Senator SHERRY—In the context of the advice that the department is providing to the financial systems inquiry, how is the department able to determine that the nature of the RSA product should be determined prior to the conclusion of the inquiry?

Senator Short—We do not see the Wallace inquiry as having any necessary relevance to the introduction of RSAs, other than, of course—depending on what the outcome of Wallace is and the recommendations it makes in terms of regulatory regimes and so on—the fact that that may impact on those aspects of RSAs. But I do not see any reason that the product needs to await an outcome from Wallace.

Senator SHERRY—Obviously this depends on the outcome of Wallace, but if there were some changes resulting from Wallace is it not a fair chance that there would need to be amendments to the laws affecting RSAs?

Senator Short—Possibly, in the same way that there may need to be amendments to the laws affecting all other elements of not just superannuation but other items in the financial industry.

Senator SHERRY—What advice did the department provide to the government relating to the distinction between the RSA product and the broader context of the Wallace inquiry?

Senator Short—You are asking for an advice provided to government and, as you well know, Senator Sherry, that is not a question for answer at estimates.

Senator SHERRY—Has the department undertaken any research into the possible FBT implications as a result of the new 15 per cent surcharge?

Senator Short—I give you the same answer as the last one.

Senator SHERRY—Minister, do you believe there are any FBT implications with respect to the 15 per cent surcharge?

Senator Short—I think we have said publicly that if there are major changes in salary packaging arrangements which may cause problems—significant problems—to the revenue then the government would look at that at the time. But we have said that publicly already and that would seem to be commonsense.

Senator SHERRY—I think Mr Carmody said it publicly too, didn't he?

Senator Short—I beg your pardon?

Senator SHERRY—Mr Carmody said it publicly?

Senator Short—I think he said it publicly. I think we have said it also publicly in response to questions from either you or other senators in the Senate.

Senator CONROY—Could you give us some indication of what the threshold point for that decision would be?

Senator Short—No, that is a totally speculative, hypothetical question at this stage.

Senator CONROY—So you admit there may be a need to change?

Senator Short—No. All I am saying and all that we have said—and the tax commissioner has said the same—is that if it does arise by any chance that there are significant changes that arise in the system of salary packaging and the like, which run the risk of posing significant problems or risk to the revenue—which we do not expect to happen—then the government would look at it at that time. But in the unlikely event that that did happen—if it happens at all and, as I say, that is unlikely—then we will look at it at the time.

Senator CONROY—You are not prepared to say if we lose \$10 million suddenly from this area, \$20 million—

Senator Short—No, it is not possible to—

Senator SHERRY—I am a little surprised you say it is unlikely.

Senator Short—Let's see what happens.

Senator SHERRY—Every financial journal we pick up at the moment—the *BRW* is a good example—is advising people on ways to minimise this new 15 per cent tax, and one of the elements they use is FBT.

Senator Short—Well, let's see what happens.

Senator CONROY—‘Get a car, negatively gear a house.’ That is the standard advice at the moment to everybody, publicly.

Senator SHERRY—That is right. Have you ever read any of those articles?

Senator Short—Yes.

Senator SHERRY—Do they cause you any concern?

Senator Short—I have noted them with interest.

Senator SHERRY—Have you requested the department to carry out any observation of these interesting articles?

Senator Short—No, but I am sure the department keeps a careful watch on what is written in the financial press in the same way that we do, as is part of their job.

Senator CONROY—How would the department indicate to you that there was a significant haemorrhaging taking place in the tax revenue arising out of this?

Senator Short—How would they?

Senator CONROY—How would they let you know? You are not telling them there is any figure to watch for.

Senator Short—I presume they would obviously raise it with us. As I say, you are talking in the future in the most speculative and hypothetical of ways and it is—

Senator SHERRY—It not another one of my great campaigns to speculate on tax evasion, is it, Senator Short? Is that what you are alluding to?

Senator Short—Let's wait and see what happens.

Senator SHERRY—Are you suggesting I am prompting all these financial writers to—

Senator Short—No, let's wait and see what happens. But I would like you still, Senator Sherry—and you have not even taken it on notice—to let me know unequivocally as to whether the opposition is going to support the government's legislation for the surcharge.

Senator SHERRY—I have already made my views clear.

Senator COOK—He has done that a couple of times.

Senator SHERRY—Yes.

Senator Short—So you are, are you?

Senator SHERRY—In the area of—

Senator Short—Are you going to?

Senator SHERRY—Have you given the area of investment loans that may become part of a salary repackaging any consideration in respect to avoidance of the 15 per cent?

Senator Short—I will give you the same answer to that as I have given you before: let's wait and see what happens.

Senator SHERRY—Why did the tax commissioner express deep concern last Wednesday over the prospect of salary repackaging?

Senator Short—I am not sure that you are quoting him accurately.

Senator SHERRY—I was not attempting to quote him.

Senator Short—Hang on. I understand that what the commissioner said—and I will paraphrase it; it is pretty close to what he said—is that it would be naive to assume that the ATO was not conscious of this possibility, that is, the possibility of high income earners switching their packages, in framing its original advice to government. The ATO is conscious of the need to advise government of an appropriate response if evidence of these planning practices emerge. And I think he also went on to say that the government is fully aware of these issues, which really is not saying anything different from what we were discussing a few minutes ago.

Senator SHERRY—Have you discussed this matter with him since he made that speech?

Senator Short—No, not specifically, no. In fact, no, not at all, I do not think. I thought it was a good speech that ranged over a range of issues and was particularly valuable in talking about the impact, particularly of a positive nature, of the growth in technological advances over the years ahead as far as the administration of the tax office is concerned.

Senator COOK—What do you think is the prudent responsibility that you have here, Senator Short? Is the prudent responsibility to wait and see whether there is in fact massive avoidance and then deal with it, or is the prudent responsibility to anticipate, given that this view is notorious in business magazines, and deal with it? I ask the question genuinely because you seem relatively unconcerned.

Senator Short—I would say again to you—and I think the commissioner said it very well; I cannot add any more to that—that the commissioner shares the view of the government that obviously it would be naive to assume that the ATO is not conscious of the possibility of the changes and we will look at that if evidence of these planning practices emerges.

Senator COOK—So the horse has to bolt first?

Senator Short—Not at all. That is not what it says. Indeed, it says the contrary.

Senator COOK—If the horse did bolt, would you retrospectively legislate?

Senator Short—Come off it.

Senator COOK—Is that a no?

Senator Short—No, I am saying that that is a question that assumes that the government would not be able to take action at an appropriate time. I reject that assumption.

Senator CONROY—If you put in place a new tax structure and you acknowledge at the beginning when you introduce it that the incentive is there for tax minimisation or avoidance, why will you not put in place some mechanism to try and stop that at the beginning rather than waste only \$10 perhaps of revenue or \$10 million and then in 12 months say you will legislate to close it when, as Senator Cook has described, in that intervening period, you may have suffered some haemorrhaging of your tax base? Why would you not look at doing it when you introduced the new structure?

Senator Short—The fact remains, Senator Conroy, that superannuation remains unchanged at all for the overwhelming bulk of the superannuation contributors, the lower and middle

income earners. As far as the higher income earners are concerned, it still remains an attractively concessional form of saving. I think some of the dire predictions being made about major changes in the superannuation system—excerpts from it—have considerable doubts attaching to them.

But let us see what happens. If there is evidence mounting of changes in the packaging or in the way in which people save and provide for their retirement having a detrimental impact on the revenue—and superannuation, of course, is only one aspect of that; indeed, in the private sector I think it is not the primary form of saving for retirement or preparation for retirement—then we will look at it at the time. But you cannot say any more in advance of that, and I do not intend to.

Senator COOK—But the wealthy would have discretionary incomes which enable them to apply some of their income to avoid tax, do they not?

Senator Short—I have answered this, Senator Cook, ad infinitum. I cannot add anything more to what I have already said and I do not propose to. Next question.

Senator COOK—Do you not even wish to comment on that proposition?

Senator Short—No. I have commented on it so often that it is becoming like a cracked record. I do not intend to respond further to that and I suggest that you move on to the next question.

Senator SHERRY—Do you pledge to maintain the integrity of the tax system?

Senator Short—Quite obviously, yes.

Senator CONROY—What percentage of incomes above \$75,000 would use a tax accountant? Is there any indication from tax office or Treasury? Would it be high, would you think? Would it be 70 per cent of people with incomes above that?

Mr Highfield—Given that on average around 72 per cent of the total population use a tax agent, I would suspect that there would be a very high possibility that anyone with a taxable income over \$70,000 would use a professional adviser. I would suggest it would probably be in the high 80s or 90s.

Senator CONROY—So if a professional tax adviser recommended, as all the magazines appeared to do, that the way to avoid the surcharge tax is to restructure their salary package, you do not think there is a potential problem, given everybody uses those tax accountants? With the segment you are aiming at, you acknowledge that they get the best advice on how to move and repackage and you do not think there is a potential right now?

Mr Highfield—I did not say that; I was just responding to your question about the incidence of the use of tax professionals by high income earning taxpayers.

Senator COOK—Given that Senator Short's answer is a 'wait and see' one—'we will wait and we will see'—how long will we have to wait and what will we have to see? What degree of avoidance would the government be prepared to act at? Do you have a performance indicator of any type?

Senator Short—No. I have said, Senator Cook, that we have debated this at some considerable length now. I have nothing more to add.

Senator COOK—Do you not think that it is in the public interest?

Senator Short—Yes. I have nothing more to add to what I have already said, which I think we have made very clear.

CHAIR—I think the minister has indicated that he regards these issues as relevant to estimates. He has answered the question so now it might be appropriate to move on to a different subject.

Senator COOK—He is declining to answer and the record can show that.

Senator Short—The thing that surprises me is that the Labor Party seems increasingly reluctant, even though it has said that it supports the proposal, to have a situation where you might envisage the revenue being increased at all by adopting for high income earners a fairer and more equitable superannuation system. I find that quite extraordinary.

Senator SHERRY—This is a cracked record.

Senator CONROY—You are going to try and collect this tax and have everybody shift somewhere else so you do not actually collect as much as you are hoping. We are hoping you collect that much tax. But we are just trying to assist you to find a way to make sure you get as much as you are after.

Senator COOK—Pardon us, but the last time you were in government, we had the bottom of the harbour schemes, so your record ain't real flash.

Senator SHERRY—In respect to the couple of questions I posed—

Senator Short—You know who moved against the bottom of the harbour, Senator Cook—

Senator COOK—Yes, I do.

Senator Short—And you know some of those people over in your bailiwick who are involved as well. So I would just be a little careful if I were you.

Senator COOK—I know what I voted on in terms of the reform to the tax system when I came into the parliament in 1983—and it was not your legislation.

Senator Short—Anyway, that is half a generation ago. What about moving on to the next question.

Senator SHERRY—In respect to the questions I posed earlier to the Treasury officials on superannuation retirement and incomes policy, bearing in mind that we are considering estimates for funding these areas—the work that Treasury carries out in these areas—you do not have any knowledge of the international examples; you do not have any knowledge of the legal implications of the superannuation policy: what is the amount of money attached to this particular section in respect to superannuation policy? Why should we continue funding it?

Mr Callaghan—Senator, going back, you said that we do not have any knowledge of the legal: again, we have said that it is an aspect of legislation that has to be introduced. And again, I am not sure where you were driving with that question. In terms of the international, we do look at what overseas experience is. Again, I thought that you asked it with regard to retirement savings accounts and, as I said, it is always a matter of applying it to the legal system and the nature of the superannuation system we have here. We do look at what is happening overseas.

Senator SHERRY—What is the amount of money being spent or allocated to superannuation policy in Treasury at the moment?

Mr Callaghan—I would have to have a break-up in the Treasury of the financial institutions division. Within the program here it covers well beyond the financial institutions division in terms of the total salary vote. For example, 1.8, in 1996-97 that salary vote is covering the staffing of the financial system inquiry. The break-up for the financial institutions division is

closer to less than \$1½ million in salary. Approximately half of that is on the superannuation area, which covers superannuation policy section—

Senator SHERRY—How many staff is that?

Mr Callaghan—Approximately five people. In addition to a branch head, there are approximately five people in the superannuation section and in another section that covers retirement income and savings policy there are approximately five people.

Senator SHERRY—Is that an increase or a decrease in resources?

Mr Callaghan—No, stable resources.

Senator SHERRY—This is yet another area of Treasury where there has been no cut. I am not suggesting there should be.

Mr Callaghan—It is a little difficult to answer because there has been a reorganisation, as is outlined, I think, on page 49, in terms of amalgamating some of the functions from other parts of Treasury. Also within the division there has been a broader reorganisation that has accommodated the establishment of the financial system inquiry. Within all that the core probably has not changed.

Senator SHERRY—Given the government's budget announcements, is that putting an increased workload? Do you anticipate having to increase the budget allocation in these areas?

Mr Callaghan—There is no intention to increase the budget allocation within Treasury.

Senator SHERRY—Has it increased the workload?

Mr Callaghan—It is difficult to answer, Senator. There are a lot of aspects associated with this, as there have been throughout the 1995-96 measures with regard to superannuation. There has been a continuation, I think, of looking at those measures in terms of what was occurring and their implementation. Then, with the change of government, in terms of advising the new government, it has been a continually heavy workload, Senator.

Senator SHERRY—Could you define the policy responsibilities between the two different areas—one is super, the other is retirement incomes?

Mr Callaghan—Senator, unfortunately I do not have with me here the specific outline of the division of the policy and the objectives of each of those sections and I certainly could provide that to you in far more detail. Broadly, within the superannuation policy section, it is providing advice on all aspects of superannuation policy. An example I would use would be looking at, as the government has announced, the work we are contributing to the review of the compulsory employee superannuation and the payment of the l-a-w law tax cuts.

Within the retirement and savings policy section it is looking at aspects related to the pension, for example, and taxation measures addressed towards private savings. Also within that is the taxation of life insurance and friendly societies and the work that is going on in that area.

Senator SHERRY—A question to the tax office: have there been any costings carried out on the effect of the 15 per cent tax on the administration of superannuation fund members?

Mr Monaghan—Not directly, but what I can say is that, building on the work we have done with industry over the years, we are working very closely with industry in how this measure will be implemented. We are very conscious of the costs that we impose on them and are doing all we can to minimise those.

Senator SHERRY—Have they indicated to you what those costs will be?

Mr Monaghan—I have got no reliable figure. I have heard figures, but no, nothing reliable.

Senator SHERRY—In a fund, is it likely that the administrative costs will be spread across all the members of the fund?

Mr Monaghan—That is a matter, in a sense, for the funds. It is not really for me to say how they allocate their costs.

Senator SHERRY—What is your judgment?

Mr Monaghan—I do not really see, Senator, that my judgment on this is going to help the funds implement the measure. There is a measure to implement and we need to do that. How they do that is up to them.

Senator SHERRY—But at the moment the new tax measure applies from budget night and the funds do not have the legislation in place yet, so they obviously have not got the administrative framework in place yet. How would they go about distinguishing between people earning more than \$70,000 a year and those earning less than \$70,000 a year?

Mr Monaghan—Are you talking about now?

Senator SHERRY—Now.

Mr Monaghan—The system is intended to operate in bulk in August 1997 for the first time, so we are working with them to see how we can make that work as best we can together. At this stage—except in relation to people who are drawing their benefits down and there is no need for them to do that—in relation to that class of member, again it is a question of working with them to identify the best way that we can deal with that situation.

Senator SHERRY—You have a close working relationship with the superannuation funds?

Mr Monaghan—We believe that the best way for us to administer our part of the system is to work very closely with them.

Senator SHERRY—In the case of a superannuation fund that clearly has a mixture of income members, those below \$70,000 and those above \$70,000—and there is no doubt that those funds exist—how at the present are funds to distinguish between the two levels of contributor?

Mr Monaghan—I am not sure at the present time they are required to.

Senator SHERRY—What if the member is going to leave?

Mr Monaghan—That is a situation which we need to sort out but, for the overwhelming mass of members, we are talking about over the next year developing a system where we can match information that the funds provide on contributors against taxable income and issue the assessment to the fund, so that is the way the system will work.

Senator SHERRY—So you do accept that the fund will need to know the income levels of all contributors?

Mr Monaghan—No.

Senator SHERRY—How many?

Mr Monaghan—None.

Senator SHERRY—Why not?

Mr Monaghan—Because there is no reason for them to need to know. All they need to do is pay the notice of assessment which is issued to them.

Senator SHERRY—How are they to identify who is to pay what tax or to have what tax taken out of their account?

Mr Monaghan—We will tell them. We will issue them with a notice of assessment.

Senator SHERRY—So the fund will know those people that are earning more than \$70,000 and those that are earning less than \$70,000. They must by definition.

Mr Monaghan—No.

Senator SHERRY—Why not?

Mr Monaghan—I guess a fund—

Senator SHERRY—If they know who is being assessed, they will know who to charge.

Senator CONROY—They must know who to charge—so everyone on the list earns more than \$70,000—

Mr Monaghan—No, I do not think that is exactly the way it is. What the fund will know is that they have been advised as to a rate of surcharge. They can sit down and speculate, I guess, which is probably what you are getting to: that someone's taxable income plus their employer contributions plus their deductible contributions add up to a certain amount. That may or may not get them within some range of what someone's taxable income actually is but I do not believe that the funds are going to be particularly interested in doing that and they are only going to be able to speculate within a range.

Senator SHERRY—They will know who is earning \$70,000 and who is not?

Mr Monaghan—No, I do not believe so. They know whose taxable income plus various contributions from what could be a range of funds and a range of situations—

Senator SHERRY—Yes, I am going to get to that issue in a moment.

Mr Monaghan—Will add up to a certain amount.

Senator CONROY—But if you send a notice saying the following people need to be surcharged, everyone who is not on the list almost certainly earns less than \$70,000?

Mr Monaghan—That their taxable income plus their contributions is less than that.

Senator SHERRY—They could reasonably speculate that they earn less than \$70,000 if they are not being surcharged.

Mr Monaghan—No, they can speculate that their taxable income is less than \$70,000.

Senator SHERRY—In relation to the costs of this in respect to the funds, do you believe it will cost the funds more in administrative costs?

Mr Monaghan—Than it does now?

Senator SHERRY—Yes, than it does now.

Mr Monaghan—Yes.

Senator SHERRY—Do you have any ideas of the cost at this stage?

Mr Monaghan—Not at this stage.

Senator SHERRY—Do you have any ideas of the cost at this stage?

Mr Monaghan—Not at this stage.

Senator SHERRY—Do you have any idea how the cost will be apportioned amongst the funds?

Mr Monaghan—No.

Senator CONROY—So if the fund has nobody that has \$70,000 plus plus, do you believe they would incur a cost?

Mr Monaghan—They would incur a cost in advising us of the contributions that they have received, but they will not incur any cost in paying the surcharge, because they will not be.

Senator SHERRY—Earlier you touched on this issue of the assessable income and you have pointed out that there are many people—I do not know the number; you might know—who are in more than one superannuation fund. Do you know the number?

Mr Monaghan—I am aware that on average there are 2.3 super accounts per member. There is a variation between public and private funds and so on.

Senator SHERRY—So the matching—

Mr Monaghan—If I could just add something there, there are somewhere in the order of five million inactive accounts, which would not be receiving the contributions in a particular year of income. So I believe that we can work with industry to reduce the volumes through means such as that, including the amount of work that they need to do.

Senator SHERRY—Are you confident you will have the system in place by August next year?

Mr Monaghan—Yes.

Senator SHERRY—To collect this?

Mr Monaghan—Yes.

Senator SHERRY—What about people who we do not have tax file numbers for by August next year? What is the situation with those people?

Mr Monaghan—The current proposal is that the surcharge would be applied and those people would be able to give their tax file number and receive the credit back.

Senator SHERRY—Any idea how many people that will be?

Mr Monaghan—No, not at the moment.

Senator SHERRY—So when collecting that tax from those people, what will be the time lag in their receiving the refund?

Mr Monaghan—There are some issues around there we have not quite finalised. Whether it will be through their tax return process or some other process I am not sure at the moment.

Senator SHERRY—Would there be a requirement that it goes back into the superannuation fund and is not taken as cash and spent?

Mr Monaghan—There would be a requirement that it be returned to the fund, I would imagine.

Senator SHERRY—How would that be policed?

Mr Monaghan—Again, it is an issue that we are still working out, but we would know from where the assessment was paid and, on the person being identified, I guess, be able to put it back. But there are some issues there that we need to work out with industry as to how that might work.

Senator SHERRY—In assessing the \$70,000 threshold from a tax office point of view, is the SG amount included?

Mr Monaghan—Yes, Senator.

Senator SHERRY—What about assessable income following tax deductions being made and processed by the tax office?

Mr Monaghan—I do not understand the question.

Senator SHERRY—A person's tax return will obviously affect their assessable income—for a lot of people it will affect it and there would be some people, obviously, who would drop below the \$70,000 threshold and others that may move above it—and, depending on what they earn between \$70,000 and \$85,000, the new tax would apply, so how would you overcome that additional administrative problem?

Mr Monaghan—The proposal for the way the system would match information is that the funds would advise us as to the contributions they have received. We will then match that on a progressive basis with taxable income—taxable income as it is calculated in the relevant taxing period. For example, if I can use the dates for the first round, in respect of contributions made since budget night 1996, the funds would advise us in August 1997 of the contributions that they have received. We would match that against the taxable income—I guess, the deemed taxable income for this purpose—for the 1996-1997 year. So we are matching this current year's taxable income with this current year's contributions but after the end of the relevant tax year. And that would happen on an emerging basis: as we assess people's tax returns we would match that against the contribution data that we had.

Senator SHERRY—All this is obviously going to entail more work for you?

Mr Monaghan—Yes.

Senator SHERRY—What additional resources have you for this work?

Mr Monaghan—I think it is \$3.3 million in this current year, \$6 million in the next year and then back down to \$3 million for the few next years after that.

Senator SHERRY—How many additional staff does that represent?

Mr Monaghan—I actually do not intend to substantially increase my staff at all. I intend to work, I guess as the commissioner said in his speech, on developing a capacity with industry to use new emerging technologies and to provide greater efficiencies right through the system. I see we will have some addition in staff. I am not sure how many at this stage, but it will not be a large number.

Senator SHERRY—So are you satisfied with the increased resources?

Mr Monaghan—I believe that it is what is required for us to do the job, yes.

Senator SHERRY—So we will not see you back here in supplementary estimates?

Mr Monaghan—I cannot say. At this stage I believe that that is an appropriate amount.

Senator SHERRY—How far advanced are you on the imposition of this superannuation surcharge on government employees?

Mr Monaghan—Senator, in my role I have been in contact with the committee of actuaries who have been advising the government. I guess I need to wait for them to advise the government and for the government to make decisions on that process.

Senator SHERRY—I understood the Treasurer declared that it would apply to government employees.

Mr Monaghan—Indeed, but from my perspective it is an implementation issue, so I need to wait for the government to make the decisions on the actuaries committee's advice.

Senator SHERRY—So at this stage we do not know who will bear the administrative cost of the tax in respect to those Commonwealth employees—whether the government will pick it up through consolidated revenue or the fund itself?

Mr Monaghan—It is not an issue for me to—

Senator SHERRY—Have you given that issue any consideration, Senator Short?

Senator Short—The question of the cost?

Senator SHERRY—Yes, to government employees and their funds.

Senator Short—I think that the outcome of all of those things is awaiting the outcome of the actuarial committee report. The Commonwealth actuary, who was chairing the committee, in fact came and briefed me a little—yesterday actually—as to how the committee was going. It seems to be making good progress. It has until the end of October, I think it is, to report on the implementation aspects. I think decisions on the totality of things will wait until we see that report.

Senator SHERRY—Will that report be made public?

Senator Short—I need to take that on notice, I think. Not necessarily.

Senator SHERRY—Why not?

Senator Short—It may be but, as I say, let me take it on notice.

Senator SHERRY—I mean, these are important issues of public policy. I would have thought it ridiculous for the report not to be made public.

Senator Short—I have got your question.

Senator SHERRY—Senator, on the issue of the indexation of the \$70,000 threshold, there is no statement in the Treasurer's release on budget night, although I know he has alluded to the issue. Is there to be indexation of the \$70,000?

Senator Short—There will be an announcement on that, I think, in the near future.

Senator SHERRY—What would be the impact if it were not indexed, Senator Short?

Senator Short—If it were not indexed? I am not sure. That is a hypothetical question at the moment. Let us wait until a decision is announced.

Senator SHERRY—To the tax office: how many people would move in the next year above \$70,000 if it were not indexed?

Mr Monaghan—I do not know the answer to that, Senator.

Senator SHERRY—Can you get the answer for me?

Senator Short—We could have a look at whether the figures are available. I am not sure whether they are, given the nature of the composition of taxable income but we will take it on notice.

Senator SHERRY—But people's incomes do increase over time so there must be some—

Senator Short—Senator Sherry, you have asked the question. We do not have the factual answer to your question; we will take it on notice.

Senator SHERRY—Good, thank you. In respect of the tax office liaison with the various superannuation funds, would a lot of those superannuation funds have matching hardware and software with the tax office?

Mr Monaghan—They will not, and I do not believe it is necessary. We have been working for some time creating opportunities for industry to join with new technologies and, with the

way they work now, it is not really a question of having matching data; it is really a question of having the capacity to send data electronically. In our work with them—and there is a joint industry ATO group working on this—I guess you could say that things are not like that now and it is not necessary.

Senator CONROY—You indicated earlier that there would be a cost of advising by the funds to you: do you have any idea what that cost would be?

Mr Monaghan—We do not at this stage because we have not been through our process of working up the best way for that to occur but I believe there are substantial opportunities for the industry and the ATO to improve the administration.

Senator CONROY—Exactly what extra information would you be requiring of the super funds?

Mr Monaghan—We would require information from the funds on the contributions that they have received, the member's name and tax file number so that we can identify the member, and the amount of the contribution so that we can add it to the taxable income—information which the funds need to provide to their members already, of course.

Senator SHERRY—Will the tax file number be used in the matching process?

Mr Monaghan—Yes, Senator, that is our expectation. We wish it to be, yes.

Senator SHERRY—Is current legislation sufficient?

Mr Monaghan—We are examining that at the moment, Senator.

Senator SHERRY—But when will you have an answer on that issue?

Mr Monaghan—We need to advise the government.

Senator SHERRY—When will we have an answer, Senator Short, on the issue of the tax file numbers and the legislation required.

Mr Monaghan—There is legislation currently—

Senator Short—There is legislation in the parliament at the moment.

Senator SHERRY—Is that sufficient, though? I note that in the announcement there was some doubt about that.

Senator Short—As Mr Monaghan said, the tax office will be providing us with advice on that provision. I assume you are supporting that, by the way, are you?

Senator SHERRY—The shadow ministry has not made a decision on that issue yet and, as soon as we do, I will inform you. We have not seen it yet.

Senator Short—The legislation?

Senator SHERRY—No, the shadow ministry has not considered it yet. I understand Mr Miles introduced it in the House of Representatives but the shadow ministry has not considered it yet.

Senator Short—It has been there for some time, I think. Anyway, assuming that it does pass, Mr Monaghan has said that the tax office will advise the government on whether it is sufficient.

Senator CONROY—Is it compulsory for every fund member to supply their tax file number to the fund at the moment?

Mr Monaghan—Not at the moment, no.

Senator CONROY—In terms of that matching process, if a fund does not have a tax file number, what do you see being—

Mr Monaghan—Again, I think the answer is that I need to advise the minister on the legislation currently before the parliament as whether any modifications were necessary or not.

Senator CONROY—A modification that would allow you to supply the fund with the tax file number?

Mr Monaghan—No, a modification which will enable the system to work efficiently. I am not speculating on what that advice might be.

Senator SHERRY—But the fund at the moment cannot require a tax file number from contributors or their employer, can it?

Mr Monaghan—Not at the moment. I am not sure exactly how it works. They can request it at the benefit stage, I understand.

Senator SHERRY—I understand a lot do, and a lot do get the tax file number. But it is not compulsory, as I understand it.

Mr Monaghan—No.

Senator CONROY—Any indication of how many? Is it 20 per cent that do not supply it, 30 per cent who do not supply it? Have you any indication?

Mr Monaghan—I am not aware of the number. I would imagine that—

Senator CONROY—Has there been any calculation done?

Mr Monaghan—My information from discussions would be that a large number of members would not have a tax file number held by the fund.

Senator CONROY—A large majority, did you say?

Mr Monaghan—Yes. In fact, it is the industry which has been seeking to use this facility for some years.

Mr Bator—The funds cannot actually ask for the tax file number unless they are making a payment out of the benefits. At the moment I think that you would find that a fair proportion of funds would not have tax file numbers, other than for those payments out.

Senator SHERRY—The issue of the proposed opting out provisions for \$50 to \$900 a month: will you have any involvement in that issue at all?

Mr Monaghan—Yes, Senator, I administer the superannuation guarantee.

Senator SHERRY—How do you propose to police that provision?

Mr Monaghan—Again, we are working at the moment on how we police that.

Senator SHERRY—What about people who are in more than one fund and earning \$500 a month with one employer and \$600 a month with another employer? Perhaps Senator Short can answer. It does not appear clear from the government's announcement whether it is \$900 in total or \$900 with each employer for the opting out provision.

Senator Short—I thought it was clear from the statement: it is \$900 per employer.

Senator SHERRY—Per employer. Do we have any estimates of the number of people?

Mr Monaghan—I think it is about 500,000.

Senator SHERRY—I have had figures of one million accounts. So you do not know how to administer that at this stage?

Mr Monaghan—I do not say that we do not know how to administer it. We are working through some options on how we would do that.

Senator SHERRY—How will you know that they are receiving the money as wage?

Mr Monaghan—That is exactly what we are looking at, and it depends, to some extent, on that legislation and how that requirement is framed as to what our role would be in it.

Senator SHERRY—I do not believe the government announcement makes it clear, Senator Short, but in relation to the allowing to draw up to six per cent in the form of wages for those people as defined, will they be allowed to draw on the full nine per cent when the SGC becomes operative?

Senator Short—Yes. Provided that it falls within the \$450 to \$900 bag, then the answer is yes.

Senator SHERRY—What about the government's co-contribution of three per cent? Will they be allowed to draw on that as well?

Senator Short—As you are aware, the government is looking at the method of implementing the co-contribution and employee contribution, the l-a-w law parts of the superannuation proposal, so it is a little premature at this stage.

Senator SHERRY—It is in the forward estimates.

Senator Short—Yes.

Senator SHERRY—So we have to wait for the review to know the answer?

Senator Short—We have said that we will be taking decisions in due course on the best ways of implementing the l-a-w law undertakings.

Senator SHERRY—Has Treasury carried out any modelling as to the savings implications of this policy?

Senator Short—Of the opt-out?

Senator SHERRY—The \$450 to \$900 opt-out provision.

Mr Callaghan—It is the same answer, again, I am afraid, in terms of the advice we have given the government in the lead-up to the budget. But certainly there was a public paper presented by the retirement income modelling section earlier in the year, and that provided some details on some modelling it had done on the aspect of this policy.

Senator SHERRY—Could you provide that to the committee, please?

Mr Callaghan—Certainly, Senator.

Senator Short—Yes; that was a public document.

Senator SHERRY—On the issue of the capital gains tax on the sale of small business, in respect to retirement savings—I have not got to the specific issue of the tax yet—is there any difference as to how the CGT exemption applies on the basis of incorporation or non-incorporation for a small business?

Senator Short—I think we have answered a couple of questions from you on that already in the Senate.

Senator SHERRY—Have you answered anything in respect to this policy for end retirement?

Senator Short—I know you are a slow learner.

Senator SHERRY—It is too late to get smart tonight, Senator.

Senator Short—That was only humorous.

Senator SHERRY—I was just saying that we will not be. Have you any estimates on the implications of this policy for end retirement incomes? I will give you an example. What if a small business went bankrupt and, during the course of its existence, recouped a quarter of its losses prior to it become the sole retirement income for its owner?

Senator Short—Could we take that one on notice?

Senator SHERRY—Yes. There will be a few of these that I think you will take on notice.

Senator Short—Okay. If there are a few like that, why do you not just put them on notice?

Senator SHERRY—Surprise, surprise! My next question is this: what is the difference between a surcharge and a tax? What is the tax office's view of that? Do you have a definition? The tax office must have a definition.

Senator Short—We have gone down that route, so I do not think there is anything more for anyone to add on that one.

Senator CONROY—It actually says 'tax'—'surcharge tax'.

Senator Short—You are now onto stage 2, are you? Are we now onto the questions to ask the tax office?

Senator SHERRY—I would have thought that, if anyone could answer this, the tax office could do it for us.

Senator Short—Is there much duplication between the next 100 and the last 100 questions? If there is, could you do a bit of a cull?

Senator SHERRY—Can we just have an answer? Can the tax office really give us this definition? Of all people—

Senator Short—The tax office was here when we had the earlier discussion and there is nothing more to be said on it.

Senator SHERRY—It is a matter of shock and horror to me that the tax office cannot give us that definition.

Senator Short—Be a little more theatrical; otherwise, we will not believe that it is real shock and horror.

Senator SHERRY—We must be the only country in the world where the tax office cannot give us the definition of difference between a surcharge and a tax.

Senator Short—Next question, please.

Senator SHERRY—Really. If this was beamed through ATV, we would not be believed.

CHAIR—Senator Sherry, estimates committees are not the place for comments; they are a place for questions.

Senator SHERRY—Comments? You could not have been listening too much today, if that is the case. In respect of the department again, has any research and analysis been undertaken in determining whether the entity charged with the tax liability—this is the CGT—was an employer, the employee or the superannuation fund? Can we put that on notice?

Senator Short—Take it on notice. Do you know what the question actually means, Senator Sherry? We are having trouble. Could you lift your head, and just put it in layman terms for us?

Senator SHERRY—There are a number of these that I will put on notice for you, Senator Short.

Senator Short—I think it might be an easy way out for you.

Senator SHERRY—And we are going to include the difference between a surcharge and a tax. We are going to include that one. I will frame the blank answer upon my wall.

Senator Short—Terrific.

Senator SHERRY—Did the department engage in consultation with other government departments as to the imposition of the 15 per cent surcharge?

Senator Short—As you know, the question of how government departments and agencies consult or do not consult with each other in the course of preparing advice for government is not a question for estimates.

Senator SHERRY—This next question will be asked in vain, I suspect. Does the department have a view on the indexation of the income levels that the 15 per cent surcharge applies to? Or 'tax': I have got to get that right!

Senator Short—You have asked in vain.

Senator SHERRY—How do we distinguish between a golden handshake and a bona fide redundancy payout?

Mr Monaghan—There are provisions applying to bona fide redundancies. I guess they are treated by those provisions. The government's announcement was that golden handshakes which fall outside of the bona fide redundancy payment are to be looked at by the actuarial committee.

Senator SHERRY—Where does it say that, in the announcement? I do not recall it making any reference to bona fide redundancy.

Mr Monaghan—No; to golden handshakes.

Senator SHERRY—Yes, I know. But it does not define golden handshakes at all.

Mr Monaghan—No; it does not. But there are provisions in the tax law which deal with bona fide redundancy situations.

Senator SHERRY—I have assumed—and I say this only because I would be very surprised if it were not correct—that the tax on golden handshakes is to apply to people earning more than \$70,000 per year, in the same way as the tax on superannuation. It is graduated from \$70,000 to \$85,000. Is that a correct assumption?

Mr Monaghan—That is certainly my understanding of the policy announced.

Senator Short—Can we just supplement that one a little?

Mr Monaghan—I guess it is not actually my administrative issue, but the announcement indicated that the actuarial committee would consider equivalent treatment for defined benefit funds, unfunded schemes constitutionally protected, and golden handshakes. I am not speaking for them, but they may have to consider what that treatment would be.

Senator SHERRY—Treasury, what is the estimated revenue from a golden handshake provision? I cannot identify it in the budget papers.

Mr Callaghan—It is not broken up in terms of items like that, in my understanding. It is just the estimate of total revenue coming from the surcharge that is provided in the budget papers.

Senator SHERRY—Why is it not broken up?

Mr Callaghan—It does not go into the details of the various components in any of these things; they are aggregate measures.

Senator SHERRY—We do not yet have a definition of what constitutes a golden handshake. Is there any revenue attributed to the golden handshake provision in the budget revenue papers?

Mr Callaghan—They are estimates, taking into account what is likely to be the revenue from all sources. Again, it is very much an estimate.

Senator SHERRY—So it is unlikely to include it, given that we do not have a definition of a golden handshake yet?

Mr Callaghan—As the ATO indicated, there are definitions in terms of trying to identify the difference between a golden handshake and other forms of redundancy payments, but it would be just a general estimate that goes in. It does not go into the detail of the various individual items, to be able to say how much is coming from one particular source or another; it is a general estimate.

Senator SHERRY—The golden handshake measure applies from budget night, but it is not yet defined. Once the definition is settled, will you be attempting to recoup the 15 per cent tax from people who have been terminated after budget night and before the exact specific details of the tax are announced and put into law?

Senator Short—I am not sure we can answer that specifically at this stage, because the question of golden handshakes and their treatment is one of the items being looked at by the actuarial committee, and it is not reporting for a while. I do not think we can give you a definitive answer, for that reason. As a general answer, it depends on what precisely is enacted, but the announcement of the surcharge does apply to contributions—however they might be defined—from budget night. We cannot give you a specific answer until we have seen what the actuarial committee comes up with.

Senator SHERRY—We have had a number of people contact us. They have been earning more than \$70,000, have lost their job and have received a golden handshake. This measure does apply from budget night, and they have asked us whether the tax will apply. We have had to say, ‘We don’t know at the moment.’ It seems quite extraordinary to me. I do not know of any other tax measure announced on budget night that is yet to be clearly defined and is to apply from budget night. Can you think of an example in recent times?

Senator Short—Yes. Frequently—in fact, invariably—taxes announced on budget night are not actually legislated until later on. Depending on the nature of the tax that is involved, the details have to wait on legislation.

Senator SHERRY—I understand to a degree—

Senator Short—Let me say that I do not resile in any way from what I said earlier, in relation to what is a surcharge rather than a tax. Semantics aside—

Senator SHERRY—Yes: semantics aside, the surcharge is clear. It is not unusual to announce a tax on budget night and the legislation be subsequently passed, operative from budget night. That is not unusual, and there are good reasons for that; I do not argue with that. But what is so unusual about the golden handshake provision is that it is as yet undefined, and people who earned more than \$70,000 have received an amount of money and are making financial decisions based on that payment, and they want to know whether they are going to be taxed or not, because there is no clear definition.

One case I have had is of a person who has been made redundant and has received their golden handshake. It is not a payment in terms of some sort of an award or industrially prescribed redundancy. They have paid off their house and have spent the money.

Mr Monaghan—I think the answer to that point in relation to the policy announcement is that a surcharge in respect of contributions to superannuation is to be made after budget night.

Senator SHERRY—I understand that—

Mr Monaghan—And that there will be equivalent treatment for some other types of payments. I guess the policy announcement reflects that equivalent treatment, and that is a matter that the government is asking for advice on.

Senator SHERRY—Do you have any idea of the total amount of money that is paid out in this form of golden handshake as distinct from clearly defined redundancy payments in a year?

Mr Monaghan—I think that, if we take that on notice, we might be able to provide some information.

Senator SHERRY—Has the figure been increasing, have you any idea?

Mr Monaghan—I am not aware of it, Senator.

Senator SHERRY—Has there been a problem?

Mr Monaghan—I do not know, Senator.

Senator SHERRY—Has the department consulted with other departments on the implications of the three per cent employee contribution?

Senator Short—Again, as previously, Senator Sherry, that is a matter of—

Senator SHERRY—They must have done because it was announced by the previous government, surely.

Mr Callaghan—Again, if you are asking about the 1995-96 budget measures, that is history essentially. In terms of this one, the government has announced there will be a review.

Senator SHERRY—Has the department made any consideration of the constitutional basis of the three per cent employee contribution?

Senator Short—Again, as Mr Callaghan said, the new government has announced that it is reviewing those matters in relation to how it will implement the l-a-w law decisions. We have made it clear that we have reserved the right, right from day one, to determine for ourselves rather than to follow your precise pattern in terms of the delivery; so I think it is a question that is premature at this stage.

Senator SHERRY—This is to Treasury: in respect of the budget measure to include superannuation assets in the deeming rules for social security beneficiaries over 55 after nine months of income support, has Treasury undertaken an analysis of the expected income of this measure on national saving?

Mr Callaghan—Again, it is the same answer in terms of the advice we have given the government.

Senator SHERRY—The government places, I am pleased to see, significant emphasis on national saving—like we did when we were in government. Why haven't you conducted such an analysis?

Mr Callaghan—No, what I said was that it is part of the broad, total amount of advice that we give the government that we do not normally discuss in these hearings.

Senator SHERRY—Yes, I heard you the first time but I still thought I would give it a go.

Senator Short—With respect, in your second go at it, you completely distorted what Mr Callaghan said the first time.

Senator SHERRY—I moved on to my next question in the hope that I would get an answer.

Senator Short—I just want to put that on the record.

Senator SHERRY—In the hope that I would get an answer, but you have well and truly muzzled the department tonight. Has the department done any research in relation to the taxation of life insurance companies and friendly society products?

Mr Callaghan—It was announced in the 1995-96 budget that a discussion paper would be released on the taxation of life insurance companies and friendly societies, and no discussion paper came out before the election. This government has not made any announcement about that.

Senator SHERRY—In respect of that question on the taxation of life insurance companies and friendly society products, do you know if the government intends to release any paper on that issue?

Senator Short—I am not aware of same, Senator Sherry. I will take that on notice, if I may.

Senator SHERRY—Thank you. I will put on notice the other questions in respect of the three per cent employee contributions and the three per cent government contributions, because I am sure you will not be answering those this evening.

Senator Short—That is fine, put them on notice, because I will not be answering them this evening. But in putting them on notice, could I remind you again that the government has said it is reviewing the nature of and implementation of l-a-w law. Therefore, I am not sure that we will be able to give you any answers, depending on the precise nature of the question.

Senator SHERRY—In the budget paper *Recognising older Australians*, it states at page 7:

The Government believes that, people aged 55 and over who have retired, or who have poor prospects of returning to work, should use all the assets at their disposal, including superannuation assets—

We have had a talk about superannuation assets—

to provide for themselves before turning to the community for support through the social security system.

Where is there a definition of ‘all the assets at their disposal’? We could not find one in the budget papers.

Senator Short—I think that is one really for Social Security, Senator Sherry. It is an area that falls specifically and entirely within the social security portfolio; therefore, I think that question has to be directed to that portfolio.

Senator SHERRY—I hope they do not refer it back here. If they do, we put on notice that we will want to ask the question to you.

Senator Short—We will have a look at it then, but I think you will find it is a social security issue.

Senator SHERRY—What is Treasury’s view of this—like assets?

Senator Short—As I said, it is a social security issue and you are asking it in the wrong forum.

Senator SHERRY—But don’t they have knowledge of this as a budget measure? We have asked a range of matters in Treasury, some of which have related to other departments.

Senator Short—But this is a specific social security portfolio matter, and that is the appropriate forum to ask the question.

Senator SHERRY—Treasury must have a definition of like assets?

Senator Short—It is a social security issue, Senator Sherry. If you want an answer, you should direct it to the correct portfolio, which is social security.

Senator SHERRY—In the election, Senator Short, the coalition estimated that \$200 million per year would be allocated to the CGT exemption. In the budget papers a \$150 million has been allocated. What business sector areas have missed out in respect of this \$50 million difference in the CGT exemption?

Dr Henry—Perhaps I could answer that. I do not believe that is a fair characterisation. The budget announcement on CGT rollovers and exemptions is, I think, reasonably faithful to the coalition's election commitments in this area. What we are really looking at is a difference in costings of essentially the same thing and that is all—the former costing being prepared by the coalition in opposition, the latter costing being prepared by Treasury and the tax office.

Senator SHERRY—That is a fascinating defence, Dr Henry.

Dr Henry—In what sense, Senator?

Senator SHERRY—I would have thought the coalition could have given us an accurate costing before the election.

Senator CONROY—Or a reasonably faithful costing.

Mr Highfield—Could I just make one comment there. Capital gains receipts have been notoriously volatile over each of the last few income years. I can tell you that, for the 1994-95 income year, capital gains receipts decreased by something like 40 to 50 per cent on the prior year. So in that sort of circumstance, the revenue base on which this measure would have been assessed, I would suggest, was considerably lower than in the prior year when perhaps the measure was contemplated.

Senator SHERRY—In the performance forecast for 1996-1997 at page 50, it notes that a key strategy to achieving performance objectives will be:

... developing and using computer models and databases for the review and development of superannuation and retirement incomes policy and related taxation and social security policy.

How much money has been allocated to the development of computer models and databases?

Mr Callaghan—That is very much the work of the retirement incomes modelling task force. I am afraid I do not have the specific costing of the retirement incomes modelling task force, but we can take that one on notice.

Senator SHERRY—Do you know then the research relationship between the development of these computer models and databases, and those developed already by the retirement incomes modelling task force?

Mr Callaghan—Well, it is a process of ongoing improvement. The RIM—the acronym for the retirement incomes modelling task force—are always trying to improve their research capacity, and it is an ongoing process of development.

Senator SHERRY—Has there been any discussion as to the nature of the review of superannuation and retirement income policy and what it will entail?

Mr Callaghan—Again, when you say 'review', it is the review that was announced by the government of the three per cent compulsory employee payments and the payment of the l-a-w tax cuts?

Senator SHERRY—Will the staffing levels associated with this strategy be part of the staffing you referred to earlier this evening?

Mr Callaghan—Yes, Senator.

CHAIR—Any more questions?

Senator SHERRY—Yes.

CHAIR—Are we getting near the end?

Senator SHERRY—Not far from the end on superannuation.

Senator Short—Not far from what?

Senator SHERRY—The end on superannuation.

Senator Short—Tremendous.

Senator SHERRY—Has any work been undertaken in developing the required legislation in order to implement the surcharge, the opting out provisions, the 18 per cent rebate, the removal of the means test for superannuation assets and rollover funds for people aged between 55 and the aged pension?

Mr Monaghan—We have commenced work to implement the measures—not the social security one, but the other ones. We have already conducted, I suppose, fairly extensive consultation and we will build on that as part of developing the legislation. We are in the early stages.

Senator SHERRY—When is it likely that we will have detail of that?

Mr Monaghan—By detail, do you mean legislation introduced?

Senator SHERRY—Yes.

Senator Short—We hope that it will be introduced by the end of this session.

Senator SHERRY—Does that apply to golden handshakes as well?

Senator Short—I hope so. We have got a very tight timetable there, Senator Sherry, as you can appreciate, given that that committee is not reporting until the end of October. Whilst the hope is there, it will be pretty tight. We will if we can.

Senator SHERRY—We are certainly very concerned about that last issue, given the impact it is having on people who are either leaving the work force or leaving their employment. Is the department concerned that the CGT exemption will be more than is estimated in the budget papers?

Senator Short—The figure in the budget papers is the best estimate we can make of it. I think the first year is 1998-99, so it is a way out. But to the extent that you can have confidence in a figure that far out, the answer would be yes.

Senator SHERRY—We have canvassed this so I am not going to go into it in any detail, but that is despite the various issues we discussed in respect of this on Monday evening where there is still final work to be done.

Senator Short—Yes, it remains our best estimate.

Senator SHERRY—This is to the tax office: have you conducted research on applying different levels of taxation to like products—or have I asked that question before? For example, have you looked at a life insurance company product offered by a bank being subjected to different taxation levels?

Senator Short—I think you asked it before.

Senator CONROY—It was a similar question, not exactly the same question.

Senator SHERRY—It might have been very similar. It is not marked off, so forgive me if I have. Have you conducted any such research?

Mr Monaghan—That is not an area of expertise for me.

Senator Short—We will have a look and take it on notice.

Senator SHERRY—Does the tax office believe that, in respect of a person whose individual income fluctuates from one year to the next—this is in respect to the 15 per cent surcharge and the golden handshakes, I suppose—it will be able to fairly assess those people?

Mr Monaghan—We do. I guess the proposal announces a system where contributions are matched against taxable income. There may well be some issues around that that the government would want to look at. But, from my perspective, I guess we need to look at how we make this system work as announced.

Senator SHERRY—At the moment, are there any special taxation measures that apply to people who have dramatically fluctuating income? Certainly in the rural sector I am aware there is—

Mr Monaghan—I am not really familiar with the detail but I am aware that they exist in the act, yes.

Senator CONROY—Sportsmen.

Senator SHERRY—Has any consideration been given in the entertainment, sports and agricultural sectors—and there may be others—as to how they will be treated with respect to the \$70,000 threshold?

Mr Monaghan—That is an issue I think we would need to be advising the government on in development of the micro-policy.

Senator SHERRY—And the equity implications for women who may leave the work force for a number of years, for a variety of reasons but often because of being pregnant, and then might not have an income for a number of years?

Mr Monaghan—But then they would not have contributions, either.

Senator SHERRY—No, but if they had been earning more than \$70,000, they often drop down to a zero income.

Mr Monaghan—Yes, but they would not have contributions against which to match—

Senator SHERRY—Yes, I know they would not, but there are no special provisions at the moment for any sort of averaging of income.

Mr Monaghan—Not in that situation, no.

Senator SHERRY—This is to the tax office: what will be the legal implications of a situation where an account has the surcharge levied against it incorrectly, mistakes have been made, the negligence is discovered later and the money remitted? Will the fund be liable to pay interest on the money that would have been earned if the money had not been taken out of the fund?

Mr Monaghan—Again, none. That is obviously a situation that might arise. We are developing some rules for government to consider on handling those sorts of situations, also amendments in future years and that like situation.

Senator SHERRY—I would have thought there was an argument in common law that, if money is taken incorrectly out of your account—whatever account it may be, including superannuation—you are entitled to recompense vis-a-vis interest.

Mr Monaghan—That may be so. We would obviously be looking at that sort of situation.

Senator SHERRY—And I would suggest there will be at least some people in that category. It is quite possible.

Mr Monaghan—It is quite possible that there will be errors. In fact, it is certain, I guess.

Senator SHERRY—Has the ATO undertaken any research into the possible alternatives of closing off salary sacrifice tax effective mechanisms?

Senator Short—I think that gets back to our earlier discussions, Senator Sherry. I do not think there is anything to add. I think that is pretty duplicative of what we have already done. I think it was before you came in, Senator Conroy.

Senator SHERRY—I want to ask about this issue of education and information, which we really see as very critical, not only in respect of the 15 per cent but in respect of the proposed exemption of people earning between \$450 and \$900, and particularly this issue of the tax file number. That is, if there is not a tax file number provided, they have to pay this tax. Are you proposing any increased education and information campaign on this matter?

Mr Monaghan—We strongly believe in education across our operations and we will be doing that as a matter of course.

Senator SHERRY—Do you have any idea at this stage of what that will involve?

Mr Monaghan—Again, that is the sort of thing on which we work with the ISC and with industry to identify the best way we can work together on maximising our impact. I do not have a strategy finished yet, but our measures would include education strategies.

Senator SHERRY—The extra money you have got—will part of that be allocated to this education program?

Mr Monaghan—Yes, Senator.

Senator SHERRY—Do you know the amount yet?

Mr Monaghan—No.

Senator SHERRY—In relation to the use of tax file numbers, the issue of privacy has been raised—I might say I am the only one who has not raised the issue of privacy to date, despite what Senator Short may think—and there has been some discussion in industry about this. I think it will become an issue of greater debate. Have you thought about any additional safeguards that may be required in the use of tax file numbers?

Mr Monaghan—In developing any such proposal, as well as consulting with any government agencies and commissions, we would look at the need for safeguards as a matter of course of building a new administration.

Senator SHERRY—Do you have any specific ideas at this stage?

Mr Monaghan—Not at this stage.

Senator CONROY—Do you think there would be greater safeguards needed than for other government departments?

Mr Monaghan—Again, I do not want to speculate on that until we have looked at the situation properly.

Mr Bator—Senator, the funds would have to comply with the general privacy requirements, in the same way as banks and other financial institutions that currently capture tax file numbers do.

Senator SHERRY—Approximately how many financial institutions—and this includes banks—would have access to tax file numbers at the moment? Are they are in the hundreds or?

Mr Highfield—Thousands.

Senator SHERRY—Thousands, is it?

Mr Highfield—By the way the law acts, it also includes public and private companies who pay dividends. So it is a very wide population. It includes employers' payroll systems; it includes the records of tax agents who deal with the majority of taxpayers' interests.

Senator CONROY—They are voluntary decisions.

Mr Monaghan—But there still needs to be a range of security measures in place to protect both the security and the integrity of the tax file number.

Senator SHERRY—That is certainly true about an employer having access to people's tax file numbers. But I think it is not quite the same situation as a fund, some of which are very large and would require access to hundreds of thousands of tax file numbers in some cases.

Mr Monaghan—Yes, but banks—

Senator SHERRY—Banks, yes, I agree. How many super funds are we talking about at the moment that would have access?

Mr Monaghan—I guess there is something in the order of 120,000 complying funds. Now whether they would all need to have access is something that we have not identified yet.

Senator SHERRY—It is going to be a significant increase in the range of institutions or organisations that have access to the tax file system.

Mr Monaghan—Yes, there will be an increase, certainly.

CHAIR—Again, I detect that the questions are drifting into the type of generally seeking information rather than actually looking at the relevance of budgetary allocations to the administration of the department.

Senator SHERRY—We want to ensure that the tax office does have sufficient money to carry out what is obviously going to be a very substantial task, and I certainly will be wishing them well in the task. You do not have to convince us as to the resources. We are just hoping to assist you in this regard through these hearings.

Senator Short—Senator Sherry, could I just make it clear—and I am sure it was from what the officers said—that, although there will be increased use of tax file numbers, we are totally confident that the security situation for privacy purposes will be maintained. I do not think we have a security concern in that sense.

Senator SHERRY—I think it is an important public policy question.

Senator Short—Yes, it is.

Senator SHERRY—I am not going to explore it any further tonight. I am sure there will be other opportunities.

Senator Short—I just wanted to get that on record.

Senator SHERRY—Sure. The superannuation business line—will that have to be reorganised or has it been reorganised yet in response to these policy changes?

Mr Monaghan—The super business line is going through a basic design process anyway. We propose to implement this measure in accordance with the principles that we are developing; so it is not so much a question of it being reorganised as being refocused.

Senator SHERRY—Clearly, that will not be in place until the final form of the legislation is known—or will you be doing some preliminary work?

Mr Monaghan—Yes, it is in place now.

Senator SHERRY—It is? What sorts of changes have you made?

Mr Monaghan—There is nothing particularly striking, Senator. We are going through a process to design a superannuation administration which reduces the costs for everyone. As part of that process we have been reorganising ourselves around different types—rather than functions but processes. We propose, as the commissioner indicated, to approach his task in accordance with that basis of working with industry and building a system between industry and ourselves. So there are not substantial changes in my organisation.

Senator SHERRY—I referred earlier to this issue of the \$450 to \$900 exemption and you indicated you have some interest in that issue. The issue of policing that effectively—how will you go about that?

Mr Monaghan—I guess the extent of my involvement does depend on the final format of the legislation as to how and where the requirement on the employers is imposed. But as with all our activities, we have a wide range of different sorts of compliance approaches in place. I am quite confident that, to the extent that we need to do that, we can develop appropriate approaches.

Senator SHERRY—Have you taken into account the implication of removing superannuation as an industrial relations issue and the role the commission plays in the regulation of superannuation?

Mr Monaghan—Obviously I need to take account of a wide range of issues and I need to be conscious of things that may or may not happen. So I would take those sorts of things into account as a matter of course.

Senator SHERRY—If superannuation does not continue as an industrial issue, a very wide range of different agreements will emerge at a workplace level. Have you had any policy thoughts or directions about how you will administer this system in that context?

Mr Monaghan—I guess when the environment changes in a way that affects the administration of the things that we have, we advise government on whether we think any changes to the rules are required. We would do that in this case.

Senator SHERRY—Let us assume the workplace reform bill goes through in the next month or so; superannuation is removed as an industrial issue as a consequence of the workplace agreements bill. I would suggest there will be an increase in workload for you in that event because of the \$450 to \$900 exemption. Do you agree with that?

Mr Monaghan—I do not agree or disagree. I guess I need to wait and see what happens.

Senator SHERRY—I am forewarning you—

Mr Monaghan—I am conscious of that.

Senator SHERRY—Is there any increase in funding in respect to this \$450 to \$900 exemption and any additional work that may require?

Mr Monaghan—No.

Senator SHERRY—There is not. There could be half a million people moving from employer to employer—some could take the six per cent; some may not. I think you will be appearing before supplementary estimates. What is the current operating status of the superannuation holding accounts reserve?

Mr Monaghan—It continues to operate unchanged at this stage.

Senator SHERRY—Have you prepared any advice on the continuance of that SHAR?

Mr Monaghan—No.

Senator SHERRY—What are the main economic groups by income that use the SHAR fund?

Mr Bator—Most of the contributions are quite small in nature. Whilst we have not done any real study on this, just from some of the contact we have been getting it would appear that a lot of them are itinerant type workers or part-time workers using it.

Senator SHERRY—I have some other questions on this issue and I will put them on notice for you. In respect to the 18 per cent rebate for partners who contribute up to \$3,000 to a superannuation fund or RSA for their spouse, have you been given extra resources to handle this new policy initiative?

Mr Monaghan—No, Senator.

Senator SHERRY—Why not?

Mr Monaghan—That is the sort of issue that we would normally pick up just as part of business as usual.

Senator SHERRY—Do you have any advice in relation to the legal term ‘partner’?

Mr Monaghan—That would be one of the matters that we would need to do and advise the government on.

Senator SHERRY—Do you have any view in respect of assets testing in this area?

Mr Monaghan—I am not aware that the policy included any statement about that—so no.

Senator SHERRY—I asked your tax office colleagues whether they would have any view on that matter—assets testing of the 18 per cent rebate.

Mr Callaghan—The same answer, Senator.

Senator Sherry—I just wanted to make sure that you did not feel I was neglecting you.

Mr Callaghan—Thank you, Senator.

Senator SHERRY—This is to the tax office: do you have any idea how many people may utilise this policy option?

Mr Callaghan—No, I am not aware of that at this stage.

Senator SHERRY—But we have estimates in the budget. Does Treasury have any idea how many people would use this? We have got a figure there.

Senator Short—Which option is this one?

Senator SHERRY—This is the 18 per cent rebate for partners who contribute up to \$3,000.

Mr Callaghan—We had the figure estimated, but I am afraid I do not have here—

Senator Short—We will take it on notice.

Senator SHERRY—Does the ATO do any actuarial modelling?

Mr Monaghan—We do not have that capacity at the moment. We do work with RIM where required. We have a regular analysis branch, but it does not do actuarial modelling that I am aware of.

Senator SHERRY—I just want to go back to this issue of a person who opts out, earning between \$450 and \$900 and receiving the money as a wage or salary—whatever it would be termed, depending on their workplace. Is it true that with a couple with two children who are under the age of 13, with a wife working part time earning \$7,000 a year, \$140 a week, and the husband earning \$21,840 a year, \$420 per week, if the wife opts out of superannuation she would have an additional \$630 per year in real disposable income? Is that correct? You may wish to take it on notice.

Mr Monaghan—We will need to take it on notice. It does sound a bit high.

Senator SHERRY—I will list a couple of other questions relating to that matter on notice. Is the tax office able to explain how the removal of the means test exemption on superannuation fund and rollover assets for people aged between 55 and age pension age will affect an individual's income where you are involved in that issue?

Mr Monaghan—I do not think we are involved in that.

Senator SHERRY—You will not be involved in it?

Mr Monaghan—I do not believe so.

Senator SHERRY—Will the ATO be involved in this aspect: have you determined how you will treat the situation where an individual who is made redundant at 55 accesses part of their superannuation benefit in order to retire debt, such as paying off their home? Will the tax office deem an income from the remaining superannuation benefit or will the ATO deem an income from the entire superannuation asset?

Mr Monaghan—Again, I think it is a DSS issue.

Senator SHERRY—Has the tax office considered the legal implications in respect of this matter that we have just been discussing—the over-55s—for existing trust agreements between clients and funds and life insurance companies?

Mr Monaghan—I am not aware of us having looked at that measure in any form to any extent.

Senator SHERRY—Have you considered what changes would be required to the S(IS) legislation in order to allow people to access their superannuation asset, should they desire to?

Mr Monaghan—That seems to me an ISC issue.

Senator SHERRY—Right, I will ask the ISC that. Other than the matters we will put on notice, I think that just about concludes superannuation matters. There are still quite a number of tax matters to do generally. We will put the other superannuation matters on notice.

Short adjournment

Senator SHERRY—My next questions relate to the section on the Commonwealth Development Bank on page 48. The government has sold its remaining 8.1 per cent interest in the CDB. When was the decision taken to dispose of the 8.1 per cent shareholding?

Mr Callaghan—I do not know the exact date the decision was taken.

Senator SHERRY—Could you take that on notice?

Senator Short—We can find the exact date for you.

Mr Callaghan—We will find out when it was announced.

Senator Short—There was a public announcement at the time. From memory, it was somewhere around May, but we will check it for you.

Senator SHERRY—The Treasurer's press release states, and I assume the date might be in that, that the Commonwealth's equity interest in the CDB has been sold to the CBA at a discount. Presumably, this means at a discount to the true market value of the shares. What was the discount that was agreed to?

Mr Callaghan—It is not possible to determine in that context what the true market value of the shares was. There was a discount against its book value because there was essentially only one buyer because it was a very minority shareholding. The only buyer would be the CBA and that reference to a discount is very much to an estimate of its book value, which may not be its market value. Its market value could be considerably less than its book value in the situation where you have a small minority shareholding with the only potential buyer being the major shareholder.

Senator SHERRY—Could it be more?

Mr Callaghan—It would be extremely unlikely because the buyer is the one who is basically going to accept it or not accept it—the majority shareholder being the buyer.

Senator SHERRY—When will the amount be released?

Mr Callaghan—It is in the budget papers; \$12.5 million was the sale price.

Senator SHERRY—Is this consistent with normal budget practice?

Mr Callaghan—In what way?

Senator SHERRY—I am referring to the sale.

Mr Callaghan—I am not sure what you mean by 'in terms of normal budget practice'. It was the sale of the minority shareholding to the CBA, and the amount received has been recorded in the budget papers.

Senator SHERRY—So your argument goes to the fact that it was such a small shareholding there was no-one else that it could be sold to?

Mr Callaghan—Yes, that is correct.

Senator SHERRY—And you see this as an extraordinary situation?

Mr Callaghan—Presumably there were many other situations like that where you have just a very small parcel of shares, where the rest of it is owned essentially by the one shareholder.

Senator Short—In a more general sense, I would like to say a couple of things about the sale of the Commonwealth Development Bank. Financial sector deregulation has eroded the rationale for a specialist marginal lender such as the Commonwealth Development Bank; other banks and financial institutions have aggressively targeted viable small businesses and rural customers. It was against that background that the government decided to cease subsidy payments to the development bank, to abolish its special lending charter and, as you say, to sell its 8.1 per cent shareholding in the CDB to the CBA.

Under the arrangements negotiated with the CBA, the development bank will retain its existing portfolio of loans to rural and small business customers, all of whom will continue to be treated in accordance with the development bank's present lending charter. New business will be written in the development bank's name, but henceforth the development bank will operate as a specialist rural lending division of the CBA, and in recognition of these intentions

of the CBA and the costs involved in maintaining the development bank's present charter for existing customers, the Commonwealth's equity interest in the development bank was sold to the CBA at a discount—\$12.5 million—representing an effective ongoing subsidy.

Senator SHERRY—I understand the annual subsidy was in the order of \$20 million—up until this year. Is that correct?

Senator Short—Yes, it is on page 48.

Senator SHERRY—Senator Short, didn't your election policy say that the Liberal and National parties would complete the sale of the Commonwealth Bank and guarantee the continued payment of an adequate subsidy to the CDB post privatisation?

Senator Short—What it has done through its sale is to represent effectively—because of the sale at a discount—an ongoing subsidy.

Senator SHERRY—How much? \$20 million?

Senator Short—Yes, it says on page 48 that the equity was sold at a discount in recognition that the lending subsidy would be maintained for existing customers, consistent with the CDB's prevailing charter.

Senator SHERRY—Yes, I have it in front of me. Do you see that as consistent with your election promise?

Senator Short—Yes, and taking into account the whole change in the financial sector and the fact that other elements in the financial sector—banks and other financial institutions—have been aggressively targeting the viable small businesses and rural customers.

Senator SHERRY—Were National Party ministers at the cabinet meeting that took this decision?

Senator Short—That is a question that you would not expect me to answer, I know.

Senator SHERRY—Have any of your National Party colleagues discussed this matter with you?

Senator Short—Ditto.

Senator SHERRY—They remain a doormat.

Senator Short—It is a coalition decision: a firm coalition government decision which reflects the view of the decision of the coalition.

Senator SHERRY—Will you rule out job losses in the Commonwealth Bank, flowing from the cessation of the subsidy? We will argue it is less.

Senator Short—Because the Commonwealth Bank is now privately owned, the question of the future staffing levels in any element of the bank is a matter for the bank.

Mr Callaghan—I would add that following the termination of the CDB charter, the CBA did move to integrate all its rural business into one group. In fact, it was going to be a flagship for rural enterprise in particular; they were going to promote it, that was one part of the deal. It also meant that the client base of this group expanded significantly because the charter of the CDB did limit it to those customers who could not otherwise obtain finance—it was originally set up on the basis of other banks referring customers to it. Its total lending had declined significantly over the years, and, in fact, in recent years it had received no referrals from other banks. Because of what had occurred within the finance sector, the other banks were targeting small business and not referring any business to the CDB. So, in fact, I believe that a much larger client base can be serviced by the CDB, which will retain that name.

Senator SHERRY—Will the Treasurer be monitoring the ongoing role of the Commonwealth Bank in this area?

Mr Callaghan—Not only the Commonwealth Bank. The question of the adequacy of sectoral finance is always being looked at, and I believe that there was an advisory panel on small business finance established, and it is reporting on the general availability of small business finance from all banks. So it will not be targeted solely on the Commonwealth Bank.

Senator SHERRY—I am specifically referring to this \$20 million annual subsidy that Senator Short insists is still continuing.

Mr Callaghan—That is certainly the terms of the agreement: the conditions for customers under the current charter would be maintained. It would be a breach of the agreement if they did not maintain it for those current customers.

Senator SHERRY—So this is current customers?

Mr Callaghan—It refers to the customers who had loans under the charter of the CDB at the point of the sale. After the sale, the charter of the CDB terminated.

Senator SHERRY—What was the book value of the CDB at the point of sale?

Mr Callaghan—I believe that that is a commercial-in-confidence item.

Senator SHERRY—Why?

Mr Callaghan—It requires the opening of the books to allow an accounting firm, for example, to come in to make an evaluation and to assess the quality of the assets. That is something that is always a commercial-in-confidence decision.

Senator SHERRY—But it was a public asset being sold. How is it different from any other public asset that is being sold? Why should the public not know what the book value was?

Mr Callaghan—You are looking at only an 8.1 per cent shareholding—the rest of it was privately owned. You are determining the book value of the entire organisation.

Senator SHERRY—That may be true, but we have a public asset—even an 8.1 per cent public asset—and why should the public not know what the book value was?

Mr Callaghan—I believe it is declaring the book value for the rest of the private shareholders too, and the company itself.

Senator CONROY—Is the government prepared to nominate the book value for Telstra and other public assets that they are considering selling?

Mr Callaghan—In that case, it is a 100 per cent owned government asset.

Senator CONROY—You are not prepared to nominate the value of the shares, though?

Mr Callaghan—There was no market value for the shares for the CDB. It was owned by the Commonwealth Bank except for the 8.1 per cent shareholding by the government. It was not a listed company; there was no market trading for it. In any situation like this, that is, for any small business which is not traded, determining what its market value is is always going to be dependent on what a buyer will pay for it. There is no readily assessable means of doing it. To make any assessment of what the general value is, you can get an accounting firm to come through and make an assessment of the quality of the loans, for example, of a bank—if adequate provisions have been made et cetera—and that gets into quite commercial-in-confidence material.

Senator SHERRY—If there is only one buyer, why is it commercial-in-confidence?

Mr Callaghan—It is disclosing it to the rivals of the competitors for the bank.

Senator SHERRY—Wouldn't a purchase such as this be detailed in the Commonwealth Bank's annual report?

Mr Callaghan—It would be detailed that there was a sale and \$12.5 million was paid to the Commonwealth.

Senator SHERRY—I still do not see why it should be kept commercial-in-confidence. Are you aware of any other sale of a public asset where the market value has been kept commercial-in-confidence? Has there been any other example in recent times?

Mr Callaghan—It depends on what the market value is, what you refer to as the 'book value'—what is the market value when there is no market trading on it. We have to make some assessment, and that market value is what the purchaser would pay for it.

Senator CONROY—I got the impression from the answer to an earlier question, Senator Short, that the discount somehow represented a capitalisation of the \$20 million subsidy. Is that what you intended to say?

Senator Short—I do not think I can do any better, Senator Sherry, than draw your attention to page 48, to which I have already referred, where it says:

This equity interest in the CDB was sold at a discount, in recognition that the lending subsidy would be maintained for existing customers consistent with the CDB's prevailing charter. As the charter will not apply to new business from 1 July 1996, the Commonwealth has ceased making subsidy payments to the CDB, at an annual saving to the budget of around \$20 million.

That is on page 48. I do not think there is anything else I can usefully add to the matter.

Senator CONROY—I just cannot understand how the discount was arrived at. Presumably some sort of net present value was calculated for what, ongoingly, the subsidy would have been when you made that discount.

Mr Callaghan—The negotiations were between two parties. The discount does represent an effective ongoing subsidy, because the Commonwealth Bank has agreed to maintain the CDB's present charter for existing customers. On that basis, the benefit it received was the purchase of the Commonwealth's shares. In the negotiation between the two parties, this was regarded as a subsidy which allowed them to maintain the customers on the ongoing charter.

Senator CONROY—The government had a commitment under the existing charter to continue the subsidy? That is what I thought you said. For existing customers?

Mr Callaghan—That is right.

Senator CONROY—So you sold those existing customers across but agreed to give a discount that represented the ongoing subsidy?

Mr Callaghan—The ongoing subsidy, I think, is understood looking at the nature of the business of the Commonwealth Development Bank. Within that charter, as originally set up, the intention was to give loans to, as we say, people who had difficulty in obtaining finance from other sources. It was recognition of the fact that the CDB was providing for those customers to continue to receive that finance and within that there is a risk element. We can say, in terms of the customers, for the entity to undertake that requires a higher risk. Those customers were not paying higher interest rates on their loans compared with others. In that sense, it was a subsidy to the institution to enable it to provide the finance to those customers. From the institution's point of view, what it was getting recompensed for was maintaining that finance for those customers who you could say are of a higher risk. The recompense to keep that going was purchasing the shares at a discount from the Commonwealth.

Senator SHERRY—It was sold at a discount, the size of which we do not know. We have to take the word of the Commonwealth Bank, presumably under your surveillance, that they would maintain the discount to their existing customers.

Senator CONROY—You must have some sort of calculation, some sort of formula?

Mr Callaghan—For what?

Senator CONROY—For calculating what the ongoing subsidy was worth to the Commonwealth.

Mr Callaghan—The ongoing subsidy amounts to the Commonwealth Bank purchasing the shares at a discount.

Senator CONROY—Yes, but will someone make some sort of calculations on what the net present value of that ongoing subsidy was?

Mr Callaghan—Again, between the two parties, the negotiation took place as to what price the Commonwealth Bank was prepared to accept to maintain the existing customers.

Senator SHERRY—What do you suggest we say to existing customers who come to us to complain the Commonwealth Bank is not maintaining the lending subsidy? How do you think the parliament, in the event of this secrecy, can scrutinise the agreement that has been reached? I think it is quite an extraordinary position for us to be in.

Mr Callaghan—The customers who would come to you would not be saying that the subsidy has not been paid. They would be saying that, under the current portfolio of loans, they were current customers of the bank and they felt that they were not being treated in accordance with the basis on which they undertook the loan. They would only come along and say that if the Commonwealth Development Bank, under the Commonwealth Bank, had terminated their loans. That would, you would say, be a breach. But, again, it is always within those commercial principles that they have to administer their loans.

Senator SHERRY—If it had not been sold, what would have been the position for new customers? If the arrangements existing prior to the sale had continued for X years, would new customers have been able to receive this lending subsidy?

Mr Callaghan—Let us try to clarify the use of this phrase ‘lending subsidy’. The subsidy was provided to the institution. As I said, the assets of the Commonwealth Development Bank had been declining over the years because it was not receiving referrals from the other banks. For example, going back into the mid-1980s, over 40 per cent of the CDB’s lending came as a result of referrals from other banks and, prior to the sale, there were virtually no referrals from banks. It was basically the Commonwealth Development Bank obtaining finance through the customers from the Commonwealth Bank.

As the senator pointed out before, one of the reasons for the sale was that there had been developments within the financial sector that had increased the availability of finance for small and rural business.

Senator SHERRY—For the record, it is the first time that I have encountered a position, when a public asset is sold, where a house of the parliament, the Senate, representing the public, does not have a right to know whether the sale was in the interests of the taxpayer. I find it quite an extraordinary situation.

Mr Callaghan—The one thing I would point out, Senator, is that, as it says on page 48, one of the consequences of the sale was an annual saving to the budget of around \$20 million.

Senator CONROY—I am struggling to understand how you define that as a saving.

Mr Callaghan—Under the previous arrangement, there was \$20 million provided a year to the Commonwealth Development Bank to undertake this business of providing finance to customers who were not obtaining finance elsewhere.

Senator CONROY—Presumably, you have made some calculation that \$20 million over the next 20 years was worth X amount and then you discounted it from the price you have received. What I am saying is, while the outlay is no longer there, your income that you have received has been discounted by the amount of that outlay and in present value terms. I actually do not understand how you can claim that it is a saving.

Mr Callaghan—It is an actual outlay. It was the Commonwealth paying to the Commonwealth Bank of Australia \$20 million a year which it will no longer be paying.

Senator CONROY—But you have lost the value of your shareholding.

Mr Callaghan—You have received \$12.5 million for the value of your shareholding. You are also not receiving some dividends that flow from that shareholding, but the ongoing saving you have is \$20 million a year.

Senator SHERRY—What would be the difference in the value of the lending subsidy on the entire loan portfolio if that entire loan portfolio was on the basis of normal commercial market rates?

Mr Callaghan—That is impossible to work out, because the Commonwealth Development Bank did not have an interest surcharge for what could be classified as any higher risk or perceived higher risk of borrowers. It was lending at the normal lending rate. But the nature of the business, in accordance with the charter as set up, would be that they should be of a higher risk. It would be difficult to assess what that would be if you had applied an interest rate that was commensurate with the risk of the customer.

Senator CONROY—Was the Commonwealth receiving any dividend income, dividend flow?

Mr Callaghan—Yes, it was.

Senator CONROY—Presumably, that is now no longer being received.

Mr Callaghan—That is right.

Senator SHERRY—What was that, approximately?

Mr Callaghan—I have not got the figure at hand. I believe it was about \$4 million, but I am not sure.

Senator CONROY—Annually—give or take?

Mr Callaghan—Obviously it varies with the profitability. Going back, the Commonwealth Development Bank had been making losses—I forget the year. Soon after this agreement was made for \$20 million it made a profit. So it obviously depends on its profitability as to what the dividend was, but I think in the most recent year it was approximately the \$4 million mark.

CHAIR—Any further questions? That concludes 1.8. We now move to program 4.

[11.13 p.m.]

Program 4—Taxation administration

Subprogram 4.1—Income and other taxes

CHAIR—Does the Australian Taxation Office have sufficient resources to investigate the tax minimisation practices of high wealth individuals under the business 2000 plan? I do not think it has been dealt with before.

Mr Butler—The tax office does have sufficient funds to deal with this particular initiative. In the budget, funds to the extent of \$9.7 million in 1996-97 and \$9.5 in 1997-98 were added to tax office funds to enable a team that we had already set up to expand to conduct a range of other activities: to retain counsel, to engage academic experts and external experts and to continue work on developing computer systems. So the team is in the process of growing to around 150 staff.

CHAIR—What action is being taken by the tax office to address the problem of sales tax avoidance in the computer industry? Is the current legislation sufficient to address the problems?

Mr Cebalo—The tax office believes that the current law is inadequate to deal with the current problems in the computer industry. What we have occurring here is blatant tax evasion. The practices that are being observed here amount to criminal activity and the remedies which are available to the tax office at the moment we believe are not adequate to deal with entrenched criminal activity.

CHAIR—Is legislation pending? Has it been drafted? What is the current state of play?

Mr Cebalo—The government announced in the budget that it believed that the law needed strengthening and that the tax office, in conjunction with the computer industry and others, would be developing some proposals with the intention of reporting back to government later on this year. A consultation process to that end is under way and a document inviting wide industry input should be available in the next few days.

CHAIR—In the 1995-96 budget, the previous Labor government announced measures to prevent trafficking in trust losses. These were highly criticised by a number of commentators. The present government announced in the recent budget that it would proceed but with a number of changes. Can you briefly explain the changes? Will affected taxpayers and professional advisers have any input into the legislation?

Mr Manoranjan—The government announced that it would proceed with the measures relating to trust losses but subject to modifications, taking into account the representations made by taxpayers and the profession. Examples of the ways in which the scheme has been modified in order to reduce costs can be given. The best example would be the way we are dealing with family trusts. Under the old proposals, the family trust deeds had to be changed in order to ensure that only family members could benefit from the trust. That has been changed by saying that, if distributions are made only to family members, that will be treated as a family trust. The trustee could make an election to treat a trust as a family trust, so there was no need to amend trust deeds to fit into the scheme. That is one example where compliance costs have been substantially reduced as a result of representations made and accepted.

Another case would be where a fixed trust is held by discretionary trusts. Previously, this could not pass the test and carry forward its losses. Now facilities are available, under strict conditions, for this type of trust to carry forward its losses.

Again, you have special tracing provisions to deal with the large companies. Previously there were no provisions to deal with cases like mutual assurance companies where there were a large number of members and it was difficult to trace changes in membership. Under the proposed measures these companies are treated as one individual holding interest in the trust, so tracing is easy. In these ways I think a lot of conditions have been provided, taking into account representations made towards the end of the stage when the previous bill was introduced. These I think make the scheme work much better. The government has also said

that they are going to consult widely on these issues. So we will issue a draft bill for discussion and only then introduce the bill into parliament.

CHAIR—The government announced a number of capital gains tax compliance reduction measures related to the principal residence exemption. Can you explain how they will reduce compliance cost?

Mr Manoranjan—Yes. The principal residence exemption proposals also reduce compliance costs in a big way. One example is where market value is used where a beneficiary obtains an asset that is the principal residence from a deceased person's estate. Previously we had to go back to the original date of acquisition of the house to get the value of the cost and then the improvements and work out the cost base on that basis. Under the new proposals, what you would do is to take the market value on the date of death, so record keeping is made much simpler.

In the case of a principal residence, again taking a deceased estate, the trustee or the beneficiary is given 24 months rather than 12 months in which he could dispose of the property without capital gains consequences. We are giving a much longer period of time to enable the trustee and the beneficiary to go ahead with arrangements to dispose of the house.

Further, previously there were cases where, say, the deceased estate had a house which was not used as a principal residence but then subsequently the beneficiary used it as a principal residence. There was no exemption available for the period of the use as principal residence by the beneficiary. Under the proposals, you apportion the capital gain over the whole period, depending on the number of years the beneficiary used it as a principal residence. This again gives an advantage to beneficiaries. In these ways, I think, they have cut down the compliance cost of dealing with the principal residence exemption.

CHAIR—Thank you. Any other questions on subprogram 4.1?

Senator SHERRY—I am pleased, Mr Chairman, that you have opened up this issue of high wealth individuals. Certainly we are very supportive of the Taxation Office's efforts to improve income tax compliance in this area. Reference was made in that earlier question to the \$9.7 million being provided. What are the special characteristics of this high wealth segment of taxpayers that distinguish it from other segments of taxpayers?

CHAIR—They have more money.

Mr Butler—They usually have access to the best advice available in Australia, perhaps worldwide. They often operate businesses nationally, if not internationally. They have involved complex structures; some have up to hundreds of companies and trusts that they might own or control. Usually they stick to one sort of business which they start out in and they tend to grow as they go along, but that is not always the case.

Senator SHERRY—Is the \$9.7 million that is being provided being used solely for information gathering purposes?

Mr Butler—No. We have staff who are doing analysis type work and developing profiles for a large number of these taxpayers so we can improve our understanding of what particular tax minimisation practices they are using. We also have some audits under way. We will almost certainly also conduct some additional audits once we analyse the information we are obtaining. We will almost certainly litigate some issues to test the current law. We will also be, as I mentioned earlier, bringing into the organisation some expert help from the legal profession and other accounting professions.

Senator SHERRY—You have outlined some of the information you are gathering. Is there any other information gathering process?

Mr Butler—Certainly. This whole initiative arose out of work done by the Taxation Office as part of our compliance enforcement and compliance improvement activity. We have broad research that we undertake. We look at a whole range of information to see what taxpayers might be classified as wealthy taxpayers and compare that with Taxation Office information. We have access to Australian Securities Commission information. There is a whole range of data and various information we regularly look at to understand more broadly what is happening, and particularly for individuals.

Senator SHERRY—Does that include the mail-out in May? You announced a mail-out of a questionnaire to wealthy individuals asking for details of their financial and tax affairs. What has been the response rate?

Mr Butler—To date, over 95 per cent of people who we wrote to have either responded or promised to respond within an agreed extension of time, and largely in the next few weeks the balance of those responses should come in.

Senator CONROY—Have you had a chance to analyse any of those responses yet?

Mr Butler—We have staff working on the responses we have received. There is only a handful of cases where the analysis has been completed.

Senator CONROY—Can you give us an idea of the format of the letter? Is it ‘Dear Tax Avoider, please tell me how you do it’?

Mr Butler—The letter was only 14 pages. The letter was ultimately settled with advice from Queen’s Counsel. It covered a whole range of questions about their own business and tax affairs for any entities that they might be associated with, control or have some influence over. It also asked questions about family members, to the extent they know about their spouse, children, those sorts of things. It covered areas such as any partnerships, any trusts, any companies, any assets or liabilities they own in their own name. It was very comprehensive.

Senator CONROY—From the analysis you have been able to do so far, does it look like they filled them out themselves or have they handed them to their high calibre tax accountants?

Mr Butler—There are very few people who responded personally. Most, as I said earlier, have access to some of the best tax advisers in Australia, if not worldwide, so they have usually called upon those people to assist them in putting together a response.

Senator CONROY—I am surprised you have indicated a 95 per cent willingness to return anything to the Commonwealth. Have you any idea why they decided to cooperate?

Mr Butler—We were asking for information. There was a cooperative approach. The Commissioner of Taxation announced in a public speech that we were going to do this in a voluntary way. It is quite pleasing that they have responded so well. I am not really in a position to analyse why they may have done that, but it is certainly a pleasing response.

Senator CONROY—A burst of public spiritedness.

Mr Butler—I really could not comment on that.

Senator Short—Could I just make one point, as I think it is important to get it on the record. I know we all laughed about it earlier when Senator Conroy asked, ‘Does the letter say Dear Tax Avoider?’ But I think we really ought to get on the public record that there is no implication for any of these people to whom these letters were written that they are tax avoiders. It is a very important point and we do really want to stress that.

Mr Butler—That is correct. The commissioner has made a point of that in speeches he has given. We are not calling these people tax cheats; we are simply seeking to gather additional information about their tax planning and business affairs.

Senator SHERRY—I think we will be able to measure the extent of public spiritedness when we see the money. That is when public spirit will be overflowing. Have you had any attempt by the legal profession to hide documentation or information?

Mr Butler—No.

Senator SHERRY—None at all?

Mr Butler—No. Not to date.

Senator SHERRY—That does surprise me.

Senator CONROY—The Taxation Office identified a small number that it believed were involved in some tax minimisation processes. The letters that went out—

Senator Short—I think this needs to be made clear. I do not think that is correct. Mr Butler will point out accurately what it is.

Mr Butler—I will just put into the context—

Senator CONROY—There was some sort of estimate that it was \$800 million?

Mr Butler—There was some work done, largely in Victoria, where they looked at a sample of taxpayers' particular arrangements and what tax they were paid, and that caused some concerns for the Taxation Office. We have had at times people looking at what we used to call key individuals, now high wealth taxpayers, and developing a list and an understanding of who these people were and what their tax planning arrangements were. We then decided to issue this questionnaire for a larger sample—

Senator CONROY—That is what I was going to ask you. This is beyond the 80 potential ones that were identified at that point in time? It was much broader than just those who were previously identified?

Mr Butler—Yes, we used risk assessment processes to identify approximately one-third of the people who we categorise as high wealth taxpayers and they received a questionnaire. In doing that, as the minister said, we were not placing any accusations before them that they were not doing the right thing because, as some of the responses showed, people are receiving large franked dividends. That is what they are using to meet their own personal living expenses and that is totally appropriate. So we were quite happy to put those sorts of cases aside.

The brief for this project is more to look at what are the issues, what are the tax mischiefs and then look at administrative and legislative responses to those particular things. So we will be developing administrative responses in the form of taxation determinations and taxation rulings when that is appropriate, or put into government suggestions or recommendations for legislative change when that is needed.

Senator CONROY—Is my recollection correct that about 80 individual trusts were identified—it was a fairly significant press conference with the Treasurer and a range of officials?

Mr Butler—Certainly.

Senator CONROY—And there was a figure of about 80 individuals.

Mr Butler—There was information available at the time but that was dated to a degree because it relied upon historical information tax returns. What we are seeking now is more

current information. So we have asked for information about the years ending 30 June 1993, 1994 and 1995. We are developing approaches now for the year ended June 1996 tax returns to gather more information from some of these people. So we are trying to get a much more current understanding of what they are doing and use that as the basis to make recommendations for administrative or legislative reform.

CHAIR—Can I just explore the accuracy of the figures that were bandied about at that time. There was this figure of \$800 million of tax being avoided by about 100 individuals, as I recall. That just seemed to me to be a fantastic figure. If you do the calculations on that, it seemed you needed about 100 people each worth about \$100 million each in assets if you look at the income that would have to be generated to generate that sort of tax liability. That just seems an unrealistic figure. If you look at the *Business Review Weekly* rich 100 and all that, there are not a 100 people with \$100 million worth of assets.

Mr Butler—I guess the best way to view the estimate is to look at the actual budget papers. As mentioned, there was some need for caution about revenue estimates. Revenue estimates that have been developed are really order of magnitude estimates rather than what you will gain from doing particular changes to the law, or issuing a new tax ruling and those sorts of things. There needs to be caution in that we are not certain as to the reliability of the wealth data that is available to us. The measures that we will be able to put in place to address any issues, they are not fully known at this point of time. There are losses that these people may have available to them and the ability to use those losses to those people is not certain. We are not certain of what behavioural response there might be, because they could restructure their affairs to try to get around any particular reforms you put in place.

CHAIR—But is it accurate to say that there are 100 people in Australia who have got assets of \$100 million? On the rough calculation I did, that sort of income would be needed to generate that sort of tax avoidance.

Mr Butler—I am not really in a position to answer that question.

Senator SHERRY—In addition to the work you have outlined earlier, are you doing anything else to improve compliance by high wealth individuals?

Mr Butler—I would suggest that the fact that the tax office is paying particular attention to these people will cause some to perhaps modify their behaviour, to be more cautious—

Senator SHERRY—Are you testing anything in court?

Mr Butler—We have some audits in Victoria that are very well advanced, which are close to being ready for litigation. But we are still seeking advice from senior counsel as to the merits of proceeding with those particular cases.

Senator SHERRY—Have there been any recent legal judgments that have made the task of improving tax compliance more difficult—or easier for that matter?

Mr Butler—There have been some recent cases. There is the full Federal Court case of Richard Walter Pty Ltd. I do not have a citation with me, but that did talk about a particular instance where a person did restructure their affairs to try to get around some changes that were made to the tax laws that apply internationally. I do not have the detail with me, but a sham was found to be evident and the commissioner was successful in that particular case.

Senator SHERRY—You would have a summation of that decision, would you?

Mr Butler—Certainly—not with me but I can provide you with one.

Senator SHERRY—Could we have a copy of that please?

Mr Butler—Yes. It is reported in Australian Tax Cases and things like that, so I can certainly send you that.

Senator SHERRY—How many officers are expected to be employed in the high wealth individuals project in 1996-1997?

Mr Butler—Approximately 150.

Senator SHERRY—In June the background briefing program on ABC claimed that ATO managers had sought an increase in staffing from 35 to 246. Is that correct?

Mr Butler—I have not been with the project that long and I am not personally familiar with that, but I understand that that was a very early planning document. It was a bidding process basically within the large business income segment of the business line. The various segments of the high wealth taxpayers segments had some very early planning figures. My understanding is that that did refer to a figure about 247. But I am confident that the 150 staff that we have—we have quite comprehensive strategies and plans now—

Senator SHERRY—What has changed? There seems to be a big difference between 246 and 150, I think you said.

Mr Butler—I think it is really the approach we are taking that has changed. Those earlier estimates I understand are based on a larger audit focus, which is very resource intensive. For example, it might take a team of six staff up to two years to do a comprehensive audit on just one high wealth individual and all the entities that they might own or control. The approach we are taking, as I said, is to do profile analysis type work as part of gaining a much broader understanding of their tax planning practices and then looking for administrative or legislative responses to those. So it is really a different approach. You are not really comparing apples to apples.

Mr Highfield—I can also advise you, Senator, that the ATO management board in its planning processes back in May made a strategic decision to make a resource shift from some of our business lines into the large business income line as well, and that would generally support the additional resource allocations that would have been given for the high wealth individuals project.

Senator SHERRY—I notice from that same program that there was a referral to low levels of confidence and morale. Were these reports accurate?

Mr Butler—On the projects that I have—

Senator SHERRY—I certainly would not suggest an appearance before estimates committees to improve morale—it might be a bit different tomorrow.

Mr Butler—The project team that I am heading up has already put in place very good training programs, quality assurance processes, a working papers management system, risk assessment processes. I would suggest the morale of the team is very high because people are seeing there is a real opportunity to do something here. So I don't see that I have a morale problem at all.

Senator SHERRY—Do you believe that legislative changes will be required to ensure that the maximum amount of tax is collected?

Mr Butler—It is really too early for me to comment on that, Senator, because we have not gone far enough in the analysis process.

Senator SHERRY—What is the best estimate of the total amount of tax that is being avoided because of tax strategies which involve the use of trust structures?

Dr Henry—I do not believe we have an estimate of that sort, Senator.

Senator SHERRY—The previous government announced it would put in place measures for collection. There have obviously been some questions on this. In May, the *Financial Review* reported Mr Carmody as saying:

The tax office has advised the government that there needed to be a deferral of 12 months of the crackdown of tax avoidance of high wealth risks.

However, the budget indicates that an additional \$100 million, which has been referred to earlier, will be collected in 1997-98. What has changed between May and the budget?

Dr Henry—The earlier statement was really saying that, if any legislative measures were to be introduced to address the issue, they could not be developed in time to produce revenue in 1997-98. I think that was the flavour of it. The \$100 million which appears in the budget for 1997-98 comes from the provision of additional resources to the Australian Taxation Office in order to undertake these sorts of things which Mr Butler has referred to. The expectation is that those additional resources, applied in the manner that Mr Butler has indicated, will raise additional revenue of \$100 million in 1997-98. There is nothing in the budget for subsequent years.

Senator SHERRY—Yes, I noticed that.

Dr Henry—At this stage, we believe it is simply too early to be able to hazard a guess even as to how much revenue might be collected in subsequent years.

Senator SHERRY—But there would have to be additional resources and/or new legislation?

Dr Henry—Not necessarily. It is our expectation that this program will lead to enhanced voluntary compliance in this particular sector.

Senator SHERRY—Yes. I was fascinated by that: people voluntarily complying. Why do you think that?

Mr Butler—I think it is the issue I mentioned before. It is publicly known that we are looking closely at high wealth taxpayers. That might cause some of them to modify their behaviour or to be more cautious.

Senator CONROY—They have never felt that there was scrutiny from you previously?

Mr Butler—I am not sure that is true. As the minister mentioned, we are not saying that these people are tax cheats. We do know that some of these people do pay substantial amounts of tax already. We are not certain as to the extent of any aggressive tax planning and minimisation.

Senator CONROY—I would have thought that their behaviour is motivated from an economic perspective rather than any other. We acknowledged earlier that they have all got a variety of very clever tax accountants. Why would they suddenly not want to potentially pursue alternative measures? Why do you believe you have taken away the economic incentive for them to do what they are currently doing?

Mr Butler—I am not really saying that. I am saying that we believe that \$100 million is really attributed to issues around the law as it presently stands. So it may be enforcing the law as it presently stands, clarifying the law as it presently stands. A component will also be a shift in voluntary compliance. We do not have a hard or accurate estimate of what that component might be. The \$100 million is around those sorts of things.

For example, if we come across some issues that we do not believe are correct in the current law—interpretation of it as it stands—our view would be that those particular arrangements

are not acceptable, then by issuing a ruling, that would have an impact on advisers and what they suggest their clients do and they might change their arrangements to fall in line with the ruling.

Senator SHERRY—Is there any estimate of revenue as a consequence of voluntary compliance?

Mr Butler—The \$100 million is the best estimate we have of what we believe we can achieve in 1997-98 through a range of measures associated with enforcing the law as it presently stands.

Senator SHERRY—Why can we not extend the estimate of revenue beyond the years 1997-98?

Mr Butler—There are two components of that, I suppose. The first is that there may be ongoing issues with enforcing the current law—some revenue attached to that. But, more importantly, the actual nature of the administrative and legislative reforms that might be developed are not known yet because we do not know enough about the actual tax planning issues. So, until we develop the administrative and legislative responses to address the tax planning, we are not in a position to attach any revenue estimate to that.

Senator SHERRY—How did the tax office become aware of the sorts of strategies that we have had outlined by certain high wealth individuals to avoid tax?

Mr Butler—I was not personally involved with the project at the time that happened. I did actually participate in a steering committee that looked at what was called ‘the large medium market segment’ in the tax office. There was work being undertaken by people who reported that steering committee. They were looking at what was then called ‘key individuals’. That was the title we had for them before. As part of the large corporate type taxpayers, they were looking at individuals associated with those large business operations. There were people doing some analysis type work. Some new technologies became available to the ATO which enabled us to more fully understand some of the arrangements and put together all the pieces, so to speak.

Senator SHERRY—This issue of the \$100 million in the voluntary compliance: does that include some expectation for voluntary compliance?

Mr Butler—Yes, that is correct.

Senator SHERRY—But you cannot put a figure on it?

Dr Henry—No.

Senator SHERRY—Just going back, the tax office awareness and the various projects you have referred to, was that not as a consequence of the compliance enforcement strategy announced in 1993?

Mr Butler—There were certainly funds made available to the tax office to do a whole range of things. There was work happening. The amount of work to be done in looking at these taxpayers allowed us to increase and improve our understanding at that time.

Senator SHERRY—When did the tax office first become aware of the use of trusts and other structures by some high wealth individuals to avoid tax?

Mr Butler—It is a very difficult question to answer.

Senator SHERRY—At some point the realisation must have dawned that this was a mechanism being used.

Mr Highfield—I guess part of the change occurred around 1993-94 when we reorganised the tax office and organised around client segments. As part of that reorganisation and a stronger risk assessment approach, we started to delve more deeply into the individuals or corporates—whoever—who make up the relevant segments. I think it was in the context of that reorganisation, digging deeply and doing risk assessments across the different segments, that we started to come to grips with some of the issues associated with the different segments and therefore started to delve deeper, and that ultimately led to the high wealth individuals' project coming into being.

Senator SHERRY—That is why it did not become apparent earlier than 1993?

Mr Highfield—I guess the other issue is that, prior to 1993, there were other high profile issues on our agenda. You will recall that in the late 1980s and going into the 1990s we had a large corporate program which was looking at the top 100 corporates in Australia. That consumed a great deal of our focus at that top end and was quite revenue productive, and that has been reported in successive annual reports. But it was when we shifted and completed that program that we started to look into other areas of risk. The high wealth individuals was one area that we started to pay some considerable attention to.

Senator SHERRY—When did you advise the government of the day about your concerns in this area?

Mr Highfield—I do not know the specific date.

Senator SHERRY—Approximately. I am not after the day. A month will do or the period of the year.

Dr Henry—I think it was in November 1995, Senator. I stand corrected on that, but I think that is when it was.

Mr Butler—According to a press release issued by the former Treasurer, it was 9 November 1995.

Senator SHERRY—So far as you are aware, it was November 1995?

Dr Henry—Yes.

Senator SHERRY—Are you concerned that of the \$800 million of estimated revenue being lost only \$100 million is expected to be recovered next year?

Dr Henry—I should clarify once again that the \$800 million figure is really an estimate of the revenue potentially at risk. It was never an estimate which was intended to map or relate to any particular set of responses. That is the first point. The second point I would make is that it really would be extraordinarily difficult—in fact, I would say impossible—to be able to implement measures to derive anything of the order of \$800 million additional revenue in 1997-98 in this area.

Senator SHERRY—So it is going to be up to the government of the day to devote resources and/or necessary legislative change to significantly improve the \$100 million figure?

Dr Henry—Yes.

CHAIR—You said \$800 million was either at risk or potentially at risk.

Dr Henry—Yes.

CHAIR—Does that mean that some of that \$800 million may be being paid in tax? Do you know what is being paid and what is not being paid or is that all tax that is not being paid?

Dr Henry—That is one aspect, Mr Chairman. The other aspect is that it could be the case that no matter what suite of measures might ever be implemented some part of that, perhaps a large part of it, may never actually be collected—for whatever reason, a whole range of reasons. So there are really two aspects to it.

Senator CONROY—Is the tax office concerned at all that delaying this suite of measures could risk some of that revenue, put at risk collection of some of that revenue?

Mr Highfield—I do not think it is a matter of imposed delays, I think it is a matter of completing the analysis with the resources that we have been given to do that and then drawing judgments as to what remedial actions are appropriate. If that includes the legislation, then that is what would be recommended to government.

Senator CONROY—Were the individual audits Mr Butler mentioned earlier in progress before November/December or have they arisen out of the analysis that was conducted and passed on to the government since November/December?

Mr Butler—My understanding is that they had all started before the November advice to the Treasurer.

Senator CONROY—Presumably you did not get up on 7 November and say, ‘We’ve got a big problem.’ You had been looking at it and formulating some advice in the lead up to that day. Did they arise independent of any of that advice? Presumably you were looking at it over a number of months.

Mr Butler—I mentioned earlier that it can take up to two years to do these audits. In fact, one of the audits in Victoria has been going for almost three years, given the complexities of particular arrangements. So, clearly, they started some time ago.

Senator SHERRY—When looking at the specific appropriations, I just say for the record that we have, I think, been a touch critical of some of the increases in resources to Treasury generally but this is one area where we would have no such criticism.

Senator Short—Would Senator Schacht agree with you?

Senator SHERRY—I am sure he would, Senator Short, in this particular area.

Senator Short—In absentia.

Senator SHERRY—I am sure he would.

Senator CONROY—Will the delay in putting in place any legislative changes now allow highly wealthy individuals to restructure their affairs again and make it even harder to recover revenue?

Dr Henry—I do not believe that in principle it does. What we are talking about are measures to bring income to tax. We are talking about a flow of future income which might otherwise avoid tax. It is not as if we are talking about a stock, a pot of money which is sitting there and which might be whisked away in the night if we do not take action to recover that pot of money. What we are really talking about is taxing the future income stream. It may be that certain taxpayers are taking action, even as we speak, to rearrange their affairs. It is our hope, and I am sure the hope of the tax office, that the work which is going on in the tax office will be addressing itself to whatever those new arrangements are as well as to any arrangements which may have existed for some time.

Senator CONROY—It is a pretty big call to say that you are relaxed and you do not think that is what is going to happen. In next year’s estimates we could be sitting here saying that there was an individual that had a structure in a particular form but by the time you got around

to introducing legislation they had changed their structure. You are relaxed at that? It is a pretty big call.

Dr Henry—No, I did not mean to give the impression that we are relaxed about it. What I am saying is that the program which the government is funding in this budget is intended to provide additional resources to the tax office to be able to monitor those developments as much as anything else.

Senator SHERRY—Mr Butler, I think I did ask you earlier about the compliance enforcement strategy that arose from the 1993 budget. Funding was provided in the material, was it not? Is that correct?

Mr Butler—Yes.

Mr Highfield—The compliance enforcement strategy dealt with a separate range of initiatives, not specifically the high wealth individuals. But, in particular, it included resources for our large business area to focus on what we call law clarification, which would impact across the whole tax paying community and particularly the top end of town.

Senator SHERRY—But this was a result of the 1993 budget?

Mr Highfield—The 1992 budget.

Senator Short—Just for the record, could I just make it clear—I am not sure it is clear from Senator Conroy's line of questioning—that there is no deliberate or conscious decision to defer progress on this matter for 12 months. The fact is that the tax commissioner advised the government that the earlier suggestion that you could move sufficiently smoothly to get money in 1996-97 was really not on. Even moving with the necessary expedition and waiting for the material that is being sought and so on is such that 1997-98 is the first year in which it is practicable to have a revenue expectation. But it would be quite wrong, Senator Conroy, if there was any suggestion that there was any wish on the government's part or the commissioner's part to not proceed with full possible speed. And that is being done.

Senator CONROY—I will put on record that we welcome that and support your efforts to get it into place as speedily as we can. The government has decided to drop the amendments to the PAYE provisions announced in the 1995 budget regarding contract labour. In addition, you are not proceeding with the discussion paper foreshadowed outlining the proposals to counter the use of interpose entities, such as companies, in alienating personal services income. Could the commissioner outline how the risks to the revenue from these circumstances arise?

Mr Highfield—As you know, the pay-as-you-earn system is the predominant means of collecting income tax in Australia. To the extent that people are able to change the way their incomes are taxed—that is, remove themselves out of the PAYE system—that presents a risk to the revenue. Typically, we find in arrangements where that occurs that entities are interposed. Those entities bring with them a raft of deductions and income splitting arrangements which lead to an overall dilution, I guess, of the revenue that would otherwise be derived from that income.

It was against the background of concerns for that sort of activity that we put certain proposals to the previous government. The government has decided that it would prefer the tax office to use the existing mechanisms or channels that are available to the commissioner to pursue both PAYE erosion and the use of alienation practices. One of our business lines, or maybe two of our business lines, will be doing work in 1996-1997 to assess how that activity might be conducted in some detail.

Senator CONROY—Is the ATO concerned that contractual arrangements are increasingly replacing traditional employment arrangements?

Mr Highfield—To the extent that we place a lot of reliance on withholding at source as an effective tax collection mechanism, we are concerned. I would have to say, however, that the mere existence of a contract does not by its own nature remove a recipient of income from the PAYE system. That is a perception that is sometimes around. I guess we are observing a trend or a change in employment practices. It is probably an issue that requires, or will continue to require, a fair amount of research for us to monitor that trend and to determine whether the current legislative framework is appropriate.

Senator CONROY—Is the number of taxpaying private companies increasing rapidly; if so, what does this indicate?

Mr Highfield—My understanding of the statistics is that there has been a significant increase in the number of private companies. I suspect part of that is due to the differential in tax rates that exist between private companies and the top marginal rates for individuals, and possibly some attractions from dividend imputation, and it will also may be linked, in part, with moves to move out of PAYE and to alienate income in some ways through company structures.

Senator CONROY—Would part of that be that more personal services income is being channelled through companies?

Mr Highfield—That is a possibility. I do not have detailed figures or information before us here today. But the general trend of PAYE erosion is accompanied often by interposition of an entity, such as a company, to receive what would otherwise be personal services income.

Senator CONROY—How seriously does the ATO regard risk to revenue from these developments?

Mr Highfield—Seriously enough to believe that there is a need for a fairly major program of action, I believe, to work out a range of strategies to deal with that particular situation.

As you will appreciate, there is a raft of technical, legislative issues in this particular area that need to be dealt with and, given the government's current position in relation to legislation to deal with this issue, until we reassess the size of the risk and the strategies available to us, we will not be in a strong position to work out the precise way forward.

Senator CONROY—Do you think you can cope with most of it, substantially reducing the risk to revenue through the use of the current law, or do you think there are a fair number of changes? I know you indicated that there were some.

Mr Highfield—I would really prefer to answer that question in the light of a few more facts about the incidence of the problem and the particular strategies that we might employ to deal with it. My recollection from previous activities involving alienation is that they are fairly labour-intensive activities. It would require a reassessment of the strategies available to us now in the current world before we could draw conclusions as to how difficult the task might be.

Senator CONROY—On page 4, Budget paper No. 1.—

Senator Short—Just before you do that, Senator Conroy, are you moving off that subject?

Senator CONROY—Yes, if that is all right.

CHAIR—Can I just ask a question.

Senator Short—I want to put something on the record too, but after you.

CHAIR—It seems that we have just spent a lot of time asking questions about arrangements on the part of high wealth individuals to minimise tax. We will spend a bit of time now

dealing with not so high wealth individuals. You have referred to the differential between the company tax rate and individual tax rates as one of the factors in that. Has the Taxation Office ever done any research or examination of what additional voluntary compliance you might get and what savings you might get in compliance costs, both on the part of the government and on the part of the income tax paying public, if we had a flat or a flatter tax rate structure?

Mr Highfield—Not specifically, no, Senator. Generally, we would not regard that as an issue that fell within our responsibility. Treasury would perhaps have a stronger role or responsibility in the area of assessing whether different tax structures would be in the general interests of a more efficient and effective tax system.

CHAIR—Has Treasury done any work on that?

Dr Henry—Only in general terms, Mr Chairman. We would find some merit in a general observation to the effect that the incentive to avoid or even evade taxes would be related to the tax rate that applies to the income or whatever it is that is being subjected to tax. We have not done any quantitative work—at least not that I am aware of—in the last decade which might provide information of the sort that you seek.

CHAIR—Minister, do you want to make a comment?

Senator Short—Yes. I just wanted to say a couple of things about the PAYE changes or proposals of the previous government and the current government's decision not to proceed with those earlier changes. First of all, I want to stress very much and put on the record that this government strongly believes that all taxpayers should pay their fair share of tax, whether they are small business, high wealth individuals or others. So far as the PAYE provisions or changes advocated by the previous government—introduced but not legislated before the election—are concerned, we received a very large number of representations in relation to those changes or those proposals, particularly from small business.

One of the main concerns that we had about the proposed changes was that in some circumstances—perhaps many—they would have brought payments to independent contractors within the PAYE provisions. That, of course, contravenes a very strongly held view of ours that tax laws should not undermine the independence of contractors. That was primarily the reason—there were some other reasons as well—why the government decided not to proceed with the legislative changes foreshadowed and introduced into parliament by Labor.

However, the Commissioner of Taxation will continue to take appropriate steps to safeguard the operation of the law, including, where necessary, testing the law in the courts. We have asked the commissioner to ensure that he continues to apply provisions, including—and this is an important inclusion—the anti-avoidance provisions of part 4A to ensure that taxpayers do not avoid paying tax on personal services income through the use of interposed entities. I wanted to get that on the record because we share the concerns of the commissioner and others about the need to ensure that we do not allow an avoidance loophole to continue.

CHAIR—Further questions?

Senator CONROY—I have a couple on the points that Senator Short has just made. The representations may lead to unintended consequences. What are the circumstances under which these unintended consequences will arise?

Senator Short—Our main concern was that the proposed changes would—at least in some circumstances and, arguably, a large number of circumstances—have brought payments to independent contractors into the PAYE system. That concerned us because we are very strongly of the view that tax laws should not undermine the independence of contractors. We

regard that as a very important principle. Having said that, we also wanted to ensure that the situation was not such that there would be an avoidance loophole. It is for that reason that we have asked the commissioner to continue to apply the existing provisions, particularly including the anti-avoidance provisions of part 4A to ensure that taxpayers do not avoid paying tax on personal services income through the use of interposed entities.

Senator CONROY—The budget papers state that the government has asked the commissioner to continue to apply the existing law, including the general anti-avoidance provisions you have just been outlining. As the PAYE system does not apply to payments for personal services to an interposed entity, does this not make it difficult to locate cases of alienation of income, especially in the self-assessment system?

Senator Short—I do not think so.

Mr Highfield—I did reference earlier on that, in the past when we have attempted to tackle some of these particular sorts of arrangements, some of them have proven to be fairly labour intensive. I guess what I am saying is that, in terms of how we go about this into the future, we need to reassess the strategies we employ to detect these particular situations and to see whether there is some way in which we can leverage and improve the compliance outcome rather than just adopting an individual case by case audit approach. Based on what we have been asked to do, we will be reassessing both the nature of the risk and what is the best way to tackle it, given the magnitude of it.

Senator SHERRY—Senator Short, in respect of that comment about independent contractors, how do you hope to maintain the integrity of the tax system if this area is not looked at—not just administratively but legislatively?

Senator Short—We believe that the existing provisions in the law—particularly using the part 4A anti-avoidance provisions—if tightly administered and fully administered, will meet most of the concerns that the previous government's PAYE change provisions were intended to fix. So you have to balance that. Obviously, that will need monitoring. But that needs to be balance against the very strongly held view that we have that, as I said before, our tax laws should not undermine the independence of contractors. We believe very strongly that independent contractors are a very important part of our economic system and social system, in many respects. We were not prepared to see changes to the tax law which may undermine that system. Like most things, these things are a matter of balance and of weighing one set of considerations against another.

Senator SHERRY—Is the number of 'independent contractors' growing? Do we have any data on that?

Mr Landau—Yes. The figures are showing that, reflecting the changes that are occurring in the labour market generally there is a growth of about 2.6 per cent per annum. ABS figures are indicating that sort of order of increase in independent contracting arrangements per annum.

Senator SHERRY—I must say I am surprised, Senator Short, at your position, given the need to maintain the integrity of the tax system and to continue to collect PAYE tax.

Senator Short—We believe that the integrity of the tax system, with the existing legislation appropriately administered, can, and will, maintain the integrity of the tax system.

Senator SHERRY—Even with the continued erosion of tax due to the sorts of changes that have just been highlighted?

Senator Short—As I said, we have asked the commissioner to ensure that he applies the existing provisions, including, very importantly, the part 4A anti-avoidance provisions, to

ensure that taxpayers do not avoid paying tax on personal services income through the use of interposed entities.

Senator SHERRY—But the nature of employment is changing—

Senator Short—Yes.

Senator SHERRY—What is the solution to an otherwise diminishing tax base?

Mr Landau—Perhaps I could clarify a couple of points. Firstly, PAYE is a collection system effectively to achieve progressive down payments on people's final end-of-year liability. It is not a tax system as such, but a mechanism to ensure that, during the course of a year, an estimate of people's liability, approximating their final liability, is collected as income is earned, rather than requiring the total tax liability for the year to be paid at the end of the period. That pay-as-you-earn system was designed for people who were in traditional employment arrangements.

Senator SHERRY—But these traditional employment arrangements are changing.

Mr Landau—Correct. We have a number of other collection systems for people who are not employees and who are not subject to the pay-as-you-earn system. In a number of industries, we have a prescribed payments system in relation to payments in the particular industries. Where people are not subject to those, we have provisional payment systems whereby people make advance payments based on previous years' assessments in anticipation of an end-of-year liability.

In terms of individuals who are not subject to PAYE or PPS, and further for entities like companies, there are payment systems that anticipate and require payments during a current year. So there are a series of collection systems that are in place, of which PAYE is one. It is not an accurate description to say that people who move out of the PAYE system and who are perhaps no longer traditional employees are not paying tax. It means that they become subject to alternate payment arrangements—

Senator SHERRY—At the same level?

Mr Landau—Well, the end-of-year liability of the person in relation to income earned is subject to a set of rules independent of the mechanism by which the payments are made during the course of the year.

Senator SHERRY—But is there any data available to indicate that the average collection of tax from these people is what we would otherwise expect through the traditional PAYE system?

Mr Landau—The nature of the employment, as the minister suggested, in a number of situations is fundamentally different. Where you have people—

Senator SHERRY—I understand the nature of the employment is different—

Mr Landau—According to the arrangements under which the income is earned, then it is subject to the various provisions of the taxation law as to what the liability is.

Senator SHERRY—But is there any data available—I just go back to that question I asked a little earlier—given the occupations of these people, that the average tax collected is what we would expect if they were employees?

Mr Highfield—The general trend in compliance is that, where income is subjected to deductions at source, in all probability you will get the highest level of compliance. So, for PAYE, we know there is a very high level of compliance. Where income is not subject to deductions at source but is reported to us in some systematic way which we can match with

tax returns, we also know that there is a relatively high degree of compliance, but not at the same level as where tax is deducted at source. The declaration of interest income is one good example of that. The trend generally in those areas where income is neither subject to deduction at source nor information reporting is a lower level of compliance.

Senator SHERRY—Given the figures we got earlier of a 2.6 per annum increase, is this then becoming a growing problem?

Mr Highfield—It is a problem, as the minister said and as I responded to an earlier question, which we have been asked to deal with through an administrative response. Now that will be a combination of service, audit and litigation type activities, using the full provisions of the current law to deal with whatever practices we find that are not consistent with our rulings and our interpretation of the law.

Senator SHERRY—I just make the point that we think this requires a bit more vigorous application and administrative compliance. You gave me the figure of 2.6 per cent per annum. Do you have any idea as to what the current figure is?

Mr Landau—No, I have not seen a figure. That was a figure I recall from about 12 months ago. That is a trend, not based on taxation but based on labour market surveys, of the shift. That has been happening as people are moving away, in many cases, from working for one employer to actually having to derive income from a number of different sources. There is clearly quite a shift away from long-term service to one employer as part of the labour market changes. But I must say we are not seeing an impact upon our PAYE collections at this stage.

Senator SHERRY—These figures are available from ABS, are they?

Mr Landau—I recall—I could check—that they were labour market figures and not tax sourced data.

Senator SHERRY—If you could. I will check with ABS. If we cannot get it from ABS, we will return.

Mr Landau—It probably was ABS but there actually are several labour studies type organisations who, as part of their labour market research, track the changes in labour supply relations. It is in that context that those figures are available.

Senator CONROY—Just referring back to Senator Short's answer about using part 4A, isn't the use of it a rather unwieldy instrument to deal with the alienation of personal services income because it requires a case by case use by the commissioner and is very resource intensive?

Senator Short—My understanding of it—the tax officers can reply in detail—is that the use of 4A is quite practicable and efficient in this context. But you might wish to elaborate.

Mr Highfield—I would not like to give the impression that that is the only provision or the only activity we would rely on. I would in many respects see that as a measure of last resort if we cannot get some better educative response from the targeted population to rulings that we might give. There is a reference here to longstanding income tax rulings issued by the commissioner dealing in some detail with this issue. I would imagine one of our strategies will be to update our current rulings in this area and to target those rulings in particular industries to see whether there is a response, and couple that with some sort of educational activity and an audit activity as well.

Senator CONROY—Given the shortcomings in the existing law, doesn't the government's abandonment of the 1995 budget measures, including the discussion paper measures, mean that tax avoidance in this area will continue to flourish?

Senator Short—I think that is what we have been discussing for the last few minutes. I do not think there is anything else we can add to this, other than to say that the answer to your question is no. We think that the measures that will be put in place and the administration of the existing arrangements, as Mr Highfield and others have just outlined, will be adequate and will protect the base and the integrity of the system. So far as the alienation side is concerned, given the decision on the PAYE side of things, the government's decision not to proceed with the discussion paper on alienation followed logically from that first decision. I understand also that, although Labor talked about a discussion paper on alienation, it was not ever actually released. I do not know whether it was completed, but it was never released, as far as I understand.

Senator SHERRY—I note the habit we are falling into with messages. I assume that at this time of night we are going to abandon it—and we are happy to do that.

Senator Short—I know it has always been different between members of the committee. You have been used to being on this side, unfortunately, for too long. There is a difference between one side of the table and the other.

Senator CONROY—In the budget papers the revenue consequences of abandoning the 1995 budget measure and any further measures is shown on table 4 of page 45 of the 1996 budget papers with an asterisk, meaning that a reliable estimate cannot be provided. Were you really unable to make any estimate as to the likely revenue consequences of abandoning these measures?

Mr Highfield—One of the difficulties we have in this area is the fact that the PAYE revenue base is so large. It is in the magnitude of, I think, \$55 billion to \$56 billion. Trying to put a revenue figure on it, bearing in mind that figure, in what is a relatively small compliance issue, is quite difficult. I think that we would prefer to do further research before we would be willing to indicate any sort of revenue figure at risk in this particular area. I know there were some estimates some years ago—

Senator CONROY—Is it not the case that the previous government was informed that the revenue consequences of not taking further measures against alienation of income would be substantial, both in respect of the loss of currently budgeted revenue and not obtaining revenue currently being avoided? Was not the previous government informed that by not taking further measures, that is, legislative action, against alienation of income, the revenue losses in terms of currently budgeted revenue would be \$140 million in 1996-97, rising to \$290 million in 1998-99?

Mr Highfield—I cannot comment on those figures. I do know that from a Treasurer in the previous government, in 1992 when the compliance enforcement strategy was released, there was an estimate of \$100 million identified as being attributable to PAYE erosion. That figure would be some three years old now. I really cannot talk about any other estimates that might have been done or given to government since then.

Senator CONROY—Now that the government has abandoned these measures, were the revenue calculations reduced to reflect the consequences of this decision?

Mr Highfield—The original compliance enforcement strategy did include estimates of revenue that were, in fact, included in the budget estimates. The decision not to proceed with the legislation—it is my recollection that the PAYE base figure was adjusted to remove the estimated revenue that otherwise might have occurred with a legislative response.

Senator CONROY—Was not the previous government informed that the revenue consequences of not taking action in this area would also be that additional revenue of \$280 million for each year from 1996-97 to 1999-2000 arising from tax avoidance already occurring in this area would not be obtained?

Senator Short—Could I just say in relation to this that you are talking about the previous government—I am not sure whether wittingly or unwittingly—but as you may know, incoming governments are not supposed to know the advice that was given to previous governments, so I do not know what the implications of that convention are in relation to estimates. I raise it as a serious point.

CHAIR—As I understand it, it applies to estimates questions.

Senator CONROY—I am sorry, I am not too sure what you mean by that. Is that a ruling that the question is out of order?

CHAIR—Yes.

Senator CONROY—I am intrigued that we are not allowed to ask questions about information that we were privy to and put them on the public record if we seek to.

Senator Short—Well, the chairman has made a ruling, but I was just making the point that there has been a longstanding convention on this issue.

Senator CONROY—What standing order is that? You have made a ruling on that, Chairman?

CHAIR—I made the ruling on the basis that, as the minister pointed out, incoming governments are not entitled to knowledge of advice given to previous governments. So you cannot—

Senator CONROY—Could you show me the standing order of the Senate that—

CHAIR—It is not apposite to ask a question which it is impossible for the minister to answer. I have made a ruling.

Senator CONROY—Under what standing order have you made that ruling?

CHAIR—I have made the ruling.

Senator CONROY—Under what standing order?

CHAIR—I am not identifying the standing order.

Senator CONROY—There isn't one.

CHAIR—That does not matter; I have made the ruling. If you want to disagree with it, disagree with it. We can have a vote.

Senator SHERRY—I would not push your luck.

CHAIR—I have the numbers.

Senator SHERRY—Is that why Senator Crane just came in? We will return to this point shortly. We will preserve our right to pursue this point some time in the next couple of hours. Mr Highfield, I want to get it very clear about these high wealth individuals. Was it in 1992-1993 that you became aware of the significant and growing problem we faced in this area.

Mr Highfield—No, I do not believe I said that.

Senator SHERRY—What did you say?

Mr Highfield—You made an earlier reference to the compliance enforcement strategy; I corrected you and said that it was announced by the then Treasurer in September 1992. That

strategy included a range of initiatives, one of which was to provide additional resources to the ATO—specifically the top end of our market, or our audit activities—to focus on law clarification activities. There was another question addressed to Mr Butler which referred to a number of audits that were under way and I think he indicated that some of those have been going for two to three years.

Senator SHERRY—So it was around this time—1992-1993—that you became aware of a significant problem?

Mr Highfield—It was in 1992 that we went to government with a compliance enforcement strategy which said that by undertaking a range of initiatives in different areas—different client segments—we could improve compliance and produce additional revenue.

Senator SHERRY—And funding was provided for that?

Mr Highfield—And funding was provided by the government for that.

Senator SHERRY—What sort of measures did you undertake as a consequence of that funding in 1992-1993 to help identify the extent of this problem?

Mr Highfield—If I indicated, or suggested in my previous answer that the specific initiatives in 1993 flowing from the compliance enforcement strategy were directed to high wealth individuals, I was wrong. That was not my intention. It was at that time that there was an expansion of resources that focused on our larger taxpayers. Our complex audit program focused specifically on law clarification activities, and, part of that general expansion of auditing activities at the top end may well have led to some audit work being done in this area. But it was only in a number of cases and that subsequently grew when further analysis and research was done.

Senator SHERRY—Because of this funding?

Mr Highfield—No, the additional funding for the high wealth individuals only occurred this year, but there has been a project within the tax office, going for at least probably 12 to 18 months, where a lot of this analysis has been done, and which led to the government's announcement last November.

Senator SHERRY—And prior to 1993 you were not aware of the significance of this problem?

Mr Highfield—We were certainly aware of the use of trust structures in particular ways, or tax minimisation arrangements. I am not even sure that the scale of what we detected and reported on last year existed back in 1993. But, certainly, there was an understanding that trust structures were used by different groupings of taxpayers for minimisation purposes, and it would not be surprising to find that there were some high wealth individuals in those particular categories.

Senator SHERRY—Dr Henry, was it in November that you informed the government of the size of the problem?

Dr Henry—That is correct.

Senator CONROY—Just returning to the issues we were talking about before, does all of this not mean that the total revenue at stake through the proposed measures to deal with alienation of income is in the order of \$420 million in 1996-97, rising to \$570 million in 1999-2000? Are you seriously now saying to the committee that revenue of these dimensions can be obtained through the use of the existing law without any additional measures?

Senator Short—I guess the point I would make in response to you, Senator Conroy, is that this government is trying to actually do something about this problem, giving support to the ATO to enforce the law. Your previous government did nothing about this and it was there for a long time. One must ask the question why you did not act much earlier than you did. I make that as a starting point. But so far as—

Senator CONROY—I do not think that is correct. We had a proposed—

Senator Short—You asked me a question. Do you want an answer? I suppose that is a preface to my answer. My answer to you is that we are giving the commissioner full support to enforce the law in a way which will deal, we believe, adequately with the problem. You may choose to have a different view on that, but that is the government's view and we are confident at this stage in that view.

Senator CONROY—Can I put to you in the strongest terms that in actual fact we had a legislative program proposed that was designed to close loopholes. You have pulled the pin on it and left the status quo. You are now sitting here saying that there is no revenue calculation available on abandoning what had been proposed.

Senator Short—As I said to you before—

Senator CONROY—That is squarely at your door. We had a position that we were pursuing and you have now abandoned it.

Senator Short—As I said to you before, we by convention are not privy to what advice is given to previous governments in terms of these matters and figures but I would draw your attention again to the comments made, I think, by Mr Landau before in terms of this. There is almost a suggestion in what you are saying that unless people are taxed in a PAYE basis then you are going to get tax avoidance. We happen not to believe that is the case if the Taxation Office is given the support to enforce the existing law. The difference between us is that you believe that the existing law is inadequate to meet the need. I think your view would appear to be that it is inadequate. Our view is that, properly administered, it is not inadequate. Therefore, I would not support the assumption, or your presumption, that there will be a significant revenue loss.

Senator CONROY—Was there any calculation done for the new government of the impact on lost revenue of abandoning the previous government's proposals?

Senator Short—The question of what advice is given to government gets back to something we have been going through all night. The question of what advice is provided to government by departments and agencies is not a matter for answer in estimates committees.

Senator CONROY—No, I didn't ask what it was; I asked whether there was any advice given.

Senator Short—I am just saying to you that whether there was or whether there was not is not a matter on which I give an answer in estimates committee.

Senator SHERRY—This doesn't sound like a vigorous, vigilant new government anxious to preserve the tax base.

Senator Short—Why on earth not?

Senator SHERRY—Because you are not even considering legislation in this area; you just ruled it out regardless of the consequences.

Senator Short—What I said was that we are vigorously supporting the enforcement of the existing laws which we believe, suitably administered and vigorously enforced, will prevent the problem of leakage to which you are rightfully concerned about—as are we.

Senator SHERRY—And what if that approach doesn't work?

Senator Short—Well, let's see what happens.

Senator CONROY—We are talking about \$400 million.

Senator Short—Well, you tell me it is \$400 million. It is the first time I have heard such a figure. But that is on the basis—presumably because I haven't seen the basis for it—that it would have to assume—

Senator CONROY—You didn't read last year's budget documents?

Senator Short—That it is not possible—

Senator CONROY—These are figures in last year's budget documents—

Senator Short—It would have to assume that it is not possible through the administration and enforcement of the existing laws to preserve the integrity of the system. We believe that is so for the tax system. We believe that, so far as this particular aspect is concerned, the integrity of the system and the revenue base can be preserved with the existing laws adequately and appropriately administered.

Senator SHERRY—It sounded like a pathetically weak approach to me, Senator Short—

Senator Short—Well, you may disagree—

Senator SHERRY—A pathetically weak approach.

CHAIR—Settle down. I am telling you to settle down. That is an irresponsible comment to the minister.

Senator SHERRY—Come off it!

CHAIR—Order!

Senator SHERRY—It is pathetically weak action, Senator Short, to allow the erosion of the tax base in this way.

Senator Short—You were not here for the whole 13 years, thank heaven, but your party was in power for 13 years. How did you finish up—

Senator SHERRY—What do you propose to do about it, Senator Short?

Senator Short—You finished up basically wrecking the financial structure of the government—

Senator SHERRY—What do you propose to do about this erosion of the tax base? How does this fit into your charter of budget honesty, Senator Short?

CHAIR—Order!

Senator SHERRY—How does it fit into the maintenance of the integrity of the tax system?

Senator Short—'Budget honesty' is a term that is absolutely alien to you and your party, Senator Sherry.

Senator SHERRY—How does it fit into the maintenance of the integrity of the tax system, Senator Short? That was the question.

CHAIR—Order! Senator Sherry, we are not in the chamber.

Senator SHERRY—You are weak on this issue.

CHAIR—I think you might need something to quieten you down, Senator Sherry.

Senator SHERRY—Right, next question. Let us see if you are as vigorous in government as you were in opposition on this proposition. You had a policy of altering the administrative structure within the ATO to replace the commissioner with a board which would include the commissioner. Are you considering such a proposal?

Senator Short—No.

Senator SHERRY—Why not? It is in your election promise.

Senator Short—I have given you the answer.

Senator SHERRY—So this was a non-core promise, was it?

Senator Short—There is no intention to change the existing administrative structure. Could you, by the way, show me where in the coalition's pre-election policy documents—

Senator SHERRY—That one I will have to take on notice because I do not have it here.

Senator Short—I will look forward to seeing that from you, Senator Sherry.

Senator SHERRY—We will get the information for you.

Senator Short—You are so dogmatic about these things as if you know it all—

Senator SHERRY—Well, we have had so many broken promises from you, Senator Short—all the non-core promises, all the non-core honesty—that we are going to keep reminding you about it. I will show you a heap of election promises you have broken, and we will just add this one to it, Senator Short.

CHAIR—Order!

Senator Short—I will look forward to receiving from you a copy of the coalition's 1996 election document that has that proposition in it.

Senator SHERRY—And we will underline all the other broken promises on the way through, Senator Short—all the non-core promises, all the non-core honesty.

Senator Short—Well, just bring that one along for starters.

Senator SHERRY—We will look forward to reminding you of that.

CHAIR—Order!

Senator Short—Just bring that one along for starters because I think you have shot yourself pretty well in the foot on that one.

Senator SHERRY—I turn to tax office closures. How many tax offices have been closed or are in the process of being closed?

Mr Landau—Fifteen regional offices have been closed and two remain open in their previous form—that is, in Darwin and Alice Springs, although the role of the Alice Springs office has been basically changed. In their place we are maintaining four offices on a full-time basis in conjunction with state—and in Victoria local government—authorities to provide a one-stop shop for small business. The four offices operating as a one-stop shop are Cairns, Tamworth, Ballarat and Bendigo.

Senator SHERRY—And what about Launceston?

Mr Landau—Launceston was closed as a regional tax office and has reopened as a retirement service centre in conjunction with the Department of Veterans' Affairs and Department of Social Security.

Senator SHERRY—How many positions were lost at Launceston?

Mr Landau—In Launceston—

Senator SHERRY—Approximately, if you do not have the exact figure.

Mr Landau—Approximately four positions, I believe. From memory, two took redundancy and two were relocated to the Hobart office. I think four or five are remaining in the pilot office.

Senator SHERRY—There is a range of questions which we will put on notice in this area in an endeavour to save time.

Senator Short—Just before you do, on the regional offices, could I say that, as I understand it, it is the wish and the expectation of the Taxation Office that their service to regional Australia is going to be strengthened and improved over time if the existing pilot projects that are being undertaken are the success that we and the commission hope it will be. We have a very strong commitment to regional Australia to provide services as adequately as we can—be it in taxation or in anything else. I know the commissioner obviously shares that view so far as the ATO is concerned. Although there has been a closure of some offices, we hope that the longer term situation for a tax presence in regional Australia is quite bright.

Senator SHERRY—Could you explain what the business 2000 program that you released in July is all about?

Mr Highfield—Yes. Essentially we released in July for consultation what we called a business 2000 planning document. It was an attempt to identify what the tax office might look like in the year 2000 in the way it would do work and the way it would be structured. It gave some possible indication as to the size of the tax office at that time. I should emphasise that it was not a firm plan to reduce the size of the tax office from 17,000-odd down to 15,000; it merely portrayed or gave a scenario of a possible position that the tax office could reach based on a certain number of assumptions.

Senator SHERRY—So you have withdrawn it, have you?

Mr Highfield—No, we haven't withdrawn it. We have received a lot of feedback both internally and externally. We are reassessing what adjustments we need to make. I guess the most significant part of the plan was to convey changes to our network of branch offices and the size and composition of those offices. We certainly have not made any decisions in relation to those sorts of issues but we do expect to announce some decisions by the middle of October.

CHAIR—Any further questions?

Senator SHERRY—Yes. Internet payment arrangements: there was a report in the *Financial Review* that the commissioner is looking to move a large section of Australia's tax payment systems onto the Internet. Could you expand upon this, if that report was accurate, and what types of payments would be affected?

Mr Highfield—Mr Carmody has told me that the report was not 100 per cent accurate. What he meant to convey was the fact that we would be examining the use of facilities like the Internet potentially for transacting business transactions, for example, submission of a tax return, submission of other information that we may require from taxpayers, and possibly it may have some future application in relation to payments. It may also have some application in relation to the matter we spoke of earlier on tonight—for example, superannuation type arrangements and the requirements on funds to forward to the ATO information that we require for the administration of laws in those areas.

What Mr Carmody referred to was simply that we would be looking, as other organisations are looking, at the Internet to see how it can assist us in conducting our business. We already use the Internet to disseminate information about aspects of our activities to people who use the Internet. Based on what we see as emerging directions in the banking system, we do see it as a technology that has some potential application for the taxation system. That said, I would say that there are major issues of security that have to be addressed before we would be 100 per cent confident that it is a secure means of doing business of a taxation nature.

Senator SHERRY—What are the major issues of security—without enormous detail?

Mr Highfield—It is essentially other people who have access to the Internet gathering, capturing information, potentially hacking into taxation systems—they are the sorts of things that potentially could be done. So there is still a fair amount of work to be done to assess the art of the possible in that area.

Senator SHERRY—I take it the benefits are some reduction in cost.

Mr Highfield—We see significant potential to change the way we do our business over the next few years through the use of technology. Notions of large numbers of taxpayers transmitting information to us electronically from their homes are not something beyond the realms of possibility in, say, a five- to 10-year time frame, if not sooner.

Senator SHERRY—Right. The tax help service. We have actually had a number of concerns raised about this operation. Is there a policy in place which required counter staff to refer members of the public seeking tax advice to the volunteer based tax help system?

Mr Mobbs—The policy that we have in place for our staff is that they should not, except in unusual circumstances, provide a service of completing a tax return for a member of the public. Under the circumstances where someone just comes in and asks for someone to help them fill out, effectively fill out their tax return, as opposed to answer a question on a particular issue, and the person asking for assistance is clearly in a category that the tax help program is meant to assist, they are offered a contact with the tax help network.

Senator SHERRY—But this tax help network is comprised of community volunteers, is it?

Mr Mobbs—It is.

Senator SHERRY—What is the liability if they give the wrong advice?

Mr Mobbs—My understanding is they are not liable.

Senator SHERRY—No, but what about the tax office being liable?

Mr Mobbs—I do not know the answer to that. I would need to take it on notice.

Senator SHERRY—It has also been claimed that the travel allowances paid to these volunteers who make the tax help system possible have been reduced. Do you know anything about that?

Mr Mobbs—I do. They are paid public service travelling allowance rates and public service travelling allowance rates have been reduced.

Senator SHERRY—Given that they are volunteers, how do you justify that?

Mr Mobbs—We find it difficult to justify paying a rate that is higher than that paid to the Public Service.

Senator SHERRY—Why was the Public Service rate dropped?

Mr Mobbs—That is formula driven—you would have to ask the Department of Industrial Relations.

Senator SHERRY—You didn't consider breaking the nexus?

Mr Mobbs—No. That would have brought with it taxation implications on the allowance because, while they are paid the Public Service travel allowance, that is free from taxation.

Senator SHERRY—How many of these people are there?

Mr Mobbs—In 1995 there were 1,357 and this year we haven't finished counting.

Senator SHERRY—Has it gone up or down?

Mr Mobbs—I would expect it to go up.

Senator SHERRY—Right. I must say I didn't know about this tax help system until I got a couple of queries about it.

Mr Mobbs—Senator, we have a lot of the program operating out of the offices of members of parliament and we would like to recruit you if you are interested.

Senator SHERRY—No you won't! I have got enough work to do. If the government give us extra staff, I will consider it. Is this a system that exists anywhere else in the world?

Mr Mobbs—Yes, I believe it exists in at least Canada, but I haven't been sent on a trip and—

Senator SHERRY—I think you would find there would be no travel allowance if you were!

Mr Mobbs—Just Public Service rates would be fine.

Senator SHERRY—Okay. The audit program. Can you outline what is the ATO's audit program for large business, small business and individual taxpayers for 1996-97 and beyond?

Mr Highfield—I think really to do justice to that particular question we would prefer to take it on notice. To give you a fully comprehensive response there is a significant amount of information that we would need to give you to fully appreciate the magnitude and the nature of that program.

Senator SHERRY—How does the level of activity that you intend to undertake compare with the last five years?

Mr Matthews—I would say that we have actually, by productivity processes, leverage strategies and maintaining our resource commitment in these areas, actually increased our activity.

Senator SHERRY—Does that include with increased audit teams in staffing—

Mr Matthews—Maintaining staffing, partly due to technology and partly due to new ways of approaching the audit tasks—certainly in respect of non-business individuals.

Senator SHERRY—There are a number of other questions I would put on notice in respect to this.

[The questions appear at the conclusion of today's proceedings]

Senator SHERRY—Is there any money borrowed to fund redundancies in the tax office?

Mr Highfield—Yes. The portfolio statement refers on page 79 to a borrow of \$16.7 million to fund a current redundancy program of about 650 staff.

Senator SHERRY—Just on the redundancies and the 650 staff, I do not know what the profile of the people who have taken redundancies is like—whether they are senior staff, more

experienced staff—but does it pose any particular problem for the tax office? I am not talking about the number but the loss of experience.

Mr Highfield—I do not believe so. The program is broken down on a business line level and is generally targeted at particular levels where there may be imbalances or excess numbers. But, in terms of numbers and profile, I do not believe we have identified that as a problem issue for us.

Senator SHERRY—Why wasn't the money provided for in this year's appropriations?

Mr Highfield—It is my understanding that programs of this nature are not normally funded especially. This is not the first redundancy program that we have had. We decided as a management decision that we needed to do this because, funny as it may seem, we are in fact hoping to recruit some new staff in 1996-97 because there has been very little recruitment in the tax office over the last three or four years.

Senator SHERRY—How many staff would you be recruiting?

Mr Highfield—I believe the last figure is around 200 graduates in 1996-97.

Mr Matthews—In addition to that, we would as a matter of normal course do annually some seasonal and base level recruitment to meet our peak seasons.

Senator SHERRY—I find that a bit strange. You have made redundant 650. Presumably many of them would be picking up an ongoing pension funded off the budget when they could be working in the tax office.

Mr Highfield—What I said was we have imbalances of staff. We have staff who, on the one hand, are excess at particular classification levels. We have some staff who are not performing to a sufficient standard and we have a general need to renew or bring some new blood into the organisation. So all of those factors lead us to a conclusion that we should embark on a relatively small program in an organisation of our size and also embark on some recruitment activity as well.

Senator SHERRY—I can understand the argument in respect of a profile of particularly younger people coming in but you have got 650 people made redundant. There is a substantial payment and a very significant increase in payment in respect of superannuation off the budget because of the public sector superannuation funds. It just seems to me to be a waste—certainly not an efficient use of resources—when they could be working in the tax office.

Mr Highfield—Unfortunately, over recent years the rate at which staff have been leaving the tax office has dropped almost to negligible levels. In the particular environment where we are not recruiting any new blood into the organisation, we regard it as a fairly unhealthy situation looking five to 10 years out when we anticipate a fairly significant number of people will retire in normal processes. So, taking a longer term view, we believe it is in our interest to make some investments in the short to medium term in some new recruits. It is for a combination of those sorts of measures or reasons that we have made these sorts of decisions.

Mr Matthews—If I could supplement that response, our wastage rates have been exceedingly low over the past few years. Therefore, some of the wastage that we expected to occur and we would have hoped would occur due to the introduction of technology and our modernisation program, has not occurred. So that is part of the background, and it is being rebalanced as part of this redundancy program.

Senator SHERRY—What is the extent of using outside contractual advice in the tax office?

Mr Highfield—What, contractors?

Senator SHERRY—Yes.

Mr Highfield—At the moment I guess the largest area in which we employ contractors would be in the area of systems application development, but it would probably be less than 100 people.

Mr Matthews—Very much less in fact. Over the past few years it has declined considerably.

Senator SHERRY—In regard to people who have been made redundant, is there a policy of not employing—obtaining their services is probably a more accurate description—them as contractors?

Mr Highfield—Yes, there is a APS rule to that effect.

Senator SHERRY—What about the tax office? Would you use the services of subcontractors who have been previously redundant?

Mr Highfield—That would be most unlikely.

Senator SHERRY—There is a reduction in the modernisation project funding of \$8.2m. What is that due to?

Mr Highfield—This is a 10-year program which is due to be completed in June 1998. The program peaked in terms of funding in the early 1990s and has been progressively declining over the last few years. The reduction of \$8.2 really just represents the difference between last year's allocation and this year's allocation—declining, as I indicated.

Senator SHERRY—Why is there an offsetting increase of \$8.3 million under heading 'Use of modernisation agreement funding flexibilities'? Is that related to this?

Mr Highfield—Within the running cost system there are flexibilities of moving funds from one year to another. My understanding is that it is just part of that process of shifting the funds to another year.

Senator SHERRY—There are some other questions but I will put them on notice for you. I now refer to the register of cultural organisations and tax incentives for the arts scheme. Do you have anyone here who is across that issue?

Dr Henry—I do not believe so. I am sorry.

Senator SHERRY—That is a pity.

Dr Henry—It is not a topical subject, I would have to say.

Senator SHERRY—I must say I was a bit surprised when I got a few questions on it. It is not something that I would have-

Senator Short—I thought that you had developed all these yourself.

Senator SHERRY—Senator Short, how would you have guessed?

Senator Short—You are just a spokesman for other question cooker-uppers, are you?

Senator SHERRY—I wrote a lot of these questions myself, Senator Short, but I would very happily go on the public record as saying I certainly did not write all of these. I can assure you of that.

Senator Short—I now understand why it does sound that you do not understand some of them.

Senator SHERRY—But the fine tradition that you established in opposition is being continued, Senator Short.

Senator Short—We did all our own.

Senator SHERRY—I am just a touch disappointed that we have not quite reached the levels of efficiency that you reached, but it is only our first year.

Senator Short—You will work it out. You have got a lot of time to practise.

Senator SHERRY—Hopefully, there will be no more than three, Senator Short. I will put those on notice. I am not terribly offended that there is no-one here to answer these questions on cultural organisations, but I am sure they are important to the people who wanted them asked. I have got a couple of general questions for Treasury before we reach the ISC. It might be appropriate to ask them now so that you can let everyone go but the ISC.

Senator Short—What program are they under?

Senator SHERRY—They are just general questions for Treasury.

CHAIR—That is what we had at the beginning of the day.

Senator SHERRY—I have got some. I have not finished with the ATO. I have some questions on the annual report. At page 17 the following statement is made:

A frequently used measure of a tax administration's efficiency and effectiveness is the cost of collections ratio.

Do you have any comparative information in this area? Is the ratio changing at all?

Mr Highfield—You see on the next page that the ratio has dropped from \$1.26 per hundred dollars down to \$1.03 this year, based on a consistent set of measures.

Senator SHERRY—Why is that?

Mr Highfield—It is essentially the trends which are set out there:

Significantly increased revenue collections resulting largely from positive economic growth and improved taxpayer compliance . . . Increased efficiencies resulting from the ATO's modernisation program.

So a combination of reduced costs and increased revenue worked to the effect of reducing that ratio fairly significantly.

Senator Short—You do not want to take back the statement that you drafted that question, do you?

Senator SHERRY—No, I do not. I will keep pressing on.

Senator Short—Haven't you read page 18?

Senator SHERRY—You are encouraging me to press on, Senator Short. On page 110 the following statement is made:

The provisional tax uplift factor reduced to six per cent for the 1996-97 year of income and, until the parliament otherwise provides, 10 per cent for subsequent years of income.

Is that correct?

Senator Short—It was, but the law was changed in June.

Senator SHERRY—That is what I thought. You don't want me to take that question back, do you, Senator Short?

Senator Short—Where is this on page 110?

Senator SHERRY—Page 110, about 15 lines down.

Senator Short—I think that should now be 6, shouldn't it?

CHAIR—It is an accurate statement that the parliament has otherwise provided.

Senator Short—Yes, but I think that—

Senator SHERRY—This was printed after the legislation was passed, wasn't it?

Senator Short—That bill was actually passed by both houses in 1995-1996. It may not have received royal assent. It might just be a timing blip there.

Mr Highfield—I am told it is an error.

Senator SHERRY—Because of that admission, I don't think I will continue the questions—we will finish while we are ahead. We will put some further questions relating to the draft report on notice.

Senator Short—Just on that—just for the record, I was slightly at error as well. What happened—

Senator SHERRY—What was that Senator Short—did you make an error?

Senator Short—Well, I could have inadvertently misled because I think I said it was six per cent in subsequent years. That is not right. I think the law was changed—and I am looking at page 451 of the budget statements. It now is six per cent for 1996-1997 and then, unless parliament decides otherwise, in future years the uplift factor will be determined by reference to the nominal increase in GDP for the 12 months ending 31 December immediately before the relevant year of income, as published by the statistician. That is right. So it is a formula based arrangement.

Senator SHERRY—So it's not 10?

Senator Short—Oh no.

Senator SHERRY—We are clear on that?

Senator Short—Yes.

Senator SHERRY—That's it for the tax office. Thank you.

CHAIR—I thank the officers for their patience.

Senator Short—Thanks very much—it was very good of you.

[1.30 a.m.]

Program 7—Insurance and Superannuation Commission

CHAIR—We will now move to program 7. Are there any questions?

Senator SHERRY—The stated object of the commission with respect to its insurance supervisory role is to protect policy owners by promoting the continued development of a viable competitive and innovative life insurance industry with sound participants and fair trade practices. Has the ISC made a submission to the House of Representatives fair trading inquiry?

Mr Pooley—No, we haven't.

Senator SHERRY—Why is that?

Mr Pooley—I don't recall that we were invited to, but that may not be correct.

Senator SHERRY—Does the ISC see the possibility of a development of a substantially different set of fair trading rules as a result of the Wallace inquiry?

Mr Pooley—We have made a submission to the Wallace inquiry and we have recommended that the regulatory arrangements could be improved, most particularly by separating out the consumer protection provisions and establishing a new authority something along the lines of the personal investment authority of the United Kingdom. We would call it a retail investment commission, and it would deal with the conduct of intermediaries, it would deal with disclosure, it would deal with complaints handling and so on. It would take those

functions and codes of conduct from us, from the ASC and the Reserve bank and consolidate them under one roof.

Senator SHERRY—Is that going to be made public?

Mr Pooley—It is already public. If you would like a copy we would be happy to send it to you.

Senator Short—I think all the submissions to the inquiry are public.

Senator SHERRY—What, in the ISC's view, is essential for fair trading within the life insurance industry?

Mr Pooley—We have done a number of things in conjunction with the industry and sometimes with the opposition of the industry. There is not only a new life act but there is a code of practice that has been developed in conjunction with the industry, with the ACCC, with the Federal Bureau of Consumer Affairs and ourselves. That should do much to improve the lot of the customer on the life insurance side of it.

In addition, we have done quite a lot on disclosure, especially in respect of regular premium products where there were high up-front commissions, sometimes 50 per cent or more of the first year's premium. We have made it compulsory to disclose those commissions and we have made it compulsory to disclose in dollar terms the surrender values over the first few years and, indeed, in the later years of the policy. For the past couple of years, consumers of those products have known in advance, by looking at just six pages of prospectus, exactly what they will buy. We think that is a big improvement.

Senator SHERRY—The level of complaints from this area is huge. What is the trend?

Mr Pooley—We think the trend is downwards, but it is hard to judge because complaints are lagged. In the last few years—certainly in the last two years—the volume of these products sold has been declining. But, typically, people do not buy them and complain in the first year; they buy them and complain after two or three years when they want to move out and find they do not get their capital back. There are, of course, complaints handling arrangements in place now which allow people who have got complaints for those sorts of policies to get some quick recompense at no cost.

Senator SHERRY—It is stated that the ISC promotes the continued development of a viable and competitive life insurance industry through financially sound participants. What constitutes a financially sound participant?

Mr Pooley—The answer to that is at least twofold. First of all, we regulate as lightly as possible to leave as much scope as possible for firms to innovate and compete. Secondly, we encourage firms to be sound by solvency and capital adequacy requirements. We have got a new life act, in respect of which a new solvency standard will be declared towards the end of this year. It has been in development for some time; there has been a lot of consultation with the industry. There is a large degree of agreement. It will be much improved.

Senator SHERRY—You say that will come at the end of the year.

Mr Pooley—Yes.

Senator SHERRY—Where there isn't agreement, how do you anticipate those areas being resolved?

Mr Pooley—There is a process that goes on draft by draft. The government nominated a board of actuaries to help develop the standards. As they produce each draft, it is circulated, comments come in, the draft is revised and another draft goes out. It is almost certain that

nearly everybody is going to agree to the standards, because they have had a lot of opportunity to state their views and mostly their views have been taken into account.

Senator SHERRY—How do you avoid being reduced down to the lowest common denominator in that sort of process?

Mr Pooley—We simply say that these are the standards below which we are really not prepared to go and keep explaining why they have to be at those levels. There is a surprising degree of convergence of view amongst these actuaries. There are eight of them, and they are all taken from the industry. So they are all appointed actuaries to one or another of the 50-odd companies. They sit around and reach agreement.

Senator SHERRY—Do you see it as critical to maintain consumer protection in order to promote fair trade practices?

Mr Pooley—Yes, we do. The consumer protection comes in in two ways—not only the way we have described through better disclosure on codes—but the best thing one can do for consumers is to make sure that the firms are sound. That is done through solvency and capital requirements. Those things will have to continue.

Senator SHERRY—Do you have extensive contact with consumer organisations?

Mr Pooley—Yes, we consult them quite a lot and we have at least two regular meetings a year with them. But when we are involved in legislation we consult them more often.

Senator SHERRY—I would appreciate an overview—not now, take it on notice—and some indication of the degree of consultation you have with whom in this area.

Mr Pooley—It would be fair to say in respect of consumer groups that, four years ago when we started these regular meetings, they were pretty dashing meetings. There was a fair bit of vitriol—vitriol may be too strong a word—and the degree of disputation was very high. We now have pretty amicable meetings at a much better level. There is a much better understanding of what we have done and of what we are doing. But the meetings are still very useful because we keep up with each other's thinking.

Senator SHERRY—But do you see these discussions and contacts as being important not just for the ISC but for consumers in general?

Mr Pooley—Yes.

Senator SHERRY—And you would not like to see that diminish at all, would you?

Mr Pooley—We have no plans to diminish these contacts ourselves.

Senator SHERRY—I was more concerned about it coming from the other end—the consumer angle. Page 132 states:

During 1996-97 the Life Group will also review and redevelop its current supervisory approach to ensure that it is in a position to properly and responsibly assess the viability of individual companies and monitor the extent to which individual life companies and life brokers are discharging their responsibilities for ensuring that customers are fairly treated.

What are the incident rates of companies not being financially viable?

Mr Pooley—All the life companies are financial viable, otherwise they would not be trading. If you get below the solvency standard, then we have to take action. We would put in a judicial manager or bring about a merger. None of the companies are in that situation.

Senator SHERRY—Any recent examples?

Mr Pooley—I think the most recent one was in 1991 with Occidental and Regal Life where there was a major fraud. I am glad to say that we put in a judicial manager who was quite

outstanding, and he got back \$250 million out of \$260 million. He did not get it all back from the right people but he got it back.

Senator SHERRY—What do you mean by that?

Mr Pooley—The Bank of Melbourne merely provided an after-hours room for a round robin of cheques that was part of the fraud, although they were not implicated in the fraud at all. They just provided the room and watched the cheques float around for the settlement. In the end the case went to court and there were umpteen QCs tied up for three months. They all got fed up so they settled. The Bank of Melbourne's cost of settlement was about \$80 million, which is a lot of money for a small bank. That is all it did—provided a room and watched the cheques go around.

Senator SHERRY—What about the incident rate of life brokers not discharging their responsibilities or discharging them negligently?

Mr Pooley—Life brokers are not very much of a problem. There are not many life brokers. Most of the brokers are general brokers. I do not know of any life brokers who have got into difficulties. Some general brokers do.

Senator SHERRY—In subprogram 7.3, Actuarial, the performance outcomes 1995-96 at page 134, it reads:

Advice provided to external clients was generally considered to be professional, high quality and relevant to the needs of the clients.

How many external clients did the ISC provide services for?

Mr Thorburn—They would be in the order of 15. In terms of external clients, they are other agencies of the Commonwealth government.

Senator SHERRY—What was the nature of the requests?

Mr Thorburn—Actuarial consulting services.

Senator SHERRY—To what extent does the ISC market this service to the broader community?

Mr Thorburn—Not at all.

Senator SHERRY—Should you?

Mr Thorburn—That is really a policy matter, I would suspect.

Mr Pooley—I think the actuarial group is very important to the government because you can certainly hire actuaries from the market and these days there are quite a lot of them. The real benefit that the Government Actuary brings is that these actuaries work within the ISC and they work for departments and they get to know the ways of the Public Service and the ways of government. That makes them much more useful advisers than you could normally get through buying the services in the market.

Senator SHERRY—Is the actuarial subprogram involved in the government's actuarial advisory committee?

Mr Thorburn—Yes.

Senator SHERRY—In what way?

Mr Thorburn—The Australian Government Actuary is chairing that committee.

Senator SHERRY—Is the actuarial advisory funded out of this subprogram?

Mr Thorburn—We would consider that to be part of our normal activity.

Senator SHERRY—The performance forecast for 1996-97 on page 134 says:

The major task in 1996-97 is the preparation of the reports into the long-term cost of the Commonwealth's superannuation obligations for Commonwealth public sector employees.

Who commissioned these reports?

Mr Thorburn—This is a triennial report prepared for the Department of Finance.

Senator SHERRY—What were the parameters for these reports to be considered in?

Mr Thorburn—I am not sure that I understand the question. The Commonwealth's superannuation schemes are reviewed triennially as part of normal prudent actuarial practice.

Senator SHERRY—What are the underlying assumptions for the preparation of the information?

Mr Thorburn—They have not been determined yet.

Senator SHERRY—When will they be determined?

Mr Thorburn—Certainly before March.

Senator SHERRY—When do you anticipate the reports will be completed?

Mr Thorburn—Before the end of the financial year.

Senator SHERRY—How will the ISC be dealing with the imposition of the 15 per cent surcharge on defined and unfunded schemes? Will you assume the employer will be meeting the 15 per cent surcharge, or will the ISC assume the employee will meet the 15 per cent surcharge on payout of benefit?

Mr Pooley—This is subject to the committee which the government actuary is chairing. The committee will be reporting to the government in the next month or so about ways and means of implementation.

Senator SHERRY—Just going back to that previous report, will that include the military and civilian defence force schemes?

Mr Thorburn—Yes. They are tabled as a separate report for the Department of Defence.

Senator SHERRY—Is it just the actuaries reviewing the schemes or will the ISC superannuation policy branch be involved in the review?

Mr Thorburn—This is purely a technical actuarial report.

Senator SHERRY—Does the ISC have any information as to the current liability of public sector superannuation schemes?

Mr Pooley—It does of the ones we have reviewed. They were published a year ago. The unfunded liability of the Commonwealth schemes was the outcome of the review that the then Government Actuary did.

Senator SHERRY—Is that all the schemes, the CSS, PSS, military and civilian?

Mr Thorburn—Yes, they were all done, I think.

Mr Roberts—Tabled in parliament.

Senator SHERRY—Do you have information on the amount of money that has been paid out during the 1995-96 financial year and the 1996-97 financial year as a result of redundancies?

Mr Thorburn—We haven't received our data for the reports as yet so we don't have that information.

Senator SHERRY—When will you receive that?

Mr Thorburn—We anticipate that we would get the relevant information towards the end of this calendar year.

Senator SHERRY—On what basis does the ISC judge sound growth of retirement income savings?

Senator Short—What was the question?

Senator SHERRY—On what basis does the ISC judge sound growth of retirement income savings?

Mr Pooley—Well, I don't think we do judge that directly.

Senator SHERRY—Do you have a view on what are prudent superannuation saving levels for a nation?

Mr Roberts—We take the view that it is our responsibility to help promote confidence in the industry. Our role is really to ensure that the public have confidence in the security of the system and that will indirectly be of benefit to the national savings policy and retirement income policies.

Senator SHERRY—What about prudent superannuation saving for an individual?

Mr Pooley—That is a function of individual choice and the tax concessions and the way people choose to save. We cannot influence that directly except by trying to ensure that the industry is sound and competitive.

Senator SHERRY—How do you measure confidence in the superannuation industry?

Mr Pooley—That is hard to measure. It is a product of a great many factors.

Senator SHERRY—Do you do any surveys?

Mr Pooley—No, we haven't done any.

Senator SHERRY—What is, in your view, essential to prudent management of retirement income savings?

Mr Pooley—In terms of the superannuation industry, we prudentially supervise the trust funds to try to ensure that they are sound. We prudentially supervise the life companies because they do quite a bit of superannuation as well.

Senator SHERRY—Have you in the past measured confidence in the superannuation industry?

Mr Pooley—No, there are surveys that other people do from time to time and those have tended to show that confidence in the superannuation industry is a bit low. I think there are a lot of reasons for this. First of all, I think some people do not like the compulsory element. A lot of people start off with small amounts and those small amounts have gone backwards until the last year or so. In addition, 1994 was a bad year for investments and the returns were poor. I think that until people's superannuation balances build up to a level that each person regards as significant, and that might be a whole series of different levels, people will tend to say, 'Superannuation is not something that we like much, have a lot of confidence in. It is too complex, it is difficult to understand. We get annual returns, they are difficult to understand.' I suspect it will all change when each person has enough in their super account to say, 'I have got enough there, this is really a significant amount for me. I had better find out what it is all about.' And when they are interested they will pick it up very quickly.

Senator SHERRY—So when we get up to 15 per cent contributions you believe their confidence will improve?

Mr Pooley—I think at six per cent it is obviously low for a lot of people. Whether we will have to wait in many cases until we get to 15 per cent is another matter. Some people might get to a significant balance sooner than that.

Senator SHERRY—Have you seen page 90 and subprogram 4.1 where the Australian Taxation Office refers to:

There is virtually universal endorsement of superannuation with 91 per cent community support.

Mr Pooley—No, I have not noticed that.

Senator SHERRY—I just thought I would draw it to your attention in view of your comments.

Mr Roberts—I think one element is the concept of the system and another element is people's happiness with the way their personal accounts are being managed. We have probably felt there is a fair bit of community confidence in the concept of the overall scheme but, as the commissioner said, people get unhappy from time to time if they have got a small account that is going backwards or if they have a bad investment year or if they feel the particular fund is not treating them correctly. I think you can have some kind of individual discontent with an individual circumstance and still have a fair degree of community confidence in the overall concept.

Senator SHERRY—But you have not measured that? You are relying on other's surveys?

Mr Roberts—We get quite a lot of anecdotal feedback because we get correspondence; there is a complaint scheme. Because we are in constant contact with people in the industry and consumer groups, they are always passing on information to us about how well their clients understand the system and how happy they are, so there is a fair amount of anecdotal and informal feedback.

Senator SHERRY—Do you not think if the ATO measures these things it would be useful for the ISC to do it as well?

Mr Pooley—No, I suspect it probably that would be overlapping if we were to try to measure the same things.

Senator SHERRY—It just strikes me that you are at the coalface, so to speak, more directly than any other organisation.

Mr Pooley—We are at the coalface of prudential supervision, but I think it would be fair to say that an awful lot more people have contact with the Tax Office because of the SG scheme and the various other bits of super that they run.

Senator SHERRY—They have a broader range contact?

Mr Pooley—Yes.

Senator SHERRY—How do you determine what is an approved purpose for taxation concessions?

Mr Freney—I think, Senator, that question may be referring to the fact that to obtain tax concessionality for superannuation, the purpose of the fund has to be for providing retirement income. There is basically a sole purpose test for that and some closely related ancillary purpose tests.

Senator SHERRY—Do you have any information in relation to the abuse or otherwise of taxation concessions for superannuation?

Mr Freney—Under the previous legislation, which was the Occupational Superannuation Standards Act, we would refer to the Taxation Office funds which were not complying with the standards that were required and then the Taxation Office would not accept the self-assessment at the concessional tax rate. Under the new legislation—the SIS legislation—funds have to comply with that to enjoy the tax concessionality. It is relatively early days in the SIS Act and our administration of it and we are examining the extent of compliance to justify tax concessionality. We are beginning a project this financial year which will establish that, particularly with respect to small superannuation funds.

Senator SHERRY—When will that project be completed?

Mr Freney—I expect it will be completed during 1997, probably about mid-year.

Mr Pooley—But we do keep a watch on all the other reviews that we do for non-compliance of tax.

Senator SHERRY—Do you have any idea how much money was being salary sacrificed prior to 20 August?

Mr Pooley—No.

Senator SHERRY—Where would that information be available from?

Mr Pooley—If it was not available from the tax office, I do not know where you will get it from. The companies might be prepared to tell you.

Mr Roberts—It is really only the employers that would be able to provide that.

Senator SHERRY—Do you do any estimates of the impact of the withdrawal of voluntary superannuation savings in the form of salary sacrificed contributions?

Mr Pooley—I do not think so.

Senator SHERRY—Under budget measures, it is stated that there are no specific budget measures affecting this subprogram. Is it correct that none of the superannuation policies announced in the budget will have any impact on the ISC?

Mr Freney—There has been no specific resource allocation to the ISC as a result of budget measures.

Senator SHERRY—Have you formed a view about whether you will need extra resources as a consequence of the budget?

Mr Pooley—No. Most of the budget measures are still being worked out, as you have heard this evening. Unless they are worked out in a way which we find unusual, we think we can manage with our present resources.

Senator SHERRY—Tax officers outlined earlier tonight their additional resources as a consequence of budget measures. Have they talked to you about some of the measures they are going to have to put in place?

Mr Pooley—There is an ongoing series of discussions that we have with the tax office as these programs develop, so yes, discussions have started.

Senator SHERRY—Have you undertaken any analysis to date of the effect of the 15 per cent charge on the management and administration of funds?

Mr Pooley—No.

Senator SHERRY—Do you intend to meet with funds on this issue?

Mr Pooley—We meet with funds all the time on a range of issues and no doubt they will bring this one up, amongst others, but there is still a long way to go on it.

Senator SHERRY—What do you mean by ‘there is still a long way to go’?

Mr Pooley—There is still a lot of ground to be covered in working out precise arrangements.

Senator SHERRY—But it is a measure that applies from the budget night.

Mr Pooley—Oh, yes. It starts to bite in August of next year, in the sense that that is when the returns come in to the tax office.

Senator SHERRY—So, at this stage, you have not done any research in this area?

Mr Pooley—No.

Senator SHERRY—What about the issue of tax file numbers?

Mr Pooley—We have had discussions with the tax office on tax file numbers for quite some years for a whole series of different purposes and for one reason and another we have had to number our superannuation annual returns on a quite different basis from the tax file number. These discussions are continuing. If the tax file number is more widespread that would be helpful to us.

Senator SHERRY—Why do you say that?

Mr Pooley—It just helps, I think, with matching. Quite often we refer information to the tax office. If we have a tax file number for the fund and for individuals that makes the referral much simpler.

Senator SHERRY—You obviously do not have that in all cases at the moment.

Mr Pooley—No.

Senator SHERRY—Do you have any views on the best way to collect the 15 per cent surcharge?

Senator Short—There has been a government decision on that in this area. We are not here to canvass government policy decisions.

Senator SHERRY—Does the ISC have a view on the most appropriate preservation age?

Senator Short—Again, I think that is a policy issue.

Senator SHERRY—Does the ISC believe that the SIS legislation provides a sound regulatory framework for the super and life industry?

Mr Pooley—Yes, we do. We think it is state-of-the-art legislation, put together only recently. We looked around the world to see which we thought was the best way of doing it.

Senator SHERRY—They are still struggling with this issue in the UK, are they not?

Mr Pooley—There is a lot of talk in the UK about a change of government and some great expectation that if the government were to change the legislation would change significantly.

Senator SHERRY—I find it quite amazing that, six or seven years after Maxwell, we have acted before they have. I think there is legislation in the House of Commons but it still has not been passed six or seven years on.

CHAIR—Senator Sherry, I am not sure what relevance the House of Commons has to do with the estimates of the Commonwealth of Australia. Could you try to be succinct and stick to the subject.

Senator SHERRY—I am being very succinct. I do not think I can be accused of not being succinct in the questions. There is just the odd little fudge or two. Does the ISC believe there is any justification to exempt one product or one section of the financial system from the SIS regulatory regime.

Mr Pooley—Yes, we do.

Senator SHERRY—In what areas?

Mr Pooley—The trust structure which has been proposed for RSAs, that need not apply to RSAs. We think there is a good case for that.

Senator SHERRY—Not applying?

Mr Pooley—That it should not apply, yes.

Senator SHERRY—Do you have any view of the effect of RSAs on national saving?

Mr Pooley—No, it is much too early to have any view. There are quite a number of details of RSAs to be worked out. We also have to see the industry response and just how attractive they manage to make them.

Senator SHERRY—I notice that in the UK there has been a lot of concern in recent years about personal superannuation products, not specifically RSAs. Are you aware of that concern?

Mr Pooley—Yes, I think so, Senator, if you mean the way very large numbers of people were encouraged to move out of public sector schemes into private sector schemes.

Senator SHERRY—And industry funds as well, I understand.

Mr Pooley—Yes. They have a best advice rule in the UK which has caused the problem, in the sense that best advice was not forthcoming in a great many cases and some of the life companies are up for millions of dollars by way of compensation, which is still being worked out.

Senator SHERRY—You would not like to see such a development in Australia?

Mr Pooley—No, we would not, but in a sense we will not have it either because we do not have the best advice rule. I certainly would not like to see people moving from good schemes to worse schemes.

Senator SHERRY—Do you have a view on the issue of superannuation contributions being on the bottom line of the balance sheet of a bank?

Mr Pooley—I am not quite clear on the question about the bottom line.

Mr Roberts—That is the way an RSA will operate for a bank provider. We think that is a good idea because there is no necessity really for a bank that wants to offer superannuation accounts to have to have a trust structure when the bank is already a very well supervised institution.

Senator SHERRY—In the event of theft and fraud, do you think RSAs should be protected in the same way as other superannuation products?

Mr Pooley—Theft and fraud are dealt with a bit differently within a bank, vis-a-vis outside it, because the banks are usually quite large and have quite a lot of capital. Although there are a number of cases of fraud in banks, they do not really touch the capital structure, they are much smaller than that.

Senator SHERRY—We have had a number of problems with banks in the last 10 or 15 years.

Mr Pooley—Yes, but most of them have not been fraud.

Senator SHERRY—Some of them have been, though. Some fraud has occurred.

Mr Pooley—There certainly is fraud within banks, but banks deal with it internally and the persons prosecuted quite often go to gaol. The amount is often for a \$1 million or a bit less than \$1 million and the bank just absorbs it.

Mr Roberts—The important thing is: is there a system in place so that, whatever happens to the bank, the deposits are protected, since there is a very good system in place, which the Reserve Bank administers, to enhance the security of those deposits. That applies equally to an employee, an RSA holder and any other bank depositor.

Senator SHERRY—Does the ISC believe the super and life industry will be best served by the introduction of two different regulatory playing fields for superannuation—one that is subject to CSS and the other is not?

Mr Roberts—It will be the same playing field for retirement income standards because the ISC will be the functional regulator of the aspects of the product that make it uniquely superannuation: the sole purpose test, the eligibility, the preservation and so on. The other important aspect, which is what CSS does for trust based super, is to enhance the security to try to encourage the people managing the money to do that prudently. The fact that you can have that done under CSS for traditional products, and under a bank or a building society for RSA products, we would see that as being equally satisfactory in providing quite a bit of extra choice.

Senator SHERRY—What about consumer protection provisions contained in the Trade Practices Act, the credit act and like legislation?

Mr Roberts—If we could make a general comment on that. We have said in our submission to the Wallis inquiry that we think there is a case for consolidating consumer protection in the financial sector under a single roof. As the commissioner said earlier, that would result in us, the ASC and the Reserve Bank losing some functions and all those consumer protection functions being rationalised and consolidated into a single system. That goes to things like disclosure, codes of practice, the regulation of advice and advisers and complaints handling.

Senator SHERRY—Has the ISC undertaken any analysis of the policy to allow people to opt between \$450 and \$900 a month to take their superannuation guarantee or the equivalent in wages?

Mr Pooley—No.

Senator SHERRY—Have you assessed the possible impact of superannuation not being an industrial relations matter?

Mr Pooley—No, we have not.

Senator SHERRY—How do you currently ensure that all SG amounts are paid on time and to the correct accounts?

Mr Pooley—The SG is administered by the tax office.

Senator SHERRY—Do you have any involvement in that area?

Mr Pooley—We get into it at the fringe. We talk to the tax office all the time about super issues, as I have mentioned. The question of whether superannuation payments are made on time is a very difficult one. We get complaints from time to time and we have talked to the tax office about it. There are all sorts of reasons why payments are not necessarily made on time: sometimes the firm is failing and is not making all sorts of other payments, sometimes

they just have an administrative slip-up. Sometimes the funds follow up with the employer; sometimes they do not. Our responsibilities really start from when the money is paid into the fund.

Senator SHERRY—What is the incidence of known fraud in relation to the superannuation guarantee contribution?

Mr Pooley—I don't think we have any figures that separate out fraud in respect of SG as opposed to other superannuation fraud. The incidence of fraud that has come to light is very low, fortunately. A very small fraction—one per cent of total superannuation assets, maybe \$20 million—has been lost in eight years. It is really quite small.

Senator SHERRY—As a proportion that would be an extraordinarily small proportion?

Mr Pooley—Yes, it would.

Senator SHERRY—In undetected fraud, you do not think that is a significant problem in that context?

Mr Pooley—We hope that there is very little undetected fraud. The nature of fraud is, as you know, very difficult to detect. We certainly look for it when we do our reviews of funds. We ran some fraud seminars this year to try to make trustees more aware of the possibility of fraud and how they could improve their systems and management to reduce it. Having said that, Senator, who knows what we will find tomorrow. Our sentiments are the same: we hope there is very little going on out there.

Mr Roberts—We would tend to know about it after the event because the members would have lost their money. The challenge for us is to try to prevent it getting to that stage. That is really a question of having checks and balances in the system and enough scrutiny from enough different pairs of eyes to minimise those risks.

Senator SHERRY—I think you are doing a very good job in this area. Do you run an information hot line?

Mr Pooley—We do from time to time.

Mr Freney—We do have a 1300 number permanently. That is supplemented from time to time for particular purposes when the demand is there.

Mr Pooley—Half of the funds selected for reviews come from either complaints or tips. People simply ring up and say that they think there is something wrong. We always follow them up, and when we go we often find there is something wrong. So that is an extremely good source for us. People don't ask for their 15c back for the telephone call, they are more concerned with the problem.

Senator SHERRY—Do you keep a record of the nature and number of calls?

Mr Freney—Yes. We divide them up into basic subject matter categories.

Senator SHERRY—Has there been an increasing use of this hot line?

Mr Freney—We have very large volumes of inquiries and of interest. Over the last couple of years we have had of the order of 400,000 telephone calls.

Senator SHERRY—Has that been increasing?

Mr Freney—No. It has been at a fairly constant rate other than when you would expect bulges because of particular events or activities.

Senator SHERRY—I would appreciate it if you could give us some idea of the nature of the calls, details of the 400,000 calls? Just the categories and any basic statistical data that you can give would be appreciated.

Mr Pooley—There is a real difficulty with all these calls because people are often rather inarticulate and they don't know super well enough to tell you straight away what their problem is and, unless you listen very carefully, you may miss what is a really good tip off.

Mr Roberts—Some of them would be SG inquiries. We really would have preferred if they rang the tax office direct because we have to refer those to Tax.

Senator SHERRY—Do you have any idea of life organisations internationally?

Mr Pooley—We are a member of the International Association of Insurance Supervisors and I have quite a bit of contact with other supervisors. But most of them are insurance and not many of them do superannuation as well. But we try to keep up with international trends and we are moving towards, in all probability, helping to develop international standards for supervision of insurance companies. That is probably going to occur in the next two or three years.

Senator SHERRY—Why is that?

Mr Pooley—The G7 finance ministers are increasingly concerned about the effects of globalisation and capital flows which have become so big, especially with derivatives, that there is a really increased possibility of financial institutions getting into trouble. The view is that better coordination, exchange of information and more consistent standards of supervision around the world would limit the extent to which that is likely to occur. So there is a tremendous push by the bank supervisors and the security supervisors to work more closely together. And the insurance supervisors are beginning to join in.

Senator SHERRY—Do you have any knowledge of international comparisons of deeming with retirement incomes and superannuation ?

Mr Pooley—No.

Mr Roberts—It is quite hard on the pensions side because the systems are so different in every country and you just do not have the kind of commonality in the industry that you have in banking and insurance. The pension side is just very diverse.

Senator SHERRY—I notice superannuation type funds seem to be spreading around the world. I notice in Thailand, I think, and Hong Kong, they have approved the legislation. In part, is this increasing international interest reflective of those developing trends?

Mr Pooley—Yes it is. Collective investments generally are all the rage and have been for the last few years. On the banking side, there have been international standards for supervision that have been around for a few years and on the security side they are increasing very quickly. It is on the insurance side where there is the biggest lag, so we have got to try to make up lost ground.

Senator SHERRY—How do you think we compare internationally?

Mr Pooley—Our standard of supervision on insurance, I think, is pretty good. The new life act is a very advanced state of the art.

Senator SHERRY—And in respect of superannuation?

Mr Pooley—On superannuation, quite a lot of people come to see us and want to know about our system because they think it is pretty good.

Mr Freney—Quite a lot of Asian regulators and governments have visited us and look with quite a deal of interest at this legislation to see whether they could use it as a model.

Mr Roberts—There is quite a trend internationally in the aging population in Western countries and in the emerging countries with less reliance on families for old age support. This means that there is quite a wide interest in systems which allow for privately funded and managed retirement income savings. We do get a lot of people looking at us as a model in that respect.

Senator SHERRY—Have you had any involvement in the issue of a golden handshake?

Mr Pooley—No.

Senator SHERRY—Have you had any involvement in the administrative costs of the surcharge announced in the budget?

Mr Pooley—No. We hear about it from the industry. We hear lots of grumbles at the present time.

Senator SHERRY—You are just not hearing grumbles from me? You are hearing them—

Mr Pooley—No. We find that any change produces grumbles from the industry. Even if it is change for the better, there is an inclination not to like it because they want stability.

Senator SHERRY—Do you have any information on likely numbers of people who opt out of superannuation?

Mr Pooley—No. We know we have some figures about the people who are in severe financial hardship and get some of their super back that way.

Senator CONROY—What sort of percentage is that?

Mr Pooley—It is a very low percentage. We have something like 40,000 or 50,000 applications a year and the amount they get back aggregates something over \$100 million per annum.

Senator CONROY—Per annum?

Mr Pooley—Yes.

Senator CONROY—Has that percentage of approvals for the hardship applications increased in recent years?

Mr Pooley—Yes, the numbers have gone up from about 15,000 five years ago to something like 50,000 last year.

Senator SHERRY—You might have been here or observed when we were discussing with the tax office the proposed opting out policy for people who have super of between \$450 and \$900 a month. Do you have any involvement in compliance issues on this matter?

Mr Pooley—Have you had any discussions?

Mr Freney—No, we have not essentially. We probably will have some responsibilities for monitoring compliance when the policy is put into effect through legislation.

Senator SHERRY—So you have not considered what involvement you will be having in the monitoring at this stage?

Mr Freney—No, Senator, it would simply be another task for us to monitor.

Senator SHERRY—Given this half a million potential opters out, do you see an increased regulatory role?

Mr Freney—No. Our core function, really, is to see that funds are prudently managed. As well, we look at some of these other issues, but it would not affect our resourcing.

Senator Short—Just on the question of opting out, I would say it is worth putting on the record the reminder that very few people can actually opt out of superannuation, with the exception of the \$450 to \$900 ones. There is a large compulsion element in superannuation today.

Senator Sherry, you talked earlier about how many people are going to opt out of superannuation. The fact is that very few people can opt out. No-one can opt out other than the people in that low income bracket and it is a point that is often overlooked, I think.

Senator SHERRY—With respect to the proposed 18 per cent rebate, will you have any involvement in the implementation of that policy?

Mr Roberts—Yes, I think we will have to change SIS to account for the non-working spouse but we have not got up to that point yet. The current system is based on that occupational link. So to the extent that the link is relaxed, that will involve some changes to SIS.

Senator SHERRY—And, again, do you see any resourcing issues involved here in terms of greater workload?

Mr Roberts—I think we would absorb it.

Senator SHERRY—What about the issue of a partner, and the legal implications of a partner, with the 18 per cent rebate?

Mr Roberts—Sorry?

Senator SHERRY—Well, the definition of what constitutes a partner.

Mr Roberts—I think that is a policy matter.

Senator Short—I think it is a policy issue and, as I said earlier tonight, that is something still to be finalised.

Senator SHERRY—When it is finalised, do you envisage you will be getting involved in disputes?

Mr Freney—What sort of disputes?

Senator SHERRY—About what is a partner. Whether it is a person who is married or a defacto—all of those sorts of difficult issues, some of which exist at the moment.

Senator Short—Will it be any different than it is now?

Mr Freney—I would hope that there would be some definition of partner and we would have some guidelines to work to; that it would just be another item, frankly, that we would check for consistency with the law and preservation arrangements.

Senator SHERRY—I can certainly see disputes in respect of divorce as to who owns the money. But, anyway, we will see how the final definition works out. What about death and disability cover? Do you have any view or involvement in that issue in superannuation in general? A lot of superannuation funds provide death and disability cover.

Mr Pooley—We certainly watch the SCT trying to sort out some of those matters but those are complaints.

Senator SHERRY—Is that an issue that you get frequently on your hotline?

Mr Pooley—There are not a lot of them at this stage.

CHAIR—Senator Sherry, can I have some idea how we are progressing through your—

Senator SHERRY—There are a couple of pages to go, so I think we are rapidly approaching the end?

Senator Short—Might you be able to put any of those on notice?

Senator SHERRY—No.

Senator Short—Have you tried?

Senator SHERRY—I am trying for you, Senator. I put in a bit of effort earlier in the evening. What has been the usage of the Superannuation Complaints Tribunal?

Mr Pooley—They have a pretty large number of telephone queries, some of which they reroute elsewhere. They have got something like 500 complaints outstanding at the last count, and something like 150 of those all relate to one particular episode and 500 people in the fund complained about it, and the complaints were all the same. Seven-eighths of the complaint was out of jurisdiction, so it probably related to fees and charges or something that they cannot deal with, and the one-eighth is in front of the Federal Court.

The SCT has been improving its throughput, is working very hard to increase productivity and has got additional staff and additional funding this year, when everybody else has been cut back by three per cent. So, we are looking forward to some good results. They will be producing an annual report quite soon, I think.

Senator SHERRY—When are we likely to get the annual report?

Mr Pooley—I am not quite sure.

Senator SHERRY—It is one report we have not read yet. What is your involvement with ComSuper?

Mr Pooley—We talked to ComSuper about policy changes but most particularly about legislative changes. They are very useful because they are a big fund, so they tell us the problems that will arise. Craig, of course, has a direct relationship with them because he reviews them actuarially from time to time.

Mr Thorburn—They are in effect the providers of the data for the triennial report, which we referred to earlier. We also calculate and certify the vested benefits for their accounts.

Senator SHERRY—To your knowledge, is ComSuper undertaking a review of public sector schemes itself?

Mr Thorburn—I do not discuss policy matters with ComSuper—they are essentially administrator.

Senator SHERRY—Do you know if ComSuper has made any decision in respect of the 15 per cent surcharge on unfunded liabilities?

Mr Thorburn—I believe they are waiting for the actuarial report.

Senator SHERRY—Do you have a view about the trend in respect of unfunded superannuation defined benefit funds and the application of the 15 per cent to these funds?

Senator Short—If I could just say on that, the question of the defined benefit and the unfunded schemes is the subject of the actuarial committee that is looking at these things. I think it is not possible to give an answer on that, even if one wanted to, until that committee has done its work, reported and some decisions have been taken. So I think that is not an appropriate question at this stage.

Mr Pooley—We could say that we do have some views and there are some useful solutions that are under consideration.

Senator SHERRY—When do you anticipate making those useful views and solutions public?

Mr Pooley—Craig, when do you have to report?

Mr Thorburn—The committee reports to the Treasurer on 31 October.

Senator SHERRY—Do you have any knowledge of the number and participation rates in seminars run by ComSuper?

Mr Thorburn—No, that is a matter for ComSuper.

Mr Pooley—Sorry, what was the question?

Senator SHERRY—Do you have any knowledge of the number and participation rates in seminars run by ComSuper?

Mr Pooley—In seminars? Oh, these retirement advisory ones?

Senator SHERRY—Yes.

Mr Pooley—No, I don't know.

Subprogram 7.5—General Insurance

Senator SHERRY—I now turn to subprogram 7.5—general insurance. Has the ISC conducted consultations with the life general industry regarding the imposition of the 15 per cent surcharge?

Mr Pooley—No.

Senator SHERRY—Have you headed into any discussion or consultation regarding RSAs?

Mr Pooley—We have been involved in RSAs for quite some time. We have spoken to the industry and they have spoken to us. It is an ongoing matter.

Senator SHERRY—There is one final question. What is the difference between a surcharge and a tax?

Senator Short—That is a matter that we addressed at far too considerable length earlier this evening. I think the discussion on that one concluded a long time ago, Senator Sherry.

Mr Pooley—We have no expertise on those matters.

Senator Short—Are you sure that is the one that you have lost?

Senator SHERRY—Thank you—you would hope we would lose. Thank you for your perseverance and patience

CHAIR—There being no further questions, I thank the witnesses for their patience in appearing before the committee. We have some questions that Senator Sherry has put on notice. Is it the wish of the committee that they be incorporated in *Hansard*? There being no objection it is so ordered.

[The questions appear at the conclusion of today's proceedings]

Senator Short—I would like to put on the record, too, now that we have concluded the Treasury portfolio—

CHAIR—I have not declared it finished yet.

Senator Short—No. But just before you do I would like to put on the record my appreciation to all the officers from the department and the agencies for their considerable help in the hearings.

Senator SHERRY—And, on behalf of Labor, I make the same comment. Thank you.

CHAIR—That concludes the consideration of the estimates for the Treasury portfolio. The committee stands adjourned until Wednesday, 25 September, when we will consider the portfolios of Industry, Science and Tourism and Industrial Relations, in whatever order is negotiated with the respective Senate ministers responsible for those portfolios.

Committee adjourned at 2.38 a.m.

QUESTIONS ON NOTICE

The following questions were placed on notice:

Senator Harradine to the Department of the Treasury—

Treasurer's Portfolio

Program 1.9: Business Law

What consideration has been given to the possibility of Section 52 of the Trade Practices Act in relation to misleading or deceptive conduct being retained in relation to prospectuses, takeovers and other dealing in securities while simplifying the Corporations Law by removing similar provisions?

Program 8.2: Australian Securities Commission—Regulatory Operations

I refer to questions raised in the Parliament last year by Mr Ted Mack MHR after the reported profits of the NRMA group fell substantially below the forecasts in its float prospectus. I note that the NRMA group has continued to fail by a very large margin to reach the profit forecasts of the prospectus.

1. What is the legal position where persons in relation to a prospectus makes profit forecasts which they have no reasonable grounds to believe or those persons appear to have otherwise acted on assumptions inconsistent with their profit forecasts?

2. Does the ASC monitor the post float performance of companies to check that profit forecasts made in prospectuses are not made recklessly and are made honestly and in good faith?

3. Has the ASC gone back and examined the NRMA's monthly accounts in the period leading up to the proposed float to examine whether there were reasonable grounds for making the profit forecasts in the prospectus?

4. Has the ASC gone back and examined the NRMA's monthly internal budget forecasts in the period leading up to the proposed float to examine them for consistency for the profit forecasts made in the float prospectus?

Program 5—Productivity

I refer to the EPAC Interim Report on Child Care. That report recommends means tested subsidies for childcare and abolition of tax concessions for childcare.

1. Will EPAC be examining the arguments that if childcare is to be subsidised it should be subsidised equally for all childcare choices including the care of children by their parents?

2. If the argument is accepted that childcare is a cost of earning income, is it not a cost of earning income for all families including one income families where one spouse foregoes income so that the other may earn income in the market? If recognition of childcare costs is seen as a tax equity issue, will EPAC examine the arguments for replacing childcare subsidies with non-means tested tax allowances for children?

3. If, on the other hand, there are no valid tax reasons for childcare subsidies, why should non-parental childcare be subsidised and parental childcare not subsidised?

4. Has EPAC examined the net cost to the community where parental preferences for providing their own childcare are overridden by tax and subsidy policies which favour market care over home care? Has EPAC done cost/benefit studies on childcare subsidies which adjust for the distortions caused by the non-measurement in GDP of home-provided childcare?

Senator Sherry to the Department of the Treasury—

ATO Audit Program

Can you outline what is the ATO's audit program for large business, small business and individual taxpayers is for 1996-97 and for beyond?

How much extra tax do you expect to raise from each of these specific categories for the 1996-97 tax year?

How many departmental officers are devoted specifically to audit teams within the ATO?

How many Audit teams are there within the ATO for the 1996-97 year?

Of each of these Audit teams can you provide a brief description of area of audit work they are or will be involved in?

How important is the use of Audit teams to ensuring the integrity of the taxation revenue base is maintained?

What percentage of departmental resources in terms of man hours and salaries are devoted specifically to the audit function within the ATO?

How does the allocation of resources to ATO Audit teams compare to that of previous years ?

I note that for 1995-96 year outstanding debt was reduced by \$109 million for the Small Business Income category (see P. 85).

What is the expected amount for the 1996-97 year?

How much of this amount will be directly attributable to the ATO's audit program?

How much will remain outstanding for the 1996-97 year

In regards to the Large Business Income category:

How much outstanding debt was there for the 1995-96 year?

How much is expected to be outstanding for the 1996-97 year?

How much does the ATO expect to recover in the 1996-97 income year?

In regards to the Large Business Income Audit program how many high wealth individuals are expected to be audited in the 1996-97 year?

Summary of Significant Variations—Portfolio Budget Statement (see P. 79)

Can you explain why it is necessary to borrow \$16.7 million from future years funds in order to pay for redundancies?

Why wasn't this money provided for in this year's appropriations?

How will this impact on the operating ability of this particular agency?

Who made the decision to borrow from future years funds to pay for the redundancies?

Could an Advance form the Minister for Finance have been sought rather than borrow from future years funds?

Can you explain how the efficiency dividend of \$7.3 million was calculated?

How does this compare with past years efficiency dividends?

Of the 2 per cent cut in running costs amounting to \$12.6 million where are these running cost reductions expected to be made?

Will any of these running cost reductions impact on any aspect of the Audit program of the ATO? And if so, how will they impact?

What is the increase in the estimate for Distribution of SG Charges of \$12.4 million attributable to?

What are the objectives of the Modernisation Project?

How much of the project has been completed and how much more is there left to go?

Treasury Annual Report

In the letter from Mr D.W. Borthwick to the committee he states that in order to meet the statutory deadline of the 31 October 1996, it is anticipated that it will be tabled in the week of the 14 October. Can you explain how it is possible for the Treasury to have a final report by the middle of October completed but it is was not possible to have a draft report by the middle of September?

Taxation

In the Budget papers it states that the Government "has received representations raising concerns" these concerns being obviously in regards to the PAYE amendments. (Budget paper No: 1 P 4-10)

I therefore ask from whom has the Government received these representations?

How many representations have been made?

How have they been made?

What record has the Ministers office or the Department have of these representations?

How important were these representations in the Government's decision not to proceed with the legislation?

The Budget Papers (see BP No:1 P4-10) make mention of longstanding income tax rulings.

Can you provide copies of these income tax rulings as well as an explanation with each ruling as to how they ensure the appropriate collection of taxation?

How do these rulings ensure that the use of interposed entities is avoided?

Are any of the income tax rulings that the Taxation Commissioner will now have to rely upon subject to any legal challenge? Or have they been the subject of any legal challenge?

If they have been the subject of a legal challenge what was the result of that challenge? Was it decided in the taxpayers favour or the Taxation Commissioners?

What is the total value to date that the ATO has been able to estimate of the assets contained in the numerous trusts for which high wealth individuals were either directly or indirectly involved as either beneficiaries or through any other related association with those trusts including the use of interposed entities?

What is the difference between the Government's proposal to allow CGT roll-over relief on the sale of business assets to that currently contained in S160ZZN of the CGT roll-over provisions contained within the ITAA?

Would it be possible for a business owner to apply a balancing charge on the purchase of like assets as it currently contained in the ITAA?

Medicare Surcharge

The Budget Papers (see BP No:1 P 4-5) estimate a revenue gain of \$135m over two years from making higher income earners take out private health insurance. Can you explain how this figure was calculated?

Was any price sensitivity analysis conducted to determine how an extra 1% surcharge would impact on high income earners demand for private health insurance?

What was the result of this analysis? Can we have a copy of this analysis?

What research do you have that an extra 1% surcharge will provide enough of an incentive for high income earners to take out private health insurance?

Do you have any comparisons to show what is the difference between paying the extra surcharge as opposed to purchasing private health insurance at all available levels of health insurance available for purchase?

Would the Government look at increasing the surcharge if significant numbers of high income earners do not transfer to the private health care system?

How much money has the Government calculated will be saved in the public system from people transferring to the private system?

How many family and single high income earners has the Government calculated will shift to the private health insurance?

Do these high income earners represent a demographic group that historically has made significant demands on the public health care system?

Can you outline what are the new ministerial arrangements regarding the approval of private health fund premium increases?

Upon what criteria will a request for an increase in premiums be granted?

Will an approval for an increase have to be unanimous between the Treasurer, the Prime Minister and the Minister for Health?

Commissioner of Taxation—Draft Annual Report

Are there any international comparisons available on the ATO's collections ratio? Can you provide a copy of all correspondence, reports and other documents relating to the structure of the ATO including

the number, size and location of all ATO offices and the number of personnel employed in each of those offices?

In regards to the Large Business Income Audit division, how many officers if any will be terminated from this division as result of ATO cutbacks?

In regards to the Small Business Income Audit division, how many officers if any will be terminated from this division as result of ATO cutbacks?

Of the \$3,163,293 paid to 74 consultants, can you provide a list of who the money was paid to? What was the work undertaken for the consultancy? And what was the start date and end date for each of the consultancies?

For each of the agencies within your portfolio, for full-time and part-time permanent and temporary positions as separate categories, and for each of the periods from the election until 30 June 1996, the current financial year and each of the estimates out years:

What are the numbers of positions that have been or will be cut;

What is the classification profile of these positions;

What are the capital city suburbs, regional cities or towns, and the numbers in each, in which these positions are located;

What are the numbers of positions by the above locations that will remain in the agencies after the cuts;

What are the changes, such as abolition of function or efficiencies, that will allow the agencies to operate effectively with these numbers;

What are the numbers, by gender, of officers who have accepted redundancies;

What are the costs of these redundancies;

What is the estimated cost of future redundancies;

What are the numbers, by gender, of officers who have been or will be declared excess under the award (General Employment Conditions Award);

What is the effect on job numbers in affected organisations of the application of a 3% efficiency dividend to Commonwealth Own Purpose Outlays and Specific Purpose Payments.

Question to the Assistant Treasurer:

Minister, in regards to your office, the Office of the Parliamentary Secretary and the Office of the Treasurer I would like to put the following questions regarding staffing:

How many staff are employed in each of the Offices?

How many staff are classified as electorate officers?

How many staff are classified as personal staff?

How many staff are classified as consultants?

How many staff are classified as DLOs?

What is the salary band of each staff member?

What is their home base for the purposes of claiming Travel Allowance?

What is their job definition? e.g. media adviser, personal secretary?

By which Department are each of the staff paid?

Under what Act are they employed?

Do any of the offices, or have any of the offices employed or engaged the services of anybody associated with Reame Australia Monitoring Services Pty Ltd? If so, in what capacity were their services employed? For how long were they engaged? How much did their services cost? Who paid for these services? And under what authority were any payments made?

Senator Brown to the Australian Taxation Office—

High Wealth Individuals Project

(1) The present government has confirmed the statements of the previous government, indicating that \$800 million per annum in tax is being avoided by High Wealth Individuals.

Is the estimate of \$800 million per annum based on advice from the Australian Taxation Office? How was it derived and can a copy of the advice be provided?

Which tax avoidance strategies were identified as contributing to the \$800 million deficit? How do they work?

Where does the figure of 80 individuals, used by the previous government, come from?

Was the BRW richest Australians list used?

Would more effort identify more individuals and more money?

(2) The Treasurer's statement in February 1996 talked specifically about complex planning arrangements, including the creation of artificial losses, revenue as well as capital, to neutralise otherwise taxable profits, particularly through the use of related party transactions.

Given that a range of practices have already been identified to the government, why will no additional revenue be forthcoming in the current financial year?

Why is it estimated that only \$100 million will be recovered in the next financial year?

(3) Is it the view of the Australian Taxation Office that legislative changes are required to enable an effective program to recover tax avoided by high wealth individuals?

If yes, which areas or mechanisms, other than that announced with the budget, require legislative change in the view of the Australian Taxation Office?

(4) On 29 January 1996, the Australian Taxation Office was asked by the then Treasurer, Ralph Willis, to prepare legislation to overcome tax avoidance by high wealth individuals.

Has legislation been prepared? Which areas does it cover?

Will the government introduce whatever legislation is required to overcome tax avoidance by high wealth individuals as a matter of urgency?

The current Treasurer indicated that an exposure draft for legislation relating to overseas distributions by charitable trusts will be released as a priority. When?

(5) In June 1996, the ABC program Background Briefing obtained an internal Australian Taxation Office document incorporating a draft of staffing allocations for 1996/97. According to that document, managers proposed an increase in staff for the area conducting the High Wealth Individuals project from 35 to 246. Additional funds in the 1996/97 budget mean a total of 150 staff allocated to the project.

Was the estimate of \$800 million per annum able to be recovered based on a staff allocation of 246 to the project.

Can copies be provided of documents relating to the staff allocation to the project, originally planned and currently planned?

What is the currently planned full complement of staff? If it is less than 246, why?

If the staff allocation is 150, how does that affect the time it will take to identify and implement the necessary measures? How does it affect the estimated amount that may eventually be recoverable?

How many staff are currently allocated to the project?

Is the intended full complement 150, and when will these positions be filled? Will they be reduced by the current program of redundancies?

Will the reduction in total staff levels in the 'Income and Other' subprogram from 12,946 to 12,224 reduce the capacity of the Australian Taxation Office to recover the \$800 million?

(6) Is the Australian Taxation Office confident that it has the powers and resources necessary to recover the \$800 million per annum?

Does it have the power to compel individuals to respond to questions?

Can files and other documents held by lawyers and accountants be accessed?

What resources, other than staff, are provided in 1996/97 and 1997/8?

How much funding is available for overseas research trips? How many such trips have been requested? How many have been approved and how many rejected?

(7) A so-called 'toyota survey' of Australian Taxation Office employees in the Large Business Income section was carried out in 1995.

Is it true that in this survey staff ranked having 'clear LBI goals' as the fourth most important factor out of 50 but actual performance in this area as 33rd out of the 50 factors?

Is it true that staff ranked 'confidence in LBI Team management' as the sixth most important factor out of 50 but actual performance in this area as only 39th out of the 50 factors?

If yes, why? What has been done to fix the problems suggested by these results?

Senator Sherry to the Australian Taxation Office—

Australian Taxation Office

Subprogram 4.1

1. Has the ATO done any costing as to what ordinary super fund members will have to pay for the administration of the Government's 15 per cent tax?

2. Does the ATO accept that super funds with hundreds and thousands of members who may only have 1-2 per cent of members in the levy category, will have to go to the trouble and cost of investigating the contributions of all their members, conveying all that information to the tax office, assessing levy liabilities provisionally, making a payment to the tax office, and ultimately probably returning money over to the tax office back to members accounts?

3. Is it a specific policy of the Government to catch up more and more medium income earners in the 15 per cent tax levy by the device of failing to index the \$70 000 point at which the levy starts to apply?

4. What revenue assumptions has the Government made for increased levy revenue as more and more employees enter that category because of salary inflation adjustments?

5. How does the Government expect to monitor the payment of wages instead of Superannuation Guarantee to low income workers in an environment of individual employment contracts and no award coverage of superannuation?

6. Does the Government see any legal consequences for it should a situation arise where a low income worker chooses to take the Superannuation Guarantee contribution as wages and then does not receive any of the money, either in the form of superannuation guarantee contributions or as wages?

7. Define the word tax?

8. Define the word surcharge?

9. Define the word asset?

10. What constitutes a 'like asset'?

11. Is it possible that the word 'surcharge' and the word 'tax' may be used interchangeably?

12. If not, why does the Treasury portfolio statement refer to the new 15 per cent surcharge as the 'increased tax on superannuation contributions by high income earners'?

13. How is the \$70 000 threshold to be calculated?

14. Is the \$70 000 calculated prior to the 6 per cent SG amount is deducted or is it calculated after the 6 per cent SG amount?

15. Will the \$70 000 be calculated prior to tax deductions?

16. If it is the case that the \$70,000 will be calculated prior to legal tax deductions being made, will a number of self-employed or partially self-employed consultants be caught in the \$70,000 income bracket, even though after tax deductions are calculated the individual's income may be less than \$70,000?

17. At what point in the financial year will an individual's income be assessed for the purposes of the surcharge?

18. Is it at all possible that superannuation funds will be required to be a year behind for the purpose of calculating an individual's income in order to know whether the surcharge is applicable or not?

19. If the superannuation fund is required to take out the tax in the current financial year, does the ATO have any estimate on the numbers of high income earners who would fall through the system?

20. Has the ATO commissioned any actuarial research as to the disparity that will result between those people earning between \$50,000 and \$70,000 who are not required to pay the tax and those earning between \$70,000 and \$85,000 and who will be required to pay the tax?

21. How did the ATO arrive at the amount of \$70,000 for the threshold for a high income earner?

22. What alternatives did the ATO consider in analysing the 15 per cent tax?

23. The ATO has estimated that the imposition of the 15 per cent tax will effect the budget by \$15,722 over four years. What are the nature of these effects?

24. Does the ATO currently have the capability to receive the tax amounts from superannuation funds, ensure that they have been properly collected and remit the excess amounts where necessary?

25. What administrative changes will be necessary in order to administer the system as stated by the Government?

26. How does the ATO currently collect tax associated with superannuation?

27. Is the system effective?

28. Why is it not possible to collect the 15 per cent tax on high income earners superannuation contributions through the mechanism already established?

29. What research, analysis and consideration has been given to how the collection of the 15 per cent tax will operate for high income earners who earn in excess of \$70,000 from more than one employer? How will the ATO determine the tax liability for such an individual?

30. If an individual has more than one superannuation account due to the fact that they have a number of different employment situations how will the ATO determine the liability that each super fund is responsible for, in order to collect the aggregate 15 per cent tax.

31. What consideration has the ATO given to the administration of the 15 per cent tax in the situation where an individual's income fluctuates from one year to the next? How will this circumstance affect the introduction of the 15 per cent tax?

32. Has any research and/or actuarial study been done on the potential for inequitable situations to arise for those people who earn minimum income over a number of years and then in one year, as a result of performance based employment, (entertainment/writer) receive more than \$70,000 and thus are subject to the 15 per cent tax?

33. What consideration has been given to the administration of situations where it is discovered two or three years later that an individual was either taxed too much or too little? How will this situation be coordinated with the payment of the 15 per cent tax?

34. What will be the legal implications of a situation where an account has the tax negligently levied against, the negligence is discovered later and the money remitted? Will the fund be liable for the payment of interest that the money would have earned had it not been taken in taxes?

35. Has the ATO any information regarding the collection of taxation from the payment of the voluntary redundancies in the public service, since March 2?

36. Has the ATO considered the legal validity of the Superannuation Guarantee Charge legislation?

37. Has the ATO examined a range of possible alternatives for the delivery of the 3 per cent government co-contribution?

38. What research and analysis has the ATO conducted into the role of Retirement Savings Accounts?

39. Has the ATO considered the legal implications of the structure of RSAs and their relationship with SIS complying superannuation funds and life insurance providers?

40. It has been suggested that the taxation of bank RSA products will be different to the taxation regime for non bank RSAs and credit union, friendly societies, superannuation funds and life insurance products?

41. Has the ATO initiated a ATO/ISC Industry Working Party on the implementation of the 15 per cent tax of high income earners superannuation contributions?

42. Who is funding this working party?

43. Who are the participants in the working party?

44. Has the ATO considered any possible policy or legislative response to the incidence of salary repackaging by executives in order to avoid the 15 per cent tax of super?

45. How did the ATO establish that there is 91 per cent community support for universal superannuation?

46. The 18 per cent rebate is only applicable in circumstances where the spouse is either not working or earning a maximum of \$10,800. Why is there no assets test in relation to this measure?

47. Will people aged between 55 and the aged pension age be deemed to earn an income from their superannuation asset for the purposes of determining their eligibility for social security and unemployment benefits?

48. Will the deeming rates be similar to those currently applying to pensioners?

49. What safeguards will be put into place to avoid incidences of people accessing their entire superannuation benefit in a lump sum, spending it on an overseas holiday and then having no asset for the purposes of either the assets or the income test and then becoming eligible for social security and unemployment benefits?

50. Has the ATO considered the extent and nature of the changes that will be required to the SIS legislation and the Income Tax Assessment Act in order to allow people to access their superannuation asset in the event of them having no other form of income?

Subprogram 4.3.4—Financial Services

Draft Accommodation Plan

(1) In light of the proposed savings being advocated by the Australian Taxation Office in its *Business 2000* document through a reduced use of private sector office space and a transfer to government owned leases and other lower cost leases wherever possible, has the department taken into account in its draft accommodation plan what effect the eminent sale of the Canberra Branch building of the Australian Taxation Office in Belconnen will have on these proposed savings?

(2) Was the Australian Taxation Office consulted about the decision to sell the Belconnen building prior to the budget?

(3) If the Australian Taxation Office was consulted what was the response provided by the department?

(4) Did this response include any analysis of how its proposed savings in relocating areas of the National Office in Canberra City to the Belconnen Building would be affected by this sale and the subsequent private leasing arrangements?

(5) Has the draft accommodation plan been amended to reflect this change?

(6) If so what effect does this change have on the proposal to bring Australian Taxation Office accommodation costs within budget by 1998-99?

(7) Will this sale mean the Australian Taxation Office will pay higher accommodation costs than it currently does for the lease it has with the Australian Property Group?

(8) If the Australian Taxation Office does not have this information how can the department continue to effectively plan the relocation of National Office functions to the Belconnen building in an attempt to reduce accommodation costs when it does not know how the sale will affect accommodation costs at the Belconnen building?

Insurance and Superannuation Commission

Program 7

1. Does the ISC view the role of consumer protection's contained in legislation and industry codes as essential for the effective regulation of the finance, insurance and superannuation sectors?
2. What is the allocation of funding out of subprogram 7.3 for the operation of the Actuarial Advisory Committee established by the Government to examine equitable outcomes and costs associated with the 15 per cent tax on superannuation contributions made by or on behalf of high income earners?
3. Part of the Actuarial Advisory Committee's role is determine the workability of the 3 per cent employee contribution and the best delivery mechanism for the 3 per cent government contribution.
What role does the Government Actuary see for himself in this part of the inquiry?
4. What is the known incidence of salary sacrifice?
5. What is the rationale of salary sacrifice for high income earners?
6. In the past, has the ISC considered the best method of closing off the salary sacrifice option?
7. What estimates has the ISC done to determine the potential impact that the withdrawal of voluntary superannuation savings, such as salary sacrifice will have on national savings?
8. How does the ISC define a tax?
9. How does the ISC define an asset?
10. How does the ISC define a surcharge?
11. What differences are there between a tax and a surcharge?
12. Does the ISC have any calculation as to what the costs associated with the surcharge/tax will be for all members of superannuation funds.
13. Does the ISC believe that the income levels associated with the surcharge should be indexed?
14. Is the ISC aware of any specific government policy to not index the income levels associated with the tax on high income earners superannuation contributions?
15. Does the ISC believe that the SIS legislation provides a sound regulatory framework for the superannuation and life insurance industry?
16. Does the ISC believe that there is any justification to exempt one product or one section of the financial system from the SIS regulatory regime?
17. Does the ISC believe that its position on fair trading means that like currently existing superannuation and life insurance products, the RSA bank product should be subject to consumer protection sections contained in the Trade Practices Act, the Credit Code and like legislation?
18. What measures does the ISC believe have been put in place, in regard to the provision of a RSA product that will prevent the occurrence of an Australian Maxwell disaster or comparable Savings and Loan scandal?
19. Has the ISC undertaken any legal analysis of the what the word "partner" means?
20. Has the ISC considered the impact that the 18 per cent rebate for contributions made on behalf of a low income or non-waged spouse, will have on the current 'occupational link' provision for superannuation/life insurance products?
21. Has the ISC considered the impact that the 18 per cent rebate for contributions for a low income or non-waged for the provision of death and disability insurance for the receiver of the contributions?
22. What, if any impact does the ISC believe that the 18 per cent rebate policy will have on superannuation—divorce law in the context of Family Law disputes?
23. Will there be any difficulties associated with this policy if the spouse receiving the contributions dies and has not nominated who is to receive the super benefit, particularly in a situation where children from another marriage may complicate the settling of the estate?
24. Has the ISC considered any alternative for the delivery of the 3 per cent government contribution?
25. Has the ISC considered what the "workability" of the 3 per cent employee contribution means?

26. Will the ISC have to play a greater compliance role in ensuring that Superannuation Guarantee contributions are paid in the event that super is removed as an allowable matter before the Industrial Relations Commission?

27. Does the ISC believe that there is case for Government to underwrite all SG contributions?

28. What definition does the ISC attach to the term "golden handshake"?

29. How many voluntary redundancies were offered in the period between March 2 and September 18?

30. How many people took up those voluntary redundancy offers?

31. What are the profiles of the people that took up voluntary redundancy?

32. What was the pay out of benefits associated with ISC voluntary redundancy packages?

33. How many consultancies per annum has the ISC awarded since 1990?

34. What are the nature of these consultancies?

35. How many consultancies does the ISC expect to award in the coming financial year?

36. Is the ISC involved in the ATO Industry Working Party regarding the 15 per cent tax on superannuation contributions made by or for high income earners?

37. To what extent is the ISC involved in this process?

38. What is the breakdown of industry organisations involved with the Industry Working Party?

39. Does the ISC have any information in relation to how the removal of the means test exemption for superannuation assets and rollover funds for people aged between 55 and aged pension age will operate?

40. Does the ISC anticipate that deeming rates similar to those applied to the pensioners will be utilised in deeming an income from the super asset for people aged 55 and between age pension age?

41. What safeguards will be put in place to ensure that people do not take their super asset and spend it, through retirement of debt etc and then claim social security and unemployment benefits?

42. If a person aged 55 and made redundant, uses some part of their super asset in order to retire debt—pay of their home—which part of the asset will be used for purposes of calculating deemed income. Would it be the super asset on being made redundant, before part of it was used, or the asset remaining?

43. Is the ISC cognisant of any proposals to apply different taxation treatments to life insurance, superannuation, credit unions and friendly society products from those provided banks?

44. Why does the ISC support this taxation differential treatment? Does the ISC believe that this is dangerously close to preferentially endorsing particular financial products?

Senator Sherry to the Department of the Treasury—

Program 1.8

1. Outline the nature of the policy areas contained within subprogram 1.8?

2. What is the funding allocation to each area?

3. What is the relationship between these policy areas and the Retirement Incomes Modelling Task Force?

4. Define what constitutes a tax?

5. Define what a surcharge is?

6. Explain the difference between a surcharge and a tax?

7. Why is it at page 82 of the Department of Treasury portfolio statements the surcharge on high income earners is referred to as a tax?

8. On what analysis and research did the Department formulate the 15 per cent tax as an appropriate policy response to inequities currently in the superannuation system?

9. Did the Department consider any other alternatives to that of the 15 per cent tax?

10. Has the Retirement Incomes Modelling Task Force undertaken any modelling as to what the impact would be for national savings if the preservation age was increased to 65?
11. What was the level of advice, research and modelling undertaken by the Retirement Incomes Modelling Task Force?
12. How readily available is the RIM actuarial modelling to industry and to the public?
13. Is the Department aware of the Superannuation Industry Supervision (SIS) Act?
14. Is the Department required by the Treasurer, on occasion, to provide advice on the operation or application of SIS?
15. Is the Department cognisant of the reasons why SIS was introduced and implemented?
16. Is the Department aware of differences that have occurred within the industry in relation to regulation, conduct and service provision since the implementation of the SIS legislation?
17. Does the Department undertake any analysis of trust law?
18. Does the Department commission other Departments or agents to undertake research and analysis of trust law?
19. Did the Retirement Incomes Modelling Task Force undertake or is the Retirement Incomes Modelling Task Force undertaking any research as to the possible financial inequities that might occur as a result of Retirement Savings Accounts being introduced?
20. What were the assumptions used or what are the assumptions being used in conducting this modelling?
21. Will the collection of the surcharge be different if the high income earner maintains an RSA as their superannuation fund?
22. How does the Department define a 'golden handshake' ?
23. What is the relationship between the Department's definition of a 'golden handshake' and the definition of an eligible termination payment as defined in the Income Tax Assessment Act?
24. Has the Department done any initial costing of what the revenue implications of this measure might be?
25. Has the Department given any consideration to the possible legal implications of the 3 per cent employee contribution?
26. What modelling has the Retirement Incomes Modelling Task Force undertaken in relation to the impact of the 3 per cent employee contribution for national savings and end retirement benefits for individuals?
27. Has the Department considered the compliance and enforcement aspects of the 3 per cent employee contribution in a deregulated industrial relations environment in which superannuation is no longer an industrial issue?
28. To what extent has the Department examined the constitutional validity of the 3 per cent employee contribution?
29. Has the Department prepared any briefing or discussion material on this issue?
30. Has the Department considered a range of alternatives as to the provision and delivery of the 3 per cent government contribution?
31. Has the Retirement Incomes Modelling Task Force modelled how the payment of the 3 per cent government contribution affects the budget liability in 20-30 years time in relation to the payment of social security benefits?
32. Has the Retirement Incomes Modelling Task Force modelled what the investment benefits and returns will be for Government by paying the 3 per cent government contribution from 1997?
33. Has the Department examined the possibility of directing the 3 per cent government contribution to particular superannuation accounts, investment options or through particular legibility criteria?
34. Has the Retirement Incomes Modelling Task Force undertaken any modelling as to the impact of the 3 per cent government contribution on national savings?

35. Has the Retirement Incomes Modelling Task Force undertaken any modelling as to the impact of the 3 per cent government contribution for end retirement benefit of an employee who earns on average \$35 000 per annum?

37. Has the Retirement Incomes Modelling Task Force undertaken any modelling as to the impact of the 3 per cent government contribution for end retirement benefit of an employee who earns on average \$21,000 per annum?

38. Has the Retirement Incomes Modelling Task Force undertaken any modelling as to the impact of the 3 per cent government contribution for end retirement benefit of an employee who earns on average \$30,000 per annum?

39. A couple whose sole source of income is their jointly owned business, from which each has been drawing equal remuneration of \$72 500 plus \$12,500 'employer' superannuation contribution per year. Currently the new surcharge will cost them \$1,825 each, annually. Is this correct?

40. If the above mentioned couple make a small alteration to their arrangements so that in the first year one draws \$70,000 including the \$25,000 'employer' superannuation contribution while the other draws \$100,000 excluding superannuation. They alternate this arrangement from year to year so each remains in a fundamentally unchanged position. In this circumstance no surcharge is payable, and the couple makes a saving of \$3,750. Is this correct?

41. Has any work been undertaken in developing the required legislation to implement the surcharge, the opting out policy, the 18 per cent rebate and the removal of the means test for superannuation assets and rollover fund?

42. What revenue has been saved by abolishing the standard employee rule for superannuation contributions?

43. Has any estimate been done of the amount of money that was moved by employers on August 19 into superannuation funds under the "old" standard employee rule.

44. How many consultancies does the Department award per year, (go back as far as 1990 please).

45. How many consultants have been employed by the Department each year since 1990.

46. Include a breakdown of the nature of the consultants business and the work they have undertaken for the Department?

47. How many voluntary redundancies were offered in this program area?

48. How many people took up these voluntary redundancies?

49. How much money is spent each year on consultants and external advice provision since 1990?

50. Define the words, tax, surcharge and asset and explain how, if possible how the technical taxation implications of these words differ from definitions provided by the dictionary?

51. What is the Department's view on the usage where possible of Plain English?

52. Has Treasury undertaken any analysis of the expected national savings impact of the Budget measure to include superannuation assets in the deeming rules for social security beneficiaries over 55 and nine months on income support?

53. If so, please provide a copy of analysis including the methodology used and the assumptions on which the analysis is based?

54. Given the emphasis that the Government places on national saving why hasn't such an analysis been undertaken?

55. Will this measure, which does require people to dip into their super before they retire definitely have no impact on national savings?