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SENATE

ECONOMICS LEGISLATION COMMITTEE

Estimates

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SENATE

ECONOMICS LEGISLATION COMMITTEE

Wednesday, 24 October 2018

Members in attendance: Senators Abetz, Bernardi, Bushby, Jacinta Collins, Faruqi, Hume, Keneally, Ketter, Kitching, Leyonhjelm, Lines, McAllister, Rice, Siewert, Stoker, Storer, Waters, Williams.

TREASURY PORTFOLIO

In Attendance

Senator Cormann, Minister for Finance and the Public Service

Senator Seselja, Assistant Minister for Treasury and Finance

Department of Treasury

Mr Philip Gaetjens, Secretary

Macroeconomic Group

Mr Chris Legg, Deputy Secretary, Macroeconomic Group

Mr Ian Beckett, Division Head, Macroeconomic Modelling and Policy Division

Dr Michael Kouparitsas, Principal Adviser, Macroeconomic Modelling and Policy Division

Dr John Swieringa, Principal Adviser, Macroeconomic Modelling and Policy Division

Ms Lisa Elliston, Division Head, International Policy and Engagement Division

Dr Angelia Grant, Division Head, Macroeconomic Conditions Division

Ms Laura Berger-Thomson, Principal Adviser (Forecasting), Macroeconomic Conditions Division

Corporate Services and Business Strategy Group

Mr Matthew Flavel, Deputy Secretary

Mr Robert Twomey, Chief Financial Officer, Chief Financial Officer Division

Ms Shannon Kenna, Division Head, Communications and Parliamentary Division

Miss Phoebe Burgess, Head of HR, Risk and Governance, People and Organisational Strategy Division

Mr Michael Webb, Chief Information Officer, Information Services Division

Mr Simon Writer, Division Head, Law Design Office

Fiscal Group

Mr Simon Atkinson, Deputy Secretary, Fiscal Group

Mr Jonathan Rollings, Division Head, Budget Policy Division, Fiscal Group

Mr Adam McKissack, Principal Adviser, Budget Policy Division, Fiscal Group

Mr Kieran Davies, Principal Adviser, Budget Policy Division, Fiscal Group

Ms Vicki Wilkinson, Division Head, Social Policy Division, Fiscal Group

Ms Philippa Brown, Principal Adviser, Social Policy Division, Fiscal Group

Mr Robert Jeremenko, Division Head, Retirement Income Policy Division, Fiscal Group

Mr Darren Kennedy, Principal Adviser, Retirement Income Policy Division, Fiscal Group

Ms Michelle Dowdell, Principal Adviser, Retirement Income Policy Division, Fiscal Group

Mr Robb Preston, Principal Adviser, Retirement Income Policy Division, Fiscal Group

Ms Kate Phipps, Division Head, Commonwealth-State Policy Division, Fiscal Group

Mr Andrew Deitz, Senior Adviser, Retirement Income Policy Division, Fiscal Group

Markets Group

Ms Diane Brown, Deputy Secretary Acting, Markets Group

Mr James Kelly, Chief Adviser, Financial System Division

Mr Warren Tease, Chief Adviser, Financial System Division

Ms Julie Greenall-Ota, Principal Adviser, Financial System Division

Ms Elizabeth Williamson, Division Head, Consumer and Corporations Policy Division

Ms Kate O'Rourke, Principal Adviser, Consumer and Corporations Policy Division

Ms Lucy Vincent, Principal Adviser, Consumer and Corporations Policy Division

Ms Kate Lynch, Principal Adviser, Consumer and Corporations Policy Division

Mr Roger Brake, Division Head, Foreign Investment Division

Ms Victoria Anderson, Chief Adviser, Foreign Investment Division

Ms Jessica Robinson, Principal Adviser, Foreign Investment Division

Mr Tim Baird, Principal Adviser, Foreign Investment Division

Structural Reform Group

Ms Meghan Quinn, Deputy Secretary Structural Reform Group

Mr Hamish McDonald, Chief Adviser

Mr Tom Dickson, Principle Adviser

Ms Kristen Baker, Principle Adviser

Revenue Group

Ms Maryanne Mrakovcic, Deputy Secretary, Revenue Group

Ms Marisa Purvis-Smith, Division Head, Individuals and Indirect Tax Division

Mr Robert Ewing, Acting Division Head, Tax Analysis Division

Mr Paul McCullough, Division Head, Corporate and International Tax Division

Mr Geoff Francis, Principal Adviser, Corporate and International Tax Division

Mr Brendan McKenna, Principal Adviser, Corporate and International Tax Division

Ms Kathryn Davy, Principal Adviser, Corporate and International Tax Division

Mr Graeme Davis, Acting Division Head, Tax Framework Division

Mr Patrick Boneham, Division Head, Black Economy Division

Mr Simon Writer, Division Head, Law Design Office

Australian Charities and Not-For-Profits Commission

The Hon. Dr Gary Johns, Commissioner of the Australian Charities and Not-for-profits Commission

Australian Taxation Office

Mr Chris Jordan, Commissioner of Taxation

Mr Neil Olesen, Second Commissioner, Client Engagement Group

Mr Matt Hay, Acting Chief Information Officer, Enterprise Solutions and Technology

Ms Jacqui Curtis, Chief Operating Officer, Corporate and Enabling Services Group

Ms Melinda Smith, Chief Service Delivery Officer, Service Delivery Group

Ms Frances Cawthra, Chief Finance Officer

Ms Deborah Hastings, Deputy Commissioner, Review and Dispute Resolution

Mr Jeremy Hirschhorn, Deputy Commissioner, Public Groups

Ms Deborah Jenkins, Deputy Commissioner, Small Business

Mr James O'Halloran, Deputy Commissioner, Superannuation

Mr Jonathon Todd, ATO General Counsel, Australian Taxation Office Corporate

Ms Michelle Crosby, Deputy Registrar, Business Reporting and Registration

Mr Robert Ravello, Deputy Commissioner, Debt

Mr Tim Dyce, Deputy Commissioner, Indirect Tax

Mr William Day, Deputy Commissioner, Private Groups and High Wealth Individuals

Mr Grant Brodie, Deputy Commissioner, Client Account Services

Australian Competition and Consumer Commission

Ms Linley Johnson, NCC Executive Director

Mr Rod Sims, Chair

Ms Rayne de Gruchy, Chief Operating Officer

Mr Scott Gregson, Executive General Manager, Merger and Authorisation Review Division

Mr Marcus Bezzi, Executive General Manager, Specialised Enforcement and Advocacy Division

Mr Rami Greiss, Executive General Manager, Enforcement Division

Mr Tim Grimwade, Executive General Manager, Consumer, Small Business and Product Safety Division

Mr Michael Cosgrave, Executive General Manager, Infrastructure Regulation Division

Mr Peter Maybury, Chief Finance Officer

Ms Elise Davidson, General Manager, Strategic Communications Branch

Australian Energy Regulator

Ms Michelle Groves, Chief Executive Officer

Ms Sarah Proudfoot, General Manager, Retail Markets Branch

Mr Warwick Anderson, General Manager, Network Finance and Reporting

Mr Gavin Fox, Director, Wholesale Performance

Australian Prudential Regulation Authority

Mr Wayne Byres, Chairman

Mrs Helen Rowell, Deputy Chairman

Mr John Lonsdale, Deputy Chairman

Mr Geoff Summerhayes, Member

Mr Mark Adams, Executive General Manager, Specialised Institutions Division

Mr Warren Scott, General Counsel

Mr Adrian Rees, General Manager, Diversified Institutions Division

Australian Securities and Investments Commission

Mr James Shipton, Chair

Mr Daniel Crennan QC, Deputy Chair

Ms Cathie Armour, Commissioner

Ms Danielle Press, Commissioner

Mr John Price, Commissioner

Ms Laura Higgins, Senior Executive Leader, Financial Capability

Ms Louise Macaulay, Chief Supervisory Officer

Mr Michael Saadat, Senior Executive Leader, Deposit Takers, Credit and Insurers; and Regional Commissioner - NSW

Mr Tim Mullaly, Senior Executive Leader, Financial Services Enforcement

Mr Warren Day, Senior Executive Leader, Assessment and Intelligence; and Regional Commissioner - Victoria

Mr Carlos Iglesias, Chief of Operations

Mr Greg Kirk, Senior Executive Leader, Strategy Group

Ms Jane Eccleston, Senior Executive Leader, Investment, Managers and Superannuation

Productivity Commission

Mr Michael Brennan, Chair

Ms Karen Chester, Deputy Chair

Ms Nina Davidson, Head of Office

Commonwealth Grants Commission

Mr Michael Willcock, Secretary

Mr Anthony Nichols, Assistant Secretary, Branch A

Mr Gregory Freeman, Chief Operating Officer, Corporate Services

Inspector-General of Taxation

Mr Ali Noroozi, Inspector-General of Taxation

Mr David Pengilley, General Manager

Committee met at 09:01

CHAIR (Senator Hume): I declare open this meeting of the Senate Economics Legislation Committee. The Senate has referred to the committee the particulars of proposed expenditure for 2018-19 and related documents for the Treasury portfolio and the Industry, Innovation and Science portfolio. The committee may also examine

the annual reports of the departments and agencies appearing before it. The committee has set Thursday, 1 November 2018 as the date by which senators are to submit written questions on notice and has fixed a Thursday, 13 December 2018 as the date for the return of answers to questions on notice.

Under standing order 26, the committee must take all evidence and public session. This includes answers to questions on notice. Officers and senators are familiar with the rules of the Senate governing estimates hearings. If you need assistance, the secretariat has a copy of those rules. In particular, I draw the attention of witnesses to an order of the Senate of 13 May 2009 specifying the process by which a claim of public interest immunity should be raised, and which I now incorporate in Hansard.

The extract read as follows—

Public interest immunity claims

That the Senate—

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

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

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

(1) If:

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

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

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

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

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

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

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

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

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

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

(13 May 2009 J.1941)

(Extract, Senate Standing Orders)

Witnesses are specifically reminded that a statement that information or a document is confidential or consists of advice to government is not a statement that meets the requirements of the 2009 order. Instead, witnesses are required to provide some specific indication of the harm to public interest that could result from the disclosure of the information or the document.

I remind senators and witnesses that microphones remain live unless I instruct otherwise—for example, for a suspension or adjournment. I ask photographers and cameramen to follow the established media guidelines and

instructions of the committee secretariat. As set out in the guidelines, senators and witnesses laptops and mobile phones and other devices and personal papers are not to be filmed or photographed.

I remind members of the public and everyone in the gallery that they are not permitted to speak or interfere with the proceedings or with witnesses at any point during the hearing. Security are present, and they will be asked to remove anyone who does not follow these instructions.

Department of the Treasury

[09:03]

CHAIR: The committee will now begin the consideration of the Treasury portfolio. I welcome the Minister for Finance, Senator the Hon. Mathias Cormann, representing the Treasurer. I also welcome the Secretary of the Department of the Treasury, Mr Phil Gaetjens, and officers from the Treasury. Minister or Secretary: would you like to make an opening statement?

Senator Cormann: I don't, but the Secretary of the Treasury does.

CHAIR: Before you do, Mr Gaetjens, can I say welcome to estimates. I know it's your first time here, so we'll go easy on you the first time, I think. We've had this agreement among senators.

Mr Gaetjens: Thank you, Chair. Good morning, it's a privilege to be here, appearing today as the Treasury secretary, leading an organisation that I have always held in high regard. While this is my first Senate estimates appearance, I will follow previous practice and speak about global and domestic economic conditions and risks, as well as budget and fiscal outlook.

Let me begin with the global economy. The May budget noted that global growth exceeded expectations in 2017, with the global economic cycle better synchronised than it had been for some time. Nevertheless, growth has been weaker than expected in early 2018 and has become less synchronised, a view highlighted by the International Monetary Fund in its world economic outlook released earlier this month.

Amongst the major advanced economies, significant fiscal stimulus has helped boost growth in the United States in 2018 and strong growth is forecast in the near term. On the other hand, euro area growth was subdued in the first half of the year, while the Japanese economy rebound in the second quarter of 2018 after experiencing a contraction in the first quarter. Consistent with the largely favourable global economic conditions, unemployment rates in the United States, euro area and Japan are now at or below the estimated full employment rates. Most notably, the unemployment rate in the United States is now at its lowest in almost 50 years, while in other key economies such as Japan, Germany and the United Kingdom unemployment rates are near decade lows. This suggests that spare capacity in the Labour market, which has persisted since the global financial crisis, is being absorbed. There are also some signs of a rise in core inflation in some economies, most notably in the United States.

The Chinese economy has moderated somewhat this year, but it is important to note that this is in line with expectations as authorities have continued their emphasis on deleveraging and rebalancing the Chinese economy. Amongst other emerging market economies, India recorded strong growth in the first half of 2018, and growth within the ASEAN-5 economies of Indonesia, Malaysia, the Philippines, Thailand and Vietnam remains broadly based. Growth in our major trading partners remains healthy.

The strength in the global economy is not without risks. These risks have intensified since the budget, most notably surrounding trade tensions. Other risks include emerging economy debt, financial market volatility and faster-than-expected of monetary conditions in advanced economies. As a result of downside risks being more pronounced or having partially materialised, the IMF recently downgraded its outlook for global growth. The IMF specifically referred to trade measures as a reason for downgrading forecasts for not only the United States and China but also Australia and South Korea. Understandably, global trade policy is a key area of focus for Australia, and we are monitoring the increasing uncertainty and unpredictability.

The US has imposed tariffs on a range of countries, with President Trump last month announcing tariffs on a further US\$200 billion of imports from China. A number of countries, including China, have chosen to retaliate, further escalating trade tensions. To date, tariffs arising from recent trade tensions cover just more than two per cent of world trade.

While there has been some recent slowing in global trade growth, it is difficult to determine how much of this reflects trade tensions as opposed to other factors. Nevertheless, the potential for further escalation remains, and this could negatively impact global growth, especially if confidence is affected. Another key risk to the global economy is the ongoing pressure that emerging market economies face as major central banks continue to normalise monetary policy. A modest tightening in global financial conditions is already exposing vulnerabilities

across a range of emerging market economies. Amongst the worst affected in recent months are Argentina and Turkey, with the IMF stepping into the support Argentina with a US\$50 billion package. The IMF board will shortly consider increasing this to \$57 billion, the biggest in IMF history. In recent weeks we have also seen financial market volatility increase in major advanced economies amid an accumulation of concerns, including the issues I have highlighted with respect to monetary policy normalisation and trade tensions.

To date, key Asian emerging markets have remained relatively resilient to the recent volatility in global financial markets, but continual tightening in global financial conditions and the recent increase in the oil price could expose further vulnerabilities. Over the longer term, broad structural challenges, including demographic change and slower productivity growth, may continue to weigh on the global outlook.

I move now to the domestic economy. Overall economic conditions have evolved broadly in line with the May budget forecasts. There have been two strong quarters of growth released since budget. As a result, real GDP grew by 2.9 per cent in 2017-18, slightly stronger than the 2¾ per cent growth forecast at budget. The recent national accounts data confirmed the strength already evident in employment data and tax collections. 2017-18 marked Australia's 27th consecutive year of annual economic growth. This is quite an achievement given major economic events during that period, including both the Asian and global financial crisis, the decline in the terms of trade of around one-third from its peak 2011 to its trough in 2016 and the six percentage point fall in mining investment as a share of nominal GDP.

Household consumption, public final demand and new business investment all contributed to growth in 2017-18. Despite continued growth in mining and services exports, net exports detracted from growth, partly as a result of an increase in capital imports linked to the strong growth in business investment. While it is still too early to say definitively, the unwinding of the mining investment boom and its associated drag on the economy increasingly appears to have run its course. Business investment grew for the first time in five years and mining business investment picked up in the June quarter, with firms investing in machinery and equipment and in resource exploration. Growth in non-mining business investment is consistent with positive results in surveys of business conditions and confidence. While these measures have softened in recent months, over the past year or so, business conditions have been around their strongest level since the global financial crisis, and business confidence has generally been above average for the past two years. There was also an improvement in consumer confidence in 2017-18, coinciding with a strengthening Labor market. With income growth expected to pick up gradually, household consumption is expected to continue to support economic growth. As growth in consumption is likely to continue to outpace income growth in 2018-19, the household savings rate is expected to decline further.

Public final demand was the second-largest contributor to real GDP in 2017-18. State and local investment grew strongly, driven by infrastructure investment programs. Through Treasury's business liaison program we are hearing that private businesses working on these projects are also investing in new machinery and equipment, further contributing to economic growth. Exports continue to be supported by the expansion of the mining industry as key projects ramp up to full production. Just this month, one of Australia's largest liquefied natural gas projects, Inpex's Ichthys project, exported its first shipment of condensate from northern Australia, following around \$50 billion of investment in the project.

The labour market too has been a good news story over the past year, with the unemployment rate falling to five per cent in the most recent release, for the month of September. This is its lowest level since April 2012 and, while care should be taken with monthly reads, the unemployment rate has been declining since late 2014. Pleasingly, the underemployment rate, the measure of employed people wanting to work more hours as a share of the Labor force, has also fallen. Following the creation of almost 350,000 jobs in 2017-18, jobs growth has continued into 2018-19, albeit at a slightly slower pace, with employment increasing by more than 45,000 people in the three months to September. Strong employment growth has been accompanied by a rise in the participation rate, which remains elevated at 65.4 per cent. Higher participation is consistent with a strong labour market, as more Australians are encouraged into the labour force by improved job prospects. Despite the tightening labour market, wage growth and inflation continue to be subdued by historical standards and, while wage growth and inflation were consistent with the May budget forecasts, momentum has been weaker than would usually be expected at this stage of the economic cycle. Wage growth and inflation are expected to pick up as economic and labour market conditions continue to be strong.

A tightening labour market is also consistent with what we are hearing through Treasury's business liaison program about skills shortages in certain sectors such as IT and construction. Prices for key commodities, on the other hand, have generally been higher than was prudently assumed at budget. Combined with stronger-than-

expected real GDP growth, this meant that nominal GDP growth last financial year was above the budget forecasts. Higher commodity prices also resulted in mining profits increasing by 17.8 per cent in 2017-18.

Drought is a challenging fact of life for Australian farmers, and its impact on the agricultural sector is a downside risk to the domestic economy that has emerged since budget. With dry seasonal conditions across south-east Australia and much of New South Wales and Queensland experiencing well-below-average rainfall, it is likely that farm production and rural exports will be negatively affected. Last month, the Australian Bureau of Agricultural and Resource Economics and Sciences released its latest forecast for 2018-19 and downgraded the winter crop outlook. This forecast still remains dependent on timely rainfall to support crop development through spring.

Fortunately we have had some welcome rainfall in recent weeks. However, the Bureau of Meteorology recently noted that, while some parts of New South Wales and south-eastern Queensland have received welcome rainfall in the first days of October, rainfall has been below average over much of eastern Australia for so long that this rainfall event hasn't been enough to break the drought. The drought is playing out asymmetrically across the country. New South Wales and Queensland have been amongst the worst hit, with ABARES downgrading their winter crop forecasts for these states. Parts of other states are also challenged by drought conditions. On the other hand, Western Australia had experienced more favourable weather conditions, and the state's wheat belt region was on track for a record winter crop. However, liaison with our Perth office suggests that recent frosts and the dry September may jeopardise that.

Another key risk to the domestic economy is the apparent tightening of credit conditions, which could constrain consumption and investment growth. A number of factors are contributing to this tightening. Interest rates in some wholesale funding markets have increased in recent months. Three of the big four banks have responded to these funding costs by raising rates on existing housing loans. Additionally, some business loans are priced off these wholesale rates and therefore some businesses have already experienced an increase in interest rates.

There is also some evidence of a modest tightening in lending standards by banks, which could be limiting access to credit for some borrowers who may previously have been able to borrow. This tightening could in part be a response to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry but also likely reflects deliberate actions by the Australian Prudential Regulation Authority over recent years to improve lending standards in the financial sector. The Reserve Bank of Australia commented on these tightening lending standards in its recent Financial Stability Review.

I want to emphasise that, despite this modest tightening, financial conditions overall remain expansionary. Funding costs and interest rates generally remain low. Total credit growth is around its recent average, and competition amongst banks for new borrowers remains fierce. Housing prices have recently softened from their peak, driven by declines in Sydney and Melbourne. This is unsurprising, as it follows a steep increase in housing prices between late 2012 and 2017. And while housing construction picked up in the first half of 2018, this moderation in housing prices and a recent drop-off in approvals may lead to a gradual softening of activity. Nonetheless, levels of activity are expected to remain elevated.

In addition to this national picture, I also wanted to briefly share insights into economic conditions across the states and territories. I met with my state and territory counterparts prior to the recent meeting of the Council on Federal Financial Relations, and it's pleasing to hear most states and territories reporting strong or improving economic conditions. Despite the moderation in the Melbourne and Sydney housing markets and the drought that I mentioned earlier, New South Wales and Victoria continue to grow strongly. In addition, the Western Australian economy appears to be improving off the back of some strengthening in the mining sector. Not only is mining investment picking up in order to maintain production capacity of iron ore or liquefied natural gas, but also there are new projects, in particular for lithium, which will support markets for battery manufacturing. Queensland, South Australia, Tasmania and the Australian Capital Territory all reported sound economic conditions. The Northern Territory economy continues to bear the brunt of the winding down of construction of the INPEX, its liquefied natural gas project, as it moves into its production phase. The messages I received from my state colleagues correspond with what we're hearing through Treasury's ongoing business liaison discussions, including through our state offices, and what we are seeing in the economic data.

Moving on to the budget and fiscal outlook, the May budget included a continued improvement in the fiscal position and brought forward a projected return to balance to 2019-20, with sustainable surpluses projected from 2021. This was the sixth budget update to project surpluses from 2021. The 2017 final budget outcome last month confirmed a better-than-expected outcome for that year. At \$10.1 billion, just 0.6 per cent of GDP, the underlying cash deficit is at its smallest since the global financial crisis. Compared with the 2017-18 budget, receipts came in

higher than expected, while cash payments were lower. Monthly financial statements for the first few months of 2018-19 were recently released, and while care should be taken in interpreting monthly reads, they suggest that improvements are continuing into this year, particularly for individual and company income tax receipts.

These early signs are promising, but the full update to the economic and fiscal forecasts will be in the Mid-Year Economic and Fiscal Outlook. While recent outcomes add confidence about the fiscal outlook, continued fiscal discipline remains critical. Continuing budget repair, consistent with the fiscal strategy, is key to ensuring that debt turns around and Australia is adequately prepared should there be any adverse surprises in the domestic or global economic outlook. Standard & Poor's recognises the improvement in the government's budget position and acknowledge the government's ongoing repeated commitment to fiscal consolidation, and successive budgets that have aimed to restrain spending and raise revenues demonstrate this commitment. The tangible result was that Standard and Poor's reaffirmed Australia's AAA credit rating last month and revised the outlook for Australia from negative to stable. Australians should be proud that our country is currently one of only 10 in the world to have a AAA or equivalent rating from all three major credit rating agencies.

Unfortunately there is no pride to be taken in the conclusions of the interim report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. Treasury has supported the work of the royal commission by providing, at the commission's request, background papers ahead of the hearings. Treasury has also made submissions to the commission following the hearings into financial advice, small business lending, superannuation and non-key policy issues. Submissions will also be made on the interim report and insurance. The interim report recognises the central role of sound and resilient banks and the importance of the financial system to the Australian economy. It is, however, rightly critical of some of the players in that sector. Conduct was found too often to have failed to meet community standards. Too often, personal interests and gains were put before the interests of customers, and legal compliance has been used as an excuse for not doing what is right. Many of the problems highlighted by case studies related to occurrences several years ago. Many of the issues are already being addressed by either the market, the regulators or the government. But it is clear that once the royal commission hands down its final report, due by 1 February, there will be more work to do. As well as raising a wide number of policy issues, the interim report has also put on the table the need for simplification of the law.

Treasury has already established a dedicated task force to support the government in addressing major issues arising from the commission, including questions raised in the interim report. Expressions of interest in joining the task force were sought internally on 19 September, and it started on the 11th of this month. In addition to providing advice to the government ahead of and following the commission's final report, the task force will be responsible for developing a plan to implement the reform agenda that follows. This is clearly an important body of work and ongoing resources will be sought in the usual way.

I will conclude by reiterating that it is a privilege to be the Treasury secretary. I started on 1 August and pay tribute to John Fraser, my predecessor, for his achievements as secretary. Using the results of the 2018 Australian Public Service Census as an indicator, Treasury improved on many measures compared with the 2017 census, including on workplace diversity, which showed that 75 per cent of respondents believe that Treasury is committed to creating a diverse workforce, up by 11 points from last year. Respondents rated our commitment to Indigenous employment 18 points higher than in 2017. How we develop and engage our staff: there was an increase of 10 points from 2017 in the number of staff who believe that their manager openly demonstrates commitment to performance management and development. On recognition for innovation, there was an increase by five points from 2017 in the number of respondents who believe that employees are recognised for coming up with new and innovative ways of working. Our overall engagement score remains high, with 89 per cent of staff saying they are proud to work at Treasury, a score that is 17 points higher than the APS average.

These provide a good indication of the impacts in Treasury during John's leadership. I too aspire to leading Treasury to new heights and to continue to deliver excellent analysis and advice to government by the smart and hardworking individuals who are our staff. Thank you.

CHAIR: Thank you very much. I'm going to use my chair's prerogative to kick off the questions. Can I ask first of all, Mr Gaetjens, how Treasury's economic growth projections for the Australian economy compare to those provided and produced by other prominent economic forecasters, including the Reserve Bank?

Mr Gaetjens: Our forecasts are fairly consistent with all, and I'll get Chris and Angelia to comment in detail. But if we go across the IMF, the Reserve Bank consensus forecasts, I think we are fairly consistent with all of them. In fact, on the Reserve Bank—they put out a recent statement on monetary policy, so they would have updated theirs since the budget.

Dr Grant: The RBA forecasts for 2018-19 and 2019-20 are just a quarter percentage point higher than the budget forecast in both of those years, so they're slightly above the budget forecasts.

CHAIR: So it's fair to say the budget forecasts are quite conservative?

Mr Gaetjens: Again, they were done in May. We don't deliberately strive to make forecasts conservative. We try to make it our best guess all the time. As conditions evolve, other people update their forecasts. We do two forecasts a year—in the budget and the midyear review—and, between those events, some of the commercial forecasters can update forecasts very frequently.

CHAIR: What are the key drivers of that GDP growth that you're expecting over the next couple of years?

Mr Gaetjens: Again, I think the conditions would range from the risk outlook in the global economy as well as the performance of the developed economies. I think at the moment we are seeing what we would describe as idiosyncratic risks in the emerging market economies to the extent that that got a bit more systemic. I think that could have an impact, not only on us, but other economies. Our major trading partners are holding up, which is good for Australia. Domestically, we are seeing continuing strong growth in the labour force, which is very good for us. Commodity prices are a perennial risk. They have held up high in the last few years, which has improved—as I said in my opening statement—our nominal growth. And last year, we had higher GDP growth than we forecast in the budget. Do you have any other comments, Angelia?

Dr Grant: Only to add that we are seeing a broadening of growth across the economy, particularly as the drag from the mining investment boom is reducing over time.

CHAIR: Recently, Standard & Poor's reaffirmed Australia's AAA credit rating, which was terrific and removed the negative outlook on that. I know that we're one of only 10 economies in the world—is that right?—that has three AAA credit ratings from the major credit agencies. Can you elaborate for the committee what the factors were that were driving that decision of Standard & Poor's, and how important is it to maintain those AAA credit rating from all three agencies?

Mr Gaetjens: From memory, I think the biggest factor that they alluded to was the continuing fiscal consolidation. In previous reports, I think they had concerns about being able to pass the fiscal consolidation measures through the Senate. They also had, again, some concerns, I think, very early on about the current account deficit, which, again, has turned out to be better than I think they forecast over the period. And I think they are also becoming a bit more nuanced about their assessment of risks in the housing market. So I think, in terms of the government's point of view, the continuing budget repair has been very important for the rating agencies to remove its negative outlook and return us to stable.

CHAIR: Could I ask a little bit more about non-mining investment. What are the signs that that outlook for non-mining investment is improving? I know you mentioned it in your opening statement, but I wonder if you could expand on it a little bit for the committee.

Mr Gaetjens: Again, I would say that, overall, for the economy, it is not the fact that non-mining investment is picking up but that mining investment as well is picking up, particularly across some of those industries where, as I said, they are having to invest more just to maintain current production levels. In terms of non-mining investment, we are again seeing pretty good performance across industry itself. It's basically something that, from memory, from speaking with both Glenn Stevens and Phil Lowe, was the missing piece of the puzzle—that, with all the intentions there, investment wasn't appearing, and now it has been, which is very good. For the specific drivers, I might go to Angelia and Chris.

Dr Grant: You're right, Senator. We saw a very strong result for non-mining business investment in 2017-18. It grew by 11 per cent in that year, which was slightly higher than the forecast of 10½ per cent. That's the strongest annual growth rate we've seen since 2004-05 in the Australian economy, and it contributed a fairly solid one percentage point to real GDP growth in 2017-18.

CHAIR: In my last couple of minutes I want to ask about the level of spare capacity in companies, which seems to have been decreasing over the last few years, and that push for higher wages growth that we seem to have been waiting for, not just in Australia but I think globally. Could you expand a little bit on that for the committee.

Mr Gaetjens: I think two things go to spare capacity. The first is the labour market itself. So, again, there has been very strong labour growth. Unemployment came down to five per cent. That is the result for one month, but, as I said, the trend has been coming down for a long time.

CHAIR: Five per cent is officially full employment, isn't it, or is that one measure of full employment?

Senator Cormann: That's what they taught us at university when we studied economics. Five per cent was meant to be full employment.

CHAIR: Yes, that's what I thought.

Mr Gaetjens: Non-accelerating—

Senator Cormann: NAIRU.

Mr Gaetjens: Correct. Guy Debelle, I think, made a speech a few days ago, commenting on that. It's probably a bit of an imprecise thing, but five per cent is the number that people allude to. If that stays, again, that should give us an indication that, in the labour market, capacity is being soaked up, and that should drive the rate of growth in wages. In capacity utilisation itself, I'd also point to the fact that the utilisation of equipment is also going up. I think it's the high 80s, and it's been very high for a considerable time, which again would point to increasing investment in industry as well. So I think on both the investment side and the labour market side, again, the signs are good. The forward indicators for the labour market are very healthy. So, again, we would be expecting to see some pick-up in wages over time.

CHAIR: Thank you. Senator Ketter, I'm going to turn to you and give you a couple of extra minutes.

Senator KETTER: The opposition requests 20 minutes for our session, and I'm going to hand over to Senator Kenneally.

Senator KENEALLY: Thank you for being here today, Mr Gaetjens. Is it the case that you have worked in the Australian Treasury for one year and four months?

Mr Gaetjens: I think it's probably longer than that now, given that I started in August as secretary.

Senator KENEALLY: That's a fair point—so one year and six months?

Mr Gaetjens: I think that's around the mark, yes.

Senator KENEALLY: And is it the case that you worked for 14 years as the chief of staff to Peter Costello and Scott Morrison?

Mr Gaetjens: In aggregate, yes.

Senator KENEALLY: And the role of the chief of staff is to provide direction and leadership in the Treasurer's office?

Mr Gaetjens: That's a very short summary of what a chief of staff does, but yes.

Senator KENEALLY: I'm happy to look at it more specifically. Does that mean for 14 years you assisted Liberal Treasurers to prepare Liberal budgets for a coalition government?

Senator Cormann: Australian government budgets.

Senator KENEALLY: My question is to Mr Gaetjens. Does that mean for 14 years you assisted Liberal Treasurers to prepare budgets?

Mr Gaetjens: I assisted the Treasurer at the time to prepare budgets, yes.

Senator KENEALLY: Does that mean for 14 years you assisted Liberal Treasurers with their budget night speeches? Surely, as chief of staff, you would have been involved?

Senator Cormann: There are a lot of people involved in supporting the effort of the elected Treasurer of the day, including, of course, the many outstanding people in the Treasury department, led by the Treasury secretary of the day. So the question that you are asking—it is fair to say that the Treasury secretary of the day equally assisted, supported the Treasurer of the day in putting forward the budget and the budget speech on budget night. So it's a team effort, whether it's under our government or under your government—under governments of all persuasions—and, from time to time, you have the people who work in offices and people who work in departments and there is a level of movement in both directions, including on your side.

Senator KENEALLY: Yes, that's correct; there are policy staff and political staff. Mr Gaetjens, did you include your time as chief of staff to these former treasurers on the CV you provided to Prime Minister and Cabinet as part of its appointment process?

Mr Gaetjens: I didn't supply a CV to the Prime Minister and Cabinet department.

Senator KENEALLY: You didn't supply a CV or a record of your history to Prime Minister and Cabinet? Did you supply one to anyone as part of your appointment process?

Senator Cormann: The CV of Mr Gaetjens is well known. I think the Labor Party would know the CV of Mr Gaetjens in some great detail.

Senator KENEALLY: So are you telling me, Minister, that the government appointed a Treasury Secretary without getting a copy of his CV?

Senator Cormann: The appointment process, in relation to the position of secretary, in any portfolio, of any department across the Australian Public Service is a matter for the Prime Minister's portfolio, of course. We had the opportunity to go through these issues on Monday. It's obviously not a matter for Mr Gaetjens to comment on, his own selection as the new Secretary of the Treasury. That was a decision that, appropriately, was made by the Prime Minister at the time.

Senator KENEALLY: Well, since there wasn't a CV supplied, I'd like to explore his experience a bit more, as you are new to this committee. Mr Gaetjens, does that mean that, for 14 years, you also assisted Liberal treasurers with their briefs and submissions to government budget committees and ERC?

Mr Gaetjens: Usually, government submissions are made to the Treasurer and the Minister for Finance and ERC.

Senator KENEALLY: I am assuming that the Treasurer, at some point in 14 years, had to either make submissions or provide advice on submissions made to budget committee or ERC.

Senator Cormann: The way the ERC process works is that individual—

Senator KENEALLY: I understand how the ERC process works.

Senator Cormann: If I may—you have asked the question, so I'm going to just provide—

Senator KENEALLY: I'm asking Mr Gaetjens if he was involved—

Senator Cormann: I'm the minister at the table—

Senator KENEALLY: as a chief of staff to Liberal treasurers in signing off submissions or advice from Liberal treasurers to the budget committee—

Senator Cormann: I'm the minister at the table and I'll answer this question.

Senator KENEALLY: or ERC.

Senator Cormann: Chair, there was a question asked, and I'm going to answer it on behalf of the government.

Senator McALLISTER: I'll tell you what: an independent Treasury Secretary would answer his own questions. He wouldn't have you speak for him.

Senator Cormann: If I may—

CHAIR: Senator McAllister—

Senator BERNARDI: Chair—

CHAIR: Yes—a point of order?

Senator BERNARDI: Firstly, it is perfectly up to the minister to answer a question or take a question from anyone without any interference or pejorative comments.

CHAIR: Agreed.

Senator BERNARDI: Secondly, I want to make the point: I think this is entirely irrelevant. We are here to talk about Treasury estimates. We've got a new Treasury Secretary. Yes, his experience is well-known. His politics and his association with it is well-known. Can we get onto the substance of what we are meant to be talking about?

CHAIR: Senator Bernardi, on your first point of order: I agree entirely. On your second point of order: there is no point of order. The opposition are entitled to ask any question that they like; however, they have asked for extra time—on the condition, Senator Ketter, that the questions were economic in nature. These questions are not economic in nature. So you had 10 minutes, of which you now have another 2½ minutes to go.

Senator Cormann: Chair, I would like to answer the question that was asked.

Senator KETTER: Chair—

CHAIR: I'm happy for you to object, Senator Ketter, but you called upon my generous nature to give you extra time, which I did, and you were dishonest, so I'm going to throw to the opposition.

Senator Cormann: Chair, I've yet to provide an answer to the question that was asked. I think that I'm quite entitled—

CHAIR: Minister, you are more than welcome to answer the question that was asked.

Senator Cormann: Firstly, the way the Expenditure Review Committee works is that individual ministers make submissions to the Expenditure Review Committee in relation to their portfolios, and the Expenditure Review Committee of course makes judgements—

Senator KENEALLY: I'm happy to have this answer come on notice, Chair—

CHAIR: I'm sorry, Senator Keneally—I can't hear the minister's answer to your question.

Senator Cormann: It's quite discourteous. Senator Keneally is not even prepared to let me answer.

Senator KENEALLY: I asked a question assuming I had 20 minutes—

CHAIR: Excuse me! Senator Keneally, I am trying to listen to the minister's answer to your question.

Senator KENEALLY: Then I would like to move a point of order. When I asked the question, I thought I had 20 minutes. Since I have asked the question, and subsequent to points of order from other senators, you have taken 10 minutes off me. Therefore, I ask that this question go on notice and I be allowed to use the time remaining to ask other questions.

Senator Cormann: The question has been asked and I'm going to answer it.

Senator KENEALLY: Minister, I have a point of order and I would like the chair to rule on it. Since you intend on running political interference for the Treasury secretary, I would like the chair to actually run this committee properly.

Senator Cormann: She has already ruled.

Senator KENEALLY: I have 20 minutes. She took 10 minutes off me so you could run political interference and shut my line of questioning down.

CHAIR: Senator Keneally, on your point of order: the minister is entitled to answer the question which you have asked. If you would like to put other questions on notice, you would be more than welcome to.

Senator KENEALLY: I would like my 10 minutes back that you took off me.

CHAIR: You will have plenty of time.

Senator KENEALLY: You took my time off me.

CHAIR: You can argue all you like. You are now down to one minute and 30 seconds.

Senator Cormann: If you like, I can go back to answering the question. As I was saying, the way the Expenditure Review Committee works is that individual ministers make submissions to the Expenditure Review Committee and then, based on advice from the Treasury department and the finance department and the Prime Minister's Department, make judgements in the Expenditure Review Committee. The chiefs of staff to the Prime Minister, the Treasurer and the finance minister support the efforts of the Prime Minister, the Treasurer and the finance minister. That is well understood. Mr Gaetjens is eminently qualified for the role that he has taken on. He is a former secretary of the New South Wales Treasury. He has also had senior roles in the Commonwealth and South Australian treasuries. It is not uncommon for former staffers to be appointed as secretaries. In fact, Ken Henry was a former staffer to Paul Keating. Our current Home Affairs secretary was also a former Labor staffer. In fact, the deputy secretary of budgeting in my own department is a former Labor staffer.

Senator KENEALLY: The minister is talking out my time. Chair, you have taken 10 minutes off me and the minister is talking out my time. This is an outrageous—

CHAIR: Senator Kennelly, the Minister is entitled to answer the question you asked.

Senator Cormann: We on this side of the parliament respect the fact that public servants are able to make a contribution in ministerial offices. We respect the fact that public servants can make high-level contributions in ministerial offices and then go back and make high-level contributions in the Public Service. The fact that Senator Keneally is not prepared to listen to an answer when she asked the question shows that she is incredibly discourteous.

Senator KENEALLY: You are simply talking out my time. You have gone beyond the scope of the question I asked.

CHAIR: Senator Keneally, do you have one last question?

Senator KENEALLY: What's the point? You are going to shut down my time.

CHAIR: That's fine. I'm quite happy to shut down your time immediately!

Senator KENEALLY: You are running political interference with the supposedly independent Treasury secretary; he is not allowed to speak for himself.

CHAIR: Senator Bushby now has the call. Do you have any questions about the economy, the budget, economic forecasts, the domestic economy or the international economy, Senator Bushby?

Senator BUSHBY: I do have some questions. Thank you. During your opening statement, Secretary, you talked about the jobs created in 2017-18 and how many have been created so far this year. How many jobs have been created in the economy since the coalition was elected to office in September 2013?

Mr Gaetjens: I don't have the exact number but it would be over a million.

Dr Grant: It is over a million. I believe it is 1.5 million over the past five years.

Senator BUSHBY: In terms of how many jobs have been created, that is how many additional full-time jobs or how many additional jobs there are in the overall Australian economy?

Dr Grant: It is the increase in employment over the past five years.

Senator Cormann: When we went to the 2013 election and we made an election promise that, as a result of our plan for a stronger economy and more jobs, we intended to facilitate the creation of more than a million new jobs the then government laughed at us and said it was impossible and could never be done. We, of course, were able to deliver more than a million new jobs in the economy as a result of our plans in the first five years in government.

Senator BUSHBY: Was there a time limit within which we hoped to achieve that?

Senator Cormann: The promise was that our plan would facilitate the creation of a million jobs within five years. We got to a million jobs within less than five years. By the time we reached five years, the number of new jobs created in the economy was well above a million.

Senator BUSHBY: Do we have any idea of what percentage of those new jobs are actually full-time jobs?

Dr Grant: Around 75 per cent of the employment growth over the past year has been in full-time jobs and, over the past five years, a significant share has also been full-time jobs.

Senator BUSHBY: Fantastic. As has already been mentioned, the latest job figures reveal that the unemployment rate is four to five per cent. How does this compare with the outlook in the 2018-19 budget?

Mr Gaetjens: We were forecasting 5¼ per cent, if my memory is correct.

Dr Grant: That's right.

Mr Gaetjens: We actually came in at five per cent. Again, we had very strong growth during that year, which has continued this year at a slightly slower pace.

Senator Cormann: If you look at the employment growth forecast in our budget back in May 2017, we forecast employment growth of 1.5 per cent. If you look at the final budget outcome of 2017-18, there was actually employment growth of 2.7 per cent. So instead of about 200,000 new jobs in 2017-18 there were about 350,000 new jobs. The flow-on effect of that is beneficial on both the revenue and the payment sides of the budget. In terms of revenue, self-evidently, if you have more people employed than you anticipated, you collect more in personal income tax revenue than anticipated. And, if you have more people in employment, that also has some effect on the payment side in that you spend less on welfare than anticipated. So there are beneficial flow-on effects on both the revenue side and the payment side of the budget that come from stronger employment growth than anticipated at budget time.

Senator BUSHBY: That effectively highlights the truth that focusing on the economy, having a strong economy which delivers jobs, delivers other benefits that are socially beneficial.

Senator Cormann: Stronger growth and jobs, as well as helping individual Australians get ahead, means we can raise more revenue, which helps to fund the important services that Australians rely on and put that on a more sustainable trajectory for the future. A strong economy is central to everything.

Senator BUSHBY: It is not an end in itself but a means to an end.

Senator Cormann: Fundamentally it is about making sure that all Australians, today and into the future, have the best possible opportunity to get ahead. Also, of course, it is to make sure government can continue to sustain and fund the level of services that Australians expect.

Senator BUSHBY: Have we seen an improvement in the underemployment rate over the last year?

Mr Gaetjens: My memory is yes. As I mentioned in my opening statement, the underemployment rate has come up. The biggest driver of the labour force is still underemployment. As you can see from any graph that goes around, it is the biggest driver of what is going on. The underemployment rate has stayed relatively constant—and I think Guy Debelle and the Reserve Bank have made speeches before as well. There is a

continuing number of people who work part time and prefer to work part time. For quite some time, there has been a view that part-time workers would like more work. That has stayed at the same rate—about two days. They still want more work, but they still want to work part time. It is not the case that a part-time job is either less secure or less desired than a full-time job; people actually do want that.

Senator BUSHBY: So there is a difference between underemployment and part-time work. A lot of people are part time by choice.

Senator Cormann: A lot of people choose to go for part-time work because it suits their personal circumstances.

Senator BUSHBY: Nonetheless, there are some people who don't earn enough and would like to earn more. They are shown as being employed but they are not really earning enough to maintain the lifestyle that they would like. You are saying the number of people in those circumstances over the last year has improved?

Mr Gaetjens: Yes. As I said, it is not as if the amount of additional work is increasing; the additional amount of work that people want has stayed the same for a very long time. Angelia, do you have the detail on that? It is several years, as far as I know.

Dr Grant: That's right. I don't have the specifics.

Senator BUSHBY: You also mentioned in your opening statement an improvement in workforce participation. That is higher than it has been for some time. What in particular has happened to female participation?

Mr Gaetjens: Female participation and older male participation have both increased very strongly. It is a very good sign of our labour force that people are coming in to fill gaps that have previously existed and to look at increasing the size of the labour force not only of those in work but those looking for work. Angie, have you got the specific numbers?

Dr Grant: The female participation rate reached a record high in December of last year at 60.6 per cent. It's come off a little bit but still remains very elevated by historical standards.

Senator BUSHBY: So what is the trend figure over the last five or 10 years? What would it have been if it was 60.6 per cent late last year?

Dr Grant: I would have to take that on notice. I don't have the figure in front of me. But, as the secretary said, it has increased quite strongly recently.

Senator BUSHBY: What about youth unemployment? How has that tracked in recent years?

Dr Grant: We have also seen a slight fall in the youth unemployment rate. I think the latest youth unemployment rate was 11.4 per cent in September, and that's down. It reached a high of 14.4 per cent in October 2014. So it, too, has been slowly declining.

Senator BUSHBY: But it's still stubbornly higher than the national average?

Dr Grant: Yes, we often find the youth unemployment rate is higher than the national average, reflecting a lot of full-time study that is going on for youth but also the fact that they are new entrants into the labour market.

Senator BUSHBY: But, nonetheless, it's improving.

Dr Grant: Yes.

Senator BUSHBY: It's down 3.3 per cent against the high in 2014?

Dr Grant: That's right.

Senator BUSHBY: Has the increase in jobs that we've seen in recent years been shared equally across the country? Specifically, have we seen an improvement in the labour markets in the mining states, given the volatility that they've seen with the fall off in investment and now the increase in actual sales of minerals? And also, from my own personal perspective, what about in Tasmania? Is there any information you can provide there?

Mr Gaetjens: Just generally, I'd say that the mining boom coming down in fact gave rise to a very welcome transition of employment from the west coast to the east coast at the very time the east coast was doing a lot of investment in infrastructure work. There are signs of employment increasing in the mining sector. If my memory is right, across about 19 sectors there have been employment increases in about 12. It's a broadbrush increase in employment. I also think there have been some quite good results in manufacturing as well. In Tasmania itself, Tasmania is again having a very strong period of growth at the moment. I don't have the specific numbers by state.

Dr Grant: You are right, Senator, that we have seen the unemployment rates in the mining states of Queensland and Western Australia fall since recent peaks. In Queensland they had a recent peak of 6.6 per cent and they are now down to six per cent. In Western Australia, there was a recent peak of 6.8 per cent. Their unemployment rate has also fallen to six per cent recently. Tasmania had a recent peak of 6.6 per cent, and they are now down to 5.8 per cent. So we are seeing those unemployment rates come down across a number of states and territories.

Senator BUSHBY: So the improvement in employment outcomes is being shared, generally, across the country?

Dr Grant: Absolutely. We still see higher unemployment rates in the mining states, but they are declining compared to where they were.

Senator KENEALLY: Mr Gaetjens, as a chief of staff to two Liberal treasurers for 14 years, you would have been involved, I presume, in activity relating to preparing for those liberal treasurers media releases, media responses, question time briefs, answers to questions on notice and attack lines on opposition policies. Surely these are things all chiefs of staff are involved in?

Mr Gaetjens: Some may be, but, with respect to media releases, the political aspects of questions on notice and things like that, I took a very minimal approach.

Senator Cormann: Let me just put this into context—

Senator KENEALLY: I'm trying to understand. Since Mr Gaetjens did not supply a CV to get his job—

Senator Cormann: I think this is very important. You are trying to create an impression here which is inaccurate. Frances Adamson, a former chief of staff of Stephen Smith as foreign minister, is now the secretary of the Department of Foreign Affairs and Trade, appointed by our government. Mike Mrdak, a former Keating government staffer to Peter Cook, was promoted by us to be Secretary of the Department of Communications and the Arts. Daryl Quinlivan, a former Keating government adviser to George Gear, an Assistant Treasurer, was promoted by us to be secretary of the agriculture department. Chris Moraitis, an adviser in 1994-95 to then Labor minister Gareth Evans, was promoted by us to be the secretary of the Attorney-General's Department. Mike Pezzullo, a Labor staffer from 1993 to 2001, including working in Gareth Evans's office, was promoted by us to be secretary of Immigration and Border Protection, and, more recently, secretary of the new Department of Home Affairs. Stephen Kennedy, a Gillard staffer and strategist, was promoted by us to be secretary of Infrastructure. There are many, many more, including in my department. We work with the public servants, professionally. We respect the fact that public servants can make a high-quality contribution in ministerial offices and subsequently make a high-quality contribution upon returning to the public service. You tried to create an impression here that is inaccurate. Just because a public servant serves the elected government of the day in a ministerial office doesn't mean that they subsequently cannot return and provide highly professional, competent and independent service in senior public service roles, including as secretary of the Treasury. I should say that Dr Martin Parkinson, who is serving our government exceptionally well as secretary of the Prime Minister's department, is also a former Labor government staffer, a former Keating staffer, in fact. I have already mentioned Ken Henry and there is a whole range of others. So, Senator Keneally, you are barking up the wrong tree here.

Senator KENEALLY: Mr Gaetjens, you said you had been a public servant for one year and six months?

Mr Gaetjens: I have been a public servant for 42 years.

Senator KENEALLY: You have been a public servant in Treasury for one year and six months?

Mr Gaetjens: Yes.

Senator KENEALLY: And for 14 years you have been a political chief of staff to Peter Costello and Scott Morrison?

Senator Cormann: And he is also a former secretary of New South Wales Treasury, a senior public service role—

Senator KENEALLY: I don't know how you know that, because he didn't put a CV in with his job application.

Senator Cormann: He has had senior roles in the Commonwealth and South Australian treasuries. The reality is this: it is up to the government of the day to select the people who serve our government as secretaries of departments. We have chosen high-quality senior public servants who have previously worked in Labor ministers' offices. And, you're right, we have also selected somebody who has provided distinguished service over an extended period to outstanding former Liberal treasurers. That is a matter of public record and it is a matter of

history. The implication of your question is that somebody should be disqualified and their capacity to provide independent public service advice should be challenged—

Senator KENEALLY: Have I said that?

Senator Cormann: —on the basis of their previous service in ministerial offices. We don't subscribe to that view. We have demonstrated that we make judgements based on the capacity of individuals to contribute, as we have done with the people I previously mentioned. In fact, I have somebody providing outstanding service in my department, who, over a very long period—

Senator KENEALLY: You know what would be helpful? If you let him speak for himself.

Senator Cormann: —has exclusively worked as a political staffer in Labor ministers' offices. I respect the contribution he is making now as a public servant supporting the elected government.

Senator KENEALLY: I would like to know about that contribution—if you let him speak. Let him speak!

Senator BERNARDI: Could you ask the minister to repeat that answer, because I couldn't hear it because of—

Senator Cormann: I'm quite happy to accommodate the request—

Senator KENEALLY: Senator Bernardi, you can ask that question in your time. Mr Gaetjens, do you have any response to Senator Bernardi's assertion that your politics are well-known.?

Mr Gaetjens: It is very hard for me to give any views about what other people think.

Senator KENEALLY: Senator Bernardi just said your politics are well-known. Are your politics well-known?

Senator BERNARDI: I may have verbed you, Mr Gaetjens. I apologise. You don't know Mr Gaetjens's politics.

Mr Gaetjens: I don't think I am in a position to answer that question.

Senator KENEALLY: I think it would be helpful to the committee and the public to know what Mr Gaetjens's politics are.

Senator Cormann: Let me answer this on behalf of the government. We have a whole series of secretaries appointed by a government who have previously worked in Labor ministers' offices, and, yes, we have one secretary who has previously worked in a Liberal minister's office. If your proposition is that because a public servant has provided service in a minister's office that should disqualify them from returning to the public service and providing senior service into the future, I think that that would be a very sad state of affairs. We certainly don't entertain that sort of attitude. We don't discriminate against people just because they have worked in Labor ministers' offices before. It is clearly the intention of the Labor Party, should they get back into government, to discriminate against people, based on the distinguished past service they have provided in ministers' offices. If you want to run witch-hunts against people because of past jobs they've done in ministers' offices, go right ahead. That is not what we've done and that is not what we believe should be done.

Senator KENEALLY: Mr Gaetjens, how can the public have—

CHAIR: Senator Keneally—

Senator KENEALLY: Only if I get the time he chews up.

CHAIR: Senator Keneally, if you would let me get a word out I would tell you that I have stopped the clock so that Senator Bernardi can make a point of order or clarification.

Senator BERNARDI: To assist the committee, my intention was that Mr Gaetjens's political work history is very well-known. I am just telling you what the intention was.

Senator Cormann: Chair, on the point of order. I object to the proposition that answering a question is chewing up time.

Senator KENEALLY: No, I was talking about Senator Bernardi—

Senator Cormann: If Senator Keneally wants to ask political questions—

Senator KENEALLY: Senator Cormann, I was discussing Senator Bernardi's chewing up my time.

Senator Cormann: —she is going to get the answers that she is getting.

CHAIR: I understand that. Senator Keneally, your time resumes now. You have three minutes and 30 seconds.

Senator KENEALLY: Mr Gaetjens, how can the public have confidence that you will act impartially and in the best interests of the Australian people and not in the best interests of the Liberal Party?

Mr Gaetjens: Because I have had 42 years experience in the public sector. I have worked for governments of both persuasions at state and federal levels and I have represented Australia at international levels. I have never been a member of a political party. I have basically tried to pursue good policy no matter where I work. I will go back to an earlier question on Treasurers' budget speeches. Both treasurers I worked for would in fact claim, rightfully, that those speeches were their own work.

Senator KENEALLY: All ministers claim all speeches as their own work—

Mr Gaetjens: If fact checking was to be involved, fact checking was involved. But they were two individuals who took great care of and attention to their own speeches and certainly would not want a staffer or even the public service wanting to claim ownership of that.

Senator Cormann: It is interesting that you don't ask the same question in relation to all of the former Labor ministerial office staffers who are working as secretaries across the Public Service. Why is it that you somehow believe it's okay for former Labor staffers to occupy senior roles in the Australian Public Service, but somebody who has served outstanding former coalition treasurers somehow should be measured by a different yardstick than those people who have worked in ministerial offices under your government?

Senator KENEALLY: Minister, of all those people you listed earlier, how many of those spent 14 out of 15½ years as a staffer in the area in which they are working?

Senator Cormann: I am happy to take it on the record. One person I listed is providing very distinguished service to us and is now the secretary of Department of Home Affairs. It is well-known that he spent a very long time working as a Labor staffer. I will get that back to you on the record. Now that you have asked me, I will give you, in detail, all of the former Labor ministerial office staffers who are working in senior positions across the Public Service now because we respect their professionalism as public servants.

Senator KENEALLY: That is not what I asked. I asked how many people you listed spent 14 out of 15½ years in their portfolio as a staffer.

Senator Cormann: I will provide you with detailed information about the length of service in ministerial offices of senior public servants. I will provide that to you on notice in great detail.

CHAIR: Last question, Senator Keneally.

Senator KENEALLY: I just want to make the point that the longer you talk this out, Minister Cormann—

CHAIR: It is not a point. It is a time for questions, not for points. Do you have a question for the minister?

Senator KENEALLY: How much time do I have left?

CHAIR: Forty-five seconds.

Senator KENEALLY: Mr Gaetjens, how many times did you advise Scott Morrison to vote against a banking royal commission?

Mr Gaetjens: I can't see how that's relevant to this estimates hearing, I'm sorry.

Senator KENEALLY: It is incredibly relevant. A banking royal commission is currently taking place. The Treasurer who you served as chief of staff voted against it 26 times. What advice did you provide to him regarding the banking royal commission?

Senator Cormann: The secretary of the Treasury is appearing in his capacity as secretary of the Treasury. The government takes responsibility for the decisions we make. Indeed, the Prime Minister, the Treasurer, and I, as finance minister, are accountable and responsible for the decisions that we make. It is not appropriate for you to ask questions about the advice given inside ministerial offices. That is not something that any Labor minister has ever entertained in the past. But let me say that we did make a decision—

Senator KENEALLY: My time is up.

CHAIR: You can finish your answer, Minister.

Senator Cormann: No, it's okay. Senator Keneally is actually not interested in answers. She's just interested in running a bit of political theatre.

CHAIR: I know. We have had 20 minutes of questions from the opposition and none of them had to do with the economy. Senator Storer has the call.

Senator KENEALLY: I would have had 20 minutes myself if Senator Hume wasn't running a star chamber here.

Senator STORER: Mr Gaetjens, thank you for the opportunity to ask you questions. I wanted to turn to the report issued in July by the Parliamentary Budget Office on trends affecting the sustainability of Commonwealth taxes. Are you aware of that report?

Mr Gaetjens: I am aware of it. I don't have it with me.

Senator STORER: No problem. It focuses on the overall trends since 2001 to the recent years regarding changes in tax receipts as a share of GDP. It notes decreases in a number of taxes as share of GDP, such as fuel, customs, tobacco and alcohol, GST, company tax, fringe benefits tax and some personal taxes. Its conclusion is:

... there is a likelihood that taxes on consumption will continue to trend downwards, taxes on capital will be flat or trend downwards and an increasing proportion of labour income will be taxed concessionally through the superannuation system. If these risks to tax receipts eventuate, and in the absence of other taxation reforms, maintaining Commonwealth Government revenue at recent levels as a share of GDP will lead to an increasing reliance on taxes on labour income through the personal income tax system.

Do you agree with that conclusion?

Mr Gaetjens: I think the report you just read out has a very important qualifier on it: that it is subject to further reform or policy change. Since 2001, we had an extended time in the mid-2000s where nominal GDP growth was very strong and the economy was strong, including commodity prices, so there was a very rich flow of revenue. Since the GFC there have been changes to the composition of the economy. Indeed, what has happened over time with the GST in particular is that the actual pattern of consumption has changed so that now the GST base is, I think, less than 50 per cent of consumption. So, there are compositional shifts in consumption as well as the greater trends in the economy. But I think it is fair to say that in Australia there is a high dependence on income tax, both labour and company. I think that gives rise to quite a bit of volatility in that area. But it is always up to the government of the day to review those trends and look at future policy in order to strengthen, if you like, the tax base rather than necessarily the individual heads of taxes within it.

Senator STORER: That goes to my point. I note, as per your paragraph on page 9, that 'monthly financial statements for the first few months of 2018 were recently released and, while care should be taken in interpreting them, they suggest improvements are continuing into 2018-19, particularly for income and company tax receipts'. You have just noted the focus in those areas, in terms of the overall tax base. This really is therefore driving very much the return of the overall final budget outcome of, now, just \$10.1 billion—0.6 per cent of GDP. As you noted, we are effectively fortunate that the two areas in which tax receipts are strongest in our overall tax take are the ones that are responding most prevalently.

Mr Gaetjens: There are a few things to comment on there. First of all, in the final budget outcome there were improvements, with both expenditure down as well as revenue up. The final budget outcome result was not just a result of commodity prices staying higher than they were forecast to. But commodity prices did say up and therefore we got more profits from mining companies in particular. But I think it is fair to say that in the last decade we have seen huge variations in commodity prices, with the first peak running about 2008-09 and the second peak in about 2013-14. And we have seen, as a result of strong jobs in particular, greater strengthening of the income tax base. But, again, they are cyclical events. It is probably best, if you want to go into detail about this, to refer to the revenue group, who come in later. And the fiscal group have our greatest connection with the Parliamentary Budget Office. But it is very useful to see these longer term trends. If my memory is correct, that report from the Parliamentary Budget Office also noted that, with respect to some of the policy changes made by government—and I think childcare services was one of them—that in fact the long-term expense of that will probably decrease as a result of policy. In the last few budgets, we have seen some very good what are technically called parameter changes that result from previous policies that the government has put in place.

Senator STORER: Is it a concern for you that the overall tax base is shrinking in particular taxes and increasing and others, and putting a stronger reliance on income and company tax to deliver the total amount of tax take to cover expenditures?

Mr Gaetjens: As I said, I think we have a high reliance on income taxes in Australia to the extent that you get cyclical changes of the drivers of those bases. It does increase volatility and therefore makes forecasting more difficult, and budget outcomes volatile. But again, it is up to governments to change policies. With respect to company tax, the government has made recent changes. With respect to personal income tax, the government has made changes as well. And, as part of the fiscal strategy, we now have formal reference to a tax to GDP cap of 23.9 per cent, which is basically a judgement government makes about the size of the tax take on the economy and basing, therefore, expenditure to that amount, with the other statement in the fiscal policy that we are looking for surpluses.

Senator STORER: How is the economy travelling against the budget assumptions for wage and productivity growth that were made in May?

Mr Gaetjens: In 2017-18 we had the wage price index turn out at 2.1, and I think we forecast 2¼. For 2018-19, we have 2¾ for wages and then a higher number out in the projection period, which is more a technical approach to basing our parameters out that far. We will be looking at the numbers that come out in the monthly releases from the ABS and will be reviewing our forecasts at the mid-year review with respect to tracking the outcome, which was roughly in line with the forecast for 2017-18, and we will be reviewing between now and December—the usual time we put out the mid-year review—as to what our forecast will be in that document.

Senator STORER: Despite the tightening labour market, wage growth and inflation continue to be subdued at historical standards. And while wage growth and inflation were consistent with the May budget forecast, momentum has been so far of little weaker than we expected at this stage of the economic cycle. So that is occurring, and you still say that you expect them to pick up, but that has been the case for some time in Australia.

Mr Gaetjens: Globally, in fact.

Senator STORER: Therefore, these will be a key focus for the income tax receipts. Are we really not expanding our tax base in other areas and still just relying on income tax receipts to overtly fund the return to surplus?

Mr Gaetjens: Again, the fact is that employment growth has been so strong—because, again, your tax revenue is a function of heads and wages, if you like, not just wages. The strengthening of the labour market has been a great result. Again, I go back to the point that it is up to government to make decisions as to the composition of the tax base. I think we know what's happening now with both company and income tax.

Senator STORER: Thank you.

Senator McALLISTER: Mr Gaetjens, in your former role as chief of staff to then Treasurer Morrison, did you provide advice to then Treasurer Morrison on Labor's tax policies?

Senator Cormann: I might just intervene here. The Secretary of the Treasury is appearing in his capacity as the Secretary of the Treasury. Questions in relation to government decisions on tax policy or any other matter in the period over the last five years are questions for me. They are not questions for somebody who, at that time, worked in the personal ministerial office of the Treasurer or any other minister, for that matter. That is entirely consistent with the approach under your government. Ask Secretary Gaetjens any questions you like in relation to his role and responsibilities as Secretary of the Treasury but if you have questions about decisions made in the past, before his commencement as Secretary of the Treasury, those are questions for me.

Senator McALLISTER: Minister, I think we've made it quite clear that this is one of the most senior public servant roles in the country. It is incredibly important that the person there conducts himself or herself impartially, and we are seeking to gain some understanding of how the present secretary intends to do that. You have elected to prevent him from answering most of the questions we've asked, which would have provided him with an opportunity to do that.

Senator Cormann: I completely reject that. Firstly, the most senior public servant in Australia right now is the secretary of the Prime Minister's department—

Senator McALLISTER: I said 'one of the'—

Senator Cormann: who is a former Labor ministerial staffer. Incidentally, I work extremely closely with the secretary in my department, Ms Rosemary Huxtable, who is also a former Labor ministerial staffer. You look a bit surprised by that but that is a fact.

Senator McALLISTER: I look perplexed at why you persist in raising this when I'm questioning, when it is not relevant.

Senator Cormann: The argument I'm making is that past service in ministerial offices for the government of the day, of either political persuasion, does not and should not disqualify anyone from providing future service. Asking questions about advice provided in a previous capacity is not the purpose of this estimates committee. The purpose of this estimates committee is to review performance against budget for the 2018-19 budget and to ask about the performance and operations of relevant departments. Mr Gaetjens is appearing before this committee as the Secretary of the Treasury. By all means, ask him whatever you like in relation to matters relevant to the Treasury as a portfolio agency—

Senator KETTER: Minister, it's extraordinary for you to suggest that we cannot ask Mr Gaetjens about his previous work experience. He is the one of the most senior public servants—the head of the Treasury. We are

entitled to ask him questions about his previous work experience. He did not put in a CV. The appointment was made in a very, very short period of time.

Senator Cormann: Let me tell you: when Senator Wong was sitting here as the then finance minister, and I was asking questions about advice to government, she would not even let officials answer questions about public service advice to government. She would say that advice to government, under government of both persuasions, is not to be disclosed in these committees.

Senator KETTER: This is about Mr Gaetjens' work experience.

Senator Cormann: You're now taking it to another level. You're saying you want advice provided in the past by ministerial staffers. That is not the purpose of this committee.

Senator McALLISTER: Mr Gaetjens, since you been the Secretary of the Treasury, have you provided advice to the new Treasurer on any of Labor's tax policies?

Mr Gaetjens: Not that I recall, but I'll take that on notice just to make sure.

Senator McALLISTER: Mr Gaetjens, on the Treasury FOI log, there is a FOI numbered 2292. It's a series of documents in response to a request from a Fairfax journalist who sought Treasury briefs or documents provided to the Treasurer's office on the refundability of dividend imputation. Are you familiar with that FOI document, Mr Gaetjens?

Mr Gaetjens: I do remember one on that issue, yes.

Senator McALLISTER: You're aware that that comprises a series of emails from Treasury officials to you specifically advising on Labor's dividend imputation policy on the day that that policy was announced?

Mr Gaetjens: My memory is I was copied in. I was not either actioning or the direct recipient of that email.

Senator Cormann: Incidentally, the area of Treasury which deals with this, which is Revenue Group, will be appearing later today. The deputy secretary of Revenue Group in Treasury will be able to answer all of the questions you may have in relation to these matters in some detail.

Senator McALLISTER: But Treasury records do demonstrate that, in your previous role, Mr Gaetjens, you were directly involved in responding to Labor policies around tax; that's correct?

Senator Cormann: No—

Senator McALLISTER: It's a matter of public record. It's on the website.

Senator Cormann: The evidence that the Secretary to the Treasury has just provided, which is hardly surprising, is that he was copied in to communications out of the Treasury into the Treasurer's office. It's well-known that Mr Gaetjens, in his previous role, was chief of staff to the then Treasurer. I don't think anyone would be surprised to hear that the chief of staff to the then Treasurer, in relation to advice provided by the Treasury, would be one of the recipients, as appropriate. If you think that there's something surprising there, I don't think you understand how the interaction between public sector agencies and ministerial offices works.

Senator McALLISTER: It goes to the point that Mr Gaetjens, in his previous role, has had a political role in evaluating Labor policies.

Senator Cormann: There are public servants today who had roles even in opposition. The current Secretary of the Department of Home Affairs actually worked for a senior Labor politician not just in government but also in opposition. If ever there are political laws, it's when you work as an adviser in opposition. But, because he is so outstanding in his own right and because this government recognises his capacity to contribute and provide leadership to a very important area of government, we don't get distracted by what you seem to be distracted by.

Senator McALLISTER: Mr Gaetjens, prior to an election, the Treasury secretary prepares the PEFO; is that correct?

Mr Gaetjens: Correct.

Senator McALLISTER: And it is the Treasury secretary who will directly sign off on that document; is that correct?

Mr Gaetjens: With the Secretary of the Department of Finance.

Senator McALLISTER: So it will, therefore, be your responsibility to provide an assessment of the economic performance of the Liberal government just prior to an election? Is that correct?

Mr Gaetjens: No, that's not correct. The PEFO provides the views of officials of the latest state of the economy and draws on knowledge from government as to whether any decisions exist that are not known to the

officials. It is an official view about the most recent state of the economy. It is not a commentary on the previous government's settings.

Senator McALLISTER: It is a very important document in the context of an election, is it not, Mr Gaetjens? That's why it's produced? Its timing is not accidental?

Mr Gaetjens: No, it's not, because it's set out in the Charter of Budget Honesty. It's to prevent governments making claims that in fact are not true. That's why the PEFO was introduced: to actually have, 10 days after the writs are issued, a sign-off by officials as to the state of the economy and the fiscal outlook.

Senator McALLISTER: Indeed; so it is a very important document in the context of an election? You would agree with that proposition?

Senator Cormann: You're asking him for an opinion, but let me answer it—

Senator McALLISTER: Its function is integrally connected to the holding of an election?

Senator Cormann: It's a very important document in providing public confidence about the state of the economy and the budget, that's right. You will be reassured to know that of the people who are part of this process in the lead-up to the next election, one of them is a former Labor staffer and one of them is a former Liberal staffer.

Senator McALLISTER: Mr Gaetjens, I go back to the FOI that I referred to earlier—2292. On the second page of that there's an email from an official, which commences with, 'Hi Phil and Gerry'. There's no other Phil listed in the to's or CC's. I assume that that person companionably referred to as 'Phil' is you—Philip Gaetjens?

Mr Gaetjens: I'd have to double-check that.

Senator McALLISTER: Mr Gaetjens, I am putting it to you that you were in receipt at that time of material that was requested in order to attack the Labor Party's tax policies, and I'm asking you how you—

Senator Cormann: Sorry; firstly, the officer has taken the question on notice. Secondly, the characterisation that this was about attacking the Labor Party is your political characterisation.

Senator McALLISTER: That is the function of the Treasurer's office, very plainly.

Senator Cormann: I disagree. The function of the Treasurer's office is to support the Treasurer in delivering on a policy agenda—

Senator McALLISTER: I think we've witnessed the performance of your treasurers in this regard.

Senator Cormann: that strengthens the economy, creates more jobs and puts the budget on the strongest and most sustainable foundation trajectory for the future. That is the function of the Treasurer's office. As I've indicated in this committee on a number of occasions, when alternative policy proposals are put into the public domain from time to time it is entirely appropriate for the government of the day to consider them. Presumably you would like the government of the day to consider them because, on the occasion a good idea comes forward, surely you would want us to adopt it. As it happens, we don't agree with that particular proposition but I would have thought that, when alternative policy options are put into the public domain, a responsible government committed to the public interest, committed to doing the best it can for the Australian people, has a responsibility and indeed is duty bound to consider these things carefully to make an informed decision on whether or not to proceed with the particular proposition being put forward. The political characterisation you're putting onto it is one I don't accept.

CHAIR: Thank you, Minister and Senator McAllister.

Senator STOKER: I'm interested in asking some questions about the housing market. I know that supply is an important factor in understanding what's going on in the housing market. How do you describe, or what can you tell me about, the pipeline of future projects in Australia that will go towards helping us understand the housing market supply?

Mr Gaetjens: What's happening in housing is that, in fact, a record high was reached in dwelling investment in the June quarter of 2018. I think what happened earlier this year is that there was a marked pick-up in housing as opposed to apartments. We also look at what we call the pipeline of work, which is in dwellings commencements and under construction. We think that what's happening is growth in housing is probably going to tail off a little bit, but the levels of housing commencement and housing investment are going to continue. It will be a strong pipeline, continuing current levels. That will probably mean less of a contribution to GDP growth in the future, but maintaining levels of activity.

I think in New South Wales in particular, going back to my experience there in Treasury, there has been—I'll focus on New South Wales but I would imagine it is the same across Australia as a whole—an undersupply for

quite a considerable time that needs to be caught up. A lot of the implications that we are seeing now in the housing market are, in fact, the impact of that catch-up in supply, particularly in the apartment market. Again, if I take New South Wales, there have been a lot of apartments built not just in the centre of Sydney—it has occurred more down in Melbourne—but also out in the inner suburbs and, in fact, along the commuter lines as they develop the public sector and public transport infrastructure that's coming through.

Again, in the housing market, Melbourne and Sydney prices are coming down, which is hardly surprising given the very strong growth that has happened in those two capitals over recent years. With respect to other cities, Perth and Darwin prices are remaining weak; prices in Adelaide, Brisbane and Canberra have been broadly steady; and Hobart prices have slowed in recent months after experiencing strong growth since late 2016. I think the state of the housing market is also shown with respect to what's happening in the rental market, where national rental vacancy rates are just below their five-year average of 2.8 per cent and capital city rent prices remain stable. Again, this is an indication, if you like, that that supply is there and there's no basic emphasis yet in the rental market. But, again, supply is becoming short and rental prices themselves go up.

So, again, going into general levels, housing has been strong. It was particularly strong—again, this is going on memory, and you might want to correct me—in the last national accounts, where I think there were revisions in the second half of 2017-18 that actually saw a stronger outcome than was put out at the time in the partial indicators. Again, levels are staying high. Commencements in investment are still occurring. I might just go to Ange for more detail.

Dr Grant: The secretary is right. We did see a slightly stronger result in dwelling investment growth in 2017-18, and our forecasts have it remaining broadly flat. We think it will maintain its elevated levels over the next couple of years, but it won't record the strong growth rates that we've been seeing over the past three years.

Senator STOKER: There has been some concern expressed recently about house price falls in some markets. Does that pose a risk to the economy more broadly?

Mr Gaetjens: As I said in my earlier answer, I think we're seeing house price falls in Sydney and Melbourne on the back of large increases in the last couple of years. There are price declines in Sydney: it is down 6.1 per cent through the year. Melbourne is down by 3.4 per cent through the year. But that was on the backdrop. Ange, have you got the price increases previous to that?

Dr Grant: I don't have that. In through-the-year growth terms, prices in Sydney peaked at 17.1 per cent in growth, and in Melbourne 13.1 per cent was their peak, so they were quite strong price growth numbers over the past couple of years.

Senator STOKER: Have APRA'S measures helped to moderate growth in the housing market of the major cities or not?

Mr Gaetjens: I think they have been very effective and, in fact, well targeted. I think the value of APRA'S macroprudential measures is that they've actually been affecting the markets where there needs to be some moderation—again, Melbourne and Sydney—by placing caps on investor loans and then also looking at bringing down the very strong numbers of interest-only loans, which in fact do pose a risk, because basically then the purchaser of the establishment has no skin in the game themselves. It's basically an interest-only play. The growth in investment loans, I think, is now well under 10 per cent, and the bringing down of the interest-only loans to, I think, under 30 per cent has happened. The approach in individual banks has been quite different, given the types of loans that they were giving out themselves, so we have had differential impacts on the banks. But in aggregate terms we are below the 30 per cent cap. APRA announced a while ago that the 10 per cent limit on investor loans would be removed, subject to some undertakings by the banks. So again I think that is a measure that has been put in place, and it was useful at that time. It is now being backed off, as in fact we are seeing through the numbers: there is quite a large shift in investor loans coming down. Again, unsurprisingly, as investors see that house prices are not a one-way bet, they taking other considerations into account before they go into that market. And we are seeing owner occupiers and first home buyers come back into the market. Again, I think we are seeing some activity levels come off in terms of auction clearances and things like that. Are there any other details?

Dr Grant: I think you've covered it.

Senator STOKER: What does the recent data show about foreign investment in housing?

Mr Gaetjens: I think I'll probably get our markets group, who handle the foreign investment area, to answer that in detail. But I think foreign investment in housing has come down. I made a speech a few weeks ago in Sydney. With respect to the statistics on that, there have been impacts on the supply side. So China itself has restricted capital outflow, which has been an impact, and applications for real estate investments, again, there has been a series break in that set of numbers. Because when the government decided to apply fees to real estate

applications versus the previous situation of no fees, people were actually making applications for multiple real estate purchases. It was no cost to them. Whereas when fees were introduced, the number of fees I think came down 25 per cent or more, just because of that incentive effect, if you like, on price. The foreign investment in housing, as far as I know, has decreased. In aggregate, I think it would probably be best addressed to the financial institutions division in markets group.

Senator McALLISTER: Mr Gaetjens, will Treasury make a submission into the House of Representatives Standing Committee on Economics inquiry into Labor's reforms to dividend imputation? This is the inquiry that has been established by the Treasurer's reference.

Mr Gaetjens: I am not directly aware. I think it would probably be best at revenue group when they come in later today. I don't know at the moment.

Senator McALLISTER: Mr Gaetjens, it's a referral that has been initiated by the Treasurer in relation to our Labor policy. It is quite unusual in and of itself. It is highly likely that the Treasury will be asked to make a submission. Do you think you will be in a position to impartially sign off on any such submission?

Senator Cormann: Firstly, the secretary of the Treasury has indicated that he has not got personal direct knowledge, and has referred you to the deputy secretary revenue group, who is appearing later today. Then you've asked him for an opinion on whether he can perform his role as Secretary of the Treasury, and of course, I mean, the government has made a judgement that Mr Gaetjens is eminently qualified and has got the requisite experience to make an outstanding contribution in that role. Thirdly, the government, through all of our departments, cooperates with parliamentary committees. I mean, there are a whole range of inquiries to the Senate initiated by the Labor Party. There are a whole range of legislation committees where the majority on the committee is a government majority, and whatever the department, whether it is agriculture, whether it is finance, whether it is home affairs, whether it is foreign affairs, depending on the topic, the government always engages constructively and appropriately with the work of parliamentary committees, whether that is in the House of Representatives or in the Senate. I don't accept your characterisation that this is an unusual process. This is clearly a matter that is a matter that is in the public domain. It's entirely appropriate. The House of Representatives has made a decision—

Senator KETTER: What is extraordinary is—

Senator Cormann: to set up a committee inquiry—

Senator KETTER: to assert his impartiality—

Senator Cormann: Why should the Labor Party have a monopoly on setting up parliamentary inquiries? A majority in the House of Representatives or a majority in the Senate can make certain decisions in relation to referrals of certain inquiries, and the government would expect—whatever the parliamentary inquiry—if there are requests for information or if there are request to appear, that all of our public sector agencies appropriately engage and comply with requirements that come from time to time with parliamentary committees.

Senator McALLISTER: Minister, the challenge we have is this, and I have a question for you about these circumstances: FOI 2292 clearly establishes that Mr Gaetjens's fingerprints are all over a series of requests to Treasury that go to undermining the Labor policy on dividend imputation.

Senator Cormann: I completely reject that.

Senator McALLISTER: There is now an inquiry that has been established by your Treasurer into dividend imputation, and the Treasury has been asked to make a submission. What steps have you taken, given Mr Gaetjens is obviously compromised by his past role in relation to this issue? What steps have you taken to ensure that an impartial contribution by Treasury will be possible with Mr Gaetjens in this role?

Senator Cormann: I completely reject your offensive remarks about Mr Gaetjens being compromised. Mr Gaetjens is no more compromised than any of the former Labor staffers, including former Labor ministerial chiefs of staff that currently serve—

Senator McALLISTER: On this very specific issue, there is a conflict of interest.

Senator Cormann: as secretaries of Public Service departments. That's No. 1. Secondly, the inquiry was established by the House of Representatives through the relevant parliamentary committee, and that is democracy at work. The same way as the Senate from time to time makes decisions to refer certain matters for inquiry to Senate references committees, the House of Representatives, of course, has got the capacity to do the same. I think it would be entirely inappropriate if the government decided to pick and choose which parliamentary inquiries the government would co-operate with, and which we wouldn't. So as a matter of course, the government, being accountable to the parliament, will co-operate as appropriate with Parliamentary inquiries.

Now, the secretary has referred you to the relevant area of Treasury that would be best equipped to answer these questions, and I strongly encourage you to take up these questions with the deputy secretary of revenue group when she appears later today.

Senator McALLISTER: So no steps have been taken to manage this?

Senator Cormann: I completely and utterly reject the offensive attempts that you are pursuing to reflect on the integrity of a senior officer in the Australian Public Service. We don't operate that way vis-a-vis former senior Labor ministerial staffers. Indeed, we recognise the fact that previous senior staffers for previous Labor governments of course should be judged on their capacity to contribute moving forward and should be judged based on their capacity to perform in the role that they are chosen to perform. We don't punish people because of past service in ministerial offices. If you want to go into the next election saying that you will make partisan political judgments based on which jobs people have had in the past, even though they are performing exceptionally well in the role that they are currently in, well, that is a matter for you. We respect the independence of the public service. We respect the fact that people can contribute, irrespective of past roles they have had, serving ministers of the day in ministerial offices.

Senator McALLISTER: Mr Gaetjens, speaking of the next election, will you have any role in putting together or overseeing the compilation of the incoming government brief that would apply to a Labor government should Labor win the next election?

Mr Gaetjens: I expect so, yes.

Senator McALLISTER: What will be your role?

Mr Gaetjens: Probably quality assurance, but with the processes in Treasury it will be a bottom-up document, rather than top-down, and I will be one part of putting that document together—certainly not the only author.

Senator Cormann: Of course, when we came into government in 2013, the Treasury Secretary at the time was a former Labor ministerial staffer, who is now the secretary of the PM's department—

Senator McALLISTER: Not a person who'd spent almost 90 per cent of his time working as a staffer.

Senator Cormann: The reason I keep repeating it is you are pursuing this line of questioning which is entirely hypocritical. So when we came into government, if my memory serves me right, both the authors of the Pre-election Economic and Fiscal Outlook in the lead up to the 2013 election, as well as the, I guess, quality assurers—the secretaries of Treasury and Finance at the time of the 2013 election—were former ministerial staffers in Labor governments. That, of course, didn't in any way diminish their capacity to provide outstanding public service, in the great traditions of our world-class Australian Public Service. Your attempt to suggest that, because somebody has served the government of the day—

Senator McALLISTER: 14 out of their 15½ years.

Senator Cormann: with distinction—well, some of our current secretaries have served the Labor Party as staffers, in both government and opposition—

Senator McALLISTER: Not for 90 per cent of their career time, no.

Senator Cormann: over an eight-year period. I can't help it that Labor, over the last however many years, hasn't had a 14-year period in government. I can't help that the last period of government for Labor was six years and not 14 years. So that has got some bearing in relation to these matters. But the point I would make to you is that we recognise the capacity of public servants to contribute in senior roles in ministerial offices, and we believe that that is absolutely valuable and a valued part of the process. And we do believe that their having done so should not prevent them from going back into the Public Service and providing outstanding service within the Public Service.

Senator McALLISTER: Chair, Senator Keneally will take the remaining time.

Senator Cormann: I just note that not a single question about the economy has been asked by the Labor Party of the secretary of Treasury. The secretary of Treasury has now been here for—

Senator KENEALLY: Whoa! Whoa, this is my time.

Senator Cormann: an hour and 45 minutes, and all we've been getting is—

Senator McALLISTER: This is not in response to a question.

Senator Cormann: lightweight political questioning in relation to something that everybody knows—

Senator KENEALLY: This is not in response to question. This is an attempt to chew up Labor senators' time.

Senator Cormann: about Mr Gaetjens's background—

Senator KENEALLY: You're running political interference. Point of order, Chair.

Senator Cormann: and I can't believe that the Labor Party isn't asking questions about macroeconomic matters.

CHAIR: Point of order, Senator Keneally.

Senator KENEALLY: I would request that 45 seconds be put back on our time, given that the minister chose to indulge in a statement that was not in response to a question.

CHAIR: Senator Keneally, I'd already given you an extra two minutes, but your question took so long I'm going to make it one. Off you go.

Senator KENEALLY: So you're cutting my time again?

CHAIR: No.

Senator KENEALLY: This is the second time you've done it.

CHAIR: You asked for 45 seconds; you've got it.

Senator KENEALLY: This is to the secretary, Mr Gaetjens. *The Sydney Morning Herald* is reporting: ... Mr Morrison has entered a round of talks with independent crossbenchers and the government is expected to survive. Mr Gaetjens, have you been asked to provide advice on policy concessions or spending commitments that could be made to members of the House crossbench?

Mr Gaetjens: No.

Senator KENEALLY: Minister, have you been asked to provide advice on policy concessions or spending commitments that could be made to the members of the House crossbench?

Senator Cormann: No.

Senator KENEALLY: Interesting. I wonder what Mr Morrison is talking to the crossbench about, then.

CHAIR: Is that a question, Senator Keneally?

Senator KENEALLY: Oh, I thought we were allowed to indulge in statements, given Minister Cormann's example!

CHAIR: No, questions come from senators.

Senator KENEALLY: Would the crossbench like to ask a question about that!

Senator BERNARDI: [inaudible]

CHAIR: You've got 30 seconds to go before I call on the crossbench.

Senator KENEALLY: Well, goodness.

Senator Cormann: Let me just say what I said on Monday—

Senator KENEALLY: We'll indulge you! It's perfectly fine.

Senator Cormann: In response to your question, let me say what I said in the Prime Minister's portfolio estimates.

Senator McALLISTER: He's just going to say everything is fine.

Senator KENEALLY: Everything is awesome!

Senator Cormann: Our government engages—

Senator KENEALLY: Everything is cool and you're part of a team!

Senator Cormann: with the crossbench all the time, both in the House of Representatives and in the Senate. We are very aware of the issues that are priority issues for individual crossbenchers. As we've done in the past, we'll continue to engage with the crossbench, and, if and when there are ideas that are put forward that are good ideas, as we have done in the past, we'll take them on board.

CHAIR: Senator Bernardi.

Senator BERNARDI: Thank you. Just for the record, Mr Gaetjens, I welcome you to the role. I come from a school of thought where experience and expertise in a relevant field are very valued. I hope you do the right thing by the country, which I don't doubt you will. In your opening statement—I didn't hear it, so I'm not sure if you expanded upon it—you mentioned wholesale funding markets and interest rates, and that there had been some increase. Has Treasury modelled a broader increase in interest rates and its impact on the economy?

Mr Gaetjens: Just to go through to the original question, in the last few months there have been—again, from memory—some spikes at the end of each quarter in BBSW, but it didn't occur most recently, which is a good sign. And, again, BBSW did actually separate a little bit from what was happening at the same time at the global level, so we were looking at it. In terms of Treasury modelling, the answer is no. I'd have to remember—is this included in the sensitivities, Dr Grant? I think we've done something with respect to bond rates.

Dr Grant: On the public debt interest?

Mr Gaetjens: Yes.

Dr Grant: Yes, but not on the macro economy.

Senator BERNARDI: If bond rates go up, you can calculate it. You look at the outstanding debt and you say, 'This is where it's going to be.' But, if there is a rise in interest rates, which it appears there may be—and I'm speculating here; I know it's happening in America and it seems to be a global movement—it's going to have an impact on Australia's economic growth and it might have an impact on our asset prices and our general GDP. Treasury hasn't done any sensitivity analysis on that?

Dr Grant: When we do the budget forecasts we take at the time what the market expects on interest rate movements. We don't take a different view than that. We think the market knows best about what will come. At the time of the budget there was a rate rise priced in in 2019, from memory, so that's taken into account in terms of the budget forecasts and any forecast update would update in terms of what the market expects is going to happen in interest rates.

Senator BERNARDI: So you're using the 10-year bond rate or something like that, are you?

Dr Grant: No, it's not the 10-year—

Mr Gaetjens: The forward market cash rates—

Senator BERNARDI: But it's an assessment of where we are at a particular point in time rather than—

Mr Gaetjens: We have to be very careful. Again, I wear two hats: I wear the Treasury secretary hat and I'm a member of the Reserve Bank Board. I'm definitely here in my Treasury secretary hat. There are statements that the governor has made with respect to the likely trajectory of rates, but for the budget itself we take quite a technical approach in terms of not making a judgement either way on both currency and interest rates. I think that, if you did some analysis, you would probably find that you would get a random walk, if you like, whether you chose a particular level or you went with an assumption that we will stick with what it is now, what it has been for the past few periods or what the forward market is suggesting.

Senator BERNARDI: That's in your budget analysis—and I perfectly understand that because you have to choose a number—but my question goes to a broader expectation and even more forward looking analysis, if I can put it like that. Where are the risk sectors in the Australian economy? Where are the potential challenges and pitfalls should interest rates rise by one per cent or two per cent? Treasury doesn't undertake that sort of sensitivity analysis for government or for the Public Service?

Mr Gaetjens: Certainly we have not had that requested. Again, I've been there a bit over two months, so maybe Chris and Ange can go on about the usual sensitivities—

Senator BERNARDI: This is not tricky. There are no traps here. I'm just trying to find out whether you look for—I'm not going to say 'the black swans'—the white swans.

Dr Grant: We always monitor what is happening here and now, so we are looking at what's happening. As the secretary mentioned in his opening statement, there has been a slight tightening in credit conditions across the economy. We will be watching that, and we think about that a lot. In terms of modelling a particular scenario, often it's very difficult because you have to think about what drives it. So, no, we don't sit down and think, 'Let's shock an interest rate and see what happens with that,' because you would want to be thinking about what's happening in the broader economy, what would be driving an increase in interest rates and what you think would happen to official rates. We don't look at that in a lot of detail, no.

Senator BERNARDI: Should another event, like the 2008 liquidity crisis or whatever, eventuate you would respond; you don't have forward scenario planning underway now should an event like that occur?

Dr Grant: We would hope that, because we are so active in monitoring the economy each day, we'll start to see whatever risk is starting to show itself in the economy at the point it is becoming clear what is happening, rather than thinking about a hypothetical modelling kind of event.

Senator BERNARDI: What risks do you see in the immediate future for the Australian economy?

Dr Grant: In the budget we outline a number of risks in both a domestic sense and a global sense. As the secretary mentioned in his opening statement, the risks around the trade tensions have definitely heightened since the budget, as have some of the risks around some of the emerging markets. We have seen Argentina need to make a claim from the IMF. The global risks have heightened since the budget.

Senator BERNARDI: Domestically?

Dr Grant: Domestically the largest risk since the budget is around the drought. When the budget is put together there is always an assumption of average seasonal conditions, and we have not seen average seasonal conditions since the budget was published. The drought definitely poses a risk for rural exports in the rural sector.

Senator BERNARDI: Just for the record, so that I don't have to go through the budget papers, what is the market telling us about interest rates going forward that you've used in the budget analysis?

Dr Grant: In the budget we simply say we use the forward curves. My recollection is that there's an interest rate rise. The market was pricing in an interest rate rise in early 2019 at the time the budget numbers were settled.

Senator Cormann: Of course, we don't speculate—

Senator BERNARDI: No. But these are market driven—

Senator Cormann: These are forecasting assumptions using established—

Senator BERNARDI: My question is what's the figure on that?

Dr Grant: As in how much was the interest rate rise that they were pricing in?

Senator BERNARDI: Yes. It just saves me looking it up that's all.

Dr Grant: It was 25 basis points. Roughly a quarter—

Senator BERNARDI: Over the forward estimates?

Dr Grant: Yes, that's my understanding.

Senator WATERS: Welcome to your new role, Mr Gaetjens. I've got a lot of questions here, and I think only have a brief period of time, so if you could keep your answers as brief as possible that would be fantastic. I'm sure you will have most of these front of mind anyway. What's the likely direction of movement in our terms of trade and what might that mean for our exports?

Mr Gaetjens: No would probably be the accurate answer, because they have been held up lately through commodity prices in particular, but it's—Angelia, have you got any more detail?

Dr Grant: I can speak to the forecasts on the terms of trade if you would like?

Senator WATERS: Yes. Just briefly if you could.

Dr Grant: In terms of the outcome that we saw in 2017-18 the terms of trade rose by 1.9 per cent, and that compares to a 1½ per cent forecast in the 2018-19 budget. The terms of trade were then forecast to fall by 5½ per cent in 2018-19 and 2¼ per cent in 2019-20. A lot that's to do with a technical assumption we make around bulk commodity prices. Bulk commodity prices have been quite elevated recently, so there's an assumption in the budget that the metallurgical coal price will fall over the forecast horizon, so that's predominately driving those falls in the terms of trade.

Senator WATERS: Could you take notice, given the shortage of time, to provide me with your assumptions about the projections for metallurgical and thermal coal prices?

Dr Grant: It is outlined in the budget. I can give you the page number if you like?

Senator WATERS: Yes, thank you.

Dr Grant: In terms of the assumption that's on page 2-25 of the 2018-19 budget.

Senator WATERS: Great. Thank you. I'll look that up. If the US reserve were to continue to raise rates, what would that mean for the Australian economy?

Mr Gaetjens: It would be quite complex, because the global reaction would also take an impact. The US is already raising rates, so there's a trajectory upwards. That would generally attract capital to the US and take capital away from other regions in the globe. We've seen at the moment, in both Argentina and Turkey, impacts on their economies. I think what's happening with the US trajectory rates is a contribution to that but it's also related to the state of the economy in those particular countries.

Senator WATERS: What does that mean for us?

Mr Gaetjens: It could mean that capital could move away from Australia and go elsewhere. But, again, that's one part of the equation in quite a complex list of issues. It could relate to what happens overseas in our major

trading partners, again, which are holding up strong compared to global growth. This is a complex area. I don't know whether Chris or Angelia want to get into more detail?

Mr Legg: The most important thing to remember is that we have a floating exchange rate, which has served us very well over the period that we've had it and the economy has adjusted to the volatility that that introduces. We have very strong institutions and markets settings behind that. Traditionally the exchange rate has helped buttress those shocks of shocks. The first thing you would see would be further weakness in the exchange rate which, in the shocks we've had—in the Asian financial crisis and the global financial crisis—the exchange rate has helped absorb that shock, helped resources redistribute, helped price signals or prices to adjust, rather than volumes. That doesn't mean that it completely insulates us from these risks, but it's the way in which you would expect to see those shocks materialise. We are clearly much better placed than some emerging markets, in terms of dealing with the volatility that a floating exchange rate introduces into the system. In fact, the floating exchange rate's been a huge asset for us.

Senator WATERS: What is the differing economic effect on Australia of a 1½ degree rise in global temperatures versus to two-degree rise in global temperatures?

Mr Gaetjens: We do not do modelling on that. Can I perhaps take that on notice? But there wouldn't be any information, in a quantitative sense, that I could provide at the moment.

Senator WATERS: Have you examined the latest IPCC report, and what it means for Australia and for our economy?

Mr Gaetjens: I have not. It might be worthwhile taking up with the Structural Reform Group, when they come in.

Senator WATERS: You haven't looked at that? It's a very important report with massive economic and monetary implications.

Mr Gaetjens: I have had, in the two and a bit months I've been there, lots of things to look at, and, unfortunately, that's one that I haven't got to.

Senator WATERS: Do you not think climate change has an economic impact?

Mr Gaetjens: It does. But we have not done modelling on that, so I just can't give you quantitative answers, or one that is driven from a large piece of Treasury work that I'm aware of. I said I'll take it on notice and provide more information when I can.

Dr Grant: If I could just add, I think it's important in terms of the long-run economic impact, versus the kind of forecast period that we look at. So the *Intergenerational report*—for things that affect the long run—is often where we would think about those issues, rather than—

Senator WATERS: What do you consider the long run, just for my understanding?

Dr Grant: It's 40 years in the *Intergenerational report*.

Senator WATERS: And what time frame do you say you consider in your forecast period?

Dr Grant: We forecast over a period of two years, and we do projections for two years after that. So the budget numbers have forward estimates over four years.

Senator WATERS: Given that you said earlier, in response to a question from one of my colleagues, that the average seasonal conditions were in fact not what you'd anticipated—and all of the science will tell us that the drought will be made worse by climate change—why are you not doing modelling on the IPCC report and its impact in the short term, let alone the long-term, on our various sectors including our agricultural sector?

Dr Grant: In the short term, we monitor the drought very closely. And we are thinking about what that does mean over the next two years for the farm sector, and that's always taken into account in forecasts.

Senator WATERS: Yes; so why are you not considering the IPCC report and what it says about the drought and the implications for Australia?

Dr Grant: Simply because, to the extent that in the short run we're looking at the weather conditions that affect the economy—and those weather conditions can play out differently, because El Nino events mean less cyclones, often, in the west—we think about weather events in the short term very closely. The long run that you're talking about, Senator, would be in a projection sense, and we would look at that in an *Intergenerational report* kind of context rather than a forecast.

Senator WATERS: So the IPCC report talks about climate impacts that are happening now. It's not in the long run. The effects are being felt now, both by our regional neighbours and by us. I still don't understand why this isn't front of mind for Treasury.

Dr Grant: It's front of mind to the extent that weather conditions over the next couple of years are expected to affect the outlook. That will be taken into account.

Senator WATERS: But what are you basing those weather projections on, if you're not considering the IPCC report and what it says about how the climate is changing?

Dr Grant: We look a lot at what the Bureau of Meteorology is projecting, and what the ABS is saying for, particularly, the agricultural sector.

Senator WATERS: Are you telling me that you as Treasury haven't looked at the economic impacts of climate change in your short-run forecasts—despite the fact that we've just had the latest instalment of the global scientific community sending the strongest warning of both the planetary and the economic impacts of climate change? I find that unfathomable. I don't expect the government to care about the climate, but for you as the Treasury this should be integral to your forecasting. Why is it not?

Mr Gaetjens: To follow on from what Angelia was saying: in the short-term, these things will materialise in Australia with respect to both rainfall and other weather and climatic conditions, which can vary across Australia. As I said in my opening statement, the situation in Western Australia is very different to the east coast. With respect to cyclones and other things, you will have impacts with respect to ports closing and exports happening. There are a wide range of events that occur. To the extent that we are getting signalling from both ABARES and the Bureau of Meteorology that things in the short term are going to be different to what is expected, given that they have forecast, whether it is El Nino or La Nina, those we take into account—we're looking at things with closer proximity to what actually happens on the surface, rather than the IPCC report, which is further away from—

Senator WATERS: It's not further away. You clearly haven't read the report. It's talking about not only the impacts that are forecasted but also the impacts that are already being demonstrated. We've just seen back-to-back coral bleaching events, where we've lost 50 per cent of the coral cover of the Great Barrier Reef, one of our greatest money spinners and tourist attractions. I can't understand why you don't see that this is a problem now and why you're not factoring that into your decision-making. Do you lack the expertise or do you just not prioritise it?

Mr Legg: I think the point is that we are presuming and we expect that that information is incorporated into the advice we get from the Bureau of Meteorology and ABARES, who are closer to looking at the effect of climate change now. They internalise that information and provide that advice to us, and that's how we then feed it into our short-term horizon. The point Dr Grant is making is that when we are called on to do climate change modelling of a longer term, that is something that would be done in a different vehicle. The most obvious one is the *Intergenerational report*, which is a very long-term—

Senator WATERS: Would you do that work directly, or, again, do you have other agencies tell you all about it?

Mr Legg: The *Intergenerational report* is done within Treasury and is done every five years. It's sort of a five-yearly look at the long-term influences on the Australian economy.

Senator WATERS: Do you have climate experts in that team?

Mr Legg: But to the extent the IPCC's report says stuff about what is happening now, the agencies of government which are very close to that are the agencies for which we get advice and feed it into our forecasts.

Senator WATERS: I understand your earlier explanation. Does the team that you say is drafting those five-yearly reports have climate experts included in it?

Mr Legg: The team that knows the *Intergenerational report* is set up when it's needed to do it. Someone will have to remind me when we did the last *Intergenerational report*. I'm not quite certain where we are in the five-year cycle.

Senator WATERS: Does anyone have any climate expertise that's drafting that report?

Mr Legg: When we establish that team, we make sure it has the expertise to do the job, including reaching out to the areas of the public service—other agencies who have the expertise that we need to tap.

Senator WATERS: Have you had climate experts on it in the past?

Mr Legg: I've not personally been involved in the *Intergenerational report*, because I've actually been in this job eight days.

Senator WATERS: Can someone answer that, please?

Mr Gaetjens: We'll take that on notice.

Senator WATERS: I've got lots more questions. Should I come back later?

CHAIR: For the macroeconomic and corporate group?

Senator WATERS: Yes.

CHAIR: You can keep going. I have one quick question about household debt, if I can. I was thinking about this: about 30 years ago, we were talking about the national savings crisis at the time. That doesn't seem to be an issue anymore; now the issue seems to be household debt levels. I'm wondering whether the panel can talk us through how household debt has increased in the last decade, but also, potentially, how corresponding asset prices have gone up or increased over the same period.

Mr Gaetjens: Senator, with respect to household debt, there has been an increase over time. In fact, Michele Bullock gave a very good speech on this issue about, I think, a month ago. One of the factors that provide us with some comfort, given the high levels, is that most of the debt is held by high-income people. In fact, a lot of people create their own buffer, in terms of mortgage payments. In other words, they've got up to a year of having paid off more mortgage than they have to according to their debt terms. In actually obtaining a loan, APRA requires that you build in buffers. I think it's the lesser of either an interest rate of seven per cent or a margin of two per cent on top of the interest rate. In terms of people's ability to repay a mortgage, buffers are built into the system.

CHAIR: So the regulators have imposed those buffers?

Mr Gaetjens: Yes, that's put in. Again, we have responsible lending that ASIC manages. We see households in the top two quintiles holding about 70 per cent of Australian household debt. With low interest rates, debt servicing requirements are manageable at the moment. I think there is a net asset position or positive net worth position from households, but, again, given that most of the debt relates to housing, you would expect the value of the asset to come down if there were an issue with mortgages and debt. Again, I think we place greater comfort in the fact that it is basically held by high-income earners. A piece of work recently released by the Reserve Bank as well—it might have been in the financial stability review—is that, when people do borrow, most people in fact do not borrow to the maximum that they can. Again, they make a personal judgement themselves to borrow less than they could, which, again, is not necessarily built into the figures, but it's a personal buffer, and then there are regulatory buffers on top of that. I think it's not something to be complacent about, but it is something, when you look at the composition of debt, that provides you some comfort that it is placed mostly in those people who can most afford it. I don't know whether Chris or Angelia have any further comments.

Mr Legg: One observation, Senator, and that is that this issue has been around, on and off, for a long time. The issue has been looked at before. The area analysis and stress testing that has been done in the past always shows that the thing that really matters here is whether or not you also have a significant increase in unemployment. In terms of the systemic risk that this poses, so long as unemployment remains on a downward track and people stay in jobs, the points that the secretary's making tend to underpin the fact that the financial risks are containable. It's only if you have a significant increase in unemployment that these issues then feed into systemic issues for the financial sector.

CHAIR: So, as long as the economy stays strong and unemployment stays low, the concept of a housing debt crisis is hyperbole?

Mr Legg: I wouldn't say it's hyperbole, because you always need to be worried about these issues, but it's the unemployment factor that often shows up as being the trigger that leads a housing crisis into a financial crisis, and then broader issues.

Senator Cormann: But your fundamental point is right, to the extent that a strong economy is central to everything. It's always important to remember that, when we came into government in September 2013, we inherited a weakening economy, rising unemployment and a rapidly deteriorating budget position. Today, as a result of the plan we've implemented over the last five years, the economy is stronger, the economic growth outlook is stronger, employment growth is much stronger, the unemployment rate is well below where it was anticipated it would be and the budget position is in a much stronger position. Instead of having a rapidly deteriorating budget position—if you look at the final budget outcomes for our last two financial years, they were better than forecast at budget time. In fact, for 17-18 our final budget outcome was \$19.3 billion better than forecast at the time of the 17-18 budget in May 2017. If you look at how we are tracking so far this financial year, the monthly financial statements for the first two months of this financial year showed that we continue to track better than forecast at budget time. We inherited a deteriorating position and we're now in a strengthening and improving position. That is why we say we need to continue to head in the right direction, strengthening the economy; creating more jobs; and putting the budget on the strongest possible and most sustainable foundation and trajectory for the future, and that is of course what we continue to work on.

CHAIR: Thank you, Minister. I think we might call a break there. We will continue after the suspension with the Macroeconomic Group, because there are additional questions.

Senator Cormann: I note that we had two hours 15 minutes with the Secretary of the Treasury, who is, of course, leaving after this session. The Labor Party did not ask a single question on macroeconomic matters of the Secretary of the Treasury. I think that is unbelievable and tells you everything you need to know about the Labor Party under the leadership of Mr Shorten.

CHAIR: Thank you, Minister.

Proceedings suspended from 11:15 to 11:31

CHAIR: The committee will now resume. I welcome Senator the Hon. Zed Seselja to the panel. I know that Senator Waters has some questions specifically for the Treasury secretary. While we wait for him, we might resume with questions from Senator Ketter.

Senator KETTER: Mr Legg, I will direct my questions to you. Is Treasury concerned about the build-up of household debt in Australia?

Mr Legg: Treasury is always monitoring those sorts of risk points, and we are conscious that household debt is high, and we're conscious that it's high internationally. But, as the secretary said earlier, we're also conscious of offsetting factors which give us not a guarantee but some comfort that the systemic risks are manageable.

Senator KETTER: Okay. Is it the case that relatively loose monetary policy is encouraging people to borrow more than they previously had?

Mr Legg: It's the case that monetary conditions are accommodative, because that's the judgement: that this is where we're at in the cycle. Other settings of policy are part and parcel of delivering the strong growth that we're having. You would have to, I think, direct your question to the Reserve Bank if you want to ask whether they are appropriately accommodative or too accommodative. That's a matter for the Reserve Bank.

Senator KETTER: Is it the Treasury's position that it agrees with other organisations such as the IMF and the OECD that Australia's tax concessions on housing have tended to encourage excess leverage?

Mr Legg: I think anything on tax you should direct at my colleague in Revenue Group. I'm not personally able to comment on the details of our tax policies.

Senator KETTER: I'm going to the issue of household debt and the impact of interest rates—

Mr Legg: The factors that affect people's willingness to borrow will be a myriad of issues, including tax treatment but also availability of funding, judgements about house prices and their own demographics. So there would be a raft of issues that will be feeding into what the outcome is in terms of the housing market.

Senator KETTER: Okay, so tax concessions are part of that mix?

Mr Legg: I would say that the overall tax impact of any decision we make is something we all judge, but the tax concessions themselves would be concessions put in place for aspects of policy which the government believe are appropriate. Those in Revenue Group who advise on this would have to take account of the various factors that are trying to be achieved through those tax concessions.

Senator KETTER: So is the IMF wrong to point out this issue, that our tax concessions are encouraging excess leverage?

Mr Legg: I'm always happy to hear what the IMF says, and I take that into account. I'm not taking a black-and-white view on this at all. I think, at the margin, there are a number of factors that affect this. The IMF is right to point out one that could. But those tax concessions would also have to be lined up against the other objectives they're trying to achieve. The overall issue is whether the housing market is a systemic threat or not. We are conscious of the risks, in terms of household debt but, as I said, I think there are a number of factors that would allow one to say, 'Well, we think there are a number of offsetting factors, which would probably mean we're not facing a systemic challenge from this and that systemic risks are manageable.'

Senator KETTER: At the moment, we have persistently low levels of wage growth. So is it the case that it's going to take much longer for households to pay off their current levels of debt?

Mr Legg: Wage growth has been low, that's absolutely true. It has been everywhere in the world. We are no exception to that. We are anticipating a pickup in household income and wages because, as we talked this morning, the unemployment numbers and other factors point to a significant using up of spare capacity in the labour market. So we do anticipate that wages growth will pick up through the forecast and projection period.

My understanding of the mortgage arrangements people enter into is that those time periods are set by the mortgages not your judgement about future wages growth, although you will make that judgement individually.

Senator KETTER: But in an environment where it is taking longer for people to pay off their current levels of debt, what do you think that means for economic growth and—

Mr Legg: I don't know what you mean by taking longer. Longer than what? What is the benchmark for the length of time you expect people to pay off their debt?

Senator KETTER: If wages growth were at historical averages, but we are now below that.

Mr Legg: I presume people would continue to pay off their mortgages consistent with the terms of the mortgage and any buffers they can build in. Of course, we are conscious that people do build in buffers. At the moment, the average buffer is about 2½ years of payments. I'm not certain that there's judgement, that there's a baseline, by which we think you would normally try and pay off a mortgage and somehow it's going to be slower than that. I'm not certain I'm in the same place when you say 'longer'.

Senator McALLISTER: It's not really a normative judgement about how quickly people should, it's about trends and the overall debt load on households at any given point in time. The question that's being asked of you is: does low wages growth constrain people's ability to pay off their mortgages? And, yes, it goes to these questions of buffers and people's ability to pay off mortgages more quickly than the terms of the mortgage required.

Mr Legg: It is possible that if wages growth were higher individuals may choose to build up faster buffers, larger buffers. That's entirely possible.

Senator KETTER: Let's move on to the international outlook. The Treasury secretary touched on this. Do you agree with the recent IMF outlook that said the downside risks to global growth have risen in the last six months?

Mr Legg: Yes.

Senator KETTER: What do you see as the key risks to growth?

Mr Legg: What do I see as the key risks to growth or what does the IMF see?

Senator KETTER: Sorry, what do you see as the key risks to growth.

Mr Legg: The international risks are those that the secretary mentioned and which the IMF is itself identifying. The IMF has highlighted trade tensions in particular and has shaved some points off its growth rates for the world and for Australia in 2019, I think by about two basis points. Is that right—0.2?

Dr Grant: It's 0.3.

Mr Legg: I think we respect the IMF's view and we'll think about what they're saying when we think about our MYEFO estimates and whether or not we ourselves have to make some adjustments. The trade tensions at the moment are very worrying. They're certainly not a step in the right direction in terms of the way we'd like to see international relations develop, but they're reasonably limited in the sense that it's just over two per cent of trade that's affected by tariffs. So the macroeconomic consequences would at the moment be considered sort of light but not nothing.

Senator KETTER: Can I just ask you then—

Mr Legg: The issue is whether or not we're going to end up in a more extensively protectionist and mercantilist world.

Senator KETTER: Have you done any analysis or modelling looking at how those ongoing trade tensions, particularly between China and the US, might affect Australia?

Mr Legg: We do a lot of thinking about it. It's not something that we model in the strict sense of what you might consider a model to be. We do a lot of thinking about it. We do a lot of talking to agencies who are more directly involved in trade policy—of course, foreign affairs and trade—and of course we pay a lot of attention to what is said at international meetings by international agencies such as the IMF and the OECD. We're very aware that the current environment in trade policy is far from ideal. There is modelling done by others, outside of the public sector, which has come up with various estimates based on different assumptions. If you assume a significant increase in tariffs by all countries then Australia is affected significantly. If you assume a light, limited trade war of the type we seem to be having at the moment, it doesn't have a significant impact on our forecasts.

Senator KETTER: The IMF, in its outlook, has said that downside risks are mounting and that 'many countries need to rebuild fiscal buffers to create policy space for the next downturn'. Does the Treasury agree with that?

Mr Legg: I think that's an accurate statement about many countries.

Senator KETTER: Does Australia have the necessary fiscal space to adequately respond to a downturn?

Mr Legg: We have far more fiscal space than many, and the government is busy rebuilding the buffers as we talk.

CHAIR: Thank you, Senator Ketter. I'm in the committee's hands. Without the Treasury secretary, we can't move forward with Senator Waters's questions. Is that correct, or have you got questions for the macroeconomic group?

Senator WATERS: I've got questions that I can direct to macro, but I would've preferred to have directed them to the secretary. If he has genuinely left, despite being told that he was still required, including by the committee secretary—

CHAIR: It didn't come from the chair that he was specifically required; I thought that was implied. But, yes, I think that the secretary had.

Senator WATERS: I think the secretary said that he had specifically told Mr Gaetjens that.

CHAIR: Can those questions go on notice?

Senator WATERS: I'd prefer to ask them; they're not very long. Can I just get confirmation that in fact the secretary is not coming back?

Dr Grant: I haven't heard back from his office, so I assume that they are currently caught up in another meeting. I haven't heard anything back.

Senator WATERS: Very convenient timing. I'll push on if that's okay, Chair; I'll just ask the macro folk. Can you tell me briefly how Australia's corporate tax rate compares with comparable OECD nations right now?

Mr Legg: I think questions about tax policy and tax rates should be directed to the revenue group.

Senator WATERS: Okay. How are we faring in terms of unemployment, compared to other OECD nations?

Mr Legg: Dr Grant, would you like to discuss that?

Dr Grant: I can, yes. It is the case that unemployment rates have come down in a number of major economies. If you have a look at some of the G7 economies—and these are the most recent unemployment rates being reported—the unemployment rate in the United States is 3.7 per cent; the secretary made reference to that in his opening statement. Japan has an unemployment rate of 2.4 per cent, which is also very low, and the UK has an unemployment rate of four per cent. And of course Australia's unemployment rate currently stands at five per cent. So unemployment rates have been coming down broadly across the major economies and in Australia.

Senator WATERS: Can you tell me what the average carbon price being applied over the OECD at the moment is?

Dr Grant: I would have to take that on notice.

Senator WATERS: Can you tell me how Australia compares?

Mr Legg: How Australia compares on what?

Senator WATERS: To the carbon price of other OECD nations.

Mr Legg: I'm not certain how we would judge carbon pricing. We don't have a carbon-pricing system.

Senator WATERS: Indeed, we don't have one. My point was: are there other comparable nations that similarly don't have one? The answer would be no. But I'm asking you the questions. What's your view on that?

Dr Grant: We'd have to take it on notice.

Mr Legg: Issues around environmental policy probably should go to our Structural Reform Group, to the extent that Treasury has an active role in there.

Senator WATERS: You're Macro though.

Mr Legg: Yes, but macro is the breadth of the economy, so tax policy, what's happening with unemployment, the use of factors of production, GDP, plus the international engagement. But we don't have a direct role, in Macro Group, on the carbon-pricing debate and policy issues. That would have sat somewhere else when those issues were alive in policy debate.

Senator WATERS: I'll push on because I actually do think this is something that should sit with your group. I'm interested in what the shadow carbon price is that most Australian globally exposed companies apply to their books when managing risk.

Mr Legg: I have no idea how I would find that, but we can try and take that on notice.

Senator WATERS: Sorry, why do you have no idea? Do you maintain that's not your job?

Mr Legg: Personally, because I've never been involved in trying to find that out before.

Senator WATERS: Is that not your responsibility?

Mr Legg: I think I've just explained it's not. We—

Senator WATERS: You think that belongs with Structural?

Mr Legg: To the extent that the department is engaged in these issues, it will be in our Structural Reform Group.

Senator WATERS: I might try to ask these and see how you go. I'm interested in the economic impact of various ways of reducing emissions. What's Macro's view on which sectors have the lowest marginal cost of abatement per tonne of CO₂?

Mr Legg: We have done no recent work on this.

Senator WATERS: Has anybody in Treasury?

Mr Legg: Not that I'm aware of, but you could ask the Structural Reform Group.

Senator WATERS: But you're not aware that they've done that work either?

Mr Legg: No. As I said earlier, I've been in this particular role for eight days. In that time, it hasn't come across my desk.

Senator WATERS: But you, as representing Macro—perhaps your divisional head might be better placed then, given the brevity of your time in the role. Is this something that Macro is working on?

Dr Grant: I can't speak more broadly for the group, but, in terms of the Macroeconomic Conditions Division, no.

Senator WATERS: Are you aware: is Structural doing that work?

Dr Grant: You would have to direct that to them.

Senator WATERS: Okay. Is anyone in Treasury currently advising the government on the economic impact of reducing Australia's emissions in a manner that the government is proposing—namely, leaving out the electricity sector?

Mr Legg: Those issues would be certainly within the purview of Structural Reform.

Senator WATERS: All right. I'll take it up with them. Thanks very much for your time.

Senator KETTER: Just on the issue of wages growth, Mr Legg, are you confident that the forecast wage growth of 2¾ per cent for this financial year will eventuate?

Mr Legg: Dr Grant, do you want to comment on that?

Dr Grant: Senator, I would refer to some of the remarks that the secretary made in his opening statement.

Senator KETTER: Yes, I'm looking at those.

Dr Grant: As you know, wages growth has been low by historical standards, and it remains the case that at this point of the economic cycle it would have normally picked up a little bit more, but we have seen a pick-up in wages growth since 2016-17, and we have seen the unemployment rate fall as the economy recorded above-potential growth. In an economy that is growing above potential and where the unemployment rate is falling, you do expect wages to pick up.

Senator KETTER: Yes, but I note that the Treasury secretary talked about the fact that momentum has been weaker than has been expected, and, given that wages growth is about 2.1 per cent, is there a chance that Treasury will downgrade its forecast in the MYEFO?

Dr Grant: As you could appreciate, Senator, I can't possibly comment about potential changes to the forecast in the MYEFO, but, yes, we will be updating the wages forecast in the MYEFO to take into account any recent developments.

Senator KETTER: What's your explanation for wages growth consistently underperforming forecasts?

Dr Grant: It is the case that we are watching this globally. We put out a public piece on wages analysis in 2017, so we know that there's a large cyclical factor affecting the economy at the moment, and that's the terms of trade, as the mining boom has come off. We think that that explains some of the dynamic in wages growth at the moment.

In terms of other factors affecting wages, it is important to note that, in all of this, the more subdued wage growth has, we think, contributed to the stronger employment growth. It is the case that the economy is responding fairly flexibly in the current environment, and we're seeing quite strong employment growth, which

means that for the compensation-of-employees forecast—which is kind of what you're thinking about as the total wages bill for the economy—we didn't do too badly on that forecast in 2017-18.

Senator KETTER: What's the wages growth forecast for the medium-term projection period?

Dr Grant: In 2020-21 it's forecast to be 3½ per cent, and in 2021-22 it's also forecast to be 3½ per cent.

Senator KETTER: Turning to terms of trade, what's the assumption for terms of trade over the medium-term projection period?

Dr Grant: Over the medium-term projection period? When we do the terms of trade in the medium term, it's built up from an assessment of what happens in bulk commodity prices from a marginal cost perspective. I can refer you to page 2-28 of the budget, and it states:

The terms of trade are projected to remain flat at around their 2005 level from 2021-22.

Senator KETTER: Some people have pointed out that the medium term assumes that Australia's terms of trade are going to be about 40 to 50 per cent higher than pre the mining boom in 2003.

Dr Grant: I don't know that number off the top of my head, but it is important to note that, in the projection period, to take the terms of trade from where they are now to the 2005 level is a further fall in the terms of trade over the next five years.

Senator KETTER: Could you take that question on notice for me?

Dr Grant: Absolutely.

Senator KETTER: Given that China's growth rate is slowing, are you worried that these terms-of-trade assumptions might be too optimistic?

Dr Grant: It is always complex to work out where you think the terms of trade will be in the short term and the long term. But we're fairly confident in the methodology that's used, so we think about it from the bulk commodities perspective, and we're quite comfortable with that analysis and thinking that the 2005 level is a reasonable level to have the terms of trade settle at in the projection period.

Senator KETTER: Just turning to medium-term budget projections, can you tell me: what is the assumption over the medium term regarding productivity?

Dr Grant: We set out in the budget—we don't take a stand on productivity. We use the 30-year, the long-run, average growth rate, which I believe is currently 1.6 per cent for productivity. In Budget Statement 8, we have some scenarios around that projection, to give a sense of what it might mean for real GDP growth if it's a little lower or a little higher.

Senator KETTER: Given that labour productivity is barely growing at the moment, why do you think that productivity will pick up to these levels over the decade?

Dr Grant: It has been longstanding practice for us to use a long-run productivity growth rate, Senator.

Senator KETTER: Can you point to any recent reforms that might drive the pick-up in productivity growth?

Dr Grant: Our Structural Reform Group thinks a lot about reform and what it means for productivity in a policy sense, but, in terms of the economic projections, it's just the long-run average.

Senator McALLISTER: May I follow up, Chair? Has there been any discussion within Treasury about changing that assumption, and has there been a discussion about whether the long-run average continues to be useful on a predictive basis?

Mr Legg: Dr Grant can elaborate on this. My judgement would be that that discussion happens all the time, in the sense that we have to re-ask, every time we get into a forecasting round: does this make sense? The issue is to ask yourself: has something structural changed that would mean that there's a reason why it wouldn't eventually come back to a long-term average? What are the structural changes which would mean that a 30-year average is no longer relevant?

Senator McALLISTER: And there is a big global debate about exactly such a structural change taking place.

Mr Legg: There is a big global debate about just that. So that question is being asked and debated and internalised all the time. At this point, we haven't felt that the case warrants changing that, but we will ask that question again at the next forecasting round and the one after that.

Dr Grant: Senator, we are monitoring closely what's happening internationally, and in the wages analysis that was released last year we made reference to some of the slowing in productivity in some of the major economies and whether that has something to do with what's going on. It's very hard to know, but we always will keep watching it.

Senator McALLISTER: Yes. It's an important question, because the PBO has indicated, for example, that changes in the expectations around productivity, or realised expectations around productivity, are one of the threats that could destabilise the surplus going forward and the performance of the budget overall. Mr Legg, your evidence is that this is being constantly discussed. Has there been any specific piece of work undertaken to examine this, or is it just part of a more general discussion?

Dr Grant: Senator, there are two scenarios in Budget Statement 8. One is a lower productivity scenario.

Senator McALLISTER: Thank you.

CHAIR: Does anyone have any more questions for the Macroeconomic Group?

Mr Legg: Chair, we have an answer to Senator Bushby's question about female participation.

Dr Grant: I took that on notice, Senator, but I found the number for you. In the last five years, the female participation rate has increased by 1.6 percentage points from 58.7 per cent to 60.3 per cent. The 60.3 per cent is not that far off its record of 60.6 per cent in December, so it's quite a significant rise in the female participation rate over the past five years.

Senator BUSHBY: And a steady increase?

Dr Grant: Yes.

Senator BUSHBY: Thank you.

CHAIR: Thank you very much to the Macroeconomic Group. We will let you go.

[11:57]

CHAIR: We call to the committee the Markets Group, please, including the Foreign Investment Review Board. Good morning to the Markets Group, and welcome back to Economics estimates. I want to ask a question specifically about some legislation that went through last year regarding the Banking Executive Accountability Regime. Who is that best directed to?

Ms D Brown: Good morning, Senator.

CHAIR: Thank you, Ms Brown. When the Banking Executive Accountability Regime was first implemented it was reasonably controversial. Can I ask you what the feedback has been about this particular legislation?

Ms D Brown: As you said, BEAR was passed earlier this year. It's concerned with improving the accountability of executives. What it requires is that bank executives are registered with APRA and that their responsibilities are specifically identified and mapped. There are new obligations around acting with due care and taking reasonable steps to minimise anything that might affect the reputation and prudential standing of the bank, and it also creates consequences for when those obligations are not met, in relation to both remuneration for those executives and also the potential for very high fines.

The BEAR took effect for the big four banks from 1 July this year. It will be extended to the rest of the ADIs, Authorised Deposit-Taking Institutions, from 1 July 2019. There was evidence given at a House of Representatives committee recently from the CEOs of the big four on the effects that's happening. They've indicated that it's definitely been working to improve transparency and accountability. What they're finding is, where there's overlapping responsibility, in particular, their obligation to develop responsibility maps is really clarifying responsibilities. What they've also found is that, because of those obligations and clarity around responsibilities, there's better cascading down of people's respective responsibilities throughout the organisation. APRA has also made statements about BEAR and talked about how it would be an effective tool to improve accountability, and they hoped that the smaller ADIs will also use it as an opportunity to increase strengthening accountability and transparency of bank executives.

CHAIR: BEAR was developed and legislated before the banking royal commission was initiated, wasn't it?

Ms D Brown: That's correct.

CHAIR: Given the observations by Commissioner Hayne in the interim report of the royal commission, do you think that the BEAR will address a number of the concerns he has raised in the interim report?

Ms D Brown: I'm a little bit uncomfortable necessarily trying to presume what the commissioner might suggest, but I concur—he does raise it in his interim report. He doesn't make any conclusions but definitely has indicated in that text that it's an accountability measure within the banking sector.

CHAIR: I suppose on an aligned issue, the government is currently looking to legislate changes to penalties for corporate and financial misconduct. Can you outline to the committee what those changes might be?

Ms D Brown: Those changes will substantially increase penalties that apply under the Corporations Act and the ASIC Act. The royal commission did indicate that financial firms are seeing penalties as a cost of doing business. These penalties are substantially higher and do prevent that from being the mindset. But I might handover to Ms Williamson who can talk to you about the extent of the increase in the penalties.

CHAIR: To clarify, it wasn't the royal commission interim report that recommended these changes, was it? I was another agency.

Ms D Brown: That's right. The financial systems inquiry recommended that there be stronger penalties or that there be a review. The government responded and conducted an enforcement review task force. It reported at the end of last year and recommended higher penalties. And then the government itself actually agreed with that recommendation and suggested even higher penalties.

Ms Williamson: I'm happy to expand on that. The enforcement review task force, as Ms Brown said, made the recommendations. In April the government agreed in principle to all 50 of the recommendations of that review task force, and the penalties regime will be introduced into parliament today, I understand.

CHAIR: Can you describe those penalties?

Ms Williamson: Certainly, I'll take you through them. The increases to the most serious penalties: for individuals currently it's five years imprisonment and/or \$40,000 which will increase in the future to 10 years imprisonment and/or the greater of \$940,000 or three times the benefit gained or loss avoided, so there are significant increases for individuals with criminal penalties. For corporations it will take the current criminal tendencies from \$210,000 to the greater of \$9.45 million or three times the benefit gained or loss avoided or 10 per cent of annual turnover—the higher of those three tests. For civil penalties there are also very large increases. For individuals it will take the current regime from \$200,000 to the larger of \$1.05 million or three times the benefit gained or loss avoided, and for corporations current arrangements of \$1 million will go to \$10.5 million or three times the benefit gained or loss avoided or 10 per cent of annual turnover.

CHAIR: So these are very significant increases in the penalties that will be available to the corporate regulators. How do they compare to international standards?

Ms Williamson: I'm not sure. We might have to take that one on notice, but let me just see.

Ms O'Rourke: The international regimes really vary in the way they set up the frameworks and penalties associated with them. There was careful mapping done of the Australian ones, both current and proposed, but I think it would be useful to take on notice a more exact consideration of how they match to particularly the UK.

CHAIR: Thank you for that, Ms O'Rourke. Has there been any analysis done on the impact on the culture of financial advice industry that these increased penalties might have?

Ms O'Rourke: Because they're prospective, not retrospective, and haven't been passed yet, it's hard to be determinative on exactly what effect they will have. The Enforcement Review Taskforce did identify this, and some of the observations in the royal commission support the observation that the current penalties are not having a deterrent effect and are seen as fairly modest costs of business. We anticipate that there will be an effect in changing culture.

CHAIR: Thank you very much.

Senator McALLISTER: I want to ask some questions about the small-amount credit contract reforms. Who shall I direct those to?

Ms Williamson: Certainly, Senator.

Senator McALLISTER: I'm conscious that the exposure draft was published for consultation in October last year. It's 10 months ago that that closed. What further policy work is the department doing on the small-amount credit contract reforms following the consultation period? I assume that the Treasury believes more work needs to be undertaken.

Ms Williamson: Following the consultation process last year, we did take the feedback from that process and considered amendments that may be needed to the bill. Some of the feedback was relatively technical in nature and that is work that we have progressed, but there's obviously broader feedback that we received about the income caps and some of the impacts that may flow through from some of the changes. That's feedback that we provided in advice to government and the government is considering that advice.

Senator McALLISTER: When was that advice provided?

Ms Williamson: With the ministerial changes that occurred, I'd have to take on notice the specific date, but we have briefed the Assistant Treasurer on it. It was in September. Sorry, I'd have to take the specific date on notice.

Senator McALLISTER: So the most recent advice was in September this year?

Ms Williamson: Correct, to the new, incoming minister.

Senator McALLISTER: To the new minister. I'm interested in the first piece of advice that was provided after the conclusion of the consultations back in October last year.

Ms Williamson: I'm sorry, I don't have the dates on me of specific advice we provided through the course of late last year and early this year, but certainly advice was provided to the former minister.

Senator McALLISTER: Can you take on notice the dates on which advice was provided to the former minister in response to the feedback on the consultation draft?

Ms Williamson: Certainly.

Senator McALLISTER: Has an updated bill been drafted?

Ms Williamson: It's really a matter for the government to consider the feedback and whether they want to make amendments to the bill.

Senator McALLISTER: So no?

Ms Williamson: It's a matter for government.

Senator McALLISTER: No, it's a question of fact. Has an updated bill been drafted?

Ms Williamson: Usually, the course would be that the government would consider whether they wanted amendments and then we would seek drafting approval, usually off the back of policy authority from the government.

Senator McALLISTER: So policy authority has not been provided?

Ms Williamson: It's still with the government for consideration.

Senator McALLISTER: I'm asking a fairly straightforward question and I can see that you're coming around it in a procedural way, but my very direct question is: has an updated bill been drafted?

Ms Williamson: Not at this time, no—not to my knowledge.

Senator McALLISTER: Have drafting instructions been written?

Ms Williamson: I'd have to check on notice, sorry. We could probably come back quickly on that. Again, the key thing with drafting instructions is that they go to policy authority, so, given the advice is with government for consideration—

Senator McALLISTER: What are the areas where changes are required based on the consultation? You've mentioned income caps and other impacts.

Ms Williamson: There will be decisions, obviously, about changes to key elements of the package. The income caps in some of these elements were very fundamental and important policy reforms in the package, so those are clearly elements that would be a matter for government to consider, as to whether they want to make changes to those. Some are more technical. They go to things that, frankly, we would ordinarily expect to weed out through a consultation process. They were more minor: is GST treated appropriately for the purposes of calculating the lease cap on costs; all prohibited forms of unsolicited communication with consumers being captured—the more technical elements that we explored with stakeholders through the consultation period that we would need to amend the bill for.

Senator McALLISTER: And the more substantial ones that are not technical in nature?

Ms Williamson: The issues that are well known around income caps—

Ms D Brown: That's going to advice to government.

Senator McALLISTER: It also goes to the outcome of consultation.

Ms Williamson: I think those issues are well known. As you are aware, they are about the mixed feedback that came in around capping the proportion of income that can be devoted to consumer lease payments or to SACCs and putting a cap on costs. They're the key elements of the bill, and they were the key things we got feedback on.

Senator McALLISTER: Have you provided briefings to backbench senators and members in relation to these reforms?

Ms Williamson: No.

Senator McALLISTER: Have you prepared drafts of written material for provision to backbench members or senators in relation to the reforms?

Ms Williamson: No.

Senator McALLISTER: Have you been tasked with undertaking any work in relation to protected earnings amounts being reduced from 20 per cent of gross income to 10 per cent of net income?

Ms Williamson: That goes to the heart of the advice we've provided to government on the feedback on the bill.

Senator McALLISTER: So you've provided advice on these questions to government?

Ms Williamson: We've provided feedback on the bill and the stakeholder feedback that we've received.

Senator McALLISTER: And you're going to provide on notice the date in September that you briefed the new minister?

Ms Williamson: Yes. I'll try and get that for you as soon as I can. I can confirm that no drafting instructions have been prepared.

Senator McALLISTER: Can a copy of the briefing document for the new minister be provided?

Ms D Brown: It's not usual to provide briefing documents.

Senator McALLISTER: Has the new minister been provided with a decision brief in relation to this reform?

Ms Williamson: That goes to advice to government.

Senator McALLISTER: It's a process question, though, about where we're up to in the process. I'm not talking about the content of the decisions before the new minister. I'm talking about whether or not a decision brief has been provided.

Ms Williamson: I don't know that I can add more. We've provided advice to the minister for his consideration.

Senator McALLISTER: I separately wish to ask some questions about director identification numbers. Draft legislation has been released. I note that the legislation does not require 100 points of identification to acquire a director identification number, only that the regulator is satisfied the identification is proven. Does Treasury believe that 100 points of identification at a minimum should be required for the scheme?

Ms Williamson: We haven't come to a view on those matters yet. They are very important matters that we're consulting on as part of the process. Certainly the legislation does not preclude 100 points of ID being part of the check. But it's a matter we are consulting on right now as we think about the design of implementing the director identification number.

Senator McALLISTER: What are the alternatives?

Ms Williamson: Some alternatives could relate to digital identity, but these go to core elements that we're consulting on at the moment.

Senator McALLISTER: Yes, but when one is consulting it's reasonably difficult to consult unless you've got some options to put before stakeholders. What are the options that you are seeking feedback on in terms of establishing identification?

Ms Williamson: Given the government's policy that the director identification number will be implemented through the modernisation of business registers platform, it's important that we are thinking about that as a whole, and thinking about how that business case would come together. There's a lot of work to do to think about the design elements. Those consultations are still ongoing as we work through the business case process.

Senator McALLISTER: When is the business case expected to be completed?

Ms Williamson: We'd probably expect to be in a position to provide that to government early next year.

Senator McALLISTER: So in the first quarter of 2019?

Ms Williamson: Yes. Just to clarify, the ATO has the lead on the second pass business case drafting, but we are obviously intimately involved in the policy work and the design.

Senator McALLISTER: Does the director identification number scheme rely on the modernising of business registers program?

Ms Williamson: The government's policy is that it will be built as part of the platform, that's right.

Senator McALLISTER: So it can't in fact be implemented until the platform is completed and commissioned?

Ms Williamson: That's the government's policy.

Senator McALLISTER: What is the expected time frame for completion of the modernising of the business registers program?

Ms Williamson: There is not an anticipated completion date at this stage. Where the government is up to in its process is that there was a budget measure this year to provide \$19.3 million for a business case. That is work that is ongoing. There's heavy consultation going on with market participants, as you would expect, and detailed work to design the business case with a view to that business case being available to government for decision early next year. You would expect that to be the key decision point to then be able to progress with the bill.

Ms D Brown: Can I add one point? The modernisation of the registry will substantially enhance the way that people can interact with government and the ASIC registry. Currently it's a fairly clunky and old system. It is not easy to interact as a user of the ASIC registry. It's very limited with its IT technology. Modernising the registry will make the whole process much more efficient and user-friendly. Doing the DIN as part of that will help to minimise the compliance cost or make it more efficient to do it.

Senator McALLISTER: My concern is that at the moment we have multiple examples of phoenix operators using incorrect director information. We now have legislation which has no clear indication of how identity will be established, and the whole thing is reliant on a platform which has yet to be built and for which there is no completion date. I am concerned that the consequence of this is a delay in any practical action to stop phoenixing. That is my concern. Are there any other things you can point to that might assist in the meantime, while we're waiting for this platform to get built? I assume that will take a couple of years. It takes a long time.

Ms Williamson: We would expect a couple of years to do the build. There is the phoenixing package of reforms that we are obviously consulting on at the moment. Consultation on that legislation closed recently and we have provided advice to the minister on potential amendments that may be needed to that legislation. That is for introduction this year. That is well under way as well.

Ms D Brown: That legislation will create new offences for phoenixing, so it will deter a lot of the activity.

Senator STOKER: I'm interested in what is being done to increase competition in the financial sector. Is somebody able to outline for me any reforms that are happening to try and achieve that object?

Ms D Brown: Competition has been a strong focus of government's financial system agenda. As an element of the Financial System Inquiry, they advocated a number of reforms. The government has since added to that agenda. Some of the reforms that have been introduced would include allowing all ADIs to call themselves a bank. That issue has been adopted by many of the credit unions and building societies to improve how they are perceived competitively with the banks. Legislation is also being introduced to help new banks to establish. There are limits on how much one person can hold in a financial institution or an ADI. That is being increased. Similarly, there are new streamlined approval processes for getting a bank licence. Legislation is being passed to allow crowd-sourced equity funding, both by public companies initially, but now also proprietary companies. That again provides a new source of finance for small businesses, rather than going to banks; so it's a form of competition with finance provided by banks.

Legislation has also been introduced to expand ASIC's regulatory sandbox. Currently ASIC has a sandbox that allows certain businesses to test their new services and new business models for 12 months. The legislation will allow that to now be tested for 24 months, and will allow a larger number of businesses and services to be tested. That allows new businesses to test the viability of their business model before they get a full AFS licence. There are still appropriate consumer protections, but it avoids the need to get all the elements of the licence.

There has also been legislation introduced to create a consumer data right in the financial services space. That is manifesting itself in an open banking regime. Under an open banking regime, customers will be able to get machine readable copies of their transaction data and to give it to trusted third parties. Those third parties could be, for example, new firms that can use that data and compare it with other information to identify different or better products for customers. So again, that is increasing the element of competition by allowing people to assess and judge between products much more readily and easily. And I think in the minister's space only recently draft legislation was exposed to make it easier for cooperatives and mutuals to raise capital. A lot of coops and mutuals are in the building society or financial sector, so that is allowing them to raise capital without affecting their status as a mutual. That will make them more effective against banks.

Senator Seselja: On that last point, we had a good meeting with representatives of the sector yesterday here at Parliament House and discussed some of those reforms. There is a lot of excitement in the sector. Mutuals and

coops and member-owned firms are about eight per cent of GDP, and 80 per cent of Australians in one form or another are members of one of those. So to allow them to have greater access to capital is good for the sector, for the membership, but also for the broader economy in creating competition in the space.

Senator STOKER: What do you think the practical effect will be for consumers?

Senator Seselja: On that reform, what we are hoping is that there will be more options. If you look at international capital markets, capital has been very cheap. It's becoming more expensive, but we're seeing tightening of capital in some areas. But often these coops and mutuals provide very valuable services to members. Australians do value them, so if they are able to expand that offering—if you look at what a lot of the financial institutions in this space would look at, it's often mortgage based. That is what they will provide, but sometimes they're not able to provide small business lending and the like. We would certainly like to see that opportunity for mutuals and member-owned firms to be offering a wider variety of services.

Senator KETTER: I have some follow-up questions in relation to the cooperatives and mutuals sector. When do you expect to release the exposure draft legislation for the second tranche of legislation?

Ms D Brown: That legislation is being worked on now. Ultimately it will be a decision of government as to when it is released, but we are working on it currently.

Senator KETTER: That's the tranche that deals with the new financial instruments for mutual firms to raise capital?

Ms D Brown: That's right. There are some significant issues to deal with there, because different coops and mutuals have different constitutions, so we need to navigate around there to try and find the most efficient way of creating a new instrument that would help their sector.

Senator KETTER: Do you anticipate the legislation being introduced into parliament before the end of the year?

Ms D Brown: We are working on it as quickly as we can, but introducing legislation depends on a lot of factors. Ultimately it is a decision of government.

Senator Seselja: I think it is fair to say, though, that the government is keen for this to progress quickly. But obviously we want to make sure we get it right. There is an urgency in government to get going on this, but whether it is possible before Christmas—hopefully, but we wouldn't be able to absolutely commit to that today.

Senator KETTER: Is it Treasury's aim to have the two bills either joined together or introduced as cognate bills?

Ms D Brown: I would probably have to take that on notice. I am not aware we have given particular thought to that. We are currently progressing them as separate bills.

Senator KETTER: So you haven't provided advice to government about that particular issue?

Senator Seselja: I think the feedback for the first phase exposure draft is still going. Obviously as part of that process we will take the feedback. If that is an option we will certainly consider it.

Senator KETTER: I would like to turn to the issue of independent mechanics and the sharing of data. Has Treasury released a discussion paper on the sharing of technical car information with mechanics?

Ms Williamson: We haven't released a public discussion paper. We have circulated a roundtable discussion paper to the five industry associations that we have been consulting with on key elements to help understand the way we need to think about the design elements.

Senator KETTER: Will it be released publicly in due course?

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Ms Williamson: That wasn't our intention. It was a short paper to facilitate discussion, not a formal public consultation process, but we will obviously need to do consultation in due course on the design of the scheme.

Senator KETTER: We had the ACCC recommendation about 10 months ago in relation to a mandatory code for sharing repair and service information. Tell me what Treasury has achieved in that 10-month period.

Ms Williamson: The former Assistant Minister to the Treasurer—I provided evidence on this in May—provided a commitment from the government on 4 May to develop a mandatory scheme for the sharing of motor vehicle service and repair information. Since then, we have commenced work on the design of the scheme in close consultation with industry stakeholders. We have met with all five of those industry associations that you would be well aware of and have released that discussion paper to them and conducted roundtables with them. Basically, from where we are now, we hope to have advice to the minister by the end of this year on the potential design of the scheme.

Senator KETTER: So the discussion paper that has been circulated doesn't contain a proposed scheme?

Ms Williamson: No, it was more questions. Talking to the experts in the industry associations, we just wanted to test some of the key questions around what is a vehicle, what information should be available—key questions like that—so we can understand some of the constraints that we need to think about in designing the scheme.

Senator KETTER: How many Treasury staff are currently tasked with formulating policy options for the government?

Ms Williamson: I provided information on notice on that matter and said we had two in our team working on it at the moment, and that remains the case. I understand we have one working on this almost full-time.

Senator KETTER: And what is the expected timeframe for the mandatory code?

Ms Williamson: I know there has been discussion about a much broader automotive code; that is not what we're talking about. It is one element of the ideas that have been around on that code. It is obviously a matter for government that we would need to provide the advice around but we are working on the design of the scheme to meet the government's policy commitment on that.

Senator KETTER: So the mandatory code was for the sharing of technical information with mechanics, wasn't it?

Ms Williamson: Yes, that's right.

Senator KETTER: So are you committed to a mandatory code?

Ms Williamson: A full automotive code is not what the government's commitment was. The government's commitment related to the development of a mandatory scheme for the sharing of motor vehicle service and repair information.

Senator KETTER: So when do you expect to have a draft of this scheme available?

Ms Williamson: As I said, we would hope to be able to provide advice to the minister by the end of the year.

Senator KETTER: And how far is the actual design of the scheme progressed?

Ms Williamson: That would be the first piece of advice to the minister. We would then need to do much further work in order for it to be actually progressed to decision point. We would need to do costing work and a range of things like that. But we are actively working on it now, consulting with the stakeholders on the design of the scheme now.

Senator KETTER: What I am hearing is that, apart from the discussion paper that has been circulated, I am not hearing a lot has really actually been achieved. Is that the case?

Ms Williamson: We are actively consulting on the design elements. It is a complicated scheme, you can understand. From the May announcement, we have come a long way. We're much closer to understanding the key design elements and understanding the recommendations we should be making the government, and we hope to do that in the near future.

Senator KETTER: And which minister is responsible for this policy area?

Ms Williamson: As an Australian consumer law issue, it will go to the Assistant Treasurer.

Senator KETTER: Has Treasury briefed the new minister about this issue?

Ms Williamson: Yes.

Senator KETTER: Have any government ministers sought a Treasury meeting on access to car manufacturer information since the reshuffle under Prime Minister Morrison?

Ms Williamson: We have briefed the responsible minister on the issues.

Senator KETTER: But no other ministers?

Ms Williamson: Not to my knowledge, but could I take that on notice, please?

Senator KETTER: Okay. In October, the industry was informed that Treasury had begun the process of consulting, and the first formal meeting took over 10 months to organise. A meeting with the original five stakeholders occurred on 17 October. How long will the consultation process be for this framework, and will Treasury do more consultation, given the already extensive ACCC consultation process?

Ms Williamson: We had met with a number of those industry associations prior to the roundtable. So there had been meetings with the industry associations prior to that recent industry roundtable. We had met with them earlier this year, and I think we provided that advice to you on notice following the May hearings—that we had met with the industry associations earlier this year and have an ongoing dialogue with them.

Senator KETTER: Thank you. I will move to the Royal Commission task force, which the Treasury secretary raised in his opening statement. Can you tell me when that commenced?

Ms D Brown: Yes. I think officially we'd probably say it started on about 17 October. Prior to that, in August, we had started discussions internally about establishing a task force. That was followed by an expression of interest. I'm trying to get the exact date; I think 21 September comes to mind. Sorry, no. On 19 September, we issued an expression of interest to invite staff to participate in the task force so that we were drawing right across all the disciplines in the department to make sure it had the best set of skills. A staff note advising of the task force was sent on 11 October, so I'm claiming that as the official start date.

Senator KETTER: Okay. The secretary mentioned that the task force is responsible for developing the plan to implement a reform agenda. Perhaps you could elaborate on what that work involves.

Ms D Brown: The task force is doing a number of work streams. To date the department has provided a lot of background papers and submissions to the Royal Commission. That work's ongoing. The task force is currently preparing two submissions that are due this week: one to the sixth round of hearings on insurance, and a further submission in response to the interim report that's due on Friday. Obviously the task force is also involved in generally briefing the government about the contents of the interim report and what possible issues might arise so that the government can consider and be well placed to respond as they wish after the final report is provided.

Senator KETTER: Just to finish on this issue, can you tell me how many staff are on the task force; whether they're all Treasury staff; if not, who else is on it; and whether there are other government agencies represented on the task force?

Ms D Brown: All the staff on the task force are Treasury staff. We are progressively bringing staff onto it. Mr Kelly might be able to indicate exactly how many are currently on the task force, but we are building up to 10 staff over the next few months, and we anticipate the task force staying on to probably the start of the second quarter in 2019, after which time we'd revise what's the best way to progress forward. Maybe Mr Kelly could advise how many are currently on the task force.

Mr Kelly: I'm now the head of the royal commission task force in Treasury, so my name plate hasn't caught up with my changing role. Currently, I and about eight staff are working on the task force. As Ms Brown said, the intention is to have me and around 10 staff—that's the normal number on the task force—until a later period in which we decide how we phase out.

Senator KETTER: Is that going to be your full-time focus?

Mr Kelly: It's now my full-time job. It is the full-time job of the staff on it. A few of them have had to carry over a few other jobs from the divisions they've joined from, but the intention is generally to be full-time. I just note that some of them are part-time workers.

Senator KETTER: I presume you are liaising with other government departments. Can you tell me how that might be working?

Mr Kelly: Sure. It has been the case even before the task force that Treasury has liaised with other government departments, so we are part of an IDC process with the Attorney-General's Department and the Department of the Prime Minister and Cabinet. So that's one formal process. When we think about the regulators involved in the royal commission, there's the Australian Prudential Regulation Authority and the Australian Securities and Investments Commission. They have their own representation at the royal commission, and they are to some extent subject to examination by the royal commission, so they're not part of the interdepartmental committee. But we have regular liaison with them, whether through our normal processes or specific meetings we've set up as the royal commission has proceeded, to discuss what we're seeing, what we see as the issues and our views on particular issues and, in preparing submissions to the royal commission, we typically would exchange drafts, so we have the chance to comment on each other's submissions.

Senator KETTER: Thank you, Chair.

CHAIR: Senator Patrick.

Senator PATRICK: I was hoping to ask some questions on CKI, the APA, foreign investment.

Ms D Brown: Certainly, Senator Patrick. We will try and answer your questions, but I just have to indicate that it's quite challenging to answer questions on particular cases. They can deal with quite commercially sensitive cases, and I think that's reflected in the act, which imposes quite strict confidentiality obligations.

Senator PATRICK: Just so you are aware, the confidentiality obligations in acts are subservient to the inquiry powers of the Senate. Our powers come from the Constitution, section 49. Of course, if I ask an individual

question and you think there's a sensitivity, please let me know and we will consider that through the normal process.

Ms D Brown: Thank you. We appreciate that understanding.

Senator PATRICK: Has an application been made?

Ms D Brown: Yes, an application has been made.

Senator PATRICK: My understanding is: once an application has been made, there is a statutory time frame, in respect of a decision being made, of 30 days—is that correct?

Ms D Brown: There is a statutory time line, but I might ask Mr Brake to talk to you about the practical application of that time line.

Mr Brake: Yes, the act does provide a time period for applications of 30 days, as you said. The practical effect on these large cases is, generally, it takes more than 30 days to deal with these types of cases.

Senator PATRICK: There is a provision that allows the minister to extend that time, isn't there, by a further 90 days—is that right?

Mr Brake: That's correct. There's a capacity for the Treasurer to issue what's called an interim order, which does provide an additional 90 days to make a decision. But—I'll just talk in general terms, because Ms Brown talked about the difficulties of talking about a particular case—in general terms, for large cases where there is a requirement to take more than 30 days to go through all of the issues and to make a decision, it is open to the applicant to request an extension of the statutory time period. So there's essentially two ways in which the statutory time period can be extended. One is for the applicant to request an extension, and the second is through an interim order. The issuing of an interim order is relatively uncommon.

Senator PATRICK: In respect of the CKI, what was the date of the application?

Mr Brake: I'll take that on notice.

Senator PATRICK: An approximate month? Was it last month, the previous month? Have we passed the original 30 days?

Ms D Brown: They entered into the implementation agreement in August. I believe the APA put that on the ASX on notice—I think it was August. We can come back with when the third application then followed.

Senator PATRICK: So it would have been past August, and you have had an application at some stage. So you would anticipate this would be a more complex consideration. Is there any feel you've got in terms of time frames? I note there are statutory time frames, so there's an expectation that you would perform your duties with relative promptness.

Mr Brake: Treasurer—sorry, Senator—

Senator PATRICK: I'll never be the Treasurer, I can assure you of that!

Mr Brake: The Treasurer did get asked questions about the process, and he said that there will be an announcement made in due course.

Senator PATRICK: Yes. I'm trying to get down to the detail of this. It shouldn't be a secret that you are performing a duty, a public duty, in respect of conducting analysis. I'm not suggesting what the time frame would be. It's not unreasonable to ask: Do you anticipate it being completed within 30 days? Has an application been made for an extension by the applicant? Do you expect one? You've got a matter on foot. You must have assigned resources to it. Those resources must at least have established what work is involved. It's not unreasonable to ask an approximate time frame. It's not that I'm going to hold you to it. What's your current thinking on that?

Ms D Brown: There are challenges with stating an approximate time frame, because we are dealing with an entity.

Senator PATRICK: Sure.

Ms D Brown: That's the subject matter. Our position is that it's a listed entity, so we are trying to manage market reactions to those types of specific details. That's the challenge we're having in being able to indicate a time line.

Senator PATRICK: The market's aware that the FIRB is making a determination, and will already have factored that into the price of the stock. As we see when these announcements are made, the stock price changes. People are very aware of the processes. I can't see how providing a date is going to in any way influence the stock price.

Ms D Brown: I think it's just that expectations created around that date can cause market issues, which we're conscious of managing.

Senator PATRICK: All right.

Ms D Brown: I can assure you we're working on it expeditiously and going through the appropriate process.

Senator PATRICK: I'm going to insist on an answer, and you can advance a public interest immunity claim, or refer back to the minister if you don't. I'll then ask the committee to consider your answer. I know governments don't like to put dates around things because they might be asked to perform and meet performance criteria. It's a simple question: what's the expectation? Is it one month, is it two months, is it three months, is it four months or is it more?

Mr Brake: Senator, I'm not sure there's too much that we can add. I think one of the issues is that ultimately it's not a Treasury decision; it's the Treasurer's decision.

Senator PATRICK: Sure.

Mr Brake: That's why I think we'll have to ask to take it on notice.

Senator PATRICK: So the decision goes to the Treasurer. Let's constrain it to when you make a recommendation to the Treasurer. I understand you're not an independent statutory authority, but you provide advice to the Treasurer. When do you expect to provide that advice to the Treasurer?

Ms D Brown: If we can take that on notice—

Senator PATRICK: The question is: do you know? Does anyone in the room have an understanding of how long it will take?

Ms D Brown: We provide advice when we are ready to give advice, when we have collected all the relevant information and are able to provide advice.

Senator PATRICK: The question I'm asking is: is there anyone in this room who has at least some inkling or knowledge of how long this will take? Do you know? Have you been advised on it?

Ms D Brown: We are working on it expeditiously and as efficiently as we can.

Senator PATRICK: Respectfully, do you know? I know you're working on it expeditiously. I'm trying to understand. Have you been given advice in respect of how long this will take? It's a simple question. Either someone has given you advice or they haven't. It's a yes or no answer.

Ms D Brown: We've had various discussions.

Senator PATRICK: Yes.

Ms D Brown: As to whether there is a specific date, there's not a time line set like that. It depends on information that comes in, how long it takes to assess it, whether there's further information to gather, whether there are further people to talk to, to consult with. So saying we will provide advice on a specific date is not the way in which the process works.

Senator PATRICK: Do you anticipate the requirement for an interim announcement to be made, for the 90 days?

Ms D Brown: As Mr Brake said, they're issued very rarely, and there are two ways of managing the time line.

Senator PATRICK: Are you aware of any date?

Mr Brake: I've got, unfortunately, nothing that I can add to my previous answer on this. It is a matter for the Treasurer.

Senator PATRICK: All right. So I'll ask that you take it on notice. Just to be clear: that's not the question I'm asking. I'm asking: are you aware of a date? You either are or are not. Are you aware of a date, or a time window, in which there is an expectation that a decision or a recommendation will be given to the Treasurer? Has anyone in the department given you advice? Have you mapped this out? Are you aware? I'll come to whether or not you then provide that answer to me. I just want to know: are you aware of it?

Mr Brake: I think Ms Brown's answered the question.

Senator PATRICK: No, I'm asking you.

Ms D Brown: Is the question: are we aware of a date, a particular date, we'll be advising the Treasurer—

Senator PATRICK: Have you a planned date? Have you an approximate date range? I'm not after a specific date.

Senator Seselja: In the end, it's the Treasurer's decision.

Senator PATRICK: I understand that. I'm not trying to get to the Treasurer's decision. There's a process that gets runs through first. I'm trying to understand that process.

Ms D Brown: We have a plan, a rough plan, but having a particular date—

Senator PATRICK: Thank you. What does the rough plan say in terms of dates?

Ms D Brown: Because of the 30-day statutory limit, there's always a date there that we're conscious of.

Senator PATRICK: What is that current 30-day date?

Ms D Brown: I don't know. I'd have to take that on notice.

Senator PATRICK: You've got a whole bunch of people in the background. Can we maybe get an answer, before we move on to another outcome, in respect of the date the application was made, then we can clearly work out when the next—

Ms D Brown: Again, if we can take that on notice. There are sensitive issues that we're managing.

Senator PATRICK: Surely there is someone in this building that knows the date of the application. Surely you can pick up a phone, make a call—yes, no?

Ms D Brown: We could find out the current date—

Senator PATRICK: Thank you.

Ms D Brown: but whether we can disclose that, we want to give that some further thought. As I said, we need to manage a number of sensitive issues, commercially sensitive issues, around whether it is something we can disclose.

Senator PATRICK: Okay. What harm would come from providing a date? If you're going to advance public interest immunity, you are going to have to provide a specific harm that flows from providing this committee with that information.

Ms D Brown: I suppose it's not a question we've previously been asked. I don't believe we've previously disclosed dates along the line of FIRB cases, if Mr Brake can confirm that. We don't commonly get asked for particular dates, so we'd have to assess what that would mean when we're involved with an entity that's listed on the stock exchange. We wouldn't want to have unintended consequences for the market.

Senator Seselja: The officials are doing their best to answer your question without prejudicing the issue. They have taken it on notice, so they will come back to you with an answer.

Senator PATRICK: I understand you may wish to advance a public interest immunity claim. You haven't done that yet—or the minister hasn't done that yet. The question was whether or not you can at least have that knowledge, sitting at the table, today.

Mr Brake: I am aware of what the current statutory date is.

Senator PATRICK: Okay. I don't know why it took so long to get to that point, because what's going to happen now—I'll probably lose the call, but I am going to insist on a further line of questioning, as I'm entitled to. This shouldn't be like extracting teeth. Just be up-front, say, 'I've got a date. Now we're going to advance public interest immunity.' That will make things a lot quicker. So we now know that you are aware of the date. Can you provide me with the date now?

Mr Brake: Senator, I think we've answered that question. Part of our issue here is that we take your point about the Senate's powers, but the parliament has enacted legislation about confidential information.

Senator PATRICK: And I will point out very explicitly there are instances where the parliament then overrides those powers in the Constitution. An example is section 37 of the Auditor General Act. I've been through this with the tax office; they now appreciate that, actually, I'm sorry, you're going to advance the public interest immunity. Your legislation does not apply here unless it explicitly states that the parliament has decided to carve out, for its own purposes, a power to ask you a question.

Senator Seselja: Senator Patrick, that is all true, but those are matters for committees and the Senate as a whole to insist on—

Senator PATRICK: Sure, and I'm happy to go to the committee—

Senator Seselja: It's not for individual senators. So the department are doing their best to answer your questions whilst dealing with the sensitivity around the issue and dealing with the various legislation. So what they have done is they've taken the question on notice and they'll come back to you. And, if there are to be any claims of public interest immunity, then they can be made. But the question has been taken on notice.

Senator PATRICK: Minister, he doesn't need to take the question on notice.

Senator Seselja: Well, I'm taking a question on notice, and we'll come back to you.

Senator PATRICK: No, no. Please, just hear me out.

CHAIR: Senator Patrick, I think we've reached an impasse here. I think the committee has been—

Senator PATRICK: No, I would like to continue to press this.

CHAIR: Well, your time is up and I would like to give the opposition a chance to ask some more questions before we break at one o'clock. Are you happy for the committee to take that question on notice and move on?

Senator PATRICK: I'm just explaining, Chair—

CHAIR: You don't need to explain it to me; you need to explain it to them. Are you happy to take the question on notice?

Senator PATRICK: No, because they actually don't need to take it on notice. They have the answer there.

CHAIR: They've told you that they're going to take it on notice.

Senator PATRICK: No, the next stage in this—

CHAIR: You don't need to argue with me, Senator Patrick.

Senator PATRICK: The next stage in this, respectfully, Chair, is that they need to advance the public interest immunity. They don't need to take it on notice. They know what the answer is. So the next proper stage—

CHAIR: But I think they have taken it on notice, and then they will get back to you.

Senator PATRICK: They don't need to.

Senator Seselja: We've taken the question on notice, so we will come back to you with an answer. If the answer satisfies you or if it doesn't, you can look into it.

Senator PATRICK: I have some more questions in relation to this. I'm sorry it took so long. I'm just trying to get a date.

CHAIR: That's okay.

Senator KENEALLY: I have some questions regarding revenue implications for the 5G spectrum auction. I am not entirely sure if this is the right area. I believe it should go to markets because of the competition issues.

Ms D Brown: That would be Revenue Group.

Senator KENEALLY: There are some competition issues. Would it be all right if I asked the question, or have you had no involvement in this whatsoever?

Ms D Brown: You can ask the questions and my colleagues will appreciate the advance warning, but we've had nothing to do with it.

Senator KENEALLY: I might ask. As I hope you're aware, the government has an auction of 5G mobile spectrum scheduled for 18 November. Just briefly, there is roughly 120 megahertz of radiocommunication spectrum being auctioned. The maximum amount which can be required by any one carrier is set at 60 megahertz in metropolitan areas. So that would indicate that two megahertz acquisitions are possible under the auction design. At the time of the announcement there were three potential incumbent mobile network operators who could bid for that spectrum. I understand that Optus and NBN Co were not permitted to bid for the spectrum based on existing holdings. This is the key point. On 31 August, TPG and Vodafone announced they would form a joint venture for the purpose of bidding for the spectrum as a single entity. That's got the practical effect of reducing the number of incumbent mobile carriers permitted to bid for two lots of spectrum to two bidders. So has Treasury provided any advice about the auction design in light of the joint venture, after it was announced by TPG and Vodafone?

Ms D Brown: Apologies, we aren't the right group. Given the question, it will not be Revenue Group but Structural Reform Group that that question should be directed to.

Senator KENEALLY: So basically you haven't had anything to do with that?

Ms D Brown: No.

Senator KENEALLY: We will take that up with Structural Reform Group. I might move on to ticket scalping and reselling. Is the correct group here now? Excellent, good. What work has Treasury done in the lead-up to the 2018 Consumer Affairs Forum in the realm of policy response to ticket-scalping and reselling scandals?

Ms D Brown: I might let Ms Williamson start that question.

Ms Williamson: Ticket reselling is on the agenda for the consumer affairs meeting that is taking place on Friday this week, and ministers will be considering the outcomes of the regulatory assessment on options to

respond to ticket-selling issues, and there will be an announcement after the meeting communicating their decision on the issue. Certainly five options to address ticket-selling issues were canvassed in a regulatory impact statement that we released for consultation last year and we received feedback on. I can run those through with you quickly if they're useful.

Senator KENEALLY: That would be quite useful, yes, thank you.

Ms Williamson: The five options were basically the status quo, including a consumer education campaign that has now taken place around measures to improve consumers' understanding and awareness of the secondary ticket-selling market. The other options included a national ban on ticket reselling, a price cap on resold tickets, mandatory disclosure of information by ticket resale sites and a national ban on the use of ticket-buying bots. So those elements we consulted on and received feedback on last year, and consumer affairs ministers will consider the outcome of that consultation at their meeting on Friday.

Senator KENEALLY: Thank you, that's helpful. Was the Consumer Affairs Forum delayed this year?

Ms Williamson: Yes. It was previously scheduled to take place on 31 August, and it has been rescheduled to be this coming Friday, 26 October.

Senator KENEALLY: What was the reason for the change in date?

Ms Williamson: With a change of minister in the role at the Commonwealth level there was a request from the Commonwealth to the Tasmanian chair if the meeting could be rescheduled.

Senator KENEALLY: Did Treasury prepare written material to inform the Consumer Affairs Forum decision-making?

Ms Williamson: Sorry, Senator, can you repeat the question?

Senator KENEALLY: Let me put it this way: has Treasury given any briefings or prepared drafts of written material to Minister Robert in relation to these reforms?

Ms Williamson: Yes, we have briefed the minister.

Senator KENEALLY: Are you able to provide copies of any written material that you have provided to the minister?

Ms Williamson: No, sorry. That would be advice to the minister.

Senator KENEALLY: Sure. Had this material been provided to the assistant minister, Michael Sukkar?

Ms Williamson: Yes, we had briefed the minister on the CAF meeting—the former minister.

Senator KENEALLY: So we had a minister and a government, then we had a change of Prime Minister, so this matter has been deferred as a result of the change in ministers. It seems that there will be a delay on any decision being taken by the government on addressing ticket scalping and reselling as a result of the change of ministers.

Ms Williamson: Yes. There was a delay to the CAF meeting, and that's where the decision will be made on Friday.

Senator KENEALLY: Chair, we will put the rest of our questions on notice.

CHAIR: Okay, and Senator Patrick seems to have just ducked out, although he does want to pursue this line of questioning. We might suspend a little early for the lunch break, but we will have to return with Markets Group.

Ms D Brown: Can I confirm whether it will just be questions in relation to foreign investment and FIRB after the break?

CHAIR: The coalition has no questions and the Labor Party has no questions, so I think it will just be FIRB.

Ms D Brown: The committee would be okay if we sent the rest of the Markets Group colleagues back to the department?

CHAIR: Yes, I think that would be fair enough.

Proceedings suspended from 12:57 to 14:03

CHAIR: The committee will now resume with the Department of the Treasury, Markets Group.

Senator PATRICK: Before I come back to FIRB, I will ask very quickly some questions about grandfathering. I note Treasury made a submission to the royal commission. Are you familiar with the submission?

Ms D Brown: I am.

Senator PATRICK: I'm want to talk particularly about grandfathering payments. In that submission, Treasury noted:

Legislative action to end grandfathering and replicate the BT example would be complicated.

Can you elaborate on those complications.

Ms D Brown: In part, the complication stems from the fact that the commissions apply across a range of products—you've got life insurance, financial advice and other types of commission types. You probably want to do it on a case-by-case basis. An outright ban might affect different industries differently, so you want to be sensitive to the different impacts in each particular industry or sector.

Senator PATRICK: You don't see any constitutional impediment in terms of just compensation? That's not on your radar as a concern?

Ms D Brown: When the bill was first put forward there were some constitutional issues raised. That's something we're looking into further.

Senator PATRICK: You might be aware that I put out an exposure draft in respect of grandfathering. I'd be very happy for the government to simply take that over. That would suit me fine. I'm just wondering whether Treasury are considering doing something—sorry, whether perhaps the minister or the government are intending to do something along those lines, noting the recommendation of the royal commission. Is that on anyone's radar at this point?

Ms D Brown: The royal commission's *Interim Report* didn't make any recommendations, and the government has indicated it will wait for the final report, due in February.

Senator PATRICK: You're right, it didn't make recommendations, but the commissioner did say he couldn't reconcile grandfathering with good practice—that's a summary of what he said. I thought that might have given rise to a discussion inside the department in respect of introducing legislation in that regard.

Ms D Brown: Whether legislation is introduced is a matter for government. I think their position has been to wait for the royal commission to conclude and make recommendations. One of the functions of the task force is to think about those issues and about what we would need to be well placed to support the government, should they wish to act quickly post the final report.

Senator Seselja: Of course, Senator Patrick, constructive contributions from the crossbench, like yourself, are always considered, and so those things—

Senator PATRICK: I think we have already contacted the government on it, as well. I was just wondering what Treasury's thinking was. Thank you very much for that. I presume someone will make a submission. Were I to table that, and referred it, I'm presuming Treasury would make a submission to a Senate inquiry in relation to that.

Ms D Brown: We look at it case-by-case, but either we make submissions or if we were called to appear in person we will always appear in person.

Senator PATRICK: Moving back to FIRB—I know it was like a dental operation before the break. I'm having difficulty in getting a straight answer. I don't mind if you say, 'I know the date, but now we need to talk about whether I can reveal it,' but please don't have many press to work out what your knowledge is.

CHAIR: Senator Patrick, we've had some advice on your request. Apparently, the officials are within standing orders to take the matter on notice as to whether they are required to seek public interest immunity.

Senator PATRICK: I was going to say that I'm happy for the minister to say that he'd like to refer it in respect of public interest immunity—that's fine.

Senator Seselja: That's effectively what I was doing earlier. Just to clarify, I've taken it on notice on behalf of the government. Obviously, we will come back to you. There's consideration of whether there will be a claim of public interest immunity, which of course only the Treasurer can make.

Senator PATRICK: Yes, and I respect that.

Senator Seselja: Given the sensitivity, we've chosen to take it on notice. When we come back with our answer you will either be satisfied with that answer or very unsatisfied, and then you can pursue it further if you're not satisfied.

Senator PATRICK: In relation to the FIRB processes, there was a recommendation out of the Senate committee that looked into the FIRB, whereby they suggested—in fact, the government agreed, I think, to the recommendation of publishing:

The committee recommends that Treasury publish guidance about the foreign investment review assessment process including information on the steps and features of the process.

The Treasury agreed to that. I've looked on your website, and there are a couple of documents. Is the policy document on the website the outcome of that agreement or is there some specific process document somewhere?

Mr Brake: There is a lot of guidance on the website.

Senator PATRICK: That's my difficulty.

Mr Brake: There's I think close to 50 guidance notes on various aspects plus the policy document that you refer to. We constantly monitor them and update them as appropriate for government initiatives. The report you're referring to I think is a few years old now. I can certainly say that we keep updating the material and we seek feedback on foreign investors and others as to the utility of that. We try and keep it up-to-date.

Senator PATRICK: I will refer you to the government response, in February 2017, where it agreed to that recommendation. It would be helpful if you could perhaps locate the document, because you said there is an agreement here that you would publish guidance. Even if it is to direct me to where the guidance that flowed from that recommendation is, it would be very helpful. Just in general, and I don't want to go into the deliberations of what you're considering, from an oversight perspective, I'm curious—and I don't want to do this ex post facto—as to the rigour of your approach to this particular acquisition. Who is FIRB likely to consult? Is it in terms of state governments? The ACCC has a view on pipelines and so forth. Could you give me some idea of who you might approach? I'm not going to ask you what the deliberations might be.

Ms D Brown: So we'll answer the question in general terms.

Senator PATRICK: Thank you.

Mr Brake: As with all large critical infrastructure cases, we obviously have a very robust process. We engage with state governments; we engage with the ACCC. In this particular case, the ACCC had its own inquiries—

Senator PATRICK: Of course, yes.

Mr Brake: and it came to a view on that, which you may be aware of. So that has happened. We always engage with the ATO on significant cases. We also engage with the Critical Infrastructure Centre and national security agencies.

Senator PATRICK: That's pretty new, isn't it, the critical infrastructure arrangement? Can you, maybe, expand on what the role is of the critical infrastructure committee—was it?—and what things they consider?

Mr Brake: Sure. It's the Critical Infrastructure Centre. You're right. It is pretty new. January 2017 was the announcement by the Treasurer and then Attorney-General. It's now located within the Home Affairs department. It's got several roles. One role is to provide advice to the Foreign Investment Review Board as needed. On larger cases, the CIC will produce what's called a coordinated assessment, where they look at the national security issues involved in a particular transaction. What I want to emphasise is they look at the national security, which is one part of the broader foreign investment test, which is about national interest. Their focus is on national security. They themselves will engage with a range of agencies to inform that coordinated whole-of-government assessment process. The CIC provides that advice to the FIRB through the Treasury.

That's one of its roles. Another role is what we call the proactive role, where they will look at national-security issues from foreign involvement. It's not limited to foreign owned firms. They look at national security risks and, essentially, work with owners to identify those risks and help mitigate those risks.

Senator PATRICK: That's outside the FIRB process, then—thank you very much for that. Is a coordinated report likely, in this particular instance?

Mr Brake: I think the Prime Minister has indicated that this would be the sort of place where the CIC would be involved.

Senator PATRICK: Let's go to very general now, but I will use the example. The ACCC, in its review of the CKI acquisition, made the point that it can't consider or block a merger on the basis that it doesn't change the status. So we have a monopoly arrangement. If it doesn't change that arrangement, he has no power to stop something. If he had two companies merging that did create a monopoly, he can. So the end state is of interest to me as the monopoly status. The ACCC couldn't deal with that issue. Is that something that the FIRB looks at in any acquisition from a national interest perspective?

Mr Brake: I don't want to go into, obviously, advice or considerations about this case.

Senator PATRICK: No, I'm not talking about this case. Can we be clear that that's not what we're talking about.

Mr Brake: But, as a general principle, the FIRB is responsible for advising the Treasurer on the national interest, which is not defined by statute. So it is open to the FIRB, as it is open to the Treasurer, to take into account all considerations which, ultimately, the Treasurer thinks would weigh on the national interest in a particular case.

Senator PATRICK: I remember in the case of Landbridge and the port of Darwin there was controversy because Defence were either notified late—I can't remember the exact nature of the controversy. But I presume Defence would be involved through that critical infrastructure council.

Mr Brake: Yes. The CIAC has secondees from a range of agencies, including Treasury, DFAT and Defence.

CHAIR: Senator Patrick, I just wanted to point out that I had this place running like a Swiss watch until you turned up. We're already 15 minutes over time. Are there any questions you can put on notice so that we can get on? There are a lot of senators lined up to talk to the ATO.

Senator PATRICK: I've just got a couple to go. In respect of this particular takeover, has the FIRB received any instructions from the minister in respect of how it should be approached and, indeed, in relation to timing?

Ms D Brown: The Foreign Investment Review Board, as Mr Brake said, is an advisory board to the Treasurer. On a case of this nature, or a complex case, there could be quite frequent or quite a number of conversations between the FIRB and the Treasurer to discuss the range of issues. But the decision is the decision of the Treasurer, and the Treasurer has that national interest test, which can cover—

Senator PATRICK: Sure, so in some sense it comes to process—that a lot of administrative decisions are made by people gathering data, making a recommendation, and they hand it to the decision-maker, and the decision-maker really doesn't get too involved until such time as they have all the information before them. But you say this is a more iterative process.

Ms D Brown: It varies case by case, but it can be an iterative process.

Senator PATRICK: This is my last question. In this particular instance, has the Treasurer made any direction or suggestion to the FIRB in terms of the time frame required for the recommendations to be handed to the Treasurer?

Ms D Brown: I'm not aware of any such direction from the Treasurer.

Mr Brake: No, I'm not aware of any direction from the Treasurer to the FIRB on the matter.

Senator PATRICK: Thank you, that was very helpful.

CHAIR: Thank you very much to the Markets Group. I want to be 100 per cent clear: you are going to take the question from Senator Patrick on notice to assess whether there is a need for a public interest immunity claim and come back to the committee when questions on notice are due, which is 13 December.

Australian Taxation Office

[14:18]

CHAIR: I am now going to call on the Department of Treasury Revenue Group, along with the Australian Taxation Office and the Australian Charities and Not-for-profits Commission. Senator Seselja, I think you're here until Senator Cormann comes back.

Senator Seselja: Yes.

Senator BERNARDI: Chair, I've just got a few minutes of questions. I have another commitment at three o'clock.

CHAIR: I'll let Commissioner Jordan do his opening statement, I'll give the opposition 10 minutes and then I'll go to you, Senator Bernardi, as long as you're happy with that.

Welcome, Commissioner Jordan, the Revenue Group, officers of the ATO and the ACNC. I understand, Commissioner, that you are the bionic man; you have two brand-new knees.

Mr Jordan: I have, but I thought for my first outing as such—I certainly didn't want to miss the opportunity to come to this committee.

CHAIR: I know you love estimates! Do you have an opening statement?

Mr Jordan: I do—a shorter one than normally, but I'd like to do that if I could. As I said, I've been looking forward to sharing with the committee today an update on some of the achievements over the last six months, since our last hearing. I should say, we continue to take the fight to the big end of town, particularly those multinationals who try to cheat the honest taxpayers of Australia. Only recently we confirmed that, with the help of the Tax Avoidance Taskforce, the ATO has raised over \$10 billion in tax liabilities against multinationals,

large corporates and wealthy individuals. We've already collected more than \$5.6 billion in cash that has been returned to the Australian community.

Our current focus on wealthy individuals and associated groups, including trusts and aggressive tax planning, includes reviewing or auditing 700 different taxpayers. We're also focused on driving domestic and international collaboration with our partner agency in the fight against tax crime. As part of the Joint Chiefs of Global Tax Enforcement alliance, which we recently helped to establish, we are working with our colleagues in the Australian Criminal Intelligence Commission, alongside other administrators that have responsibility for addressing tax crime in Canada, the UK, the US and the Netherlands. This will allow us to take joint operational activity against the enablers of international tax crime. Our enforcement work is made possible by laws like the MAAL and the DPT, our task force resources, and our powers, which are comparable to those of revenue authorities in other OECD countries.

In July we released our Individuals Not in Business income tax gap, which was a figure of \$8.7 billion, or 6.4 per cent of the theoretical total, for the year 2014-15. Our tax gap program measures the performance of each market, and for individuals we do see a lot of overclaiming of small amounts but by a lot of people, which does add up to a large amount. By far the most common driver of the tax gap for this group was incorrectly claiming work-related expenses. So we have stepped up our awareness and education to help people get it right this tax time. Interestingly, we are this year starting to see a decline in the overall value, and I think, for the last 20 years, each year the value of work-related expenses has gone up. This year, although it's not over yet, and this is very tentative, we are actually seeing a decrease for the first time in over 20 years in the value of overall work-related deductions being claimed, showing that Australians have heard the message, hopefully, and reflected on that, and are taking maybe some extra care in the size of their deductions for work-related expenses.

Considering all this success, it is still very disappointing that there continues to be public commentary about our relationship with small business. So I do think it's important that we reset the conversation to be more future focused. I want to draw a line in the sand here so that we can move forward, and hopefully other commentators will as well. Commentators who continually use very emotive terms and portray a somewhat one-sided account of isolated cases as representing every small business's experience really undermine the integrity of the system and the confidence in it, and hopefully that is not pushing small businesses away from making contact with us if they are in some difficulties.

At the ATO we are constantly looking for ways to support small business. This year alone we've delivered a range of improvements that we have been working on for some time. These include bringing forward the launch of our independent review for small businesses, that pilot; reviewing our penalty relief approach for people who have had a first-time issue to say that if they've got a good history they won't be penalised; speaking directly to a lot of small businesses about the irritants they see in their interactions with us and to reset our program of interactions; and ensuring that all objections and reviews are conducted under our independent appeals second commissioner, Andrew Mills. All objections have been conducted under him since July 2015, with the exception of the ABN cancellation objections, which moved to the independent appeals second commissioner in June this year. We've also provided small business with a dedicated complaints hotline. We've supported Curtin University to establish a tax clinic for unrepresented taxpayers and are looking at how we can expand that into a network. And we have invited the ANAO to review our management of small business end-to-end debt processes—to have a look at all those and report back to us.

As the commissioner, I'm committed to a small business experience where we listen to and understand their individual circumstances, we simplify processes and offer streamlined pathways to resolve concerns and we differentiate our approach and offer tailored support. But of course we still have a job to do, and as custodians of the tax system we know that every market, including small business, will require our attention and our compliance efforts. So I just want to say before finishing that a lot has really changed since I became commissioner in 2013. And in essence I'm asking people now to step back and see us for who and what we are today. We are known as one of the leading tax administrations in the world, and that's largely as a result of our reinvention program. I was brought in to change the way we work, and I do believe that we have made significant progress. Naturally there is still more we can do. But we have already reduced red tape. We've streamlined processes. We've improved the culture of the people at the ATO. This is all part of our ongoing commitment to being an administrator that is known for contemporary service, expertise and integrity.

So, in closing, I'd like to acknowledge the contribution of two significant tax officials: Second Commissioner Neil Olesen, on my right, has recently announced that he will retire after 35 years of contribution to Australia's taxation and superannuation systems. Among his many achievements over that time, Neil has most recently been a driving force behind our cultural shift from that compliance to engagement, reflected even in the change of the

name of the group from Compliance Group to Client Engagement Group, to improving the client experience and to really being the driving force behind our tax gap program. Ali Noroozi will shortly finish his second term as Inspector-General of Taxation, and I thank him for his service. As Ali has said, there is a healthy tension that exists between the scrutineer and the scrutinised, and I believe our work together has helped to improve the system for all.

CHAIR: Thank you very much and, can I say, thank you and congratulations to Mr Olesen for his 35 years of service. Your contribution is greatly appreciated. Is this your last estimates?

Mr Olesen: Sadly, yes.

CHAIR: We're very sorry for you!

Senator KETTER: I'll start off with Revenue Group questions. Earlier today, the Treasury secretary has said that it's a matter for Revenue Group as to whether or not a Treasury submission will be made for the House committee inquiry into dividend imputation. Can somebody tell me whether Treasury will be making a submission?

Ms Mrakovcic: We are still considering whether or not we will put a submission in. We haven't reached a final landing position but we are considering the issue.

Senator KETTER: Is there a deadline for submissions?

Ms Mrakovcic: I believe it is early November. For some reason, 2 November is in my mind. I don't know, has anyone else got that information on exactly when the submissions would be due?

Mr McCullough: I'll look it up.

Ms Mrakovcic: I believe it is very early November.

Senator KETTER: Were you invited to make a submission to the Senate inquiry?

Ms Mrakovcic: Yes, we were.

Senator KENEALLY: Does Treasury usually make a submission when they're invited or are there times when they would choose not to?

Ms Mrakovcic: I think we reach a decision on whether to make a submission or not depending on whether we believe we have anything valuable to add to the discussion. So if we believe that there is something that we think we would have a value-add or a comparative advantage in providing that information, I think that that would be an important consideration for us.

Senator KETTER: Is that the only consideration in relation to this particular matter on dividend imputation?

Ms Mrakovcic: I believe it's the only consideration for me that I've taken into account in terms of thinking about whether or not we will. As I said, I still have to reach a final decision on that.

Senator KETTER: Since the appointment of the new Treasurer, have you been asked by him or his office to provide any advice or analysis of any of Labor's tax policies?

Ms Mrakovcic: I can't recall. I will have to take that on notice.

Senator KETTER: Okay. If the answer is, yes, could you also advise us which policies and when did the request occur?

Ms Mrakovcic: I will take that on notice.

Senator KETTER: Okay. Thank you. Moving to the final budget outcome, and continuing on with questions to Revenue Group, page two of the final budget outcome has table one. The last column provides a comparison of the estimate. If you look under the first sentence of underlying cash balance underneath the table, it says that the 2017-18 underlying cash deficit was \$10.1 billion, an improvement of \$19. billion, compared with the estimate of the time of the 2017-18 budget. That seems to be a change of practice, because previously the comparison was with the most recent budget estimate. Is that the case?

Senator Cormann: This is actually not a question for Revenue Group, because the presentation of the final budget outcome for 2017-18 is consistent in terms of the comparator costs of both revenue payments and across-the-board in the document, as is made clear on the front page. It's a document provided by the government, by the Treasurer and me as Finance Minister together. As you also will be able to see, this is the final budget outcome for 2017-18, not the final budget outcome compared to the revised forecast of the 2017-18 financial year and the 2018-19 budget.

For most of the period of the Howard government, consistently the final budget outcome for a particular financial year was compared to the original forecast as well as the revised forecast of the subsequent budget. For

some reason, in more recent years during the Labor period of government, the original budget forecast was taken out of the equation. We're presenting both. We're presenting the comparison to the original forecast, and that shows \$19.3 billion improvement, and we're also comparing it to the revised forecast for 2017-18 in the 2018-19 budget. But bear in mind the revised forecast for 2017-18, at the time of the 2018-19 budget, is six or seven weeks prior to the end of that financial year. So if you want to have a valid comparison on how the government has performed against budget, then you've obviously got to look back to your original forecasts. That is the only way that you can notice a difference.

During the Labor years, I guess the reason why it became more usual to just compare against the revised forecast is because of the level of deterioration from budget to budget updates. You might remember that in the 11 weeks after Labor's last budget in May 2013, the budget position deteriorated by \$33 billion—\$3 billion a week. You can understand why they tried to reduce the period in terms of the comparison, the period against which you compare to the outcome against revised forecasts, and to make that period as short as possible.

Senator KETTER: But in the two previous years, I understand, the comparison was made with the most recent budget estimates.

Senator Cormann: This financial year it would not have provided an appropriately accurate picture to the parliament of to what extent the budget position actually improved. If we had compared the final budget outcome against the forecast six weeks prior to the end of the financial year that we were assessing, that would not have given the parliament an appropriately accurate picture. Given that we had a \$19.3 billion improvement—

Senator KETTER: Did you make that decision to change this presentation?

Senator Cormann: The government made the decision to ensure the parliament had all of the information in front of it, which included both the 2017-18 revised forecast in the 2018-19 budget and the original 2017-18 forecast. What you can see is that the underlying cash balance is \$19.3 billion better than forecast at the time of the 2017-18 budget. What you also can see is that employment growth, instead of being at 1.5 per cent, came in at 2.7 per cent. In actual numbers, what that means is that instead of 200,000 additional jobs, the economy created 350,000 additional jobs—

Senator KETTER: Thank you for that, Minister.

Senator Cormann: which means increased personal income tax revenue—

Senator KENEALLY: Here we go.

Senator Cormann: which means lower expenditure on welfare payments. This is of course why we've been able to achieve—

Senator KETTER: Obviously we're getting on to something that—

Senator Cormann: that significant improvement. If you look at the table that you referenced, what you can see is that revenue is—

Senator KENEALLY: I thought this was for Fiscal Group, not revenue.

Senator Cormann: \$13.4 billion higher and payments are \$6.9 billion lower than what was anticipated at the time we delivered the budget. Now I know that the Labor Party—

Senator KETTER: Chair, I would like to ask a question.

Senator Cormann: would not want to see the full extent of the improvement, but we thought it was important for the parliament—

Senator KENEALLY: I thought this was for fiscal, not revenue, Minister.

Senator Cormann: to be very well aware of the full extent of the improvement that we were able to achieve—

Senator KENEALLY: Why are you chewing up time in revenue—

Senator KETTER: Now, Minister—

Senator Cormann: particularly given, when we came into government, we inherited a weakening economy, rising unemployment and a rapidly deteriorating budget position.

Senator KENEALLY: You don't want us to ask questions, do you?

Senator Cormann: What this shows is that the economy is stronger—

Senator KENEALLY: It's not performance time.

Senator Cormann: employment growth is stronger and the budget is now in a stronger position and has a stronger trajectory, an improving trajectory, for the future.

Senator KETTER: Now, Ms Mrakovcic, when were you advised of the decision to change this presentation?

Senator Cormann: Revenue Group is not responsible for the budget presentation.

Senator KENEALLY: So you just chewed up seven minutes or so for an answer that should be in fiscal? Congratulations, Minister; well done!

Senator Cormann: No, I'm just answering the question. Senator Keneally, I know that you quite enjoy being condescending—

Senator KENEALLY: No, I'm just pointing out what's going on.

Senator Cormann: but I'm actually here to be helpful and to provide answers. Given the question is asked of the wrong group in Treasury, what I'm doing is I'm providing the answer on behalf of the government, given I'm actually one of the two ministers responsible for this document.

Senator KENEALLY: Let's move onto revenue issues then.

Senator KETTER: We'll revisit that—

Senator Cormann: That is entirely a matter for you. You get to ask the questions and then I get to answer them, and if you ask questions of the wrong group or in the wrong area—

Senator KENEALLY: You still will answer them.

Senator Cormann: then I will answer them.

Senator KETTER: Let me move on. Ms Mrakovcic, is it still government policy or its intention to lower the company tax rate for all companies to 25 per cent?

Senator Cormann: The government is legislating—again, this is a policy question, which is a question for the government.

Senator KENEALLY: Surely she can answer it.

Senator Cormann: It's not a question for the Revenue Group.

Senator KENEALLY: Yes or no.

Senator KETTER: I'm asking Ms Mrakovcic what's her understanding as—

Senator Cormann: No, the government's policy has been legislated by the parliament; it's actually the parliament's policy to reduce the corporate tax rate down to 25 per cent for all businesses with a turnover of up to \$50 million a year, and to do so five years earlier than previously planned and previously legislated—namely from 2021-22 onwards. We were, of course, very grateful that, having initially resisted that very important economic reform, the Labor Party joined us in supporting it through the Senate.

Senator KETTER: What about the rest of the businesses? Is it government policy?

Senator Cormann: No. We've made that announcement extremely clear: government policy is what was legislated through the parliament last week.

Senator KETTER: So it's not your policy now. Will it be your policy in the next parliament?

Senator Cormann: No. Our policy, which was endorsed by the parliament, is to reduce the corporate tax rate to 25 per cent for all businesses with a turnover of up to \$50 million, and to do so with effect from 2021-22.

Senator KETTER: Ms Mrakovcic, given the statements from the government about economic growth and wages growth were predicated on the government's full company tax cut plan, has Treasury been asked to conduct modelling on the economic impact of the company tax cuts that have been implemented?

Senator Cormann: If you're now going into macroeconomic forecasting, that is a matter you could have raised with the Treasury Secretary this morning. You chose to just ask political questions instead of asking questions about economic and employment growth forecasts.

Senator KETTER: What about the revenue impact? Have you been asked to conduct any modelling in relation to the revised government position on the company tax cuts?

Senator Cormann: Again, we have actually provided direct advice to the parliament in relation to the revised impact of the accelerated reduction in corporate tax rates to 25 per cent for businesses with a turnover of up to \$50 million. If you go back through to the documentation that was presented to the Senate at the time, last week, it will show you the net cost over the forward estimates is \$3.2 billion. In an abundance of transparency, we've also indicated that over the medium term, to 2028-29, the standalone cost for that measure is just over \$10 billion, which is quite a bit less than the cost of the measure it replaced, which was previously costed in information to the Senate at \$35.6 billion to 2027-28.

Senator KETTER: When was the decision made to drop the company tax cuts for business with turnover of over \$50 million?

Senator Cormann: In terms of the specific date, I will have to take that on notice. But obviously sometime in the second half of August, when the Senate decided to vote down our initial enterprise tax plan, we gave an indication at the time that we would assess how we might be able to reframe, recalibrate the measure by prioritising small- and medium-sized businesses. The announcement that was subsequently made, and that was subsequently legislated through the parliament, gave effect to that. In terms of the specific date on when the decision was made, it would have been sometime after we made the announcement that we would consider it in the second half of August.

Senator KETTER: Minister, if you're taking that on notice, can you also look at who made that decision? We'd also appreciate a copy—

Senator Cormann: I can tell you who made the decision. The decision followed the usual process through the Expenditure Review Committee and through the cabinet in the normal way.

Senator KETTER: Was there a media release associated with that decision?

Senator Cormann: When we made an announcement as to how we would proceed, obviously that was made public.

Senator BERNARDI: Mr Jordan, I am heartened that you have been targeting the big end of town and are working towards helping the small end of town, if I can characterise it like that. I received an email from an accounting office. They had clients who wished to set up a self-managed superannuation fund. They applied to the ATO for a tax file number for this SMSF, and they received correspondence from the ATO that it wanted to audit the clients and the details surrounding the set-up of the SMSF—not that there'd been any activity; it was just the establishment of it. This necessitated an interview with both of the clients, which took an hour; they had to be interviewed separately. The accounting firm found this highly unusual and irregular. Are you able to respond to this?

Mr Jordan: Not specifically, but it does sound somewhat unusual and irregular. There are hundreds of thousands of self-managed super funds, so we just couldn't physically do that with all of them. Are you aware of anything particular?

Mr Olesen: My colleague will be able to answer in more detail, but I think we do run a program across new self-managed super funds, when they are established, where we select some of those ones that are being established to check the bona fides of the intent of setting them up. The reason why we do that is that we do see instances of the self-managed super fund system being abused through the inappropriate early release of money from the superannuation system. We do have a program—one of our many programs—where we look at some self-managed super funds on their setup to check that the bona fides are what we'd like to see them to be. We don't do them all, because we can't, for the reasons Mr Jordan stated, but we do a selection of them. Without knowing, it sounds like this might have been caught up in that kind of exercise. We'd be happy to take the details from you.

Senator BERNARDI: I'd need permission before I forward that on.

Mr Olesen: Of course.

Senator BERNARDI: What concerned me about this is that this is supposedly a credible accounting firm—it's not my firm; I have no personal interest in it—and I would have thought that the accounting firm is responsible to their clients for the advice and things they receive and that it's only after their lodging things with the Taxation Office in respect of transactions that an audit may or may not be appropriate. Who are you to decide whether the structure is appropriate for an individual to set up?

Mr Olesen: Without knowing the circumstances, it's hard to comment in detail. It may be that we had some intelligence about the particular people that were setting it up that caught our eye, for whatever reason. But I'm, naturally, only speculating now.

Senator BERNARDI: That's the stuff I don't know. There could have been these things done.

Mr Olesen: Exactly. That's right.

Senator BERNARDI: I want to ascertain whether this is regular sort of thing, or is it—how many of these would you do every year?

Mr Jordan: I think we'll pass on to James O'Halloran. But when I was talking about 'unusual'—you can't audit something that doesn't exist. If it was an audit of a super fund, it's only just been formed, so it must have been an audit around the people, if you know what I mean.

Senator BERNARDI: It says: 'We use the word 'interview' loosely, as it was more akin to an interrogation. It lasted for over an hour. They wanted to interrogate each of us individually.' They now have to provide various types of documentation substantiating the structure which they intend to invest in and how they propose to do it. He says, 'This type of action is unprecedented. Neither I nor my colleagues have experienced or heard anything like it happening in our 20 years of public practice in the accounting profession.' That doesn't sound very friendly to the small end of town.

Mr Jordan: No, and there's got to be something else around it. James?

Mr O'Halloran: Obviously, like all of us, I have no details on that specific instance. But, just broadly, I can run through a couple of quick steps. Obviously there's the registration of a self-managed super fund itself. We are the regulator and therefore there are steps in terms of the bona fides and the appropriateness of establishing a self-managed super fund. Of something like 26,000 new self-managed super funds a year, I think, from memory, we check about 2,000 of them, give or take, in the sense that these are—

Senator BERNARDI: At registration?

Mr O'Halloran: At registration. I think it's 2,600 for the last financial year. That sometimes results in the cancellation of an ABN and other issues in terms of perhaps the appropriateness of the trustees. Again, I just heard the tail end of the particular instance. Certainly we do have an audit and review program, which can be based on some of the things that have been touched on, ranging from auditor contravention reports to perhaps identification of particular issues or characteristics of the fund. In relation to your point about the appropriateness of checking the advice, I certainly would say that that's not, as you correctly say, the place of the ATO. But certainly there is some information, depending on how old the self-managed super fund is, that sometimes comes in through the annual return and the like when we may have raised an issue which raised a question for us.

Clearly I'm concerned, as you can appreciate, about the consciousness or the feeling, real or perceived, of an interrogation versus a review or an audit—and I don't know which one it was. But, in short, we do have a process at the front door in terms of the establishment of self-managed super funds, and we do have programs particularly based on risk and some of the characteristics which we flag with industry very strongly. Some of it may be the treatment of reserves. Some of it may be some of the issues coming out of the recent, or not so recent, 2016 superannuation measures. Again, I can but offer to look into it, with approval from your constituent. I'm more than happy to look at that.

Senator BERNARDI: Thank you. I'll ask. I appreciate the information, but he's used the term 'audit'. It wasn't in respect to any transactions. There can be no questions about reserves or anything else of that nature. It is about the establishment of it. Dare I say that if a reputable accounting firm—and I know their business is trying to do more work for their clients—are authorised under ASIC to provide advice to their clients to do with the establishment and creation of a self-managed super fund, and that's what the clients decide they want to do, I'm not sure what the role of the ATO is in checking the advice they've received.

Mr O'Halloran: Clearly we take regulating self-managed super funds seriously, and, as I've indicated, when you look at the 500,000 funds or so that exist, the 26,000 a year, I think a two per cent check rate—for want of a better term, in whatever the context is—is certainly not onerous. We are conscious of the right of people to establish a self-managed super fund, but it does create a concessionary environment and opportunities. Being a trustee and also an adviser to a self-managed super fund creates an obligation. The fact that ASIC have authorised, as you say, the financial advice—we're not questioning that. But I also think, as regulator, that it's appropriate for us, where we see risk, to sensibly try and follow it up.

Senator BERNARDI: I'm going to agree to disagree with you, because you don't regulate trustees in other environments.

Mr O'Halloran: No. That's right.

Senator BERNARDI: In all of those, when we establish someone as a director of the trustee company for a trust—which is a tax-friendly environment, in many respects—there's been no transactions in respect of it. In questioning what their motives are for setting it up, is anyone going to sit there and say, 'My motive is to rip off the ATO?' I don't think that's the case.

Mr O'Halloran: The difference is in the law. Under the SI(S) Act we are the regulator, unlike the other instances where we are not the regulator. Firstly, there is an obligation on us. That's why we disqualify some 300 trustees a year and those things.

Senator BERNARDI: But you disqualify them because they've done the wrong thing.

Mr O'Halloran: Yes, we disqualify them if we don't find them to be fit and proper persons, or, conversely, they've facilitated or we believe they've facilitated the inappropriate use of assets or perhaps the movement of moneys across the superannuation system.

Senator BERNARDI: So the establishment of a superannuation fund gives you no grounds to do either of those things unless they're not a fit and proper person to be a trustee, which is a regular thing, whether you are a corporate director or not.

Mr O'Halloran: Again, I'm flying in the dark as to what the circumstances of this are—

Senator BERNARDI: I am a bit too.

Mr O'Halloran: But I did want to perhaps clarify that the difference with the trust example and some of the others is that we are, by law, the regulator of self-managed super funds in the establishment as well as the appropriate behaviour of the trustees and obviously the members. In some instances, obviously, there have been advisers who we've found to have in fact facilitated some inappropriateness. But I need to add that the incidence of it is very low. We think we've got a highly compliant area.

Senator BERNARDI: Which comes to a point—and I'll conclude on this, Chair, because I appreciate the time. Is it the adviser, then, that marks the flag? There are less reputable accounting firms than others, and I've gone to lengths not to name this accounting firm. Is that what flags it? This is quite inconvenient, as it's described to me, for anyone—

Mr O'Halloran: There are a range of circumstances. Like any intelligence, if we establish something, we may refer the matter to ASIC. It's the nature of audit and review work or inquiry work that, as we come across certain things, if it's not appropriate for the ATO to make judgements or to apply, whether it be an education undertaking or something stronger, we would clearly and do refer, quite often, matters to ASIC, so that some of the things you've touched on are dealt with by relevant agency.

Mr Olesen: We certainly expect of our people that it's clear what activity we were undertaking and why. We would not like our clients to feel like it's an interrogation. That's not the kind of experience we're trying to create for the people that we deal with. I think we've got legitimate circumstances to get upstream on some of these activities, but we've no intent to make people feel like that. Once again, we'll be very happy, with permission, to have a look at that.

Senator BERNARDI: I'll share the *Hansard* with them. My apologies for taking too long.

Mr Jordan: I'm happy to undertake to you that we can revisit our program of these establishment queries because, just to reiterate, we don't want people thinking this is somehow an inquisition of them. We've got a role to play as a regulator. I think it's one of the few areas, if the only area, where we are a regulator as such. So I'd be really happy to say that we'll have a look at that process. I don't know the last time it was reviewed, but why don't we undertake to you that we'll have a look at the process to make sure it's fit and proper. We certainly don't want people to come away thinking that that was not a good experience at all.

Senator BERNARDI: I appreciate that, thank you very much. Thanks, Chair.

CHAIR: Senator Williams, that was a much longer question than we anticipated, so I'll go to the opposition and then I'll come back to you.

Senator KETTER: Continuing with the company tax cuts issue—Ms Mrakovcic, can you tell me, over the 2018-19 budget and forward estimates, how much revenue was gained by the dropping of the company tax cuts for companies with a turnover of over \$50 million?

Senator Cormann: The forecast across all categories of revenue will be updated in the half-yearly budget update. As you know, governments of both political persuasions don't provide running updates; we provide the appropriate estimates at budget time. These estimates are updated for the effects of further policy decisions or relevant parameter variations at the half-yearly budget update. That's not something we can assist you with today.

Senator KETTER: What about the impact on gross debt and net debt?

Senator Cormann: Again, the same answer applies. In between budgets and budget updates there are always a range of movements in both directions either as a result of further policy decisions to increase spending, cut spending, increase revenue, reduce revenue, or as a result of parameter variations. Rather than provide ad hoc daily updates on all of the various movements, all of that is brought together in a consolidated form in the half-yearly budget updates, which will be delivered later this year.

Senator KETTER: Is it still government policy to have a cap on taxation receipts?

Senator Cormann: Yes: 23.9 per cent as a share of GDP.

Senator KETTER: At the time of the 2018-19 budget, in what year would that cap have been reached?

Ms Mrakovcic: My recollection is that it was not reached in the forward estimates.

Senator Cormann: I can refer you to a graph in budget paper 1, if you bear with me, which will show you. It's adjusted for the cap. There is a nice little dotted line. It should be in statement 3 of budget paper 1. This is not a revenue group question, incidentally. In an abundance of helpfulness: if you go to page 3-12, you can see the revenue trajectory. The dotted line is the unconstrained receipts where there is no 23.9 per cent cap. The continuous line is the line reflecting policy decisions and the application of the cap. Without any further policy decisions, we would expect it to be exceeded sometime after the forward estimates period. What it says is:

As shown in Chart 2, under the Personal Income Tax Plan tax receipts will now be below 23.9 per cent of GDP until 2026-27, while without the Personal Income Tax Plan receipts would exceed 23.9 per cent of GDP from 2021-22.

The parliament very appropriately legislated our plan to provide tax relief to hardworking Australians, prioritising low and middle-income earners, but also providing tax relief for all working Australians to ensure they have the right incentive and the right reward for effort for their hard work. You can see that, given we have legislated for the personal income tax plan, the tax as a share of GDP cap at budget time was not expected to exceed 23.9 per cent until 2026-27. Again, there will be an update to this in the half-yearly budget update, given the parliament did not in the end legislate our full 10 year enterprise tax plan. We have replaced our original plan with the legislation to reduce the corporate tax rate to 25 per cent for businesses with a turnover of up to \$50 million from 2021-22, but the effect of all the different parameters, caps, estimates, forecasts and projections will be updated in the usual way in the half-yearly budget update.

Senator KETTER: Are you able to tell me in what year the tax cap will now be reached?

Senator Cormann: I've just told you that we will be providing that as part of the normal half-yearly budget update. This is only one decision that has a bearing on this. There are policy decisions on the revenue and spending sides of the budget in budget updates in between every budget. There are parameter variations. There are changes in the economy. There are changes across a whole range of relevant parameters that have a bearing on the question you just asked me. In an orderly fashion consistent with the way this has been done for many years by governments of both persuasions, those updates will be provided in the half-yearly budget update.

Senator KETTER: Given this is still government policy, presumably work is now being done to lower taxation receipts in other areas to reach the cap.

Senator Cormann: If your question is: are your revenue estimates and projections based on an assumption that policy decisions will be made to ensure we don't reach the 23.9 per cent tax as a share of GDP cap then that is right. Our revenue projections are based on an in-built assumption that tax receipts as a share of GDP will not be allowed to go past 23.9 per cent. Labor has already made decisions that will smash us through that barrier. You have already made announcements to increase the tax burden in the economy by about \$200 billion over the next decade, which we argue would be bad for investment and lead to lower growth, fewer jobs and higher unemployment. The cycle of high unemployment, which is what we inherited from you last time, will lead to lower wages over time. Under the agenda Labor has announced so far, Australians would earn less while they pay more in tax, on electricity, on private health insurance—you name it.

Senator KETTER: Can you tell me when the decision was made to accelerate the already legislated tax cuts for businesses with a turnover of less than \$50 million?

Senator Cormann: You have already asked me that question and I have already taken it on notice.

Senator KETTER: No, I have asked you about the businesses in excess of \$50 million.

Senator Cormann: You are suggesting that we made a decision to accelerate the tax cuts for small businesses at a different time than we made the decision to—I don't understand your question. The question that you have just asked is precisely what I understood the previous question to be, but I am quite happy to put on record that I take this question and the previous question on notice, and I am very confident that it was the same question.

Senator KETTER: The previous question was in relation dropping tax cuts to companies with a turnover of above \$50 million.

Senator Cormann: Sure, but the decision not to proceed with corporate tax cuts for businesses with a turnover above \$50 million and the decision to accelerate the corporate tax cuts for businesses with a turnover of up to \$50 million is one decision. It is the same question.

Senator KETTER: Can you tell me what the cost over the forward estimates of that acceleration is?

Senator Cormann: You have already asked me this question. The net cost over the forward estimates is a reduction in revenue of \$3.2 billion over the medium term. The standalone cost of the measure is just over \$10

billion dollars, which is significantly less than the cost of the original plan. The last published projection for the unlegislated component of the original plan, which we have released in parliament, was \$35.6 billion to the end of 2027-28. The standalone cost of the accelerated reduction in corporate tax rate for businesses with a turnover of up to \$50 million is just over \$10 billion over the medium term to 2028-29, but the net cost to the budget bottom line over the forward estimates is \$3.2 billion. This was all announced when we introduced the legislation into the parliament in the usual way.

Senator KETTER: How much of the cost of accelerating tax cuts for businesses with a turnover of less than \$50 million is being offset by dropping the company tax cuts for companies with a turnover above \$50 million?

Senator Cormann: Over the forward estimates there is a net negative effect, because there is a net lowering of revenue. How that is treated in the budget will be updated in the half-yearly budget update. Over the medium term, as I have indicated to you, the net effect on revenue of the revised decision is positive. Again, the detail is going to be a matter for future budget updates, but I have pointed you to two figures that are in the public domain. One figure was the cost projection of the unlegislated component of the original 10-year enterprise tax plan to 2027-28, which was \$35.6 billion. I have also indicated to you that the standalone cost of the revised measure over the medium term to 2028-29 was just over \$10 billion. You do the maths, but obviously, over the medium term, the revised decision is more than offset by not proceeding with the original plan. In fact, as you've quite accurately pointed out, there is still some fiscal room on the revenue side for further decisions in order to ensure that we don't exceed the 23.9 per cent tax as a share of GDP cap, which remains our policy.

Senator KETTER: How much of the cost of the acceleration of the tax cuts is being paid for by upticks in revenue?

Senator Cormann: Sorry—how much is what?

Senator KETTER: How much is it being paid for by upticks in revenue?

Senator Cormann: What you are asking me here is whether we are paying for this through a variation in economic parameters. That is essentially another way of asking me to provide you the half-yearly budget update now. The half-yearly budget update, which will reconcile the fiscal effect of policy decisions and the fiscal effect of parameter variations, will be done in the usual way at the half-yearly budget update later this year.

Senator WILLIAMS: Mr Jordan, I was glad to hear you say in your opening statement that you're 'continuing to look at ways to support small businesses', which is a good attitude. The farm management deposits have been a great thing for farmers. In a good year they put money away and don't have to pay tax on it. In a bad year, like this year, they pull the money out. Have you considered doing FMDs or a similar thing for small businesses? I ask the question on the grounds that, when a drought hits, not only does it affect the farmers but also the money is not coming into the rural communities and not being spent in the towns, the local small businesses, the local pub or the restaurants—the whole lot suffer, even the hairdresser. Have you ever considered doing a similar thing for small businesses as far as laying off some money in an FMD-style thing in a good year and drawing it back out in a bad year?

Mr Jordan: That would be a policy initiative for Treasury. What we do do is more specific around natural disasters, say. We have an Australian Business Register that allows us to identify businesses and people in floods, bushfires or whatever. We put out notices through the media and elsewhere, publicising the fact that small businesses can get extensions for their bad seasons. If they've got a debt, we'll extend the payments. If they need to lodge anything, we'll extend the lodgements. Those are the sorts of things that are within our administrative powers—

Senator WILLIAMS: To balance it out a bit?

Mr Jordan: but those are really around natural disasters.

Mr Olesen: That's correct.

Senator WILLIAMS: Drought's not classified?

Mr Olesen: Drought is certainly classified—yes, it is. In the current circumstances, we're making extensions of time to pay and extensions of time to lodge, and encouraging people to come and engage with us. We've done forums around northern New South Wales actively over the last month or two—there are more coming up over the next few weeks—to be visible and encourage people to get in touch if they're facing difficulties.

Mr Jordan: Typically we run off state or other government announcements declaring an area as a natural disaster area or a drought-affected area. I'm not quite sure what the exact trigger for drought is. It's a more obvious one when it's a different thing. But we've had many community engagements at Tamworth, Narrabri,

Moree, Inverell, Glen Innes, Dubbo and Borenore, which is near Orange. We're doing all these things to try to let people know.

Senator WILLIAMS: I'm happy with that answer. That's good. Something to look at policy in the future. I have one question for Mr O'Halloran. When Mr Keating set up the whole trust issue with superannuation, it was a situation where criminal charges could not be laid against a trustee of a superannuation fund—is that correct?

Mr O'Halloran: That's right.

Senator WILLIAMS: We've put that legislation to the Senate. We don't have the numbers. Given what the royal commission has brought out, I do hope it gets through the Senate in the future so criminal charges can be laid against those trustees who have done the wrong thing. But I just want you to confirm that, yes, the situation now is that criminal charges cannot be laid against trustees of superannuation funds.

Mr O'Halloran: That's my understanding, yes.

Senator WILLIAMS: Hopefully Labor and the Greens will support us the next time it comes back.

Senator KETTER: Just returning to my previous question, Minister, what I was trying to get out there was the cost of the accelerated company tax cuts. My question is: is that being paid for or offset by economic growth and changes in the revenue that is coming through currently?

Senator Cormann: My answer to that is that all of the reconciliations, in terms of the effect of policy decisions on the revenue and the spending side of the budget and parameter variations, will be part of the half-yearly budget update. We don't provide ad hoc updates on a running basis. The fiscal rule in our budget is very clear. Any new spending measures have to be paid for by spending reductions in other parts of the budget. I think that's very clear. But in terms of the update and the reconciliation of the fiscal effect of policy decisions and parameter variations, that is a core purpose of having a half-yearly budget update, and all will be revealed at that point in time.

Senator KETTER: Yesterday in estimates, I understand, you made reference to what you called a strategic reprioritisation of resources. Can you tell us what that means?

Senator Cormann: That was talking about the public sector. That was a conversation about ASL in the public sector. When you have to deal with higher priorities and you face limitations, in terms of the available resources, reprioritisation is a very important tool. When you've got limited resources and a, potentially, unlimited demand on those resources, one of the key skills you've got to deploy is to appropriately prioritise those resources. I think that is something my Public Service colleagues here, my senior Public Service colleagues here, understand very well.

Senator KETTER: I'll cede the rest of my time to Senator Keneally, who has another question.

Senator KENEALLY: Thank you, Chair. I go back to some questions Senator Ketter was asking earlier regarding the inquiry in the House of Representatives into dividend imputation, cash refund ability and whether or not Treasury will make a submission. Have you had any discussions with the Treasurer's office about making a submission?

Ms Mrakovcic: No.

Senator KENEALLY: In deciding whether or not to make a submission, will you discuss that with the Treasury secretary or will you make that decision, within Revenue Group, without recourse to the Treasury secretary?

Ms Mrakovcic: I guess the way I would answer that is that, in my thinking, to date I have not consulted the secretary to the Treasury.

Senator KENEALLY: But it's possible, now, you might? Why would your usual practice change?

Ms Mrakovcic: No, I didn't say it was usual practice. I'm trying to reflect on whether the question of whether or not we would provide a submission is something that we would consistently raise with the secretary or at what level that decision would be made. I guess the way I would answer that question is that we get asked to make a number of submissions to different inquiries over the course of the year and that, generally, depending on whether the subject matter is contained to the responsibility of one division or one group, or the department, the decision would be made at that relevant level.

For example, if the issues were all contained within the remit of one division, I would anticipate that the division head would normally make a decision as to whether a submission would be made or not. I guess that, as deputy secretary of Revenue Group, if he or she chose to consult with me and to flag that there was an intention or not, that would be something I would appreciate but it's not necessarily something I would expect.

Senator KENEALLY: So, in this particular circumstance, have you arrived at a point of view as to whether or not this is wholly within revenue or it does have broader implications for the department?

Ms Mrakovic: No. As I've indicated, I'm still considering the issue. We haven't reached a final landing on whether we will make a submission or not—therefore, I haven't gone to the point of thinking to myself whether I consult my other colleagues on the executive committee, whether I mention it to them or consult.

Senator KENEALLY: Is there any particular reason you haven't made a decision? The call for submissions went out some weeks ago. We understand from the committee that the Treasury was invited to make a submission. Is there any particular reason?

Ms Mrakovic: Yes, I did indicate that we had been invited to make a submission. No, there is no specific reason. It is something we simply have had a discussion or two on but have not reached a final landing on.

Senator KENEALLY: More generally, you say that Treasury is often invited to make submissions to various inquiries. As a practice, when Treasury is making a submission to a parliamentary inquiry does that go through the Treasury secretary's office for sign off or approval?

Ms Mrakovic: Not consistently.

Senator KENEALLY: So it's not necessarily so that a submission will go through the Treasury secretary's office for his or her approval?

Ms Mrakovic: That's correct. We take an internal decision at what level the submission will be signed off at, if you like.

Senator KENEALLY: Thank you, that's helpful. I have a few questions on dividend imputation. A letter from the previous secretary, John Fraser, dated 18 June 2018 to the shadow Treasurer confirmed that formal advice was provided to the Treasurer on 7 June advising of a Treasury costing of a policy to deny franking credit refundability. Can you confirm on what date this advice was sought by the Treasurer's office?

Mr Ewing: I believe that advice was sought in May.

Senator KENEALLY: Can you confirm exactly what advice was sought by the Treasurer's office, including policy specifications?

Mr Ewing: I can tell you that we were asked at that time to cost a policy relating to denial of franking credit refundability, which had a detailed set of specifications. I don't have access to the exact specifications, other than to note that they're broadly reflected in the costing note that was provided by the then Treasurer in a press release dated—

Senator KENEALLY: So you don't have access to the specifications. Is it that you don't have them here?

Mr Ewing: I didn't bring them with me, but I do think that the costing note is a full specification of the policy that we costed. Those specifications would reflect what was provided by the Treasurer's office. I don't have the exact details on what was given to us in the initial request versus what were things that we had to clarify over time. A normal part of a costing process is to seek clarification of the specifications of the policy. The final specifications are always reflected in the costing note, and I wouldn't have anything to add to that.

Senator KENEALLY: Can you confirm which entities were being considered to be included in this policy?

Mr Ewing: The specification of the policy is that refundability would be denied other than for not-for-profit entities, tax-exempt entities, individuals receiving an Australian government pension and self-managed superannuation funds who had a member receiving an Australian government pension prior to 28 March 2018.

Senator KENEALLY: The letter mentions that the assumptions relating to the costings were informed by external consultations. Are you able to advise with whom external consultation occurred?

Mr Ewing: The consultations were conducted on a confidential basis, so I am unable to provide any details of the people that we consulted with.

Senator KENEALLY: Is it a usual thing that they are conducted on a confidential basis?

Mr Ewing: Yes. 'Consultation' is a term we normally use very specifically to refer to talking to people about policy measures. I'd described these more as conversations over behavioural responses of a set of policies rather than consultation per se.

Senator KENEALLY: My understanding is that the letter specifically says 'external consultations'.

Mr Ewing: It does say 'consulted some external experts'. I suppose that's accurate but perhaps misleading, so I wanted to make that clarification.

Senator KENEALLY: Why do they need to be confidential?

Mr Ewing: We normally conduct these conversations in confidence to allow people to provide us their frank views without being concerned that the content of their views or, indeed, the fact that they are providing us advice becomes public. If we were to not respect that confidentiality, it would have consequences for our ability to have these conversations, which are an important element of ensuring that we provide the fullest possible advice on the behavioural responses of policy across a broad suite of the costings my division is responsible for.

Senator KENEALLY: Thank you. I understand the time has expired.

Senator FARUQI: Good afternoon. I just have a few questions for the ATO. Are there any current ATO investigations underway into the Scripture Union Queensland regarding a potential breach of its tax deductibility?

Mr Olesen: Even if I had that information, I wouldn't be able to provide it in respect of a particular taxpayer.

Senator FARUQI: Why is that?

Mr Olesen: Because of confidentiality requirements.

Senator FARUQI: Has the organisation Queensland Parents for Secular State Schools made a complaint to the tax office regarding this organisation, Scripture Union Queensland?

Mr Olesen: I'd have to take that on notice.

Senator FARUQI: Could you provide that on notice reasonably quickly, or not?

Mr Olesen: I'll check as part of that process, certainly.

Senator FARUQI: Could you also provide a list of any other complaints, or any organisations that have made complaints about organisations that provide chaplaincy programs in schools.

Mr Olesen: Again, subject to privacy and confidentiality, we're happy to have a look at that.

Mr Todd: I suspect we won't be able to, with the taxation secrecy laws.

Senator FARUQI: Can you confirm, though, that Queensland Parents for Secular State Schools have made a complaint, or is that—

Mr Todd: No, we can't.

Senator FARUQI: part of confidentiality as well?

Mr Todd: That would be taxation protected information.

Senator FARUQI: When does this information become public?

Mr Todd: I can't answer that. I'd have to take that on notice.

Senator FARUQI: Okay. If a complaint is made, an investigation happens and a breach is found, is that the point where that information becomes public?

Mr Olesen: Typically, we'd keep confidential the activities of the tax office because that's the nature of the rules under which we operate. It's certainly open to individual organisations to make public correspondence they've given to us. It's just not open to us to do that, as Mr Todd points out.

Senator FARUQI: So, even if it is found to be a breach, nothing is made public?

Mr Olesen: Correct.

Senator FARUQI: And, if someone asks you for that information, you can't make that public either?

Mr Olesen: Correct, but you can always ask the party involved.

Senator FARUQI: So you can't make that public?

Mr Olesen: No, we can't.

Senator FARUQI: Okay. Thanks.

Senator RICE: I want to ask about the very welcome change that we're going to see, the removal of GST from sanitary products—the removal of this unfair and discriminatory tax. Now that COAG have given their support for this reform, I just wanted to get an outline of what the steps to be taken from here are going to be.

Ms Purvis-Smith: The steps are that we have gone out and consulted with a draft definition. That consultation has just finished, I think. We will take into account and review any of the submissions that we may have received or any of the queries that we may have received. Once that definition is final, we will get final approval for the definition and then take steps to make a change to the legislation.

In terms of the change, the GST legislation itself states that any changes to the rate or base can only be made with the unanimous agreement of all the states and territories. That has been received, as well as from the Commonwealth. There are several ways that change can be made. It can be made through changing the primary

legislation, or, because the GST legislation itself provides for determinations to be made in certain circumstances and this is one of those circumstances, a health determination can be made, which is a disallowable instrument but can be put into parliament, and at that time the change becomes law.

Senator RICE: Is that the way the government is proposing to move in this instance, then—through a health determination?

Ms Purvis-Smith: That's what we're aiming for.

Senator RICE: Right. And the expectation is that it will meet the time line that was proposed—that it will be in place by January next year?

Ms Purvis-Smith: Using a determination allows the greatest time available for it to be in place by 1 January, and, in fact, allows it to be in place to allow time before the change takes place.

Senator RICE: So you'd expect to have that health determination made in plenty of time before 1 January, then?

Ms Purvis-Smith: That's right.

Senator RICE: When are you expecting that health determination will be made?

Ms Purvis-Smith: I couldn't tell you an exact time frame at this point. We're moving as quickly as we can, and the government—it's up to the government, our priorities on when it gets that information, when we get the final approvals, and then to be able to place it into parliament. So I don't have an exact time frame for you, but we are working on it quickly.

Senator RICE: And, presumably, if it's a disallowable instrument, there would be the risk that that disallowance could occur after it was implemented. But you'd have to cross that bridge if that occurred—I wouldn't think that it's likely to occur. Do you know how many submissions you received in your request for comments on the draft definition?

Ms Purvis-Smith: I may do, I'll see if I have that information to hand—I don't have the information; I can't readily see that information on how many. I can take it on notice for you, Senator, if you would like.

Senator RICE: Please take it on notice, that would be good.

Ms Purvis-Smith: Yes, and I can tell you that that consultation closed on 22 October, earlier this week.

Senator RICE: We were very pleased to see the comprehensive definition that was being proposed including menstrual cups and period underwear, which a lot of our supporters felt was very important. I hope that there was support in the consultation for that broad definition of menstrual products.

Ms Purvis-Smith: One of the things with the GST legislation is that, in the explanatory memorandum, it does have to be quite specific. It cannot just be a very broad, law change. It does have to be quite specific so that companies and retailers know exactly which products are to be GST-free.

Senator RICE: It will certainly be welcomed by people who menstruate right across the country! So thank you.

Senator FARUQI: I want to go back to the issue of tax deductibility. I'm wondering how, if at all, you monitor the deductibility status for the religious instruction category? Are there any audits done? Or how do you do that?

Mr Olesen: Yes, like much of our business, and assessment of risk, we will look at various entities and their classification as qualifying for deductible gift status. In relation to funds that are maintained by religious institutions, I'm aware that we have done some work in that field. We get reports from the community from time to time—as we do across our work—about whether those funds are being used for the purposes for which they've been established, and, in some cases, I'm aware that we've acted to remove the status of those funds, depending on the evidence. So, yes, we do do work, and sometimes we do remove the gift deductibility status of some of those funds.

Senator FARUQI: But publicly no-one would know which organisation has had that removed—or not? Publicly, you can never know which organisation has had their tax deductibility status removed. Is that correct?

Mr Olesen: Publicly, whether an entity has gift deductibility status is published on the Australian Business Register.

Senator FARUQI: Are the changes that have happened published?

Mr Olesen: Well, you can see them over time; exactly when they occur you won't be able to see, or why they occurred. But the status of entities is recorded on the Australian Business Register, so people can check from time to time.

Senator FARUQI: Are you aware of recent reports about concerns raised about Scripture Union Queensland that they may have breached their tax deductibility—

Mr Olesen: I'm not aware of those reports.

Mr Dyce: Senator, I'm the Deputy Commissioner, Indirect Tax, and I also have responsibility for the not-for-profits. Again, we can't discuss individual taxpayers but, whenever there are reports made to us, we treat every report seriously, and we do look at every report. So, as was mentioned here before, whilst we can't tell you which organisations have lodged reports or complaints to us or the outcomes of those, if it did affect the deductible gift recipient status, then it would be visible on the Australian Business Register that an organisation either had DGR status—if I can use the acronym—or it didn't. As was mentioned previously, the businesses themselves can make public whatever they want to about either complaints they've lodged or complaints about them, if they want to. We can't, but we treat everything that we receive very seriously and look at everything in detail.

Senator RICE: How often is the business register updated?

Mr Dyce: Unfortunately that's not something I know, but I can take that on notice. I would imagine that, if the status changes, it would be updated quite promptly.

Senator RICE: Thank you.

Senator FARUQI: But you could provide that on notice. Thank you very much.

Senator KENEALLY: We have just tabled a letter that might be useful if it was made available to the witnesses, particularly to Mr Jordan. This letter is a tabled letter to a taxpayer who was featured in the ABC *Four Corners* program about the ATO earlier this year. This is a letter from second commissioner Andrew Mills, who says that he has reviewed the taxpayer's case, and I quote, 'I sincerely apologise for the ATO's actions in relation to these activities,' these activities being the audit activities between 2011 and 2014. This letter to Helen Petaia is being tabled. At the last estimates, the tax commissioner made several statements about the reliability of both the ABC and Fairfax's reporting and the witnesses who featured in the program. Mr Jordan stated that he believed that the ABC violated its own charter. Commissioner, do you stand by your blanket statements about the *Four Corners* report giving a 'distorted picture'—those are your words—in light of Mr Mills' apology to Ms Petaia?

CHAIR: Before you answer, can I get committee's agreement to table this document? We only have one copy so far. Perhaps, Senator Keneally, we could get that document photocopied and handed out to the panel, and we could come back to you? Before that, we could go to Senator Leyonhjelm to ask a question, just while we are getting the administrative stuff taken care of?

Senator Cormann: It will be done pretty quickly.

Senator KENEALLY: The question probably stands without the letter. The letter is only to provide evidence. Do you stand by your blanket statements about the *Four Corners* report giving a 'distorted picture' in light of Mr Mills' apology to Ms Petaia?

Mr Jordan: Yes.

Senator KENEALLY: Do you maintain that the case of the taxpayer to whom Mr Mills' apologised, to use your words, was 'overblown' by the ABC?

Mr Jordan: I wasn't speaking about any particular case there. I was talking about the overall presentation of that show and the stories that were told there, as I said again today, as misrepresenting or portraying them as what is usual for small business. This continual sort of commentary around us destroying small businesses and their livelihoods and us targeting vulnerable people who we seek to destroy is just nonsense—absolute nonsense. This was a matter going back to 2011. I think the independent appeal's second commissioner, Andrew Mills, was reiterating the apology made back in whenever by an assistant commissioner, Darryl Richardson, for the delays in time taken.

This case had a very unfortunate thing, in that it was not passed between officers quickly enough. For a bit of background, the first officer who had it went off on six months of sick leave and it took a little while to go to the next officer. The next officer, unfortunately, was diagnosed with a terminal brain tumour. We did not hand the case over. We should have anticipated illness and sickness as a normal course of events. There was another delay in that being handed over. It was probably an unfortunate and unusual set of circumstances there that caused a delay. Our general counsel is here. The purpose of this is to try to bring a close to some of these things that have been going on since 2011. This is an attempt to try to say, 'Okay, we have had a good look at this. There were

unfortunate circumstances associated with this that this taxpayer knows about. We hope that we can come to some resolution.'

Mr Todd: We are still trying to resolve this matter. I don't think the public ventilation of it has helped in that process so far. I don't think further public discussion of it is going to assist in us resolving it from either our point of view or Ms Petaia's point of view. We are still actively working on trying to resolve the matter.

Senator KENEALLY: I think Ms Petaia would be very happy if it could be actively resolved. In light of an apology from second commissioner Andrew Mills, would the commissioner like to retract any commentary he made about individual taxpayers or what could be perceived as identifying individual cases in the previous estimates?

Mr Jordan: I didn't name any of these people specifically. I've got to say, these people have gone to the media.

Senator KENEALLY: You quoted some them.

Mr Jordan: They stand up in front of cameras, go to newspapers and then complain to this committee that I have somehow identified them in my evidence before the committee.

Senator KENEALLY: Some of your evidence could have been—

Mr Jordan: They have self-identified, clearly, through TV, newspaper, radio or any other form. I don't retract anything, in terms of identification. I didn't name them. I talked in general terms. I would again defend the good people of the ATO, who are doing a decent, good job for the country and are trying their best to do that, often in difficult circumstances. We do collect tax. It is not an easy job. It is a job where I am very proud of the way that our people do it. There will be disputes. There will be people who are not happy with what we do. I get that. We have to be better at acknowledging problems, apologising quicker and moving on. As I said, I would like people to judge us for what we are now. This is a 2011 case. It was not handled well in terms of time frames, clearly—undeniably.

Senator KENEALLY: It is not finished, according to Mr Todd, either.

Mr Jordan: Sorry?

Senator KENEALLY: According to Mr Todd, it is not finished.

Mr Jordan: No. Well, it takes two people to finish something. You can't you unilaterally finish something.

Senator KENEALLY: Mr Jordan, in the last estimates you did state that you believed the ABC had violated its own charter. I asked you then if you had made a complaint to the ABC and you said you were thinking about it. Have you done that?

Mr Jordan: I don't know if you could call it a complaint as such. But with the prior managing director, Michelle Guthrie, I saw an article in *The Australian Financial Review* saying how she was very proud of her staff at the ABC, how she was very proud of the work that they did and that their staff should not be used as a political football. I took that opportunity to write to her to say that I too was very proud of the staff of the ATO, I too was very proud of the very good work that the staff of the ATO did and I didn't appreciate them being publicly humiliated by her organisation, the ABC, in the way that they were. Whether that is a complaint or just me feeling better about—

Senator KENEALLY: Did you send the letter?

Mr Jordan: Yes, I sent the letter. I didn't get a reply from her, no.

Senator KENEALLY: You didn't write to the board; you said you wrote to her.

Mr Jordan: I wrote to her because it was her who said how proud she was of her people and their great work, and I wanted to let her know how proud I was and what great work the ATO people did. Just like she didn't want to see her people used as a political football, neither did I. I didn't think their public humiliation of the ATO people was something that was a particularly positive thing.

Senator KENEALLY: Would you be able to table that letter that you wrote to Ms Guthrie?

Mr Jordan: I will have to take that on notice. I would be happy to, but I don't know what the protocols are.

Senator KENEALLY: It's your letter. Surely you can decide.

Mr Jordan: I don't know. I always get the general counsel telling me what I can't do.

Senator KENEALLY: Maybe you should listen to them.

Mr Jordan: I will defer to the general counsel.

Mr Todd: We will take it on notice.

Senator Cormann: I'm sure you could table your letter, but you can take it on notice.

Mr Jordan: I will take it on notice.

CHAIR: Senator Keneally, you have about thirty seconds left. I'm just conscious that Senator Leyonhjelm—

Senator KENEALLY: I have another section to start on. But if there are only 30 seconds, we will move on.

CHAIR: Senator Leyonhjelm, have you got five minutes before we go to the next break?

Senator LEYONHJELM: I will get started; I may not finish. Mr Jordan, in your opening statement, which I was watching carefully from my office, you said the ATO has raised over \$10 billion in tax liabilities against multinationals and already collected more than \$5.6 billion in cash. You didn't say what period that applied to.

Mr Jordan: The deputy commissioner of public groups can hopefully answer that.

Mr Hirschhorn: Thanks for the question. That period is the period since the task force commenced, so since 1 July 2016.

Senator LEYONHJELM: So a bit over two years.

Mr Hirschhorn: Yes. In fact, that was for the two-year period and the cases of that period. We have extra cash that we have collected, but relating to activities of previous periods.

Senator LEYONHJELM: You are probably not the person to answer this question, but in May I raised the question that I had been approached by a number of taxpayers, small businesses, saying that the ATO was enforcing their assessments even though they were being disputed. That was denied by Mr Mills. I don't think Mr Mills is here today, is he? No. Last May, I said:

So you're saying that, where the amount claimed by the ATO is disputed by the taxpayer, you don't initiate recovery action?

Mr Mills said:

We don't. That doesn't mean people won't pay voluntarily or think that they need to pay if they don't understand that they can leave it outstanding while the dispute is resolved.

I know of some cases that would suggest that that is not accurate; but I understand also that you can't talk about individual cases, so I won't raise that. There is one court case that is in the public domain, dating from 2017, *Bosanac v Commissioner of Taxation*, where the court record showed that the dispute was yet to be settled in a court action. Yet before the trial, the ATO garnished the plaintiff, Mr Bosanac, for \$14,000 a month. It was clearly an outstanding issue—it hadn't been resolved—and the ATO nonetheless seized the funds. That would tend to suggest that what Mr Mills said was not accurate. Would you like to comment on that? I am not sure who is the appropriate person here.

Mr Jordan: I will comment on the general thing, because I think Mr Mills wrote to the committee secretary clarifying his comments. I don't know if you have seen that letter.

Senator LEYONHJELM: I confess I haven't, no.

Mr Jordan: Because he does reference you and his response to that. I have a copy of that here, but—

Senator LEYONHJELM: If it is short, perhaps you would like to read it out.

Mr Jordan: It goes for a whole page.

Senator LEYONHJELM: Not that short! Can we table that, please?

CHAIR: Yes, that's fine.

Senator LEYONHJELM: I will take that, thank you. I will also get in the third question, if I can. This is probably answered quite quickly. GST on breastfeeding aides applies and yet you could easily classify breastfeeding aides as either health care or fresh food, which are both GST free. By what authority is determined that they are not GST free? Is it an ATO decision or somebody else makes that decision?

Mr Jordan: The person who would know the answer to that is suggesting to me that we take that on notice.

Senator LEYONHJELM: I can't understand why! No, I am not asking about that specifically. I mean, I am not—

Senator Cormann: There is a process of determination through the Minister for Health. The reason I know is because we have gone through this in the past, but on notice I am happy to spell out the entire process for you.

Senator LEYONHJELM: Alright.

Senator Cormann: I think I might get a job at the Australian Taxation Office one day!

Senator LEYONHJELM: That's right! Chair, if I can just reserve my right to come back to this after having read the letter from Mr Mills?

CHAIR: Yes, that's fine. Thank you, Senator Leyonhjelm. The committee might take a break.

Ms Mrakovic: I will correct the record on something. In talking about the House's Standing Committee on Economics and the reference to a submission, I just wanted to make clear that, in fact, as I understand it, the House standing committee has invited interested persons and organisations to make submissions. The Treasury has not actually specifically been invited or requested to make a submission. I did indicate that we are still considering the issue, but I also wanted to state that we do stand ready to assist the committee in its deliberations. But I did want to make clear that, as far as we are aware, we have not specifically been requested to appear.

CHAIR: The committee will now suspend the 15 minutes for the afternoon tea break. We will return with the revenue group, the ATO and the ACNC.

Proceedings suspended from 15:46 to 16:01

CHAIR: The committee will now resume with the Department of the Treasury revenue group, the ATO and the ACNC. Senator Leyonhjelm, you still have the call.

Senator LEYONHJELM: Thank you, chair. Thank you for the letter from Mr Mills.

Mr Jordan: You've got both parts?

Senator LEYONHJELM: I do, yes. Thank you very much. Essentially what this letter does is confirm the information that I had received from some taxpayers that recovery action is undertaken by the ATO even when the amount is disputed. The information I have also is that there are instances—and I certainly know of some—where it turns out that the debt claimed by the ATO is not upheld. On appeal, one way or another, it turns out that the taxpayer does not owe the ATO money. I'm not sure whether this is for Mr Jordan or somebody else there: what's your policy in those situations where the ATO pursued the debt and turned out to be incorrect?

Mr Ravello: I can try to answer part of the question.

Mr Jordan: Mr Ravello is the deputy commissioner in charge of debt.

Mr Ravello: It is true that in some circumstances we take recovery action when debts are underway. The numbers are very small, and it's in circumstances where we believe there is risk of criminal activity, phoenix activity or things like dissipation of assets which put at risk the collection of revenue. It would be our preference to work with stakeholders, where there is a dispute and there are risks, to enter a fifty-fifty arrangement, but if that doesn't happen, yes, in a small number of cases we do do recovery activity.

Senator LEYONHJELM: That didn't answer my question. I know of cases where it has turned out that the taxpayer has been effectively compelled to pay over a disputed assessment, and down the track the ATO actually returned that money to the taxpayer on the basis that it wasn't owed. What's the ATO's policy in relation to how it handles that?

Mr Ravello: I think there are two scenarios that could occur there. This is a situation where there is a dispute active and the dispute is settled in favour of the taxpayer. If the taxpayer had entered a fifty-fifty arrangement—which is an arrangement whereby we reach agreement with the taxpayer to pay 50 per cent of the primary liability that's being disputed—and should the dispute be settled in the taxpayer's favour, that money is refunded and we pay interest. If there were recovery action and we actually recovered the funds from the taxpayer, I would have to take on notice what action we would do there. I am not aware of cases of that nature, so I will take that on notice.

Senator LEYONHJELM: That is not the scenario I was thinking of either. What would you do in a situation where you didn't reach a 50-50 agreement with the taxpayer, because the taxpayer said, 'I don't owe any of the money that you are claiming'?

Mr Ravello: In the vast majority of cases, we take no action and wait for the dispute to be heard. As I mentioned earlier, in a small number of cases, where there is risk of dissipation of assets, criminal activity or phoenix, we do take recovery action. So in a small number of cases, we take recovery action. And it is possible, in those cases where we take recovery action, that the dispute could be finalised in the taxpayer's favour. I'm not aware of cases where that has happened and I am happy to take on notice what would happen in such a situation.

Mr Jordan: But presumably it would be refunded with interest.

Mr Ravello: Of course, that is my guess.

Mr Jordan: Whether we do anything extra above that, I think is where you are going to. What he is saying is, being in charge of debt, he is not aware of those so we would have to have a look to see what we would have done.

Senator LEYONHJELM: There are cases I am aware of where the taxpayer has been left, in their view, no choice but to pay an assessed amount. The amount has ultimately been returned to the taxpayer because the assessment was incorrect. The obligation to hand over that money had the potential to bring the business down on a cash flow basis, so that is where I am going with this. I am interested in knowing the ATO's policy around requiring assessments to be paid even if they are disputed, what the consequences of insisting on that payment might be to that business, and how do you know? What is the basis on which you make an assessment that the business is a potential phoenix or something that you don't like?

Mr Ravello: All of those cases are referred to us from our compliance areas, so I assume through the compliance audit and dealings with the taxpayer there is evidence of criminal phoenix activity. In terms of dissipation of assets, we would know whether that business had interests or ability to shift funds offshore. We have access to funds transfers so we do see situations where funds are moved offshore. We are pretty clear on those cases. On the phoenix and criminal activity, again, that would be through evidence gathered in audits.

Senator LEYONHJELM: Do you think you have ever had a situation where you have put at risk the viability of a business because of a wrongful assessment?

Mr Ravello: That is possible.

Senator LEYONHJELM: What would you do if you were aware of such a case?

Mr Ravello: If there was an incorrect assessment, obviously the assessment would need to be objected to or disputed. It would need to be heard through the normal process and resolved through the normal process. If there were moneys voluntarily paid, they would be refunded and there would be interest paid on moneys voluntarily paid. If there were moneys recovered forcefully through, say, garnishees or other processes we have available to us, as I said, I am not aware of those cases having occurred.

Mr Jordan: We would have to be really cautious if we thought that demanding the payment of tax was going to put the viability of a business in jeopardy when it is still disputed. I mean, we would really be all over that. So I think the head of debt is saying he is not aware of them, so this is not a common occurrence, clearly. In the vast majority of cases we don't seek to recover, the 50-50, as I understand it, prevents interest being accumulated. So why would somebody want to do a 50-50? Because what it does is prevent interest being charged. If they lose, they don't get charged interest on that period, is my general understanding. So that is the incentive to do a 50-50 arrangement—we get half the money, we are happy for that, and they don't get high interest charged to them. Whether we sought to recover—I think that's what Mr Ravello's saying—is pretty unusual, unless there are factors like risk of flight or dissipation of assets and that sort of thing. You've hit on a very important point, though—this phoenixing. Why phoenixing still happens, in some respects, is because it is difficult to understand sometimes when is there a genuine business failure through normal circumstances of just bad trading or whatever, versus an intent to avoid obligations. It's very difficult, and that is where sometimes we err on the side of giving the benefit of the doubt, and maybe lose out. Did you want to say anything on compliance?

Mr Todd: Ultimately, if there was defective administration a compensation claim could be made and dealt with, but it would have to be demonstrated that the assessment process and the debt collection process amounted to defective administration.

Senator LEYONHJELM: You do pay compensation, do you?

Mr Todd: On occasions, I am not aware of having one over this specific issue, but we administer the Commonwealth CDDA scheme, like every other department, and pay compensation in the absence of legal liability where it is appropriate to do so under that scheme, where—

Mr Jordan: And this is a whole-of-government scheme, I think, administered by the Department of Finance?

Mr Todd: That's right.

Mr Jordan: And we look to pay compensation if we've made a mistake and it has caused economic loss to the person. So, that is there. What's being said is we're not aware of any that have had to do with this debt-type recovery problem.

Senator LEYONHJELM: I do have some cases that come pretty close to that, but I don't want to talk about them today. We might leave it there and may come back to them another time.

Mr Jordan: If those people want to or allow you to, we are very open to have that given to us, and we will deal with you or them and really go through that. Because, clearly, there's an issue. If we have done the wrong thing, we would like to understand why. Or is there just a misunderstanding somewhere here? So, we would be really happy to look at them. People say, 'Why would we disclose things?', but we are not going to do anything. We genuinely want to understand if there is a problem on our side.

Senator LEYONHJELM: Okay. Thank you.

Senator McALLISTER: Ms Curtis, what is ATO practice in regard to staff acknowledgements of country?

Ms Curtis: Where we have a significant event or formal occasion we give an acknowledgement to country. We have a prescribed set of words, but we do vary them from time to time, depending obviously on where the event is being held and the people who are actually the traditional owners of the land. We acknowledge the owners of the land and the elders past and present. Sometimes we will do that at official meetings. For example, at our National Consultative Forum with the unions we will do that as well.

Senator McALLISTER: Is it the case that some staff choose to acknowledge country in their email footers, for example? There are no constraints on staff acknowledging country at other times?

Ms Curtis: No, that is correct.

Senator McALLISTER: Has the charities commissioner, Mr Johns, ever raised this matter with you with the ATO?

Ms Curtis: Not with me, no.

Senator McALLISTER: And with the ATO?

Ms Curtis: Not to my knowledge.

Mr Jordan: Not with me.

Senator McALLISTER: I see. That's all, thank you.

Senator ABETZ: Welcome to the ATO officials. I have a brief bracket of questions relating to the Federal Court decision which was referred to on ABC Online on Friday, 5 October, under the heading 'Tax office computer says yes, Federal Court says no'. What is the ATO's response to that? It was a split decision. I think I have to agree with Justice Kerr's dissenting judgement in it, but it seems to leave, especially, the small business community in a terrible state.

Mr Jordan: It's an unfortunate situation because, as I understand it, too, in a bit more detail, those involved might well have known what it was—because there were a whole lot of things either side of that, so that wasn't necessarily as clear as when you just say it in that way—

Senator ABETZ: Justice Kerr provided a fairly, to my view, convincing dissenting judgement—I hear you listening to yourself, Minister! Always wise words!

Mr Jordan: Obviously, there is commentary—and it is true that, with increasing digitisation of things, that's not a great situation to have. So we need to look at processes around that and the templates that are used.

Senator ABETZ: Yes, but, look—

Mr Jordan: Maybe, in that case, an email or something would have been a better way to do it, rather than a template. But we understand your concerns.

Senator ABETZ: Do you? Well, given the concern, what is the ATO doing about the particular individual so that no injustice is occasioned to that particular business? I must say it's—with respect to their honours—a bizarre and interesting judgement from the Federal Court. People ought to be able to rely on correspondence that comes out of government departments and not be told, after the event, 'It was a computer generated letter and therefore it doesn't bind the government'—

Mr Jordan: I absolutely agree with your sentiments.

Ms Hastings: Regarding that particular case, there was the decision. I can talk about what we can do from here, in terms of providing more guidance, more generally. As you're probably aware, there were two court decisions there. There was the first decision in the Federal Court by Justice Tracey and then in the full Federal Court, where we had Justices Kerr, Derrington and Moshinsky, and special leave was sought to the High Court and was denied. As to the litigation, if this case has effectively ended, what we would do in this instance is: we'd provide guidance in the form of a decision impact statement, in very clear and simple language. We'd consider the decision. We'd consider the likely implications—what that means for people. And we'd provide a statement of guidance as to what that means in future for other people in similar situations.

Senator ABETZ: But the bottom line is this: surely the initial letter that goes out, irrespective of faults occasioned, but within the ATO, should be that which guides the taxpayer and not be subjected to a situation where it can be overturned because somebody pressed the wrong computer button or used the wrong template or whatever. People's livelihoods are at stake, sometimes people's houses are at stake, their whole families are at stake—especially in the small business sector—and that's why it's so important that the administration of the ATO be exemplary but also exact. To err is human—that's accepted. But, once the error was made, what was the public

policy reason for taking this to the Federal Court rather than just fessing up that you stuffed up, if I can use that term, and going to the taxpayer and saying, 'We mucked up. Sorry. Situation resolved for you, as per that computer generated letter'?

What was the public policy reason for taking this to the court?

Ms Hastings: This was an administrative law challenge under the Administrative Decisions (Judicial Review) Act. So it was a challenge that, in effect, all of the actions here were ultra vires and that—

Mr Jordan: But who made the challenge?

Ms Hastings: The challenge was by the taxpayer.

Mr Jordan: So the taxpayer challenged. It wasn't us.

Senator ABETZ: Yes, but challenged the fact that you wanted to go back on your letter—was it not?

Mr Ravello: Yes, that's right.

Senator ABETZ: Yes. Having acted on your initial letter, they then got another letter saying, 'Well, times are tough.' Shouldn't the ATO be acting as a model litigant and as a model, if you like, business enterprise, and owning up to mistakes and then correcting them, and not requiring the person as to whom the mistake has been made to cover the consequences?

Ms Hastings: Certainly, you're right; as a model litigant, it's an obligation—and it's one that we do take seriously and appropriately seriously. During the course of proceedings, that doesn't preclude any discussions to try to resolve the case with individuals, and certainly that occurred in this case as well.

Mr Ravello: We did try to settle the case, and there is more to the case than just the letter. The letter was what was in the media, and it's true that the wording of the letter did say 'inclusive of general interest charge'. The judgement and the decision on the case were based on the letter and a whole lot of other events, which include contemporaneous notes, records of discussions and other things with the taxpayer, and that was the basis for the judgement. So the case is a little bit more complex. But I'm not arguing with you, Senator. It is a bad look. We don't want letters like that going out. We are seeking to change that letter so that that circumstance doesn't happen again.

Senator ABETZ: Yes, and that is good, but then how do we provide justice to Mr Pintarich? It's not often that I would be quoting Justice Kerr, especially in his previous manifestation, but he said, about the majority decision, that it would turn on its head fundamental principles of administrative law and that it would be productive of administrative uncertainty and confusion if the deputy commissioner were entitled to rely on the distinction between his officer's subjective mental processes and the objective manifestation of those processes where correspondence has been sent in his name which, on its face, appears to the world to be a decision. I would have thought that was pretty powerful. I'm just very disappointed that the ATO are still pursuing the matter. I'm disappointed that the High Court has not given leave to appeal, but that's another matter. Chair, you've been very generous with the time, and thank you for that. But I trust that the ATO will ensure that businesses are given certainty and that, when the ATO makes mistakes, it will own up to them and not make the taxpayer suffer.

Senator KETTER: I suspect Mr O'Halloran is probably the best person to answer this question related to unpaid super. Mr O'Halloran, I'm going to be referring to answers to questions on notice that were provided in June of this year in relation to the inquiry into the Treasury Laws Amendment (2018 Superannuation Measures No. 1) Bill 2018, which went to superannuation guarantee charge and penalties.

Mr O'Halloran: Yes.

Senator KETTER: If I look at those figures, it would appear that there were 25,000 employers in the 2017-18 year at that point who hadn't paid SG on time, of which 17,700 self-reported, and for just under 7,000 the ATO detected non-payment. Does that sound about right?

Mr O'Halloran: It sounds right. I haven't quite caught up with the context, but that sounds right.

Senator KETTER: In the table that you provided in relation to the application of part 7 penalties, could you explain to me why only 15,000 cases of the 25,000 cases in total were considered for part 7 penalties? What happened to the other 10,000 employers?

Mr O'Halloran: I'm sorry—I just can't visualise the chart or the data, but part 7 provisions, under the current law—

Senator KETTER: I'm happy to provide this copy.

Mr O'Halloran: Do you mind? I'm sorry.

Senator KETTER: I've only got the one copy. I don't think I'll need it.

Mr O'Halloran: Thank you for your patience, Senator.

Senator KETTER: That's okay. Can you explain why only 15,000 cases were considered for part 7 penalties?

Mr O'Halloran: Could I ask you to draw the table—

Senator KETTER: It's the last table on the second page. You add the final column, and there is a misprint in the response you provided. The total is 1,500, but it should actually be about 15,000, I think.

Mr O'Halloran: I'm sorry.

Senator KETTER: Can you see what I'm talking about?

Mr O'Halloran: Yes, I do, Senator. The part 7 provisions would not apply. Certainly the penalty component as opposed to the admin component would not apply to voluntary disclosures generally—if there were a review or a voluntary disclosure from an employer. That's my quick response.

Senator KETTER: There were 17,712 who self-reported by lodging an SGC statement.

Mr O'Halloran: Yes.

Senator KETTER: My question is: did the other 10,000 employers get off scot-free?

Mr O'Halloran: I'm sorry, Senator, I'm struggling with the frame. But, certainly, if a person comes forward with an SGC charge—self-declaration, for want of a better word—certainly a penalty can be remitted, but the admin component should still apply, the \$20 per employee per outstanding quarter.

Senator KETTER: Am I correct in interpreting your response to say that there was no admin penalty—

Mr O'Halloran: That doesn't sound right, to be candid, Senator. There is no discretion. I apologise, Senator. I've just caught up. There was a period, certainly, when I felt that, under the law, we did have some discretion in terms of the admin penalty. I apologise for being a bit slow to tune into the table. We did not apply a \$20 admin penalty. To be candid, as it was further examined, and obviously last year was a big year of super guarantee focus, I sought clarification on the discretion the commissioner may have had in terms of the application of the \$20 penalty per employee per quarter, and it was clear at that point that the discretion wasn't there on the information that I had, and it still remains that way. That's when I stopped that process occurring, because of that reason: I didn't want to put the staff at jeopardy of inappropriately remitting a penalty. So there was a period, certainly—you're quite correct, Senator; and, again, I'm sorry I was slow to tune into this—which is probably what you've identified, where we did not apply the \$20 penalty. I felt at the time that we had the discretion, but, on seeking further detailed advice, it became unclear, so I made the decision to stop that process.

Senator KETTER: To stop applying the—

Mr O'Halloran: No, to stop not applying it.

Senator KETTER: There are the employers who have not had the application of the admin penalty. Is that going to be reconsidered?

Mr O'Halloran: I haven't at this stage.

Senator KETTER: If you look at that same table, I think there were 5,296 cases where penalties applied—it's the sum of those figures there, and I think I might have handwritten where that figure has come from—so 80 per cent didn't attract the penalty. So you've just given me the explanation for that.

Mr O'Halloran: That's right—again, without checking. But now that I've turned my mind back to the period we're talking about, that would be the explanation, yes.

Senator KETTER: I suppose the question I would ask is: what sort of message does that send to employers, if there's no penalty applying for nonpayment of superannuation?

Mr O'Halloran: I think, as we've discussed many times, the coming forward of super guarantee is a balancing act, as always, in terms of that indication. That's why one of the reasons that we've been keen, as an agency, to get visibility on an SG payment from superannuation funds is so that people can see whether a payment has been made as a matter of fact and not speculate between payslip or payday event reporting. I think, the identification and the obligation of employees is to come forward. Numerically, it does have an incentive for people to come forward. But, as I've said, we're always trying to balance the voluntary disclosure, and what's not covered in this sheet, I think you'll find, is that, of course, all the way through last year and, increasingly, this year, with the SG task force and some additional material, you may be aware we certainly haven't been passive in our audits and reviews. In fact, the follow-up work and ATO-initiated casework has dramatically increased, with significant liabilities and revenue results, so we're not waiting for people to come forward. In fact, quite the reverse; we've escalated both our ordinary review work and our application of penalty in suitable cases. Also, we've doubled the amount of liabilities that we've raised; as well, we've increased our casework et cetera. So I think that would be

the balance I'd put back—we're not just waiting for people to come in, but these things are always a matter of balance and individual circumstances.

Senator KETTER: If I look at that same table, I see that there was not a single occasion when the 200 per cent penalty option was applied in the previous five years. Is that correct?

Mr O'Halloran: Yes.

Senator KETTER: Again, what sort of message does that send?

Mr O'Halloran: The law allows for the commissioner to remit from 200 per cent as a starting point and remit down. I would put to you that each circumstance does tend to be different and, whilst there are views—and many have been expressed in other hearings I've been at around what the right balance is between the application of penalties and so forth—200 per cent is a very large current arrangement for superannuation guarantee. But what you've got there are the figures, and we have found that, by and large, given that we would still argue that the intentional noncompliance of SG is certainly an incident, there's also a reality that for some employers, by definition, there are circumstances, either personal or business-wise. The response I'd give would be that 200 per cent should be rare—some could argue not as rare as that, but even 150 per cent is certainly not an insignificant penalty when one adds what can be thousands of dollars in terms of the administration fee under the current arrangements.

Senator KETTER: The table that I'm referring to on that document refers to the fact that you've adopted what you call a practical compliance approach.

Mr O'Halloran: That was perhaps a bit of inappropriate shorthand for what I've just described as the modification to the application of the \$20 fee.

Senator KETTER: Looking at all that together, there seems to be—and people could argue this—that there has been a persistent and generous waiver of penalties, and some would argue that's contributing to the issue of underpayment or nonpayment of superannuation. How would you respond to that?

Mr O'Halloran: I think, in our cases, certainly, there are different studies and views on the impact of penalties. There are also, as you would be aware, some views that the penalty regime is a disincentive for people to come forward. I think there are many views on that. I would just say that, where we have applied penalties, we've felt it was appropriate and, as a counterpoint to that, we've also raised our ATO-initiated casework, as was requested by other committees, so that there is far more proactive work based on ATO-initiated intelligence, coupled with some of the other aspects, which I won't—

Senator KETTER: I just want to quickly move to one issue, which is the rollout of Single Touch Payroll to small business. Mandatory reporting is due to commence 1 July next year. Is there any suggestion that could be delayed?

Mr O'Halloran: I'll just address the SG component rather than the payday events aspect of it. Funds have already started—they started about three weeks ago, from memory—to report superannuation guarantee payments that they have received. It is a small number of funds. All the other funds will come in by April. So as part of STP and as a key part for the SG visibility and administration that will be in place by April. By then we will have visibility of every APRA superannuation fund member and whether they receive an SG payment. In due course, we will make that available through MyGov and other arrangements so that employees can see that an employer paid, what the amount was and in what quarter and period it was paid for.

Senator KETTER: But my question is to the rollout of the STP to small business, which is due to commence 1 July next year. Has there been any discussion about delaying the implementation date?

Mr O'Halloran: Certainly the law that is in place now is in relation to the substantial employers with above 19 employees. That is what we are working on in the implementation of the single touch payroll program. As for any changes to that, that would be a matter of policy.

Senator KETTER: So you are not aware of any representations to change that for small business?

Mr O'Halloran: I have certainly seen a lot of representations in the public media about different views of small business, but certainly the law at the moment, and the only law my colleagues and I are applying, is the current single touch payroll law for substantial employees.

Senator KETTER: Ms Mrakovcic, are you aware of any representations to change the rollout date for the single touch payroll to small business?

Ms Mrakovcic: I am not myself aware of any representations. I am happy to take that on notice. But I would just reiterate what the ATO has said—that it is government policy for it to start in the middle of next year, in July 2019. It is a matter of government policy.

Senator KETTER: Mr O'Halloran, to come back to you, would it be true to say that the ATO's compliance efforts will be set back if there were a delay in the operative date of STP for small businesses?

Mr O'Halloran: From an SG point of view, any changes to single touch payroll or any confirmation is what industry is looking for in terms of certainty. From our point of view, numerically, at least one aspect of the current legislation is it picks up the biggest employee and biggest employer numbers and certainly goes a long way in its current form to pick up substantial numbers of the quantum of super guarantee. It is correct that the complaints we get from employees saying they are not paid, as I have said in other forums, certainly predominantly come from small business. But I certainly say that the task of getting the visibility on the biggest number of employees and therefore the tangible commencement of the visibility of SG payments alone goes a long way to bring visibility to the payments of employees' rights in terms of the 9½ per cent.

Senator STORER: I have questions regarding the Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures No. 2) Bill, which deals with the CGT changes for expatriates. I have received significant concerns from expatriate Australians with regard to changes in this bill which are effectively denying CGT exemptions on homes sold while the owner is outside of Australia. Others have stressed that for families of Australians who may have lived overseas, if that person happens to pass away, the CGT exemptions will not be in place for the beneficiaries of that will. So my questions really are about this. What is the rationale for stopping Australians living abroad from claiming the CGT exemption on their family home in terms of the bill's stated aim of measures for reducing pressure on housing affordability?

Mr McCullough: The first thing I need to do, if you don't mind a little sojourn, is to explain how our tax system interacts with other tax systems, simply because, in the vast majority of cases, us exerting a taxing right over a piece of property owned by a nonresident is transferring, effectively, revenue to Australia from another compatible jurisdiction. Let me explain. Australia taxes its own residents on their worldwide income, and it typically exerts its taxing rights on nonresidents over certain limited categories of property, particularly land. A lot of other countries do that too. That results, in many cases, in double taxation, which is relieved by a tax treaty. So, if we were in an arrangement with a UK citizen, their system is very similar to ours. When a property is sold in Australia by a UK resident, we would typically want to tax it here and the UK would typically want to tax it there, the person being a UK resident, so the treaty would have to come into play to decide which jurisdiction has primary taxation responsibility and which one relieves the responsibility, with the result that the thing is taxed once. In exerting our taxing right over land owned by foreign residents, we're really just doing something that's consistent with the most popular international model. There are wrinkles where you interact with the jurisdiction that doesn't exert or doesn't have the same sort of model. So, if we're dealing with some countries where they decide not to tax their residents on their worldwide income, it actually means that they wouldn't be taxed at all unless Australia exerts that right, which it is basically doing. You asked a question about the death of people—

Senator STORER: Some have referenced that, in the case of beneficiaries of someone who has passed away overseas, the amount they receive will now not have the CGT concessions applied to them.

Mr McCullough: Before I come to that, there is a transitional period for nonresidents to get rid of the property without that provision applying. It's confusing, because we're talking about nonresidents—with a 'ts'—and what they're exempt from is the main residence exemption—with a 'ce'—so it often sounds like you're saying the same thing, but there's a two-year period for nonresidents to sell their property while they remain non-tax residents, and there's also a provision whereby they can resume Australian residency and thereby trigger the exemption for the principal residence. The starting point, of course, is that a nonresident really shouldn't have been entitled to a claim for a principal residence in the first place. On the death point, I understand there are discussions and the government is considering whether that issue might be addressed by way of an amendment.

Ms Mrakovic: Just to clarify: the interesting issue here is that, in the case of the sale of such properties, two jurisdictions would in effect be asserting the right to tax on those proceeds. So, in a sense, if Australia were not to be taxing in those particular instances, that would not rule out the other jurisdiction still being able to exert a taxing right on the sale of that property. As Mr McCullough said, it depends on the tax system of that other jurisdiction as well and whether they are operating a worldwide tax system or a territorial tax system. But, by and large, most countries would operate on the basis that, if Australia chooses not to exert a taxing right, there would be tax payable in the other jurisdiction in most cases. And, vice versa, if we exert a taxing right on land in Australia, that would normally be taken care of as an offset in terms of the tax payable in the other jurisdiction by applying a tax credit.

Senator STORER: With regard to this issue, reports have noted that, when a foreign resident is terminally ill or dies within a specific time frame of losing their Australian tax residency, that doesn't distinguish between Australians who are living overseas who are classed as a foreign resident; correct?

Mr McCullough: You can be a tax resident of two jurisdictions. An Australian who is living overseas can still be, in many circumstances, an Australian tax resident, and, just because they are a foreign tax resident as well, that doesn't necessarily disqualify them. It's really a question of fact as to whether they lose, or, in some cases, choose to give up, their tax residency. It's all a question of whether you intend to go permanently. So people who are, for example, just on a three-year posting but intend to come back would remain Australian tax residents during that period. The bill before parliament wouldn't affect those categories of people.

Senator STORER: What is the justification for the change in calculating the CGT from the date that the property was purchased rather than the date that the person moved overseas?

Mr McCullough: Again, that's really just consistent with the way that system works. You calculate the gain on the property at the time of the disposal—the event, technically. And, if you happen to be a nonresident at that time, that's the way it's calculated.

Ms Mrakovcic: On that earlier point, just because we choose to undertake an apportionment, if that were the theory or the proposal, you would need to take into account that that doesn't mean that the other jurisdiction would also take into account that apportionment. They may still choose to do so from the date of disposal. So, what tax is actually payable ultimately depends on the interaction of the tax systems of the two jurisdictions and how they choose to exert the taxing rights on those particular nonresidents. That would be correct, Mr McCullough?

Mr McCullough: Yes.

Senator STORER: Won't this change ultimately create a disincentive for expatriate Australians to sell their homes? Isn't it the aim of the bill to create reduced pressure on housing affordability by having more stock here?

Mr McCullough: I'll have to think about that. In the sense that there's a tax-free period, if you like—there's a transitional time—that might actually put some reverse pressure on. That might put some pressure on to reverse before the time period expires. Can I take the rest of the question on notice and think about that, Senator?

Senator STORER: Okay. I have a question about the bill that is termed the Treasury Laws Amendment (Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2018, which includes the research and development tax incentive changes. This was flagged, and I asked questions about this in May, post the budget. Now that it's been brought into the parliament, I'm interested in the savings that are purported to be in the amount of \$2.4 billion in fiscal balance terms over the forward estimates. As per the review that was done by Mr Bill Ferris and Dr Finkel, which recommended that savings be recycled into direct grants used by top innovation countries such as Germany, Sweden and Israel, why isn't the \$2.4 billion that's being saved being recycled into other R&D programs, if the aim is to reform and better focus the R&D grant program?

Perhaps that's for the minister to answer. Minister—Mr Bill Ferris, in Dr Finkel's review, recommended that savings made from the reform of the R&D tax incentive program be used in direct grants as per top innovation countries like Germany, Sweden and Israel, but it's been put into consolidated revenue.

Senator Cormann: That's not quite right. We made decisions in relation to the R&D tax incentives over a number of budget cycles, and you'll find that over that same period we also made decisions to increase the level of investment in relation to initiatives to promote innovation and indeed as part of our innovation strategy. This is probably not specifically for this portfolio, because it touches on other portfolios, but if you want I can take it on notice and organise a consolidated list of the policy measures with a positive and a negative effect on the budget bottom line in relation to this broad space of research and innovation.

Senator STORER: Okay, thank you. I just note that, in a speech to the Australian Financial Review Innovation Summit 2018 in July, Mr Ferris noted that he called for the direct grants to start in 2018 at \$1 billion a year and build to \$3 billion a year by 2030. I'm interested in why the government's policy doesn't line up with what Mr Ferris and Dr Finkel have said.

Senator Cormann: The government gets recommendations from time to time across a whole range of policy areas, and the government considers recommendations across a whole range of areas. In the context of the fiscal capacity to afford those recommendations, what I can say is: while we might not have precisely made decisions that were 100 per cent consistent with the recommendations in that report, overall, in terms of the fiscal impact of policy decisions in this space, with overall fiscal impact up and down, you'll find that we did make additional investments that more than utilised the higher revenue that came as a result of these changes.

Senator STORER: I have received significant communication from other parties, such as major consulting firms, indicating their concerns regarding the bill. But perhaps I'll take that up with—

Senator Cormann: What you will find in this space, Senator Storer, is that there are a whole range of people who have various interests and views on where certain expenditures should be allocated. The government ultimately has to make a decision on how to prioritise the potentially unlimited demand for the allocation of resources, and the decisions that the government makes in the context of limited resources don't always 100 per cent align with every individual interest that wants us to spend money on their priorities. So it doesn't surprise me at all that there are people approaching you who take the view that we should be spending more on A, B and C. It happens to me every day. I've got people coming into my office every day, saying to me that we should spend more on A, B and C. In the end, we've got to make decisions on what is affordable and what can be accommodated in the budget. But on the broader point, and where you started: we did make decisions in relation to the better targeting of the R&D tax incentive in order to be able to afford other initiatives with a negative fiscal impact.

CHAIR: Thank you, Senator Storer. Senator Waters?

Senator WATERS: Mr Jordan, I think most of my questions will be for you, but I might have some for revenue. In an article published in *The Australian* in August 2011, then BG Group executive vice president, Catherine Tanner, made a statement in relation to how much tax her company would pay for its Curtis Island LNG exports—that company being QGC, the parent company of which is BG Group. She said, 'QGC will pay more than \$1 billion in tax a year after 2014.' Can you tell me how much tax this company has in fact contributed since 2014?

Mr Jordan: We can't answer on specific taxpayers. If they are—I presume they would be—in the list that we now publish about tax paid each year for the last two years, you could see it from that list, because we have to publish total turnover, taxable income and tax paid for companies with a turnover above \$200 million. So I assume that would have been published. So you can see the last two years tax paid.

Senator WATERS: Would you be able to check that for me if you've got that to hand? It looks like you've got something there.

Mr Hirschhorn: If you give me one second—

Senator WATERS: Yes. Thank you.

Mr Jordan: While he's looking, I will say—without talking specifically about them—that, if they're involved in these big energy projects, often they don't pay tax for quite a while. That is just a general statement. With some of the ones in Western Australia in particular, we're starting to see some of those things coming through, because they get big write-offs for the investment in the capital equipment. Sometimes people query that. They say: 'That's a big thing. Why isn't there big tax?' Hopefully there will be big tax, but they take their losses first in that construction phase. Hopefully I've filled that gap now. Have you found that now, Mr Hirschhorn?

Mr Hirschhorn: Yes, thank you. As the commissioner said, we normally cannot talk about individual taxpayers. We are compelled to publish the gross income, the taxable income and the tax payable of large companies. That's public and foreign-owned companies of more than \$100 million revenue, or private companies of more than \$200 million. The data is expressed in the context of tax groups rather than economic groups. Sometimes a particular economic group may have multiple tax groups, and maybe not all their tax groups appear in the data because some of the tax groups might be less than the threshold. I assume that they are in the same group, because I see three companies here: BG International (Aus) Pty Limited, BG International Limited and BGC (Australia) Pty Ltd.

Senator WATERS: The first and the third sounded remarkably similar to me.

Mr Hirschhorn: Yes. Companies often have very similar names. They are in the same group, but they might be separate tax groups.

Senator WATERS: They are separate—okay.

Mr Hirschhorn: It may be that they are not the only companies in that group, but I can't see anything called QCLNG off the top of my head.

Senator WATERS: Yes, BG is the parent company.

Mr Hirschhorn: In the 2015-16 year, between them they disclosed about \$8 billion in gross income, \$125 million in taxable income and \$35 million in tax payable. The corporate tax avoidance committee, which was established by this committee and which has run over the last few years, closed earlier this year. We spoke a little bit about projections of tax and, in particular, projections of tax in the LNG industry. We did a particular submission in the context of the PRRT. Among the things that we noted are some of the problems with projections and whether predictions came true. The biggest factor is that many of the business cases and

projections were based on very high gas prices, and over the last few years the gas prices that have been realised by many of these organisations have been much less than they originally projected. There were generally also significant overruns in the cost of developing many of the resources.

Senator WATERS: Indeed.

Mr Hirschhorn: So, putting aside any sort of tax planning or anything like that, I think it's a fair comment that the LNG industry has not been nearly as profitable as the investors had hoped over the last few years—

Senator WATERS: Imagine!

Mr Hirschhorn: and that the tax has been much less.

Senator WATERS: Thank you for that explanation. I certainly agree they have underdelivered on what they had earlier talked themselves up for. Can I just take you back to that group figure. The figure that I had was revealed from the corporate tax transparency data which you've published, but I have a more granulated version. The figure I've got is for BG International (Aus) Pty Limited. I don't know whether that's the first of the groups you mentioned or the third of the groups that you mentioned.

Mr Hirschhorn: I'm looking at the 2015-16 data. We have published for three years, and in fact in December we'll be publishing the fourth year of these figures. Looking at the 2015-16 year, I have BG International (Aus) Pty Limited.

Senator WATERS: Yes. And was that \$35 million tax payable relevant to that particular company for 2015-16?

Mr Hirschhorn: No. That entity has disclosed about \$6.3 billion of gross income, no taxable income and no tax payable.

Senator WATERS: Yes. Thank you. That's the figure that I have—that, in fact, over 2013 to 2016 they have delivered zero tax.

Mr Hirschhorn: Again, what I would say is that that entity may not be the only entity in their economic group. I suspect that BG International Limited is part of their group. I also—and this is based not on any knowledge but on the similarity of the name—suspect that BGC (Australia) Pty Ltd is part of their economic group. BGC (Australia) Pty Ltd is the one, of those three, which had the tax payable.

Senator WATERS: And that was the \$35 million. So, of the three, one had a \$35 million tax bill and the others paid nothing; is that correct?

Mr Hirschhorn: That's correct.

Senator WATERS: So one of them paid nothing at all and one of them paid \$35 million. That might sound like a lot to your average punter, but when you look at BG Group's tax payable to the UK government you see it is \$406.462 million, which is more than 10 times what they've paid Australia. Is that a concern to you? How do you explain such a large discrepancy?

Mr Hirschhorn: The first thing I would say is that we get to tax Australian profits; we do not get to tax global profits—

Senator WATERS: I understand that.

Mr Hirschhorn: and I'm unaware of what operations they have elsewhere in the world. I would also say that income tax is a profits tax, and to pay corporate tax you have to make profits. In the start-up phase, in particular—and this is discussed in our PRRT submission—you would typically expect gas operations not to pay corporate tax for probably the first decade of their existence and corporate tax to start kicking in after that.

Senator WATERS: And that's because of those various write-offs that the commissioner mentioned?

Mr Hirschhorn: They spend an extraordinary amount of money setting up the resource, before any income arises.

Senator WATERS: So was it improper of Ms Tanna, in 2011, to say that by 2014 BGC would be paying more than a billion dollars in tax a year, if, as you say, it might take up to a decade for all of those various perks that they can avail themselves of to wash through?

Mr Hirschhorn: I can't comment on Ms Tanna's projections.

Senator Cormann: But I can comment. The thing with the Labor Party in government that it took us a while to tidy up is that, in the context of decisions like introducing the mining tax and the changes to the PRRT that were connected to it, they made heroic assumptions on what revenue it would collect. Then they would spend all the money they thought it would raise, and more. And then, when the money didn't come in, they'd end up in a

difficult budget position. Just to prove that it is not a partisan point that I am making, I'll add that when Paul Keating initially introduced the petroleum resource rent tax, taking a very cautious approach, his revenue forecast in his first budget was for zero dollars in revenue, and, in fact, they outperformed that to the tune of about, from memory, \$90 million or thereabouts, in 1990.

The Labor Party in more recent years, in terms of policy changes to increase tax, have assumed blue sky and have been extremely over-optimistic in how much they would raise. They've then committed the Commonwealth to increased levels of expenditure structurally, on an ongoing basis, in excess of what they thought they would raise. And then the money didn't come in to the level they thought it would, and that put the budget into a difficult structural position, which we have had to address in recent years.

Senator WATERS: Chair, I've just got one more question. I'm primarily concerned, with this line of questioning, with company executives talking up their likely payback to the taxpayer and then, in fact, pursuing alternative tax arrangements once they've got their approval. That's my primary concern. Perhaps this is a question more for Revenue. What sort of policy or compliance actions are you taking to prevent this, if you like, change of tack where they say one thing before they get their approvals and then do another after, and the taxpayer ends up getting absolutely nothing for potentially 10 years?

Mr Hirschhorn: Can I start off with compliance action?

Senator WATERS: Sure.

Mr Hirschhorn: First, I will refer to our submission to the PRRT review, where we talk about this in granular detail.

Senator WATERS: Thank you. I haven't read that, and I am interested in that.

Mr Hirschhorn: We are, of course, very interested in tax compliance—that people are complying with the law. In a sense, we are less interested if people's business cases were more optimistic than they turned out to be; we are interested that their actual business performance is fully taxed. We have had a very significant focus and very significant success in relation to ensuring that these large gas companies are complying with tax law. The major issue was around related party debt. We have had a very successful case against Chevron. Off the back of that case with Chevron we have had extraordinary success in recalibrating the interest rates that these companies pay. Over the last year or two we have settled about \$90 billion of inbound debt into what we call our green zone in our practical compliance guideline. We have denied well in excess of \$10 billion of interest deductions in the past. Our projection is that, over the next decade, deductions will never arise for about \$25 million of interest expense. In terms of compliance, in terms of the actual business performance and ensuring they have paid the appropriate amount of tax, I can assure you we have had a very significant focus and very significant success in ensuring that these companies are complying with Australian law.

Senator WATERS: Is your ability to collect that sort of revenue undermined by the fact that we have just fast-tracked the reduction of the corporate tax rate? What does that do to your projections?

Mr Hirschhorn: I would say two things. Firstly, the reduction in the corporate tax rate does not apply to these entities due to their size. Secondly—and I have said this to this committee before and I get teased about it by my colleagues—I am the bricklayer, not the architect, and I will lay the bricks that the architect tells me to lay.

Senator WATERS: You said your chief focus in compliance is ensuring that the rules are adhered to. Those are the rules that are allowing two of those BG companies to pay zero tax over those three financial years and only one of the three to pay a small amount of tax compared to the tax that their parent company is paying in the UK. Does that not imply that 'the architect needs to build a better house'?

Senator Cormann: You are asking the officer for an opinion now. If the chair was paying attention, she would have ruled your question out of order.

Senator WATERS: Minister, perhaps I can ask you then. Perhaps I will rephrase and we can let the chair have that conversation. Apparently I've been very naughty.

Senator Cormann: Chair, there was a request for an opinion of the officer. I just want to make sure that—

Senator WATERS: I will rephrase, Chair.

CHAIR: We are very behind schedule, so we would like to move on if we can.

Senator WATERS: This is my last question, Minister. I will rephrase. Is it appropriate, in your view—

Senator Cormann: You are still asking for an opinion.

Senator WATERS: I am asking for your opinion. I am allowed to.

Senator Cormann: So you are asking me?

Senator WATERS: I'm sure you have many opinions. Is it appropriate that two of those BG groups pay zero tax when they are extracting a non-renewable resource that belongs to the Australian taxpayer and when they talk about the tax revenue that they would supposedly provide and are now under-delivering?

Senator Cormann: Every company must pay tax consistent with our tax laws. Self-evidently, if a company doesn't make a profit, if it doesn't have taxable income, it doesn't pay tax. Company tax is a tax on profits. The petroleum resource rent tax was designed as a tax on super-profits. If you don't make any profits or super-profits, you don't incur tax liability. In my opinion—and it is a very strong opinion—every company across Australia that makes a profit must pay their fair share of tax consistent with the laws.

Senator WATERS: The commissioner referred earlier to various arrangements whereby they can front load their obligations—accelerated depreciation, for example.

Senator Cormann: But it has got to be done consistent with the law.

Senator WATERS: The laws are weak. The laws are allowing these multinationals to pay zero tax, and that is not okay. And you don't have a problem with it?

Senator Cormann: We don't have a turnover tax in Australia. You can go to the next election and say that part of your economic plan for a weaker economy, fewer jobs and lower wages is that we should introduce a turnover tax.

Senator WATERS: Wages have been stagnant for about 20 years now, so I don't think we can get any worse.

Senator Cormann: If you want to introduce a turnover tax on business, I can guarantee you that the economy will be weaker and there will be less investment, lower growth, fewer jobs, higher unemployment and lower wages. You can go to the next election with a plan for weaker growth, less investment and lower wages, and we'll go to the next election with a plan for stronger growth, more investment, more jobs and higher wages.

Senator WATERS: I don't accept any of the premises of your statement. That's a phrase you like to repeat yourself a lot, so I'll give it right back to you.

CHAIR: I don't think there are any further questions for the ATO.

Mr Jordan: Can I make one comment regarding Senator Abetz's question? I do not want people to think that because of a letter that wasn't clear that we would—he talked about people's livelihoods and homes and all of that and small businesses. I don't want that left hanging out there. We absolutely need to get all our communication right, clearly. We're very focused on that. But the full Federal Court did find in our favour based on all of the evidence, not just that unclear letter. We were clearly not wanting that to go to a hearing, but there are two parties to anything. I really want to clarify this because I don't want any misunderstanding.

Mr Ravello: The letter was one piece of evidence. The other evidence was that the ATO did have discussions with the taxpayer and in those discussions it was clear that the amount paid was primary tax only and that did not include interest. That was supported by contemporary records taken by the staff member at the time and that was part of the court's consideration in the decision that they made. Yes, the letter was wrong, but we believe that discussions with the taxpayer were very clear that the amount being paid was primary tax only and did not include interest.

Mr Jordan: We were trying to settle and not have this go through the courts.

Mr Ravello: That's right.

Mr Jordan: But for whatever reason the taxpayer wanted to pursue that matter. It was absolutely a special set of circumstances and clearly would not put livelihoods or businesses in liquidation based on something like that. Absolutely not.

Ms Hastings: The senator was right about Justice Kerr's dissenting judgement. However, there were the other three judges, justices Tracey, Moshinsky and Derrington, and each of them, consistent with what the commissioner and Mr Ravello just said, said that in this case what they did take into account was—the evidence was provided by both the ATO decision-maker and the taxpayer's representative—they took all of that into account and said that what you needed here was more than just that letter, more than just that communication. What you needed was that mental process that goes to the decision making. So it really was that you did need to take into account all the relevant circumstances surrounding it. We apologise if that wasn't absolutely clear earlier.

CHAIR: Thank you for that, and thank you to the ATO.

Australian Charities and Not-for-Profits Commission

[17:14]

CHAIR: I welcome Dr Gary Johns. Senator McAllister?

Senator McALLISTER: Mr Johns, it was Susan Pascoe's practise to acknowledge country. I understand that you don't do that. Why is that?

Dr Johns: The issue arises—I noticed this in my own signature block a couple of months ago—with the words, 'We acknowledge the elders' and so on. The term 'we acknowledge' worried me because it refers to the commission. There is a perception there that the commission would be acting in a biased way towards one group. I do register some Aboriginal charities. They are a small number in proportion to the whole 56,000. So I don't, because 1. it is simply a practise, it is not law; and 2. To me it sends that signal of a perception of bias. I am a commissioner for all charities.

Senator McALLISTER: Mr Johns, what's your approach to ACNC staff acknowledging country?

Dr Johns: It came to my attention that a very small number of staff of the 100 of my officers used, if you like, the standard acknowledgement that is used throughout some sections of the public service and the tax office. The question is, do I control my own signature block?

Senator McALLISTER: It is simply a grammatical—

Senator Cormann: It is a common courtesy to let the witness finish his answer before you interrupt with another question.

Senator McALLISTER: I don't intend to contest what he's saying. I just want to understand whether he's saying—

Senator Cormann: Perhaps let him finish the answer.

Senator McALLISTER: He is going to leave us all uncertain because of the way he has phrased his answer. But go on.

Dr Johns: A small number of officers use that reference to 'we acknowledge'. I think it raises a perception of bias, so I've had discussions with those officers.

Senator McALLISTER: Does that mean that you have stopped them from acknowledging country or simply stopped them from acknowledging country on behalf of the commission?

Dr Johns: Neither. What we've done is, I asked them, 'Who is the "we" in "we acknowledge"?' They were unsure. I said, 'My issue is this perception of bias on behalf of the commission.' I think I could preserve their right, their practice to acknowledge the elders, if they were to use the words 'I acknowledge'. So in fact several officers are using that in a signature block: 'I acknowledge.' They feel they are able to preserve that practise and I feel that to some extent it relieves that notion of perception of bias on behalf of the commission, which must register Indigenous and non-Indigenous charities.

Senator McALLISTER: Did you seek any advice from the ATO human resource advisers and senior staff about this issue?

Dr Johns: From the ATO? Yes—from two senior ATO officers who are not here. That was purely on the question of whether I own and control my signature block; not on the other substantive issue.

Senator McALLISTER: This goes to the question that I sought to clarify earlier. When you say 'my signature block', what are you talking about: your own, or the signature block of all staff in the organisation which you temporarily head?

Dr Johns: All staff that come out, if it were printed—it is electronic normally—with the ACNC logo, address, phone numbers and the name of that officer, because they are an officer of the commission. The words 'we acknowledge' or 'I acknowledge' sit within that signature block.

Senator McALLISTER: So the question is, do you as the commissioner have the right to control the signature blocks of staff? Is that what you're trying to say?

Dr Johns: Yes, if they are writing on behalf of the commission.

Senator McALLISTER: What was the advice that you received?

Dr Johns: That I control the signature block.

Senator McALLISTER: You will be aware that the practice of acknowledging country is widespread across the Commonwealth Public Service. Why do you uniquely believe that you have different obligations to those other Commonwealth public sector agencies, which are quite comfortable acknowledging country?

Dr Johns: Because the words raise a perception of bias that I'm not treating all charities the same. I think that's plain on the face of it.

Senator McALLISTER: It's not plain on the face of it to many people listening to this exchange, I'm fairly certain, particularly because the obligation to act without bias runs across the entire Commonwealth Public Service. What is so special about your agency's circumstances that means that this invokes bias in your organisation but raises no concerns in a whole range of other organisations?

Dr Johns: I obviously can't speak for other organisations, but I, as the commissioner, am responsible for any perceptions of the commission and its work. I took the view that that signature block and using the words, 'we acknowledge' imply that the entire commission was, if you like, acknowledging one group of charities and not others.

Senator McALLISTER: But it doesn't in any way speak about charities at all. Traditional owners are not charities.

Dr Johns: It refers to Indigenous people. There are Indigenous charities.

Senator McALLISTER: They are not charities. They are people and citizens.

Dr Johns: To be an Indigenous charity you need a number of Indigenous people on the board, so to all intents and purposes they are—and indeed their charitable purposes are, for instance, for reconciliation or various land issues which can only apply to Indigenous people.

Senator McALLISTER: Did all staff follow your practise of not acknowledging country?

Dr Johns: One officer was concerned about it and didn't want to use the term, 'I acknowledge'. She wanted to prefer, 'we acknowledge'. The issue then arose that if I were to give a written notice to that person it would act against her career interests. I think that would be too harsh, so I have taken no further action.

Senator McALLISTER: So there has been no formal disciplinary action in relation to this matter?

Dr Johns: Correct.

Senator McALLISTER: You've raised perceptions of bias as your reason for changing this practise, which is widespread in other parts of the Australian Public Service. Can I put another proposition to you, which is that you've written extensively with very strong and, I would suggest, unorthodox opinions about Aboriginal affairs publicly prior to taking this role. Some people might conclude that in fact you are importing your own preferences into the institutions of the Australian Public Service. Do you have a response to that?

Dr Johns: It would be wrong, because I'm only discussing the issue of the perception of bias and not the substance of the issue.

Senator McALLISTER: I don't understand what you mean by that. You might have to elaborate for me.

Dr Johns: I'm only discussing the perception of bias.

Senator McALLISTER: The perception of bias about whom?

Dr Johns: Anyone might think that I'm favouring one group as opposed to another. I make no statement about the notion of acknowledgement.

Senator McALLISTER: You haven't convinced me that your circumstances differ from any other part of the Australian Public Service. I don't see that it does.

Dr Johns: Well, that's not my problem. It's yours.

Senator McALLISTER: How do you think staff have responded to your leadership in your first stint as commissioner?

Dr Johns: I think well. They're good staff. We have about 100 and they're working diligently to fulfil their obligations to charities under the Commonwealth.

Senator McALLISTER: Would you consider yourself well informed about staff morale at the ACNC?

Dr Johns: I think so, yes.

Senator McALLISTER: Would you characterise staff morale as high?

Dr Johns: Yes.

Senator McALLISTER: Have you been able to see the data from the 2017-18 census for the ACNC?

Dr Johns: Yes.

Senator McALLISTER: In your earlier answers where you characterised staff morale as high, were you guided in answering by the data obtained through the APS census of 2017-18?

Dr Johns: That's one element, yes—it's a good element, good feedback.

Senator McALLISTER: In the table of verbatim comments from ACNC staff in response to the census, were there negative comments made about your conduct, comments you'd made in a work context, or your adherence to APS values?

Dr Johns: Yes, I think by one officer.

Senator McALLISTER: By one officer.

Dr Johns: But these are not identified. That's very important, and, indeed, these comments are private and not meant to be circulated.

Senator KITCHING: Senator McAllister, can I just ask Dr Johns: if they have become public, wouldn't it indicate that there is a lack of satisfaction with your performance?

Dr Johns: Perhaps on the part of one officer, yes.

Senator McALLISTER: Mr Johns, in the section relating to 'staff view of senior leaders', can you comment on the trend of those measurements in comparison to the previous APS census of 2016-17?

Dr Johns: I can. We have to be a bit careful here, because most of the comments about leadership refer to a staff's, if you like, immediate report, not the commissioner. And I don't want to reflect at all on other senior people in the commission. I think they're all very good officers.

Senator McALLISTER: So there is no obvious trend that you could comment on. I'm particularly looking, of course, to any trends associated with the change in leadership in the period where Ms Pascoe left and when you commenced.

Dr Johns: No—are you asking if I'm concerned about any trends? No, I'm not.

Senator McALLISTER: I'm not asking if you're concerned, I'm asking whether there is a trend.

Dr Johns: There was a change in some statistics from last year to this. Whether that's a trend is another matter.

Senator McALLISTER: If I did see the data, would I see comments reflecting staff concerns about the effect of your remote work base on the culture and productivity of the commission?

Dr Johns: I don't recall—there may have been one or two, again, but of the many comments, you know—we could single out one or two, yes.

Senator McALLISTER: Do you envisage over the duration of your term as commissioner basing yourself in any other city besides Brisbane?

Dr Johns: No.

Senator McALLISTER: Even if it became apparent that your remoteness from the rest of the ACNC staff and management was detrimental to the work of the commission?

Dr Johns: Well, it's not remote. It's not detrimental. I'm situated in a large, eastern seaboard city which has a lot of charities in it. I'm often in Sydney, I'm often in Melbourne—Adelaide, rural. It's an Australian role.

Senator McALLISTER: I understand that the ACNC recently rejected an FOI request that sought to have the results of the last two APS censuses for the ACNC made public. The ACNC is funded by taxpayers. Would you say that taxpayers have a right to see the data that reflects on how the ACNC is being run?

Dr Johns: Not individual comments; I mean, I think that's too sensitive. But what will happen—

Senator McALLISTER: What about the data—

Dr Johns: What will happen is—

Senator McALLISTER: Because there's quantitative manipulation, isn't there?

Dr Johns: There is some data that will be public. We've got to be careful about which data we're referring to. Once we get to comments, or data, that could, if you like, identify particular individuals, you then defeat the purpose of asking the staff for feedback. You may well get a situation in the future where people just don't give feedback, because it is made public. That would be sad.

Senator SIEWERT: Can I ask: has the provision of constitutions been removed from the new ACNC Charity Register?

Dr Johns: Now just explain that: the provision—

Senator SIEWERT: of constitutions. Let's put it this way: has there been a change to the way that organisations provide information for the new ACNC register?

Dr Johns: No. We have a renewed website, and you'll have to log in with a new password. But, other than that, no, there's no change.

Senator SIEWERT: Do organisations still have to provide copies of their constitutions when they're registering?

Dr Johns: Yes.

Senator SIEWERT: They do?

Dr Johns: Yes—or similar documents that tell you—

Senator SIEWERT: What does that mean?

Dr Johns: Well, meaning: these are the rules under which this charity operates. They're not all core constitutions but, yes, they should supply the primary document.

Senator SIEWERT: So, are some organisations registering that actually don't have constitutions?

Dr Johns: It might be a trust document, for instance. So, it's just another document which sets out the purpose of the organisation and some of the key elements of voting rights, the people who'd be responsible persons and how they'd come to be and so on.

Senator SIEWERT: So, they don't have to meet the requirements of model constitutions in order to register?

Dr Johns: No; no, there's no single rule. There are various legal entities, all of which can be a charity. So those laws—whether it's association, corporation, trust or whatever—determine the nature of the documentation. We receive those documents as those laws determine.

Senator SIEWERT: If I go onto the website will I be able to find out now what those requirements are and how you determine whether they meet the requirements to determine whether an organisation is in fact meeting all of the rules for running an organisation?

Dr Johns: Yes and, if in doubt, contact advice staff or registration staff.

Senator SIEWERT: Dr Johns, you suggested recently in an article in *The Australian* that the government should consider law changes if they want charities to butt out of partisan politics.

Dr Johns: Yes.

Senator SIEWERT: On what basis are you making those comments? Do you consider that charities have been making partisan comments?

Dr Johns: They can—that's the point I'm making. So, we've had, over the nearly six years now, 60 complaints from the public about the partisan nature of some charities.

Senator SIEWERT: Their view that it's partisan, should we say?

Dr Johns: They're just complaints; that's all. It doesn't mean to say that—

Senator SIEWERT: It doesn't mean that they have been partisan.

Dr Johns: Correct. So, you then use the law—there's a disqualifying purpose that says: a charity shall not have a purpose of favouring, supporting, one political party candidate or not. It's a very high bar. My point is to explain that to people: 'It's a very high bar. If you want a different bar, you need different legislation.' So, it's really to tell the public, some of whom think we have a particular test for partisan political activity—not advocacy, partisan political activity—and often mistake the test. It's a purposes test.

Senator SIEWERT: Do I take it from your comments that you weren't advocating change; you were just saying: if you want to make it clearer, you need to change the act?

Dr Johns: Yes.

Senator SIEWERT: Is that what you were saying?

Dr Johns: And I did that in the context of being asked questions about it.

Senator SIEWERT: Can I ask then: you don't believe there need to be changes?

Dr Johns: No, I have no view on the matter of change or, no, that's a matter for government. My role is to make perfectly clear what the act determines, just judging from—not a large number—a large class of complaints we've had about charities who apparently are biased which just haven't come to fruition because the act says: it's okay because they haven't reached that level which says they have a purpose which is political.

Senator SIEWERT: Or are not in fact advocating a vote for one particular political party?

Dr Johns: Yes. There are a whole lot of measures here, and we don't have a lot of common law cases to help us. Ultimately, you have to look at the behaviour of a charity, if it were brought to your attention, in order to understand whether it had such a political purpose.

Senator SIEWERT: You don't see criticising a particular policy, no matter whose it is, as partisan politics?

Dr Johns: Absolutely not. No, I don't.

Senator SIEWERT: In that same article, in fact, it was talking about the ACNC investigating the Catholic Education Commission of Victoria. Is that, in fact, correct?

Dr Johns: It's the Catholic Education Melbourne. It's a different entity.

Senator SIEWERT: Thank you. Does that correction imply that, yes, you are—

Dr Johns: We did and we completed the investigation. The only reason I can say this is that the charity itself made that public and I'm allowed to clarify it. Otherwise I would not be able to.

Senator SIEWERT: When did you complete it?

Dr Johns: A couple of weeks ago.

Senator SIEWERT: What was your finding?

Dr Johns: That there was no disqualifying political purpose in the particular matters that were brought to our attention.

Senator SIEWERT: So the matters that were brought to your attention related to what the political purpose of the organisation was, rather than what they had done?

Dr Johns: No, you start with activities. It's unlikely that a charity will print on the front page of the paper that their purpose is political or partisan.

Senator SIEWERT: Exactly.

Dr Johns: You have to look at, for instance: are they spending money that should be for charitable purposes in a partisan way or that might constitute a partisan purpose? You begin your journey, which is literally an inquiry—you have to write to them and ask: what are you spending, what are you doing and what are you saying? Then you look at the whole of the evidence to see whether it would reach that threshold of proving that it had a purpose that was political.

Senator SIEWERT: You found that it didn't?

Dr Johns: Correct.

Senator SIEWERT: Thank you. In that respect, do you take into account where the resources come from when you make that—whether it was money donated for a political purpose or whether an organisation is using money that they made or got elsewhere?

Dr Johns: It hasn't come to pass. I haven't had a case like that.

Senator SIEWERT: You said you had 60 or so. I won't quote that number, because you made it as a sort of—

Dr Johns: The number is correct according to my briefing.

Senator SIEWERT: Of those, how many have been found to have contravened political purposes?

Dr Johns: One.

Senator SIEWERT: Who was that?

Dr Johns: I can't name it. That's the strange thing.

Senator SIEWERT: Sorry. Yes, I understand. You can say no when you've found—

Dr Johns: But I can't name it unless a charity were to give me permission.

Senator SIEWERT: Sorry, I'd forgotten that. Thank you.

Senator McALLISTER: Dr Johns, I understand that the assistant minister you work with is Senator Seselja—is that right?

Dr Johns: Yes.

Senator McALLISTER: Since his appointment, have you met to discuss the priorities for the Australian Charities and Not-for-profits Commission?

Dr Johns: Yes.

Senator McALLISTER: When was that, Dr Johns?

Dr Johns: About three or four weeks—at a sitting time in Parliament House.

Senator McALLISTER: Sorry, when you say three or four weeks, do you mean three weeks ago or—

Dr Johns: About three or four weeks ago.

Senator Seselja: We can get you the exact date. That's my recollection. I couldn't tell you the exact date.

Senator McALLISTER: Alright. Did you initiate that conversation, or did Senator Seselja?

Dr Johns: I offered.

Senator McALLISTER: You initiated the conversation?

Dr Johns: Yes.

Senator McALLISTER: What did you flag for Senator Seselja as the most pressing piece of work to be done for the sector?

Senator Seselja: Sorry, just before you do: I can confirm it was 20 September that we met.

Senator McALLISTER: Thank you very much, Minister. What did you flag for Senator Seselja as the most pressing piece of work to be done for the sector?

Dr Johns: It was a broad overview, keeping in mind that this is the Assistant Minister's first time looking over the ACNC. We spent most of our time just painting the broad structure, the rules and the fact that there had been tabled a five-year review of the act, and we do know that the government will be considering a response to that in time.

Senator McALLISTER: Minister, when should we expect a response to the review?

Senator Seselja: We're working through that process. I couldn't give you an exact time frame, but we are keen to respond soon. Obviously, the review has been public, and we're working our way through that. I, as a new minister in the portfolio, have taken time to get across it. We'll be working through a cabinet process soon.

Senator McALLISTER: You would consider that a cabinet process has been initiated in relation to that review?

Senator Seselja: Well, it's with me and then it's ultimately for government, finally, to give a formal response.

Senator McALLISTER: From a process perspective, do you expect any other steps? Really, what I'm interested in is whether or not you're considering any additional consultation or seeking any other feedback or any other procedural steps before you prepare a recommendation for cabinet.

Senator Seselja: I wouldn't anticipate that. I couldn't 100 per cent rule that out. Obviously there has been a lot of work done that has gone into the review. It's quite a comprehensive piece of work, and that's why we need to take a little bit of time to get our response right. I don't anticipate any other sort of widespread formal consultation or further process externally.

Senator McALLISTER: Separate to the review, Senator Seselja, what is your primary focus now as minister? You have had a few months to get into it.

Senator Seselja: With the ACNC?

Senator McALLISTER: Yes.

Senator Seselja: I think the review's pretty central to it at the moment, because it's the first serious opportunity to see what's working and what's not. I'm not going to pre-empt the government's response to that review, but I think you'll find that, in our response to the review, that will be a reflection of my thinking and the broader thinking of the government in terms of the charitables sector. In terms of my priorities, it is to make sure that it continues to be well regulated, that the community can have confidence in the charity sector and that it can do the amazing work that it does in the community.

Senator McALLISTER: Dr Johns, coming back to that issue around perception of bias, do your previous articles, books and commentary create a perception of bias on your part against the charitable sector? Have you done anything to neutralise that perception?

Dr Johns: Well, I don't have to neutralise it. I was asking questions, in all of my work, about what charities do. Now, as the commissioner, it's my task to use all of the data, which by law and taxpayers' money I gather, and turn it over to the public. That's what the act actually tells me. That's what I was writing about for a number of years.

At the moment, it's very difficult to find information about charities in a form where you can compare like with like. What I'm going to do, and I've spoken of this a hundred times now in public forums and with hundreds of charities, and they seem very keen—I want charities to tell us what programs they run. Every time I sit down with

a charity, I say: 'How are you going? What are you doing? What are you up to?' They immediately tell me about their programs, because that's the common language, I think, between charities and the public, and especially donors. If I can, over the next couple of years, have charities report to me with no further red tape and using some common language, I think we'll be able to get a far more powerful register that people can make great use of. It's passed the first test with flying colours, the first five years, which is that we have a verifiable list of charities; you can rely on it. I think we can now take that further, to be able to find information that would be of interest to donors so that they can chase their interests and their passion and look at programs for the people they want to help in the places where those programs are delivered. That would be a significant achievement.

Senator McALLISTER: Dr Johns, you've previously argued that people on government allowances should be required to take contraception. You've described Indigenous mothers as 'cash cows', attacked Indigenous charities and criticised Beyond Blue. Have you done anything to dispel any perception of bias that might have arisen from those previous public comments?

Dr Johns: No, and I don't need to, as the commissioner.

Senator McALLISTER: It seems fairly more directly relevant to your role than an acknowledgement of country, because those remarks go very directly to the charitable purposes of the organisations that you regulate.

Dr Johns: They're not in my signature block. That's the issue. They carry the Commonwealth seal, the ACNC, which is a Commonwealth body under law. That's my concern.

Senator McALLISTER: So have you disavowed those views, Dr Johns, or are they still your views?

Dr Johns: Absolutely not. I'm quite public. I've written for 30 years about a whole range of matters. Why would I seek to disavow any of that?

Senator McALLISTER: Thank you.

CHAIR: Senator Siewert has one more question.

Senator SIEWERT: I want to go back to the issue around the constitutions. You can't find an organisation's constitution on the website anymore. If I look up a charity, if I want to see how it operates, I can't find their constitution.

Dr Johns: You should be able to.

Senator SIEWERT: I can't.

Dr Johns: I would be most concerned. When did you do this?

Senator SIEWERT: Just then. I just checked to see, following our conversation, and I can't.

Dr Johns: Offline, give me the name of the charity you are trying to find. You should be able to see it; you really should. That's a primary document.

Senator SIEWERT: So it's not the intention for them not to be there?

Dr Johns: Absolutely not, no. That is a key element of the registration.

Senator SIEWERT: That's why I'm asking. Thank you.

Senator STOKER: Dr Johns, what tools do you have at your disposal to help potential donors to charities or not-for-profits decide what represents a good value organisation to which to contribute?

Dr Johns: The key tool that I want to produce—there's an annual information statement that each charity provides. There are descriptors there about the charitable purpose. Unfortunately, it's apples and oranges; I can't make sense of what one charity does compared to another. My key tool is that I will provide a taxonomy of purposes to charities when they fill in future annual information statements, so that they can tell us what programs they are using to deliver on their charitable purpose in a way that a donor will be able to search by purpose. It's their passion; the donor is interested in not a charity by name—they can find that now—but a purpose to look after particular children or animals or the environment. They'll want to know, perhaps, where it's been delivered and for whom. I'll be able to deliver, over the next couple of years, some simple search tools so that anyone can come to the website, ask their questions and find charities and the activities that they undertake. I must say: every time I mention this to charities, they are very keen on it. They want more visibility; they want to be seen. So this is really what I call a visibility project. It will build on the notion of this large register of 56,000 charities.

Senator STOKER: Is the ACNC working on a way to make it so that you can compare the effectiveness of the work of a charity in addressing the causes that it was designed to assist?

Dr Johns: No. It's too difficult. You have to be very careful here. You could go to the website now and you could spend a lot of time drawing out annual statements. You might look at the financials and how much they are

spending on a particular activity, but they are simply not comparable; we don't have the accounting standards. I spent many years writing about this and thinking about this. What I can do is something that I think is quite powerful. If donors can look at similar products, programs that charities run that people are interested in and the places they are interested in, and get a drop-down list of the programs, the donor will then ask, 'Which charity is best for my purposes?'

At that point, I have to stop. We don't have substantial metrics and I think we are a long, long way away from that. But that's a really good start; at least you are in the ballpark and you know what you are looking for. It's up to the donor to go and look further into annual reports or the AIS or whatever, but at least they're on their journey. The taxpayer will know now that we've aided the donor and made it a lot easier for them to start their journey. We've lowered the cost of searching for like programs. Beyond that, I wouldn't hold out a lot of hope for the golden metric of which one's more efficient or not. It's quite difficult.

Senator STOKER: What role, if any, does the ACNC have in ensuring charities don't direct funds to organisations with links to terrorist causes?

Dr Johns: We take advice from those organisations in Australia under the Commonwealth that would have some insights. You cannot characterise us as a frontline organisation; we simply don't have the resources to be that. But we are of course concerned about it, and we do have regular meetings with a number of other groups whose role it is to track funds and look at purposes that may be illegal, terrorist-related or not. We share data; that is as much as I can say, yes.

Senator STOKER: If, say, DFAT or one of the other Commonwealth departments with responsibility for assessing this kind of issue provides you with information that indicates an Australian charity is providing funds to an organisation that is on the consolidated list of organisations subject to financial sanctions as a result of the security threats, what consequences flow for them?

Dr Johns: It's highly likely that their registration would be revoked—this is theoretical, of course.

Senator STOKER: Has something like that occurred as a consequence of the article I observed in *The Daily Telegraph* on 27 June 2018, which indicated that Union Aid Abroad, or APHEDA, was funding the MA'AN Development Centre, which employed a leader of the Popular Front for the Liberation of Palestine, which is a listed organisation?

Dr Johns: We can't talk of specifics, but this is how it goes. You would be most concerned if that were true. We would rely on DFAT, because they would have people in place—I am sitting in Melbourne, really not on the spot. DFAT would have much better information than us, and we would take good advice there. The other issue too, of course, is that things can go wrong in charities, especially when they're delivering aid overseas. The question for us is: did the responsible people, the people running the charity, bother to make themselves aware? Did they ask the right questions? Were they concerned about it? These have been the issues, especially among overseas aid charities in the UK in recent months. The question comes back—not that things may go wrong, but when you are delivering thing at an enormous distance from you and don't have absolute control at least you need a line of sight. You need to be asking the right questions, that's the key thing. If something is wrong you should have taken steps to rectify it. When you haven't, we'll help you.

Senator STOKER: I'll move to a slightly different subject. Is there any requirement at law for charities or not-for-profits to be truthful in the way that they advertise or market to try and get people to donate?

Dr Johns: I think it's a matter for the ACCC. I don't have direct powers there but it is an interesting one. A charity, like any other organisation, might exaggerate its wares. I suppose the question arises, what is it selling and so on? The ACCC may be able to take account of that. It doesn't directly come within our purview, but, nevertheless, if there were a blatant situation of a charity holding itself out to do things, or to represent to the world as it is not, then maybe that might spark our interest on the governance side. We are saying, 'Hang on, are you pursuing your charitable purpose here or are you making a big fuss in order to raise funds?' But it's certainly not clear. It's not an easy one but it's a very interesting area of work.

Senator STOKER: Would the ACCC's jurisdiction over this come from a requirement not to engage in misleading and deceptive conduct that applies to charities, or is it sourced somewhere else?

Dr Johns: I think the ACCC have sufficient power to do that.

Senator STOKER: I'll leave it there. Thank you very much.

Dr Johns: Good. Thank you.

CHAIR: Thank you very much, Dr Johns. If there are no more questions for the ACNC, we'll let you go. We'll ask the office of the Inspector-General of Taxation to appear before the committee. Welcome. Welcome to your last estimates, I understand, Mr Noroozi?

Mr Noroozi: Yes.

CHAIR: We'll be very sad and we we'll miss you, but I congratulate you on your service and thank you very much on behalf of the committee.

Mr Noroozi: Thank you.

CHAIR: Have you got an opening statement?

Mr Noroozi: Yes, a brief one. Thank you for the opportunity to appear before the committee. Since my last appearance before you, two of our reviews have been publicly released, namely the goods and services tax refunds review and the review of the ATOs fraud control management. The GST refund review was released on 16th August. It examined ATOs GST refund verification processes with a number of recommendations being made, such as developing a framework for continuous improvement of the ATO's automated risk assessment tools. Other recommendations include striking an appropriate balance between ensuring refunds are released expeditiously and affording the ATO sufficient time to address serious fraud risks.

Earlier this week the Review into the ATOs Fraud Control Management was also publicly released. It was conducted at the request of the Senate standing reference committee on economics following certain events, including those relating to Operation Elbrus and allegations of tax fraud that may be linked to abuse of position by a public official. We have found that generally the ATO has sound systems in place for managing risk of internal fraud, however, a number of areas were uncovered which require improvement.

Last Friday, we also released the IGT's 2017-18 annual report, which sets out our achievements over the last financial year, as well as briefly celebrating our successes during my 10-year tenure. In particular, it reports that we've received 2,405 complaints during the last financial year, an approximately seven per cent and 12 per cent increase compared with the prior two financial years. Since the start of this financial year, we have received a further 972 complaints as at 22 October, which is an increase of over 20 per cent compared to the same period last year. Overall, we have handled over 8,000 complaints to date from a range of tax professionals and taxpayers, including vulnerable individuals and small businesses.

In terms of IGT reviews that are currently in progress, the future of the tax profession review is in its final stages and is expected to be finalised and provided to the minister next week. This review examines the impending technological, social, policy and regulatory changes which will have a lasting impact on the tax profession. It aims to address the challenges ahead and realise potential benefits for tax practitioners, the ATO and the Tax Practitioner Board, as well as the broader community. Another review currently in progress is into the ATO's use of garnishee notices. It is in response to serious allegations by current and former ATO staff in a joint Fairfax ABC *Four Corners* investigation about inappropriate use of ATO powers to issue notices and extract payments, particularly from small business taxpayers. This review is expected to be completed before the end of the financial year.

As you are no doubt aware, this is my 10th and final year of service as the IGT, and my last day in the role is less than a couple of weeks away. I would, therefore, like to take this opportunity to express my gratitude for the support and confidence that my office and I have enjoyed from many of you here in parliament. It has been an honour and a privilege to serve the Australian public as the IGT, and I wish my successor, my staff and all of you the best, as you continue to serve our nation.

CHAIR: Thank you, Mr Noroozi. On the number of complaints that you received during that last financial year, you said that there were reasonably significant increases there: seven per cent and 12 per cent and then 20 per cent from this financial year. What do you think is the cause of those complaints? Do you think it's because your role is becoming better known—that there is in fact a complaints-handling process that's available to people?

Mr Noroozi: Yes. We've had the complaints-handling role since 1 May 2015 and it has been steadily building. I think one part is people are becoming aware of it, but also when people have a positive experience the word spreads. We have an 80 per cent satisfaction rating among those that use our service.

Having said that, there is still more to be done. I don't know whether you've had an opportunity to look at my valedictory speech. I've suggested a number of things that should be done about improving the visibility of the office, particularly amongst those who need our help the most—that is, vulnerable individuals and small taxpayers. The trouble with a name like Inspector-General of Tax is your average person thinks of somebody in the Army. I think we would be better off with a name like the taxation ombudsman, which is what we really are. I think those would be helpful.

There are also other measures that I've outlined that could take place to improve the visibility of the office. Earlier on in the year, we've engaged some professionals to help us with an increased social media presence. So there are a number of things we are doing. But also, the complaints are growing very rapidly. As I said from 1 July—I mean some of it has to be attributed to the *Four Corners* program, which has put the spotlight on so that they now know there is somebody that can help people. So we have seen a particular increase since the airing of that program. Obviously, this is one of the positive effects of it—that people know where to go.

CHAIR: How many of those complaints related to the ATO versus the Tax Practitioners Board?

Mr Noroozi: The vast majority would be the ATO. It's not surprising, because the TPB only looks after a very small population—tax professionals—whereas the ATO deals with the entire Australian population. So usually well over 95 per cent is about the ATO.

CHAIR: How many of those are referred back to the ATO for resolution action?

Mr Noroozi: Well, nearly all of them we have to deal with the ATO. So there are a number that will come to us and say: 'Look, we are unhappy. This is what's happened.' Our first question is, 'Have you complained to the ATO itself first?' If they say no, we give them the option. We'll keep a running brief because we do have their tax file numbers, so we can keep a track of the complaint. We say 'Let the ATO handle it,' and we brief the ATO—we've already synthesised the issue. You have to appreciate that when people come to us they're raving and ranting, and it's because they've been through the wringer—you can appreciate that. So it takes quite a bit of time to really get down to the nitty-gritty of what the issues are. We give that to the ATO, and give them another chance to fix it. Generally, we have a high success rate amongst that group.

And then there are those who have already been to the ATO and are still unhappy. With those, obviously, we then have to do a detailed investigation. For example: we heard about one particular complainant being discussed earlier with the commissioner. We had feedback from the ATO that until we did our investigations, the people at the highest level of the ATO had not appreciated fully what had gone on. Those kinds of investigations take a long time and chew up a lot of resources.

Anyway, I've talked a lot, perhaps, about a very small question, but that's how it works. And one of the reasons why we do that is because we want to foster that relationship between the taxpayer and the revenue agency. So we give the ATO another opportunity to smooth things and to put them on the right track. That doesn't mean, of course, that every complainant has a valid issue. Sometimes they just don't understand that it's how the tax system operates: it's a complex system. For example, sometimes the ATO is well entitled to garnish certain accounts and we need to explain to them, 'Yes, they really do have the power to do this.' At other times we understand that perhaps the action may have been a little harsh and then we have to talk to the ATO to sort it out. So it's a variety of scenarios.

CHAIR: Just to give me a better idea of the complaints that you're dealing with, approximately what proportion comes from individuals versus small business?

Mr Noroozi: The vast majority are from unrepresented individuals. I think David has the numbers there. With my eyesight, I can't read that, so you'll have to sing it out.

Mr Pengilly: Certainly. Since 1 July this year, for example, if I look at those which have come from individuals, it's 72 per cent, and from organisations or businesses it's about 11 per cent. And if we include tax practitioners within that—because they're running a small business as well—that's about 15 per cent. That's since 1 July this year, during a certain tax period. There are certain sorts of issues that are raised at different periods during the tax year. Obviously, during this period it's all about individual lodgement, so the proportion is generally higher.

Mr Noroozi: In terms of small business, I have given a figure before. This was prior to these numbers. About 25 per cent of our complaints have generally come from small business, but the majority are from unrepresented individuals.

CHAIR: Excellent, thank you.

Senator KETTER: Mr Noroozi, I just want to join with the Chair in thanking you for your service to the Australian public and wishing you all the best in your future endeavours.

Mr Noroozi: Thank you.

Senator KETTER: Firstly, I'll go to your recommendation for a second commissioner of appeals at the ATO. You've described that as critical improvement or reform. Can you tell us why you think that reform is still necessary, despite the fact that the ATO is restructuring to accommodate your and the standing committee's observations on the appeals processes?

Mr Noroozi: Again, I addressed this in my valedictory speech, so I am on the public record. But to recap quickly: I acknowledge that the ATO has moved some way towards what I recommended some years ago, but it falls short of what's required. The point is that they've moved the appeals function from the compliance area into the legal advisory area. The problem with that is that the same area also establishes the precedential views of the ATO, and if you want to challenge an ATO decision then sometimes you have to challenge that very precedential view. Therefore, they've just moved the conflict from one area to another; there is still a conflict. It's critical that we have an appeals process, that's not only independent but is seen to be independent.

The other thing is that in some cases you will have dedicated technical people from this legal and technical area helping the audit teams. So you have a second commissioner who's in charge of developing presidential reviews and doing appeals. That's not what's required. This isn't just my view; this was also the view of the House of Representatives Standing Committee on Tax and Revenue when they handed down the report on their inquiry—it's a bipartisan committee—and it was unanimous at the time. I note that the Labor Party has adopted my recommendation in its entirety recently, and I welcome that. I hope it will happen with bipartisan support.

Senator KETTER: Some stakeholders have suggested taking that appeals function outside of the ATO completely, perhaps locating it within a new body or even within the IGT. Do you have a view on that?

Mr Noroozi: Yes, I would caution against that. I think that should only be done if there are still major issues once this separate appeals area within the ATO has been established and its performance assessed. Then they should consider this. There are several-fold reasons I say this.

First of all, we already have the AAT, the Administrative Tribunals Tribunal. That was one of the reasons we set up the AAT. You have the court system to decide substantive issues. Effectively, my office, or the office of the IGT after I've gone, has an ombudsman-like function. There are very few ombudsmen in the world that actually can overwrite the decisions of the subject of their scrutiny. So that would be odd.

Secondly, if you set up a different body, can you imagine two different public service agencies trying to resolve a dispute—the amount of delay that might cause. There would be delay, and I think there would be overlap with the existing processes, so I would caution against it.

There are some that have also suggested that maybe there should be something specific for small businesses. Again, I would caution against that. There should be equal access to justice for all. If you do it just for small business, what about individuals? There are plenty of small businesses that 'trade as'; they are individual taxpayers. Also, if you restrict it just to small business, are we going to have the same minds and the same quality of people, for example, that would be deciding cases of the large end of town? So it's really important that we have—perhaps I shouldn't offer a view on having a different tax rate for small business and big business, but I think the less difference there is between taxpayers the better, and this certainly falls into that category.

Senator KETTER: Okay. Mr Jordan has repeatedly described Mr Mills as an independent second commissioner. What legislative or other process would make Mr Mills independent in your view?

Mr Noroozi: Independent from what, sorry?

Senator KETTER: Well, that's a good question.

Mr Noroozi: So I would need to understand that. But even the appeals process that I'm suggesting, with a new, dedicated second commissioner, is not completely independent. If you are within the ATO, how can you be independent? What I've tried to do with what I've suggested is to achieve the maximum amount of independence while still within the ATO. The reason I've suggested a separate, new, dedicated second commissioner mandated by legislation is that his or her tenure and remuneration are decided on by the Rem. Tribunal, and their appointment is by government. So that second commissioner is not dependent on the commissioner for his or her daily bread. That's the maximum amount of independence. I don't know what he meant by the word 'independent', but if you take the word in its strict sense then how could it be independent if it's still within the ATO? So I would question that.

Senator KETTER: Okay. You've identified the extent to which Mr Mills might be considered independent. You don't think there's any other—

Mr Noroozi: I think the thing is that Mr Mills currently, as I said earlier, also is in charge of the area that sets ATO precedents. Again—independent from what? He hasn't qualified that. So maybe that's the question to ask of the commissioner.

Senator KETTER: So, you disagree that he's an independent second?

Mr Noroozi: Well, as I said, it depends on—independent from what? They also, for example, call something an independent internal review. Well, internal and independent—the two don't kind of go together. Again, they

need to specify what it is independent from. They might be meaning that it's independent from the compliance area. Well, that may be true, but it's not absolutely independent.

Senator KETTER: So you haven't seen any guidelines—

Mr Noroozi: No, this seems to be a new terminology that seems to be creeping in.

Senator KETTER: Would you like to see some guidelines or would you like to see some legislation?

Mr Noroozi: The thing is, I think they may try to put in their own guidelines, but guidelines are not as good as legislation. For example, I heard earlier discussion on the Pintarich case, and there's been another one. People don't feel sorry when the big end of town is involved, but it also happens. There was a Macquarie case a few years ago where the commissioner argued that they didn't have to abide by their own practice statements, because practice statements are not legally binding. The trouble with not having this stuff enshrined in legislation is: what is it to guarantee that they may not be ignored? The difficulty—these things are important and perhaps are worthy of being enshrined in legislation.

Senator KETTER: Given that the complaints have arisen, as you've identified in your opening statement, does that further underscore the need for a real and perceived independent second commissioner of appeals?

Mr Noroozi: Possibly, but what it probably also means is that perhaps my office needs more resources.

Senator KETTER: I've got a few more questions on the fraud review. Firstly, your report notes that stakeholders were concerned about the removal of the ATO's integrity adviser. When was that role abolished and why was it important?

Mr Noroozi: They reinstated the role. I think it was a few years ago when the current commissioner basically dispensed with the need for an integrity adviser. We recommended it, but during the course of our review they chose to reinstate him, and I think it's a positive step. I think it was a few years ago, but—

Mr Pengilley: Yes. Certainly we set out the dates for the relevant integrity advisers—there were three—and their periods of tenure. That's certainly set out in our report.

Mr Noroozi: It was around 2015. So, it was a few years ago. But the good thing is that it's been reinstated.

Senator KETTER: That's right. But had you raised concerns with the ATO about the abolition of this role before it was brought back?

Mr Noroozi: We certainly raised concerns about it in this review. Certainly when they decided to reinstate the position they were aware of our concerns.

Senator KETTER: Your report states that there are perceptions that former associates were recruited from the private sector in preference to internal candidates who may have possessed more relevant experience and been better suited to the roles in question. Can you tell us why it's important for the ATO to have appropriate internal hiring practices?

Mr Noroozi: Certainly there are those concerns. There are concerns particularly of some of the existing ATO staff—long-term ATO staff. We had a number of complaints. Some of them felt as if they almost had to work outside the ATO to be eligible for a promotion. Those are perceptions. Our review found that the process of recruitment—because, for example, there is always a panel, and the panel has a constitution—has safeguards in place. So, we do go through that. But that's not to say that those perceptions are not there.

Senator KETTER: So, you didn't find any evidence that there wasn't a level playing field between internal and external candidates?

Mr Noroozi: Certainly the evidence showed that they do have the required APS panels.

Mr Pengilley: During the review there were some people who did come to us with particular concerns about particular events as well, which we did look at, and that informed our views in the report. It's important to note that with the extent of our jurisdiction and the things we can look at there's a particular prohibition in our law about looking at HR-type decisions, one of those being recruiting or disciplining staff. To take that to the next step and look at what happened in this case, to look at what was all taken into account, would have been a step too far and we would have been exercising power that was outside the scope of what parliament had given to us. That being said, we did look at the concerns. Tax administration is not only about what actually happens; it's about perceptions as well, because then they drive behaviours—so, certainly addressing those perceptions. If there's opportunity there to address the perceptions, that's very important in the process. And as the inspector-general has recounted, there's a panel for more senior positions, and there is an independent member on that panel from the Australian Public Service Commission who sits on that panel as part of the decision-making process, and there are processes under the Public Service Act in terms of appealing or challenging decisions of recruitment.

Senator KETTER: The other thing you identified in your report was that you were critical about the fact that the practice of Siebel notes seems to have fallen away within the ATO. I think you identified that only one Siebel note had been recorded by an SES officer since 2015.

Mr Noroozi: That's around intervention by senior officers. Let's say you have a case officer working on a taxpayer case. Sometimes you might have a senior officer intervene in the case, possibly as a result of being approached by the taxpayer. What we have said is that there is nothing wrong per se with taxpayers having a point of escalation. Sometimes, in fact, it's necessary. What we have said is that that needs to be transparently documented and easily verifiable. What should happen—they do have procedures such that the very thing I said should happen—that is, it should be documented in Siebel notes, which would then be easily verifiable. But, as you correctly noted, that seems to have happened in only one case, which is a bit disappointing. But when we raised the issue with the ATO they said there may be notes in emails; that may happen. It's impossible for us to check those emails. We've said to them that it needs to be transparently and easily verifiable and they need to make those adjustments so that if there are any perceptions of undue interference from senior officers in cases it can be dispelled readily or addressed, if there's been something untoward.

Mr Pengilley: If I could just clarify: I think in our report it was more than one particular case, and I'm looking at page 84 of our report.

Mr Noroozi: There was only one involving a taxpayer; there were over 300, but only one of them related to a taxpayer.

Mr Pengilley: That's right. The issue that we found difficult in this area in the review was that it was impracticable for the ATO to retrieve any particular emails where this may have been documented, which would have frustrated the purpose of having a transparent process that provides assurance about the integrity of those communications.

Senator KETTER: Has the ATO consulted with you on any processes that are now being put in place to ensure that SES officers record Siebel notes and when they will be in place?

Mr Pengilley: We certainly have during the review in a number of discussions. We are looking at particular issues and where we feel there's an area of improvement we'll engage in discussions about what's a practicable solution to that. We had those discussions before the report was finalised. The general process with all of our reviews and our recommendations is that after the review has been finalised for agreed recommendations we'll receive a copy of their intended implementation plans, and we're provided with opportunity to look at that and say, 'Look, if you were to implement this, would we have concerns with it in terms of whether it would address the particular issue that was intended to be addressed by the recommendation?' So, there's that opportunity. The ATO will then ensure its own compliance and implementation through its Audit and Risk Committee process, relying on the advice it receives from the internal audit area.

Mr Noroozi: Perhaps I can refer you to the ATO response, recommendation 3.5(c). We have made a recommendation that they need to make detailed notes of how this should be. They have agreed, but the agreement is qualified, and this is what they say:

The ATO agrees that changes can be made to our existing records management approaches to make the documenting and recording of intervention requests more transparent and easily accessible. The ATO will do so in a way that seeks to prevent duplication of effort and the imposition of undue process.

So, they have agreed, but it remains to be seen how they will implement it. Usually they do run their implementation plan past us. That hasn't occurred yet, to my knowledge.

Senator KETTER: That's unusual? Is that what you're saying?

Mr Noroozi: No. It's still early. This was completed in June and it was released only this week.

Mr Pengilley: We do encourage the ATO, if it is a good idea and everyone agrees, to implement straightaway, even if we haven't finalised the review. If it's a good idea, there's no reason to wait until we've finalised the review before commencing implementation. It can depend on the nature of it, but in terms of actually seeing the plans ourselves, it's not unusual for there to be some delay after publication before we see those.

Senator KETTER: Thank you very much.

CHAIR: Thank you very much, Mr Noroozi, for all your work over the years. We wish you all the best for the future.

Mr Noroozi: Thank you very much.

CHAIR: And thank you, Mr Pengilly, for appearing before the committee. I'm just going to confirm that the committee has agreed to put all questions to the Productivity Commission and to the Commonwealth Grants Commission on notice, so they are no longer appearing before the committee tonight.

Proceedings suspended from 18:27 to 19:20

CHAIR: I now welcome officers from Treasury Fiscal Group. Will there be an opening statement from this group or can we move straight to questions?

Mr Atkinson: There is no opening statement.

Senator KETTER: Perhaps if I can start with you, Mr Atkinson. I understand you are a long-time public servant. How long and between what dates were you chief-of-staff to finance minister, Mathias Cormann?

Mr Atkinson: It was somewhat shy of three years following the 2013-14 election.

Senator KETTER: I would like to go to a line of questioning I attempted earlier in the day when I was directed to the Fiscal Group. In relation to the final budget outcome—you might be aware of this issue—I was looking at the change in presentation of the underlying cash balance, I think it was, and the minister conceded that there has been a change to the presentation. My question was: who made the decision? And when was Treasury advised of this change? Are you able to assist with those?

Mr Atkinson: Yes. It was a decision of the government as to how the presentation was done and I was advised, I think, about a week before the FBO, that we would be doing it on this basis.

Senator KETTER: Are you able to tell me how long the previous practice of presentation had been going on for?

Mr Atkinson: I'd have to take it on notice. We didn't do a back analysis of it.

Senator KETTER: That's okay.

Mr Atkinson: The finance minister answered that, I think, in part during Revenue Group.

Senator KETTER: And what would have been the numbers if the previous style of presentation had been used, the underlying cash balance between the 2017-18 outcome and the figure from the 2018-19 budget?

Mr Atkinson: The figures are actually here. It is effectively the 18.2 minus 10.1 on page 2 of the FBO, so the difference would be 8.1 billion.

Senator KETTER: Can I turn to the issue of the fiscal rules?

Mr Atkinson: Yes.

Senator KETTER: I just want to check, is the budget repair strategy which is stated on page 37 on budget paper No. 1 of this year's budget still the government's policy?

Mr Atkinson: Yes.

Senator KETTER: So, in other words, it is still government policy that new spending measures will be more than offset by reductions in spending elsewhere within the budget?

Mr Atkinson: Yes.

Senator KETTER: Is it still the government's policy that the overall impact of shifts in receipts and payments due to changes in the economy will be banked as an improvement to the budget bottom line if the impact is positive?

Mr Atkinson: That needs to be read in the context of the tax cap, which is also in the fiscal strategy. The finance minister went into that in some detail in Finance estimates, but basically, I think, it's \$20 billion from the underlying cash reconciliation on page 3-21 went to the bottom line—correct me if I'm wrong there, gentlemen—and the operation of the tax cap meant that the decision to decrease taxes to keep revenue under the tax cap meant that some of that improvement went into that.

Senator KETTER: Is this budget paper No. 1 you're talking about?

Mr Atkinson: Yes, budget paper No. 1, page 3-21.

Senator KETTER: Whereabouts on that page?

Mr Atkinson: Sorry, it's the total impact of parameter variations, the 35, minus the effect of policy decisions on receipts of 15.25. Both rules are elements of the fiscal strategy and need to be read in the context of each other.

Senator KETTER: Is that referred to elsewhere in the text of budget paper No. 1?

Mr Rollings: I believe it is, but just give me a moment and I'll locate that for you.

Mr Atkinson: Senator, we can come back with that answer.

Senator KETTER: You've raised the issue of the tax cap. What year is the government going to hit the tax cap when you take into account the decisions on the company tax cuts that have been made in the last few weeks?

Mr Atkinson: The tax cap will now be hit in 2026-27. It is on page 3-12. There is a chart there that shows where the tax cap kicks in.

Senator KETTER: Okay, but there have been changes to the tax arrangements. We've had the decision to accelerate the tax cuts for small businesses.

Mr Atkinson: Those will be caught in the next economic update in MYEFO.

Senator KETTER: Going back to the issue of the budget repair strategy, when we were talking earlier about new spending measures being more than offset by reductions and spending elsewhere, do spending measures include revenue decreases as well?

Mr Atkinson: In this sense they're talking about the payments line on page 3-21 in the UC reco table—effect of policy decisions—a positive impact on the budget of \$404 million. It is offsetting payments with payments.

Senator KETTER: Under the budget repair strategy do spending measures include revenue decreases?

Mr Rollings: I think Minister Cormann talked a little bit about this earlier. The strategy talks about spending on the payments side. New spending will be offset by reductions in spending on the payments side, and the revenue side is separate. The government's approach is that reductions in tax are not spending and therefore reductions in tax don't have to be offset necessarily by increases in tax, for example, to offset them.

Senator KETTER: So they just act to increase the deficit, if they're not being offset?

Mr Atkinson: In this case the \$15 billion impact of the tax cuts in the underlying cash balance reconciliation table acts to keep it within the tax cap as part of the fiscal strategy. There is balance on both sides of the equation.

Senator KETTER: But if we don't do anything to offset the impact of those tax cuts then they're going to have an impact on the deficit, aren't they?

Mr Atkinson: If the same amount of spending remains in place and taxes are decreased, then the deficit would be larger.

Senator KETTER: I'm sorry, I missed that last bit.

Mr Atkinson: The deficit would be larger. Sorry, I must say: the surplus would be smaller, because those are all in surplus years.

Senator KETTER: I might move on to the issue of the MYEFO, which the minister raised earlier today. I understand it's traditionally done around December and follows what will be in the December national accounts. So can we take that to mean that this year's MYEFO will be released after the national accounts are released on 5 December this year?

Mr Atkinson: I believe the finance minister said that that was the government's intention in the finance estimates. It's actually the September national accounts that come in on 5 December, but it's those accounts.

Senator KETTER: Are you able to tell me what's the earliest date MYEFO can be released?

Mr Atkinson: The latest date is the end of January. The earliest—it could be earlier than that and has previously been earlier than that.

Mr Rollings: Under the Charter of Budget Honesty, the only requirements are that MYEFO be within six months of the budget or by the end of January, whichever is the later.

Senator KETTER: Can I turn to the issue of the budget next year. Has Treasury done any preparatory work, thinking about the possibility of an early budget or an economic statement, given the possible timing of a federal election next year? I think Mr Pyne told us the election was going to be in May, so I presume you've done some thinking about how we are going to deal with that?

Mr Atkinson: Our position's very similar to the secretary of finance's answer yesterday in the finance estimates, which is that these things are not new to us—the systems and processes required to do economic statements and budget. We're well positioned for whatever eventuality happens.

Senator KETTER: Does that mean you are looking at this issue currently?

Mr Atkinson: We're focused on delivering MYEFO at this point, but we certainly know what we would need to do if something different happened.

Senator KETTER: Has there been any thought given to how appropriations might work for the 2019-20 financial year, given the potential impact of a federal election in May?

Mr Atkinson: Appropriations are a matter for Finance. The answer that they gave yesterday though was that these are not unusual things and that they know how to manage it and did in previous elections.

Senator KETTER: I would like to turn now to a couple of announcements that were made, firstly on the issue of the abolition of the measure to abolish the energy supplement. On 22 August, the government announced it would no longer be proceeding with that and the then Prime Minister said that it had been provided for in the contingency reserve, so there would be no adverse budget impact by that change in policy. Does this mean that the decision to no longer abolish the emergency supplement was made prior to the 2018 budget?

Mr Atkinson: No. Once again, as they canvassed in Finance's estimates, they provisioned for it in the contingency reserve and in the medium term projections. So it was provisioned for, but no decision.

Senator KETTER: You're saying there was no decision made?

Mr Atkinson: Sorry, I would just have to check that.

Mr Rollings: That's correct. There's no decision, but the contingency reserve is often used to make a provision for things that are anticipated that may happen but without a formal decision.

Senator KETTER: Keeping options open.

Mr Rollings: A use of the contingency reserve is for those purposes. There was no formal decision but a provision was made at budget.

CHAIR: Can I just clarify, you do that in case a particular measure isn't legislated, is that correct? Is that why you have a contingency reserve?

Mr Atkinson: Sometimes. Governments make decisions to do that from time to time.

Senator KETTER: The abolition, though, was specifically included in the calculation for the contingency reserve?

Mr Atkinson: Sorry? Say again? It was provisioned for in the contingency reserve in the budget, yes.

Senator KETTER: Who made that decision?

Mr Atkinson: That's a decision through the budget process.

Senator KETTER: Can you tell us when the decision was made to no longer proceed with the abolition of the energy supplement?

Mr Atkinson: That's part of cabinet's deliberations.

Senator KETTER: But it was after budget?

Mr Rollings: Yes.

Senator KETTER: When was that decision communicated to you?

Mr Atkinson: I'd have to take that on notice. I suspect it would be through the normal cabinet minute process.

Senator KETTER: So could you take that on notice. Where would the fiscal impact of this be included?

Mr Atkinson: The impact was provisioned for in the contingency reserve, so the impact was in there.

Mr Rollings: The decision will be recorded at MYEFO. But, as described, the impact, because there was a provision for it, will be neutral.

Mr Atkinson: There will be no fiscal impact, yes.

CHAIR: Senator Ketter, I just have a few questions. Can I just jump in on a couple of issues, and then I'll come back to you.

Senator KETTER: Yes.

CHAIR: I want to ask the Fiscal Group about the AAA credit rating that was reinstated by Standard & Poor's quite recently. Obviously that's one of three AAA credit ratings that we have from the major agencies. I would be interested in the Fiscal Group's opinions—or I'm not allowed to ask your opinions, but I would like responses—on what that says about the state of the Australian economy and specifically of the budget.

Mr Atkinson: What I can say is that all three ratings agencies have emphasised the importance of Australia's fiscal performance underpinning their strong credit ratings. S&P in particular, when they revised their outlook from negative to stable, quoted the strong fiscal position of Australia as a key underpinning of the AAA credit ratings.

CHAIR: How long have we had all three agencies with AAA credit ratings?

Mr Atkinson: I'll have to check that. The ratings are actually a part of our Macroeconomic Group's responsibilities.

CHAIR: I'm sorry. I probably should have directed that question to them.

Mr Atkinson: That's all right. We can talk about the importance of fiscal strategy and fiscal performance in contributing to that.

CHAIR: Yes. I suppose the counterpoint to that is: have the agencies highlighted any risks to maintaining the AAA credit rating that you are aware of—or is that more a Macroeconomic Group question as well?

Mr Atkinson: It's a question for the macro people.

CHAIR: All right. I will refer it to the Macroeconomic Group. In relation to the final budget outcome for 2017, can you specify for the committee how that has improved since the estimates in the 2017-18 budget?

Mr Atkinson: Yes. Just turning to the final budget outcome, you can see that, in an underlying cash balance, there's a \$19.3 billion improvement since the 2017-18 estimate at the 2017-18 budget.

CHAIR: The improvement is \$19.3 billion, from a deficit of \$10.1 billion?

Mr Atkinson: Yes, \$10.1 billion.

CHAIR: And that gives what percentage of GDP?

Mr Rollings: It's 0.6.

CHAIR: Thank you. What were the main drivers of that improvement?

Mr Atkinson: The main drivers of that were receipts being higher by \$13.4 billion and payments being lower by \$6.9 billion.

CHAIR: The budget, we have been saying for a while now, is expected to return to balance. Does that remain the case?

Mr Atkinson: Yes, it's set to return to balance at \$2.2 billion in 2019-20 and then go to \$11 billion the following year.

CHAIR: What is the trajectory after that? Is that a sustainable surplus?

Mr Atkinson: Yes. It grows to a surplus in excess of one per cent of GDP in 2026-27.

CHAIR: I want to ask about the rate of real spending growth in the budget too, and how that compares to historical averages.

Mr Atkinson: Okay. The rate of payments growth is moving down, from 25.4 in 2018-19 down to 24.7 across the forward estimates. That is the percentage of GDP

CHAIR: So it's not the rate of growth of spending?

Mr Rollings: No.

CHAIR: You frightened me for a moment.

Mr Atkinson: Sorry. That's dropping from 3.1 per cent to 1.9 per cent at the end of the forward estimates.

CHAIR: Did you say 3.9?

Mr Atkinson: No, it will be 3.1 in 2018-19, dropping to 1.9 across the forward estimates.

CHAIR: Terrific. Finally, I want to ask about the tax-to-GDP ratio in 2017-18 and what the sort of historic average is of that as well?

Mr Atkinson: The tax-to-GDP ratio in 2018-19 is 23.1. That'll be growing to just below the tax cap of 23.9 in 2021, and then it tracks, as shown in the medium term table. As you can see in the budget papers in 312, you can follow the tax-to-GDP over time as it stays under the 23.9.

CHAIR: So the 23.9 is the cap. Is that correct?

Mr Atkinson: Yes. It dips down in 2022-23 and then rises up and hits the cap at 2026-27.

CHAIR: What was it in 2017-18?

Mr Rollings: It was 22.7 per cent.

CHAIR: So it was well below the cap?

Mr Rollings: Yes.

CHAIR: Is a cap an unusual approach? I know it was a bit controversial at the time. It was originally spoken about by this government.

Mr Atkinson: Australia is one of 14 countries that have revenue measures of this type in their fiscal strategy.

CHAIR: One of 14 countries?

Mr Atkinson: OECD countries, I think.

CHAIR: So it's not an uncommon approach at all. Is it an uncommon approach in Australia? Have previous governments instituted a tax-to-GDP cap?

Mr Atkinson: No. It's my understanding this has been in place before.

Mr Rollings: That's correct. I can't remember the specific instances, but there have been features of fiscal strategies in the past.

Senator KETTER: Going back to the energy supplement issue, I'm just interested in what your understanding is of the circumstances that triggered the decision to abolish this measure or to not proceed with this measure? It was done at the same time as the announcement of not proceeding with the company tax cuts for big businesses. Was it always intended that that would happen in the context of the company tax legislation?

Mr Atkinson: I'm sorry, we can take it on notice, but I don't have any specific knowledge of when those decisions happened or the decisions of when they would be announced.

Senator KETTER: If you could take that on notice, that would be good.

Mr Atkinson: Yes.

Senator KETTER: What's the financial impact over the 2018-19 budget and forward estimates of this decision?

Mr Rollings: That'll be reported at MYEFO, but, as we alluded to before, because of the provision there will be no impact.

Mr Atkinson: It'll be zero.

Senator KETTER: Presumably it's the same over the medium term?

Mr Atkinson: Yes.

Senator KETTER: Turning to another measure that has been dumped: the proposal to increase the qualifying age for the pension to 70. That was announced on the *Today* show on 4 September. Were you aware that the Prime Minister would be making this announcement prior to it being taken to cabinet?

Mr Atkinson: I'm not sure. We certainly participated in the normal cabinet processes with respect to costing and policy development. I'm not sure about the specific dates of when we knew what.

Senator KETTER: Can you take that on notice?

Mr Atkinson: Yes.

Senator KETTER: Do you know if the Prime Minister unilaterally made that decision on the *Today* show on 4 September?

Mr Atkinson: No, I don't know.

Senator KETTER: Has the Expenditure Review Committee met to consider this backdown?

Mr Atkinson: I can't really talk about considerations of ERC.

Senator KETTER: What's the financial impact over the medium term of abandoning this measure?

Mr Rollings: The medium term projections will be updated at MYEFO to reflect that.

Senator KETTER: Let me turn to the issue of the negotiations of school-funding arrangements with the states and territories. Mr Morrison said that school-funding agreements would be negotiated by 4 October. That doesn't seem to have happened. Can you tell us: have any bilateral school-funding agreements been signed with any state or territory?

Mr Atkinson: Senator, the school-funding agreements actually are a matter for the education portfolio. We obviously always work closely with our education colleagues on the financial implications of those, but they're actually education agreements signed by the education minister.

Senator KETTER: You're not involved in those?

Mr Atkinson: We participate with them. I'm not aware of any bilaterals having been signed yet.

Senator KETTER: But you participate in the process?

Mr Atkinson: Yes, we work with them on it.

Senator KETTER: You're not aware of any having been finalised at this stage?

Mr Atkinson: I'm not aware of any being done yet, no. But it is a matter for them.

Senator KETTER: You can only tell me as much as you know—what's within your knowledge. Were bilateral school-funding agreements between the states and territories and the federal government the subject of discussion at the Council on Federal Financial Relations on 3 October?

Mr Atkinson: Yes, Senator.

Senator KETTER: Had the Treasurer been briefed to raise the issue of school-funding arrangements in the general business section of that meeting?

Mr Atkinson: We had briefed him about raising it, yes. The states had wanted to discuss the issue.

Senator KETTER: The states didn't want to?

Mr Atkinson: They did want to discuss the issue.

Senator KETTER: Was it Treasury's view on or about 19 September that negotiations on bilateral school-funding agreements would be concluded with all the states and territories by 4 October?

Mr Atkinson: It's difficult to tell, with state negotiations, when it will be done. I believe that was our target date at the time.

Senator KETTER: I'm asking about Treasury's expectations as to when these agreements would be concluded.

Mr Atkinson: It's a negotiation process, so a lot of it depends on the states.

Senator KETTER: Sure, but I'm asking: did you have a goal to have these agreements concluded with all the states and territories by 4 October?

Mr Atkinson: I think that, at the CFFR meeting, an ambition to do it by a date that sounds about then was expressed by ministers.

Senator KETTER: And did you advise the Prime Minister or the Department of the Prime Minister and Cabinet of your view?

Mr Atkinson: I didn't express a view, but I updated the Department of the Prime Minister and Cabinet on the tenor of the conversation at CFFR.

Senator KETTER: What about your ambition, to use your word, of having these agreements concluded by 4 October?

Mr Atkinson: Sorry, Senator, to clarify: that was not my ambition; the time frame to move quickly was expressed by the state treasurers and the Commonwealth Treasurer. I'm not sure of the date, by the way. Can I take the date on notice?

Senator KETTER: Did Treasury share that ambition?

Mr Atkinson: We always support the ambitions of the government.

Senator KETTER: On 19 September, the Prime Minister gave an answer to a question without notice on why he had cancelled the COAG meeting due to be held on 4 October. In that answer he said:

The two items that were going to be addressed at the COAG meeting related to the education funding arrangements which are being pursued by the education ministers' council as well as the Council on Federal Financial Relations, who have advised the premiers, when I spoke to them directly about this, that these issues will be resolved in time for when that meeting would have been held anyway. So those issues do not require a special meeting of COAG in October.

So how could the Prime Minister have formed the view on 19 September that funding agreements would be signed by 4 October?

Mr Atkinson: As I said, the treasurers at CFFR had stated that they would like to do that. Once again, I'm sorry, I am taking the exact timing of that on notice, if that's all right, because I can't just recall.

Senator KETTER: Okay. Is it true that, since the Council on Federal Financial Relations on 3 October, the Treasurer has been leading the negotiations with his counterparts in the states and territories over the bilateral school-funding agreements?

Mr Atkinson: No, that's not quite right. The education minister is still leading the negotiations on the bilateral agreements. The Treasurer and Treasury are supporting negotiations with the states on one funding element of it.

Senator KETTER: But isn't it true that the Treasurer is contacting state and territory treasurers, trying to conclude a deal, and is texting them on this issue?

Mr Atkinson: He's communicating with state treasurers around that part of the funding agreement. It's a financial element of a much broader reform agreement that's the education minister's responsibility.

Senator KETTER: Has Treasury been in contact with officials in treasury departments at a state or territory level about the Commonwealth government's view about the appropriate contents of bilateral school-funding arrangements?

Mr Atkinson: Yes, we've been working with state colleagues to understand their concerns and try to support resolution of those funding arrangements.

Senator KETTER: You've said that the education minister has carriage of this matter, so how can it be that the Treasurer is possibly qualified to negotiate on school-funding agreements? For example, who's advising him on what school reform arrangements should be in these agreements?

Mr Atkinson: Sorry, as I said, the entire funding agreement is still the responsibility of the education minister. The Treasurer and we are helping to work through some of the issues raised in some of the financial elements of that. If we can support resolution of those, then the agreement will be signed between education ministers, as it's still their responsibility.

Senator KETTER: So is it true that the Treasurer seems to be blundering in somewhere that he doesn't belong in order to reach a deadline?

Mr Atkinson: That's not my understanding of it, Senator.

Senator KETTER: Well, it certainly gives the impression that he's taking a very active role. As you said at the outset, it's normally the education minister who takes a lead role in this matter.

Mr Atkinson: And the education minister is still taking a lead role in this. The Treasurer is just assisting with some financial elements of it.

Senator KETTER: How do you respond to the perception that the Treasurer is taking over these negotiations and it's a clear vote of no confidence by the government in the ability of Minister Tehan to conduct these negotiations?

Mr Atkinson: Senator, I think you are asking me for an opinion.

Senator KETTER: I think that concludes my questions.

CHAIR: Has anyone else got any further questions for the Fiscal Group?

Senator KENEALLY: Just one moment, Chair.

CHAIR: Can I ask the Fiscal Group: are you in charge of superannuation? Yes, you are. I might ask a question about the Protecting Your Super package. Can Treasury perhaps explain how fees are currently charged on superannuation accounts, including default accounts, and the impact on members' eventual retirement outcomes, and perhaps you might want to comment on the current MySuper rules that were put in place by Labor.

Mr Kennedy: Those rules for MySuper are set out in the SI(S) Act, but I might ask my colleague Mr Deitz to expand on the particular details that you've raised.

CHAIR: Thank you, Mr Deitz.

Mr Deitz: There are two sets of fee rules, the general fee rules which apply to all superannuation products and then the MySuper specific fee rules, which are applied to all products where an RSF provides a MySuper product.

CHAIR: Do you want to elaborate further on what those fee rules are?

Mr Deitz: The fee rules cover various categories, as set out in the act. The main ones which the government's Protecting Your Super reforms will seek to address are administration fees and investment fees, and those are where there is currently a fee structure where some of those are charged on a percentage basis and some are charged on a flat-fee basis.

CHAIR: Those flat-fee-basis ones would have a significant impact, I would imagine, on low-balance accounts, and that is what?

Mr Deitz: They do. The median fee on a \$1,000 balance account is approximately nine per cent per annum.

CHAIR: Wow, okay. So from this particular legislation, the Protecting Your Super package, what is the expected benefit to low-balance accounts?

Mr Deitz: The expected benefit, had it applied in the 2015-16 year, would have been approximately \$450 million in fees saved in that year.

CHAIR: To how many account holders?

Mr Deitz: Unfortunately, I don't have the number of account holders that that would have applied to at that time. I would need to take that on notice.

CHAIR: That would be terrific, thank you, if you would. Can you also explain what's meant by 'exit fees' and how those particular funds might operate as a barrier to competition?

Mr Deitz: An exit fee is charged when a member seeks to remove their money from the fund. The government's rules will no longer allow funds to charge a fee on exit. That also comes with a significant benefit to members.

CHAIR: When they want to switch funds or change to a fund that's better performing or that has better administration or service?

Mr Deitz: That's right, yes.

CHAIR: Can you also talk to me about the changes that are proposed to insurance within superannuation under the budget package?

Mr Deitz: The measures announced at budget have three principal elements to the insurance changes. From 1 July 2019, insurance can no longer be provided to individuals who are under the age of 25, to accounts with balances below \$6,000 or to any account which has not received a contribution for 13 months or more.

CHAIR: Could Treasury also explain how the lost and unclaimed super regime operates now, and in particular how long it generally takes before an account is protected from erosion by being transferred to the ATO?

Mr Deitz: The existing regime is quite complicated. There are many ways in which moneys can be ultimately transferred through to the ATO, depending upon the particular nature of the account and how it came to be inactive. Those periods can extend to up to five years before it gets transferred. Under the government's reforms, once an account has been inactive for 13 months or longer, it will be transferred to the ATO after the next balance test date. So the effective period of transfer will be reduced under the government's reforms for low-balance accounts to between 17 and 23 months.

CHAIR: You've said that the estimate of benefits to members simply from removing the exit fee component is \$450 million. What is the overall benefit to members from this complete set of proposals? Do you have a dollar figure for that?

Mr Deitz: That was \$450 million from the fee cap.

CHAIR: From the fee cap? Sorry, forgive me.

Mr Deitz: It's around \$120 million from the exit fee, and we anticipate that around \$7½ billion held within six million accounts will be transferred via the ATO mechanism.

CHAIR: \$7½ billion to be transferred?

Mr Deitz: That's right.

CHAIR: Wow. And do members of superannuation funds need to be proactive in order to benefit from any of these changes?

Mr Deitz: No. The ATO currently holds a significant stock of lost and unclaimed money. In addition to these amounts, it will be given the power by the reforms to transfer that money without an individual's consent wherever it can find an active account which in combination will hold over \$6,000.

CHAIR: Thank you.

Senator KETTER: I've just got a couple of further follow-up questions, firstly on the issue of the negotiation of the education agreements. I think, Mr Atkinson, you mentioned that there's one funding issue that the Treasurer's handling instead of the education minister. Did I hear you correctly?

Mr Atkinson: I said that the Treasurer is supporting the education minister in resolving it.

Senator KETTER: Can you tell me what that is more specifically?

Mr Atkinson: Yes. It's about the funding contributions and requirements that are placed on the states.

Senator KETTER: Going back to the issue of the energy supplement, you've made it pretty clear that there was no decision made prior to the budget to not proceed with the abolition of the energy supplement, but there was a decision made, nevertheless, to provision for it in the contingency reserve. Do I have that right?

Mr Atkinson: Correct, Senator.

Senator KETTER: Can you tell me details of other provisions that are made, like that type of decision, in that contingency reserve where there's a provision made before a decision is actually made subsequently?

Mr Atkinson: By definition, the contingency reserve is not announced. The elements of it are not announced until they're decided. The elements that are in the contingency reserve are not published for a number of reasons. So, while it's a fairly common practice and has been for a long time, of governments of both persuasions, to provision for these types of things, I can't actually talk about—

Senator KETTER: Can you give me some historic examples of the types of matters that have been dealt with in the contingency—

Mr Atkinson: We could probably provide a couple of examples on notice of announcements that had similar characteristics.

Mr Rollings: As Mr Atkinson said, these things aren't generally published, but, if you refer to page 6-45 of Budget Paper No. 1, it talks a little about the uses for which the contingency reserve can be utilised. At the bottom of page 6-45 it says:

In general, the Contingency Reserve can ... include:

- • a provision for underspends ...
- • commercial-in-confidence and national security-in-confidence items ...
- • the effect, on the budget and forward estimates, of economic parameter revisions ...
- • decisions taken but not yet announced ... and
- • provisions for other specific events and pressures that are reasonably expected to affect the budget estimates.

Senator KETTER: Which category does the—

Mr Rollings: I would say it's the last one.

Senator KETTER: So it's for provisions for other specific events and pressures that are reasonably expected to affect the budget estimates. Is that—

Mr Rollings: Yes, Senator.

Senator KETTER: In the case of this particular measure, can you tell me what the specific event or pressure was that triggered—

Mr Atkinson: Their decision to reverse it—it goes to the deliberations of cabinet; it's a decision of the government.

Senator KETTER: So there is no definition as to what is meant by 'a specific event' or 'pressure'?

Mr Atkinson: Those are the categories of items that are often in the contingency reserve, and 'pressure' is a funding pressure that could eventuate in future but is not currently a decision.

Senator KETTER: I guess that comes back to the issue of the fact that the decision was ultimately made in tandem with the announcement in relation to the company tax cuts?

Mr Atkinson: Sorry, Senator—what I said is that I don't know when those particular decisions were made with respect to each other.

Mr Rollings: Senator, could I also point you to page 6-44. There's another example regarding the contingency reserve being used to make provision for future increases in new medicine listings. That's a provision for future listings, even though the decisions on those listings have not yet been made.

Senator KETTER: Thank you, Chair.

CHAIR: As there are no further questions for the Fiscal Group, we'll let you go home. Thank you very much. Mr Atkinson, I didn't get a chance to say welcome to your first official estimates of the—

Mr Atkinson: I've been to many estimates committees, just not this one recently.

CHAIR: Yes.

[20:04]

CHAIR: I now call upon the Department of Treasury structural reform group to join the committee. Good evening, welcome, and thank you very much for waiting. I know we've held you up a little bit, but not anything like as much as we thought we were going to. Have you got an opening statement for the committee?

Ms Quinn: No, I don't.

CHAIR: If you're happy for us to start with questions, we might kick off with Senator McAllister.

Senator McALLISTER: Welcome, Ms Quinn and others. Was Treasury asked to model or cost the economic impacts of the National Energy Guarantee?

Ms Quinn: This is the National Energy Guarantee—the government's policy. Treasury did provide advice on the National Energy Guarantee to the government and that did include some economic analysis that drew on economic modelling.

Senator McALLISTER: Are you able to talk in the briefest of ways—I don't really want a lot of detail—about the nature or the methodological basis of that analysis? What kind of model was used and how did that feed into the analysis?

Ms Quinn: We looked at the electricity sector only and we looked at what the implications might be for emission constraints and reliability components together. We drew on an external consultant's model for the detailed analysis of the electricity in terms of the generations and things like that.

Senator McALLISTER: Which model did you use for that?

Ms Quinn: We used ACIL Allen.

Senator McALLISTER: So you pulled out the kind of likely impacts through to the wholesale electricity market?

Ms Quinn: That's right.

Senator McALLISTER: That was the approach, and then you fed that into broader analysis for the economy?

Ms Quinn: We didn't do broader analysis; we just looked at the energy sector.

Senator McALLISTER: Right. Have you been asked to model the economic impacts or identify the cost impacts of the energy announcement made yesterday by the Prime Minister and the energy minister?

Ms Quinn: We haven't, no.

Senator McALLISTER: No analysis around energy bill savings?

Ms Quinn: There's some analysis in there in terms of what it looks like. Most of that drew on the ACCC's analysis and their inquiry. We've certainly provided briefing on those matters as part of our general briefing to the Treasurer. The ACCC went through the implications of a default price relative to standing offers and things like that.

Senator McALLISTER: So you have essentially done analysis of their work and pulled it together relevant to the policy announcement that's been made.

Ms Quinn: That's correct.

Senator McALLISTER: Did you do any work on the fiscal cost of the energy package announced yesterday?

Ms Quinn: There is some information, particularly in terms of additional funds for the ACCC and the AER, to undertake the monitoring side of it. That was announced in August by the Prime Minister.

Senator McALLISTER: No other impacts on the revenue side?

Ms Quinn: No.

Senator McALLISTER: It's not a trick question; I'm just interested in understanding the methodology.

Ms Quinn: I'm just thinking through the different elements. There are certainly some cost implications for the regulators to implement. That's the default price and the monitoring from ACCC and the AER. Their potential fiscal implications are relating to the generator investments element, but that is out for discussion and final policy design isn't in yet. So there may well be, depending on the design of that, some fiscal implications, but there is no costing at this stage.

Senator McALLISTER: Have you been asked to model or cost Labor energy policies?

Ms Quinn: Not to my knowledge, no.

Senator McALLISTER: I feel compelled to ask it in this other way: have you been asked to model or cost energy policies that are very similar to or almost identical to Labor policies?

Ms Quinn: We have been asked to do policy related to the NEG in most parts, and then we're asked to do some other scenarios. But at no stage have we been asked to do anything that's been described to us as Labor Party policy.

Senator McALLISTER: What were the other scenarios that you were modelling when you were doing the work on the NEG?

Ms Quinn: The scenarios we get asked to model go to advice to government and we don't typically talk about the types of advice that we give.

Senator McALLISTER: I suppose it is relevant because the government has made a range of assertions about the costs associated with reaching 50 per cent renewable energy by 2030 and I am interested to understand the basis of those assertions. Has advice been provided which would substantiate the claims the government has made about a 50 per cent renewable energy goal?

Ms Quinn: That may be provided by others—the Department of Energy et cetera—but the numbers I have seen in the public domain are not related to the modelling that we did.

Senator McALLISTER: When you did the modelling on the NEG, was any work done on an electorate-by-electorate basis?

Ms Quinn: We certainly didn't do anything like that.

Senator McALLISTER: From your answer so far, I think I know how you will answer this: are you confident that Treasury has not been asked by the government to use its public resources to perform analysis of Labor policies for the primary purpose of supporting party political activities by the government?

Ms Quinn: Certainly in the area I'm responsible for, and in the analysis we have done, we have not been asked to specifically model Labor policies or other party policies.

Senator McALLISTER: That is a narrower formulation than what I have asked for, which is: are you confident you haven't been asked to use public resources to perform analysis for the primary purpose of supporting party political activities by the government?

Ms Quinn: We've provided analysis on lots of different policies across the policy spectrum. All of it has been requested by a minister. I am not quite sure for what purpose it is used after we provide it to a minister, so I can't answer that that last bit. Certainly we have not been asked to model Labor Party policy.

Senator McALLISTER: Nothing that would give you concern as a good public servant?

Ms Quinn: I've had no concern on this basis.

Senator McALLISTER: Did Treasury provide any specific advice on the price outcomes of the NEG?

Ms Quinn: Yes.

Senator McALLISTER: What was the methodology used to produce that?

Ms Quinn: We used the ACIL Allen model—

Senator McALLISTER: To get the wholesale price?

Ms Quinn: To get the wholesale and the retail price.

Senator McALLISTER: ACIL's model will produce a retail price also?

Ms Quinn: That's right. It was across different scenarios. There wasn't just one scenario, because there are various stages of development. And we didn't model the ultimate final NEG policy; we did work in the early stage of the policy development stage.

Senator McALLISTER: I'm not making a political point here, but it is true that the policy evolved quite substantially along the way. But I think at all times the government's position was that it wouldn't allow the Energy Security Board to consider any emissions reduction scenarios other than those contemplated under the Paris agreement. Was Treasury constrained in its modelling by the same public commitments?

Ms Quinn: We modelled the scenarios that the government asked us to model.

Senator McALLISTER: What were they?

Ms Quinn: That, once again, goes to the scenarios that we were asked to do, which goes to the advice that we provided to the government as part of the cabinet process.

Senator McALLISTER: The government provided more than one scenario—you said 'scenarios'. So there were multiple scenarios modelled in relation to Paris?

Ms Quinn: There were multiple scenarios in relation to energy policy—

Senator McALLISTER: In relation to emissions reduction targets?

Ms Quinn: That goes, again, to the type of scenarios that we were asked to do. It was part of the cabinet process. We don't usually talk about the advice and analysis that goes into cabinet submissions.

Senator McALLISTER: I see. Nothing in that caused you to think that you might be being asked to model Labor policy?

Ms Quinn: No.

Senator McALLISTER: In that work that you did—and I am conscious that you were dependent on the way that ACIL constructed the model—

Ms Quinn: And they undertook analysis for us.

Senator McALLISTER: What did they describe as the main drivers of the NEG's price impact?

Ms Quinn: There were different elements over time. One was the reliability standards and what that might do to the types of generation that might come into the system and their generation costs. The other—

Senator McALLISTER: And in what direction did that drive prices? Sorry to go to the basics, but that was—

Ms Quinn: That interacts also with the emissions reduction element. It is a bit difficult to unpick some of these things because of the interdependency. As part of the analysis, there was also the issue of what it might do to investor certainty. The types of consideration that ACIL Allen took into account in their modelling are very similar to the public modelling provided by the Energy Security Board where they undertook analysis using another modelling house. Our role is partly about supporting and Q&A-ing the analysis that the Energy Security Board is doing at the time.

Senator McALLISTER: I want to touch firstly on questions around reliability and the price impact. The Energy Security Board's assessment about the price impact of improved reliability was one of the more contentious aspects of the public debate. How confident were ACIL Allen in their assessment about the price impacts associated with improved investor certainty?

Ms Quinn: At the stage when we were doing the analysis the design features of the NEG hadn't all been finalised. Our input was part of the development process. So the precise mechanisms and design of the reliability, and the way the emissions would be accounted for and the impact on the contract market, shifts the analysis. You are right: future scenarios rely on assumptions and judgements around the implications—

Senator McALLISTER: And the cost of finance?

Ms Quinn: And the liquidity implications in the market, in particular, and what that might mean for bidding and contracting in the electricity sector. So there are a lot of assumptions that get made. That is one reason why we did sensitivity analysis and different scenarios in trying to understand what the different implications might be.

Senator McALLISTER: ACIL's model obviously includes existing policy settings like the renewable energy target. Does it also include the state government policy settings?

Ms Quinn: To the extent that they are known or they are specified to a level that you can incorporate into the analysis, that is a feature of their modelling, yes.

Senator McALLISTER: Can you run us through which of those meet that test that you just described?

Ms Quinn: I can't remember that detail of analysis.

Senator McALLISTER: Perhaps you could take that on notice. It is probably in the public domain. If you could take that on notice, I would appreciate it.

Ms Quinn: I am happy to take that on notice.

Senator McALLISTER: Was the RET a significant driver in the overall modelling of the price outcomes?

Ms Quinn: The renewable energy target is bringing substantial electricity generation into the market over the next few years and has done in recent times. That was a part of the analysis and it did have an impact—as it did in the Energy Security Board analysis.

Senator McALLISTER: So a similar order of magnitude as the NEG itself?

Ms Quinn: Our analysis was broadly supportive of the work done by the Energy Security Board, yes.

Senator McALLISTER: Arising from that analysis, how significant is policy certainty for investment in energy generation?

Ms Quinn: Providing certainty to investors is an element of creating generation capacity, and that would reduce electricity prices.

Senator McALLISTER: Sorry, I didn't quite catch your last phrase.

Ms Quinn: Increasing certainty for future generation investment decisions would reduce electricity prices.

Senator McALLISTER: Okay. I think that's all on energy for me for the moment. I know Senator Keneally has some questions.

CHAIR: I have a follow-up question on energy reporting, on the abolition of the limited merits review. Did you do any modelling on that?

Ms Quinn: Treasury didn't do any detailed modelling on that component. There was analysis done by the Department of Environment and Energy that looked at the implications of the limited merits review and what that might mean for network pricing and, therefore, retail electricity prices. That was put into the public domain.

Senator McALLISTER: Thank you.

CHAIR: Senator Keneally.

Senator KENEALLY: I have some questions that I was told earlier in the day were best put to Structural Reform, so I'm going to hope that advice was correct. This is regarding the government's auction of the 5G mobile spectrum, scheduled for November 2018, and the revenue that might flow from that. I understand that there are roughly 120 megahertz of radio communication spectrum being auctioned and the maximum amount that can be acquired by any one carrier is 60 megahertz in metropolitan areas. That would indicate that there are two 60-megahertz acquisitions possible under the auction design.

At the time of the announcement, there were three incumbent mobile network operators who could bid. Just to be clear, I understand Optus and NBN Co were not permitted to bid based on existing holdings. But, on 31 August, TPG and Vodafone announced they would form a joint venture for the purpose of bidding for this spectrum as a single entity. So this really has the practical effect of taking us to two bidders for two lots of spectrum. Has Treasury provided any advice or received any advice on the revenue impact, what effect the reduction in the number of bidders might have on the sale?

Ms Quinn: The design of the spectrum auctions is a matter for the Australian Communications and Media Authority, and the decisions around competition limits are a matter for the minister for communications, neither of which is in the Treasury portfolio. So we have not been involved in those discussions at this point.

Senator KENEALLY: Oh.

Senator McALLISTER: Neither is the Department of Finance, which does make me wonder who is watching it all.

Ms Quinn: There would be an update in the usual course as part of the MYEFO process.

Senator KENEALLY: Right. Well, this is scheduled to happen in November. So you're saying Treasury has had no involvement whatsoever?

Ms Quinn: We're aware of the decisions around the design of the spectrum and the decisions by the minister for communications, but we've not been involved in those processes. It is a ministerial responsibility for another portfolio.

Senator KENEALLY: And you haven't received any advice from the communications minister or the department on what impact this development would have on the forward estimates?

Ms Quinn: No. We've had conversations with them and various things, but we haven't at this point got any formal advice.

Senator KENEALLY: Okay. Thank you.

CHAIR: Does anyone have any further questions for the Structural Reform Group?

Senator KETTER: Yes, we do.

Senator McALLISTER: I have a couple to follow up on energy. Have you provided any advice around the viability of new investments in coal-fired power plants?

Ms Quinn: Sorry about investments in—

Senator McALLISTER: New investments in coal-fired power plants.

Ms Quinn: We provide analysis, as I think we discussed last time, around what's happening in the energy market. I'm not really sure what the question is, to be honest.

Senator McALLISTER: I'm interested in whether you've provided advice on one of two things. One is the viability of private sector new investment in coal-fired power—the market appetite for that and any of the drivers around the market appetite for that, and the reasons for what is apparently a pretty widespread lack of interest in private sector investment in coal-fired power plants. I am also interested to understand whether you have provided advice in any way about public, Commonwealth investment in coal-fired power?

Ms Quinn: We've certainly provided advice at different stages over the past few years about the relative cost of different types of technology in the energy sector. We've provided advice about the current state of the energy

market in terms of factors that are behind the increase in electricity prices in 2017 and the subsequent modest reductions in energy prices through 2018. We have provided advice on the different sources of investment and all those sorts of things. In terms of Commonwealth engagement, we've certainly been involved in things to do with the purchase of Snowy Hydro and also discussions around 2.0 discussions. We've also provided advice on what others are doing in the sector, but I'm not aware of anything on Commonwealth investment in coal power stations.

There have been some discussions around the feasibility of various things, but we haven't been providing anything in that space. Recommendation 4 from the ACCC inquiry, around the potential funding gap in the private sector for generation in general around the risk that the financial system might be willing to take relating to the length of contracts that big customers might be willing to sign up for.

Senator McALLISTER: So are you saying that you have provided advice additional to that provided by the ACCC?

Ms Quinn: We have provided our view on the ACCC's entire report as part of the government's deliberations and considerations for that inquiry response, yes.

Senator McALLISTER: The ACCC report was very deliberately technology agnostic. Has your advice been technology agnostic, or have you delved into the funding gap as it might specifically apply to particular technologies?

Ms Quinn: That goes to the advice that we have provided to government, which we don't typically discuss, but you are correct that the ACCC was talking about a financing issue not relating to a specific type of technology.

Senator McALLISTER: Okay. That was quite a helpful broad answer. I think you said that you have been providing information about the cost. You've identified via the ACCC issues around a funding gap associated with the nature of contracting and that sector. You've also identified the cost of generation as an issue for investment decision. Are there any other drivers you would consider in providing advice about private sector investment decisions in the energy sector?

Ms Quinn: There are lots of implications. So there is the price of input costs such as gas prices. There are issues around the demand and what's happening to the energy sector relating particularly to the NEM demand curve relative to solar. There is also the future implications of any emission reduction target.

Senator McALLISTER: Okay. Thanks very much.

CHAIR: Are there any more questions for the Structural Group? Senator Ketter.

Senator KETTER: On the issue of the consumer data right bill and specifically in respect of the first exposure draft that's been circulated. A controversial aspect of that is the inclusion of derived data in the consumer data right, and this is contrary to the recommendation from the Farrell review and also seems to run contrary to the majority of the submissions that have been published. Is it fair to say that the opposition to the inclusion of derived data amongst stakeholders is overwhelming or the vast majority? How would you describe the opposition?

Ms Quinn: You're correct there have been ongoing discussions about how you draw the boundary between raw data and derived data and where that mix is and there was a lot of concern expressed by stakeholders around the exact definition and how that would be operational. For that reason we have put out a second consultation process to respond to those questions and clarifications. It was always going to be an interesting exploratory process, and it's quite important to get that barrier between those two things right. The difficulty is that it's a new type of policy and also that, in some senses, people are looking at it in banking but it's also important to get a definition that's appropriate for other sources of data, because the intention is this is something that can be used in other sectors of the economy over time. I will hand over to my colleague, who might have something else to offer.

Mr McDonald: The thing I would add to that is that the open banking review did recommend that, as a general rule, data results from material enhancement by the application of insight, analysis or transformation should not be included in scope but that there can be exceptions to or qualifications of this broad principle. So the Farrell review did countenance the idea that some forms of derived data could be included within the right. One of the challenges with the legislation is about where you draw that line between where data has been derived a little bit and where data has been more significantly changed. One of the potential examples where people have questions whether it is derived or raw is bank accounts. The bank account balance is, in a sense, a derived data, because the bank has been calculating that to sum it up. That was certainly one of the data sets that the open banking review suggested should be within the consumer data right scope.

In designing the legislation, we took account of the feedback that we received through the first process. We've gone through a second consultation process, and under that we've refined the approach on derived data—or we are proposing to with what we put out for consultation—and that is to treat derived data such that could be included within scope of the consumer data right only when explicitly included in the Treasurer's determination, and that's the disallowable instrument that goes before parliament. So that was a suggestion that was put to us by stakeholders.

Senator KETTER: The recommendation from the Farrell review was that the derived data should not be included but you mentioned there were some exceptions. Can you tell us what those exceptions are?

Mr McDonald: Bank balances are an example of exceptions.

Senator KETTER: Okay. Are there any other sectors or business types that support the inclusion of derived data?

Mr McDonald: I guess there would be a number of fintech people that would support the inclusion of derived data. The question here is: which derived data is included.

Senator KETTER: In relation to this bill, can you tell us your understanding as to the timeline for the introduction of the bill into the parliament?

Mr McDonald: The timing of the introduction is a decision for the government, but the government's policy is that the consumer data rights should start for the big 4 banks on 1st July next year.

Senator KETTER: Previous indications have been that it would be introduced before the end of the year. Is that your understanding of the current time line?

Mr McDonald: It's certainly possible.

Senator KETTER: Does Treasury hold any concerns as to the time lines involved and the risks of mistakes, oversights or unintended consequences for things such as the drafting of the legislation?

Mr McDonald: We've actually had enough time to do two consultation processes on this, which is potentially more than the normal consultation, so we've been doing pretty extensive consultations and working through the issues, and I guess the responses we received to the most recent round of consultations were pretty positive.

Senator KETTER: What about the ACCC's work in setting the consumer data right rules framework?

Mr McDonald: The ACCC are busy setting the consumer data right rules framework. They've issued a paper and have got feedback on that and will be taking the next steps of issuing the draft rules under their own time lines.

Senator KETTER: What about Data61's technical standards work?

Mr McDonald: That's also progressing with a view to the data rights starting on 1 July.

Senator KETTER: Do you have a view as to when those technical standards will be finalised?

Mr McDonald: That's a better question for Data61 and CSIRO, but our expectation is that our work, Data61's work and the ACCC's work will be done in time, including to allow for implementation.

Senator KETTER: I'm looking at Data61's Data Standards Body committee minutes. Those minutes say that the chair has noted that he met with the Treasurer since the last meeting and he reiterated the government's commitment to the timetable for the introduction of the CDR regime and that the Treasurer also confirmed that COAG will consider the early application of the consumer data right to the energy sector. I understand from those minutes that there was a discussion about the timetable and the chair said that he was 'suitably uncomfortable' and 'there's a need to keep the pressure on and there's a lot to do; all parties have the same intent at heart'. Are you concerned about those comments in recent meeting minutes? Are there any risks involved in the current time frame?

Mr McDonald: I can't speak for the chair of the Data Standards Body, but what I would interpret by 'suitably uncomfortable' is that there is a lot to do but it is getting done.

Senator KETTER: Thank you.

CHAIR: I thank very much the Structural Reform Group of Treasury. We will let you go for the evening.

Australian Securities and Investments Commission

[20:39]

CHAIR: Good evening and welcome back to Senate estimates to everybody from ASIC. Mr Shipton, do you have an opening statement for us?

Mr Shipton: I do, Chair, a short one. Firstly, with permission, I'd like to table my opening statement to the Parliamentary Joint Committee on Corporations and Financial Services which I tabled last Friday, 19 October.

CHAIR: Yes, the committee's happy to do that.

Mr Shipton: That statement referenced two documents tabled to that committee, namely ASIC's latest enforcement and compensation outcomes, and the terms of reference of an internal review into our enforcement processes and procedures. I would also like to table those two documents now, Chair, with permission.

CHAIR: Permission granted.

Mr Shipton: There are many important points that I raised last week. Among them was our recognition of the royal commission's important work to date. I want to reiterate my acknowledgement of the seriousness of the observations made in the royal commission's interim report, including those made of ASIC. Crucially, I want to underscore ASIC's long recognition of the human impact of misconduct in finance. Financial misconduct can and does have devastating and, at times, catastrophic impact on individuals and families. The royal commission has reinforced that this conduct has real and enduring impact across the community, including on more financially vulnerable consumers. The commission has also clearly reinforced that the financial industry has abandoned its core role of being custodians of other people's money.

Another point I referenced was an insightful observation by the royal commission in its interim report about the heightened role of Australia's financial regulators. The interim report observed that 'important deterrents to misconduct are ... missing'—meaning, market deterrents. Those missing market deterrents are, firstly, the absence of meaningful competitive pressures; secondly, the absence of a fear of failure or collapse of an institution; and thirdly, the absence of a fear of failure of individual financial transactions. The absence of these particular deterrents in Australia's financial system means there are limited market-cleansing mechanisms to counter misconduct. This includes demand-side pressures. It is difficult for consumers to exert pressure on large financial institutions. The result is that financial regulators need to step up where the market does not. To this end, the interim report importantly states:

If competitive pressures are absent, if there is little or no threat of enterprise failure, and if banks can and do mitigate the consequences of customers failing to meet obligations, only the regulator can mark and enforce those bounds.

This is a crucial observation. It is an observation that must be embraced at a policy level by policymakers, and in practice by ASIC.

We all have to be very aware that the particular structural characteristics of Australia's financial system have unintended consequences that require extra effort and attention by financial regulators. This goes to the heart of the expectations conversation I started last week. ASIC's role is not that just of a usual or standard financial conduct regulator. Our role in this country is especially heightened because of the absence of market-cleansing mechanisms through competition. I want ASIC to fill the vacuum left by the absence of these market forces. Leaning into this problem with rigorous and frequent use of enforcement and other regulatory tools is one way of filling this vacuum.

With these important observations in the front of our minds, noting that the market is not going to help us in this challenge, what we now need is a constructive conversation about the powers, positioning and right sizing of ASIC.

As I close, I want to raise another important issue—that of regulatory capture or favouritism towards regulated entities. This has been the subject of much external commentary as the royal commission has progressed. It is a subject that I'm attuned to and very alert to. I will do everything in my power to not let this happen. I am a firm believer in the institutional credibility of a financial regulator—one that needs to live by and display absolute strength and robust independence. Be assured that no-one is more motivated than I to maintain and enhance the institutional credibility of ASIC. Having worked in a range of other jurisdictions, I know all too well the corrosive effects of the decline of institutional credibility. Accordingly, my mission is to strengthen the agency's capability and to strengthen its credibility. As I said last week, the men and women at ASIC value their independence and integrity. They are eager and dedicated to working towards a fair, strong and efficient financial system for all Australians. What they need is effective, strategic guidance as to where their energy is best deployed, and my fellow commissioners and I are firmly committed to giving them that strategic direction. We look forward to the committee's questions.

CHAIR: Thank you, Mr Shipton. I might kick off the questions, if I can. I was at the Parliamentary Joint Committee on Corporations and Financial Services last week. I thank you very much for tabling the opening statement you made there, which was not dissimilar but slightly more comprehensive, I think. But I will ask

initially if you could just briefly outline for this committee what ASIC's strategy is to make it a more effective regulator?

Mr Shipton: Thank you for that question. Essentially, we need to be focusing on the outcome as an effective regulator. The outcome for us is a fair, efficient and strong financial system for all Australians. What we need to be doing is deploying a range of different regulatory tools, using all of the powers that we have in our toolkit with that aim in mind—the aim of fairness, strength and efficiency in the financial system. Unfortunately, as the royal commission has all too well displayed and highlighted, the financial system and financial institutions are not playing their part in making sure that we do have a fair, efficient and strong financial system. Unfortunately, what's happened is that there's been a complete abrogation of that frontline responsibility by financial institutions to ensure there is honest, fair and efficient use and deployment of their functions and capabilities. That's a statutory responsibility.

Your question, Senator, is: what do we do about it? Our job is to deploy the tools that we can, which will include and does include court enforcement powers and court enforcement tools. I will take this opportunity to highlight that essentially two-thirds of our enforcement action is court based. That, I think, indicates our willingness not only historically but also moving forward to deploy these court based enforcement tools. Ultimately, I think it's very important that we have conversations before committees like this to ensure that we are being actually held to account to work towards that strategic goal of fairness, strength and efficiency of the financial system with the consumer in mind. When I say 'consumer', of course I'm talking about Australians. I'm talking about the men and women of this country, because we have a very democratised financial system in Australia, particularly through compulsory superannuation, which heightens our responsibilities as a financial regulator. But, equally, it heightens the responsibilities of financial institutions to live up to their part and, to put it bluntly, live up to their basic legal obligations, which they're not doing.

CHAIR: I noticed that you've tabled the terms of reference for the review of ASIC's enforcement policies, processes and decision-making procedures. Was that issued just last week?

Mr Shipton: That's correct.

CHAIR: That review is going to be completed in December—is that correct?

Mr Shipton: We're now moving to January, I believe.

Mr Crennan: I might answer that—I'm leading that review with some external advisers. Our aim is to complete the whole thing before Christmas. Then we will provide it the royal commission and hopefully that will be plenty of time to consider what we have recommended to ourselves. We have taken on a couple more external people to assist with that. Our shared view is that this review, although it's internal, it will benefit significantly from, for example, having a senior academic, a senior silk and a senior member of the AFP who have agreed to participate. So those three and I will be conducting the review—with staff, obviously. So I hope we can finish it as quickly as possible—certainly before Christmas.

CHAIR: Since we last saw ASIC at the committee, your funding has increased by \$70 million. Can you explain how this money is used to implement your strategy, Mr Shipton?

Mr Shipton: Yes. We have had funding over two years of just in excess of \$70 million. This will fund very important strategic initiatives. These strategic initiatives, I will highlight, have been decided on the basis of a new strategic decision-making approach and structure that essentially leads to a number of key themes. Firstly, we are going to use this money to accelerate our enforcement outcomes. We have a large body and a large book of matters that we'd like to take to court, pursue through the court and get accelerated as quickly as possible. This funding will be going to our enforcement special account to fund that acceleration of enforcement initiatives.

We also have new strategic approaches when it comes to supervision. This funding will go to, amongst other things, an initiative that we are calling close and continuous monitoring of the large five financial institutions—the big four banks and AMP. This is all about putting physically on site, inside these financial institutions, our supervisory officers. They will be led by very senior chief supervisory officers with an SEL, or senior executive leader, rank. They'll be leading on-site supervisory teams. This is a new supervisory tactic and approach that we are applying on a permanent basis. This is an important tool. It's a non-enforcement tool but nonetheless an regulatory tool. By having ongoing and physically present monitoring of financial institutions, we hope that that will help catalyse the behavioural change and the awareness that I mentioned before that is needed by financial institutions. As part of that supervisory strategy, a part of the funding will also be going to enhanced and increased supervision in the superannuation space and also in the corporate space, when we are focusing on increasing corporate governance standards in Australia.

Finally, the funding, which I think is very important, will go to what I'm calling a new frontier of financial regulation, which is the adoption, development and efficacy of regulatory technology solutions. The enormity of the challenge facing the financial system and financial institutions right now is so great that I believe that we need to think about creative and not just human solutions. Technology can be, I firmly believe, a part of the solution here. So the funding, which we think will be catalytic, will help us work with technology developers to develop technology solutions that will apply inside financial institutions and also inside financial regulators to help with compliance, real-time monitoring and, importantly, we think, information systems so that the leadership of these financial institutions know sooner about a breach or an issue than they currently do. I'll quickly give you a reference in relation to the speed at which financial institutions can identify breaches. We have a report on breach reporting which indicated that, with large financial institutions, it took an average of four years before a financial institution could identify a breach inside their own financial institution. That, to me, speaks to, amongst other things, a failure of the system—the management systems and identification systems. And regulatory technology, I believe, is a core part of the solution there.

CHAIR: Thank you, Mr Shipton. I want to ask a couple of quick questions about the information that ASIC supplied to the royal commission. Were many of the case studies that have been heard at the royal commission known to ASIC before they were publicly disclosed? Was ASIC in the middle or in the process of investigating any of those?

Mr Shipton: Yes, that's right. A very, very large number of the matters before the royal commission are matters that we've been aware of and attending to.

CHAIR: I know you have recommended enhanced remediation powers. Can you explain to the committee what those powers are? Also, in relation to those powers, there's some legislation that I think has just passed the House and is probably before the Senate now. What would your message to senators be with regard to those enforcement powers or those powers and penalties?

Mr Shipton: There are a number of powers—including the directions power, which will give us an ability to direct compensation, amongst other things, where there's been malfeasance. This is a very important power, and I would implore senators to look favourably on the legislation that I understand is coming before you very soon, because these powers—amongst others, the directions power—will enable us to more effectively do our jobs. It's as simple as that. I mentioned in my opening remarks that we need to have a conversation about the positioning of ASIC. When I talk about the positioning of ASIC, I'm talking about the powers for it to be able to do its job, and the directions power is one of those tools that will enable it to do its job. The increased penalties legislation that I understand will be coming before the Senate shortly is another piece of legislation, another important part of our tool set, that will enable us to very effectively provide a deterrent, because what we want to do is go to court more often. We want to provide credible deterrents to bad actions, malfeasance and misconduct, but to provide those deterrents we actually need meaningful and robust penalties. This is what the increased penalties legislation that will be before the Senate—and, hopefully, before the Senate in the New Year as well, because there are two tranches—will do. They will be able to empower us effectively to get on and do the job that we desperately want to do.

Mr Crennan: Chair, could I add to that?

CHAIR: Yes, Mr Crennan.

Mr Crennan: In terms of the bill that you've referred to, and I understand the first reading was this morning, there are some aspects which are acutely important to ASIC as a regulator and, in fact, particularly in terms of financial services. As I referred to in the parliamentary joint committee on Friday, there's a particular section, which is section 912A of the Corporations Act, which hitherto has not had a civil penalty regime. Although a financial services licensee might have breached that section, and I'll come to that in a moment, the regulator was hamstrung as to what relief it could seek. It could seek a declaration of the court, but a declaration by itself serves limited purposes, for obvious reasons. It could suspend the licence, but, when you're talking about one of the major four banks, that's also a very unlikely outcome. However, in this bill, as a result of the ASIC Enforcement Review Taskforce recommendations—which were almost all accepted—section 912A has a civil penalty regime attached to it. I think it's in section 76 of the bill. Now, that is a very significant development in the statutory framework that the regulator has available to it to deal with financial services licensees, and those people are banks and large financial services providers. One of the cornerstone duties is to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly. The second word in that grouping, 'honestly', certainly relates to many of the criticisms made of the financial services industry and the participants therein in the royal commission's interim report.

The 912A civil penalties, which I'll explain in a little bit more detail, are coupled with quite significant increases for those civil penalties across the board—and there are different types of penalties; they're not as simplistic as financial penalties. For individuals, contraventions of 912A can amount to \$1.05 million or, most significantly, three times the benefit gained—and that's disjunctive, not conjunctive, so you can get both of them. For companies, it can be the greater of \$10.5 million or three times the benefit gained or, most significantly, for large institutions, 10 per cent of annual turnover capped at \$220 million. These are very, very high penalties and very, very significant.

I should tell you that the reporting section, which is in the same part of the act—it's the obligation to report the breaches that I've just described, which include other things such as having adequate arrangements for management of conflicts, which is a very important aspect and also very relevant to some of the criticisms of the financial services industry by the royal commission, and to take reasonable steps, which is a reasonably new section, to ensure that its representatives comply with the financial services law. That's also a very big area.

So they're the breaches. I've told you the penalties. The second section, which is very important, which will be partly transformed by this bill but also by a prospective bill, is 912D. Section 912D imposes an obligation that breaches of 912A and other sections must be reported to ASIC within 10 days. The consequences of breaching 912D(1)(b), which is where the obligation resides, are extremely severe. That section, I must say, has had criminal offence attached to it for some time. This bill does two things. Firstly, it increases the penalty to two years imprisonment per contravention, and, secondly, attaches a civil penalty regime—so you have a significantly lower burden of proof.

Most significantly, the government has agreed in principle to reform that part of the legislation so that it is an objective rather than a subjective test. As was said in the parliamentary joint committee hearing last Friday, we received legal advice that the combination of it being a subjective test and a criminal burden of proof made it very difficult to succeed in pursuing that section, unless you basically caught someone with their hands in the cookie jar and had emails or whatever. In any event, those developments, some of which are almost immediate and some of which are soon to be in place, will be transformative in ASIC's view of the landscape, particularly with financial services, so that we can pursue large organisations for very significant financial penalties. If they don't report breaches, then they are facing some very severe consequences. We hope to think that that would be transformative in this area.

Mr Shipton: I should quickly clarify that there are essentially two tranches. There's a bill before the Senate, as I understand it, which is tranche 1, and then there is a tranche of powers which has been agreed in principle, such as the directions power, that we hope that will come before the Senate and the other place in the not too distant future.

CHAIR: Thank you very much, Mr Crennan and Mr Shipton. Senator McAllister, why don't you take us through to the break at quarter past nine and then we'll come back to the Labor Party again after that.

Senator McALLISTER: Thanks very much for your presentation, Mr Shipton, and for the documents you've tabled. I think thinking in broad strokes about what's required to have an adequate regulatory response is very useful. One of the things I want to ask you about is your views about culture in regulatory organisations. You made mention in your remarks of the Parliamentary Joint Committee on Corporations and Financial Services to the arc of history, I think, and how ASIC landed in its present position. There you were talking about the size of the organisation and the resourcing for the organisation, but its history also affects its culture. I wonder if you have any reflections about how that culture supports or doesn't support the exercise of new or existing powers, the deployment of resources and the development of the new capabilities, particularly around supervision, that you made reference to in your opening remarks.

Mr Shipton: I would be happy to talk about culture.

Senator McALLISTER: We talk about it a lot for the regulated community but not so much for the regulators sometimes.

Mr Shipton: Absolutely. I believe in my first or second speech in this role, which I'm very honoured to have, I spoke about the fact that we need a professional culture inside the financial institutions. But, equally the men and women, at ASIC need to be held to that very same standard, if not a higher standard. So I firmly believe in that. You raise a very good question. We could have all the powers, all the funding in the world and all the mandate in the world, but if we don't have the mindset and the willingness inside the organisation then that is for nothing. So I firmly believe that. I believe—and this is a message as much for us as it is for financial institutions in corporate Australia—that the message must come from the top. Good decision making has to start there. I've done a number of studies on this over the years, and there is a PhD study out of Columbia University which

speaks to the fact, that unless the leadership group of an organisation takes control of the culture and directs the culture of an organisation, that culture will drift. It usually drifts into untoward situations or into a culture that you don't want to have.

So the first thing that we've done as a leadership group of the commission is provide strategic direction. You asked a very good question and you used the word 'deployment'. We need to deploy our tools. We need to empower our men and women so that we are empowering them to deploy those regulatory tools as appropriately and effectively as possible. The message has to start from the top. That's why we started, as one of our very first steps as a commission group in February, March and April of this year when we first formed and when I joined, to articulate our vision. I mentioned it in passing in my opening remarks. Our vision is for a fair, strong and efficient financial system for all Australians. That is the benchmark of our corporate culture or our agency's culture. All the men and women in our organisation are dedicated and aimed towards that goal. That is a cultural mindset. That is a cultural aim of our organisation. You're absolutely right: we need inquisitive, professional and dedicated men and women who are working towards that goal of a fair, strong and efficient financial system for all Australians. You are absolutely right to hold us as a commission group to account to ensure that we are maximising the efficiency and the effectiveness in that culture.

We do cultural surveys. I had been in contact, even before I joined ASIC, with our head of people development to indicate the mindset. We do cultural surveys on an ongoing basis. Interestingly enough, our culture surveys are holding up, even though our men and women are working hard and there have been a number of criticisms levelled against them. But again, at the end of the day, I think it comes down to better, more effective, strategic decisions and leadership by us as a commission group to ensure that we can actually harness the energy of our men and women. I used an expression last week at the parliamentary joint committee hearing. I said—and I believe this is accurate—'Our men and women are all fired up and ready to go; what they need is us to strategically deploy them to harness that energy.'

Senator McALLISTER: That's very useful. You talked a little bit in your remarks about regulatory capture, and one of the specific vectors for capture that has been discussed in the public domain has been the movement of personnel between the regulated community and the regulators. I understand why that happens. These are complex institutions and having people who know how they work is very useful. Have you and your leadership team given any thought to how to manage conflicts?

Do you accept that that is one of the vectors for capture, and have you given any thought to how you might approach it?

Mr Shipton: Yes. That is certainly one of the contributing factors of vectors for possible capture, without a shadow of a doubt. We have, we believe, a very robust conflicts of interests policy, which is leveraged off the public sector conflicts of interests policies and procedures. That said, we are also undertaking a review of our conflicts of interests policies and procedures, internally.

I came into the organisation believing that management of conflicts of interests, one of which is the risk of regulatory capture or favouritism, is something that a good regulator needs to be very attuned to and alert about. There is also a particular body of work taking place with regard to regulatory capture or favouritism in relation to the teams that will be going inside the large financial institutions. We're calling it the close and continuous monitoring program. We have specific training, which we developed, in relation to looking out for the indicators of regulatory capture. I'm very proud to say that I contributed to the development of that training, because that's how personally committed I am to making sure that this organisation is not one that can even have directed towards it an accusation of regulatory capture.

But you're absolutely right to ask that question. It's a question that we're asking ourselves. We believe that we have good conflicts of interests policies, but I have undertaken or started a process whereby we're reviewing that to make sure that they're fit for purpose in the modern day and that they are the very best that they possibly can be.

Senator McALLISTER: Because some of the risks in the financial services sector might be a little different to the general kinds of conflicts that appear in the public sector more generally.

Mr Shipton: Absolutely.

Senator McALLISTER: Can I just ask a final question which goes to size and resourcing. You delicately raised this in your remarks to the corporations and financial services committee last week. What principles might we be thinking about in looking at the level of resourcing necessary to fulfil this task?

Mr Shipton: It's a very important question. I will say: it's not just resourcing. I like the word 'positioning' because the word 'positioning' connotes the fact that it's powers and penalties. Senator Hume was just asking

about them. That's an important part of the equation. Resourcing and funding and capability are another part. Your question about our effectiveness and our culture is as much a part of that issue of positioning. But, certainly, funding is a core part and resourcing is a core part of that positioning conversation, which I hope will be a constructive one.

Essentially what I think we should be doing in this constructive conversation is identifying the challenge, identifying the risks, identifying the harms, diagnosing the problem that we're trying to solve and then responding accordingly. This should not be a conversation about cents and dollars. This is not a nickel-and-dime conversation. This is a conversation about how we can have the most effective, most robust, most capable, most supported financial regulator that we possibly can to meet the particular challenges that we face here in Australia. That's why I highlighted, both before the Senate estimates today and the PJC last week, that there is a particular challenge that comes from the failure of the market deterrents in this country. Those market deterrents do not, unlike in other places and other markets, provide a cleansing mechanism against misconduct, and, because those market deterrents are not stepping up, I think we need to have a conversation—a constructive one—about how financial regulators can step up to make good for those failings, pending perhaps one day those market deterrents actually being effective.

My suggestion is that we have a conversation about the challenge and diagnose the problem. The royal commission is very helpful in this regard, because the royal commission is providing a spotlight and a diagnosis as to the depth and the penetration and just how almost systemic the challenge is; and, therefore, once we've identified that, we can then talk about positioning. As I said, positioning is more than just funding. It's all about that capability, the tools we apply, the culture that you asked about, the leadership structure that you asked about, and then work from there.

Senator McALLISTER: Thanks, Mr Shipton. Thanks, Chair.

CHAIR: We might take a break now. The committee will suspend for 15 minutes, and then we will resume with ASIC.

Proceedings suspended from 09:15 to 09:32

Senator KETTER: On the issue of director identification numbers, does ASIC believe that 100 points of identification, as a minimum, should be required for the Director Identification Number scheme?

Mr Price: That is really a policy question. What I would say is that it is very important to think about what sort of authentication will be required for directors. But it is also particularly important to remember that there are over 2.7 million directors in Australia. So, whatever mechanism is used to authenticate identity, it needs to be practical and preferably one that isn't going to slow down the economy. It needs to be efficient, is what I'm saying. We also need to bear in mind that directors are from all parts of Australia, including regional and remote Australia. In some cases it may be difficult for them to demonstrate the 100 points of ID. So, we have an open mind. It is a policy question, but it is a very important one.

Senator KETTER: Are you continuing to provide advice to the minister in relation to this matter?

Mr Price: We are in discussions with Treasury. Obviously, Treasury is advising the minister in relation to these matters, but I have conveyed, more or less, what I've said to you today. It is very important to think about the practical aspects of what authentication may be. Bear in mind also that often it is not directors themselves who register companies. They often do it through agents, such as accountants or other professional service providers.

Mr Day: There are many other more modern ways of authentication that the government has available now—through Australia Post, through myGov. There are lots of other ways that aren't in that very old-school way of 100 points of proof. In fact, most of the banks don't use 100 points of proof now. They use other mechanisms. One hundred points of proof is an older standard and there are many other standards the government can use.

Senator KETTER: When does ASIC understand that the systems will be in place for the Director Identification Number scheme?

Mr Price: The director identification number reforms are tied to modernising various registries within government. That is quite important, because many people don't appreciate that the companies register that ASIC currently operates is basically running the same systems that were put in place when ASIC was started in 1991. It is a stable system but there is no doubt that it needs to be replaced. It doesn't really make a lot of sense to try to build large amounts of new functionality into that old system. A key thing of importance is to work out what new platform on which to run a variety of government registers. Then, I think the idea is to build the director identification number into that.

Senator KETTER: Is the preliminary work being done on the other scheme?

Mr Price: There is legislation that is being consulted on at the moment that talks about establishing a new registrar for a variety of government registries. That includes the ASIC registry and some tax office registries. That would be built on a new platform and administered within the Taxation Office. We are supportive of these measures.

Senator KETTER: Moving onto the investigation into Stuart Robert. On 16 October last year, two days after receiving a letter from the shadow Assistant Treasurer, ASIC made an initial assessment about allegations made in news reporting about the directorship of Robert International. In subsequent correspondence to the shadow Assistant Treasurer and the shadow minister for financial services, ASIC outlined the reasons it was not going to pursue any further actions. ASIC stated: 'Outside of an insolvency context, in ASIC's experience matters relating to director appointments and internal governance arrangements of small proprietary companies would be unlikely to affect consumers or investors in the broader economy.' Why does ASIC feel that, if someone potentially deliberately supplies misleading or incorrect information—which is a breach of subsection 1308(2) of the Corporations Act—irrespective of any insolvency context, this doesn't undermine confidence in the director registry system?

Mr Price: I think we need to start looking at the premise of your question. Many of the matters in relation to Mr Robert were actually canvassed in the Parliamentary Joint Committee Corporations and Financial Services on Friday, 27 October 2017. In short, we felt there was insufficient evidence to establish that any false statement had been made. Mr Day can speak further to that. He was actually the person recorded in the *Hansard* that I just cited.

Mr Day: I think the excerpt you have read from the letter is taking it out of context. If you look at the broader considerations that we made that are mentioned in the letter, and that we mentioned to the parliamentary joint committee in October last year—you were a member of that committee and I think you were there on that day—there is a number of other factors that primarily we were interested in. The excerpt you have read out is generally true, in that there is a limited amount of, if you like, public harm that occurs in relation to a change of directors or lodgement of director duty notices in relation to small proprietary limited companies. That is the general statement we were making. I don't think it is a specific statement to say that we don't enforce that or that we don't see that mischief can occur there. I don't think that is what we are saying there. Outside of that, Mr Price has indicated the issues that we considered—

Senator KETTER: I'm happy with that response. In correspondence in October last year you noted that the allegations relate to forms lodged in 2010 and 2016 and there are statutory and evidentiary limitations on ASIC from pursuing these matters, due to the passage of time. I think that is a direct quote.

Mr Day: Yes.

Senator KETTER: Can you detail what the statutory and evidentiary limitations on ASIC were in relation to those documents, some of which were filed the year before the allegations were made?

Mr Day: The issues relate, in fact, to the lodgements that occurred in 2010, not 2016. The issues are: whether or not the people who became directors of those companies in 2010 were aware or knew that they'd become directors of that company. That had occurred, as I said, in 2010—that's seven years before. A number of other factors are at play, apart from what we perceive to be potential evidentiary limitations as well.

Senator KETTER: The correspondence made note of the fact that you were aware of media reports about Mr Roberts' parents' age and health, which quoting further from you suggested 'further limitations on evidence that they never consented to being directors to meet the requirements to pursue court action'. So did ASIC make any further inquiries beyond assessing media reports?

Mr Day: Yes.

Senator KETTER: Can you tell us what those were?

Mr Day: We reviewed the document themselves and we looked at the other documents that had been filed with ASIC in relation to those transactions.

Senator KETTER: Can you tell me why media reports about the age and health of two people central to the allegations was a limitation on evidence?

Mr Day: It's not a limitation. One of the issues that you deal with when you're collecting evidence is to the recollections that the individuals may or may not be able to have in relation to activities they were involved with at that point, seven years before. Certainly, given their age and their health, that would impact on their memory and other factors in relation to what they knew they did sign or did lodge at those times.

Senator KETTER: You confirmed the media reports about them—about their—

Mr Day: How do you confirm media reports about them, Senator?

Senator KETTER: The age and the health aspects?

Mr Day: From the documents we saw that confirmed their age—yes.

Senator KETTER: What about their health?

Mr Day: No.

Senator KETTER: So you just accepted that?

Mr Day: Yes.

Senator KETTER: Mr Robert is the minister with oversight of the director identification number scheme that we earlier discussed. I want to refer you to another media article about Mr Robert which appeared in *The West Australian* newspaper, which reported:

A company run by a Federal minister who charged taxpayers \$2000 a month for internet access lodged documents removing him as its director only after the matter was queried by *The Weekend West*.

The article goes on to say:

Until late yesterday ASIC records showed Assistant Treasurer Stuart Robert was a director of an alternative health franchise business, despite Mr Robert telling Parliament a month ago he quit the board of Cryo Australia when he returned to the ministry.

Will you be making any inquiries related to these matters that have been brought up by *The West Australian* newspaper?

Mr Day: At this stage, no, Senator.

Senator KETTER: Can I ask why that's the case?

Mr Day: If I talk in general terms about that, the register that matters, in fact, is the register that the company holds of its own lodgements. ASIC's register is, if you like, the public telling of that register, but what we often find is that the relevant documents for change of directorships are lodged with us quite late in the piece or later in the piece than should be the case. If they are lodged later, there are things about late lodgement that we can look at and that we would look at. Outside of that, we'd revert to the statement of the general nature that you excerpted earlier in your questions in relation to these matters, Senator. You've got to ask whether there's a public general interest in looking at the directorships or late lodgement of small proprietary limited companies.

Mr Price: It isn't uncommon for company documents to be lodged late. There can be a variety of reasons for that: inadvertence through the company; as I said, many documents are lodged through agents, and so on and so on.

Senator KETTER: In your earlier correspondence, you said that ASIC's inquiries did not suggest systemic concerns about the operations of Robert International or its current or former directors. So, in the light of the report from *The West Australian*, will you be revising your estimate about the systemic concerns of former directors of both Cryo Australia and Robert International?

Mr Day: At this time, no.

Senator KETTER: Why not?

Mr Day: If I were to respond to every media report, there would be a lot of investigations at ASIC that would be driven purely by speculation in the media. At the moment, I see that allegation; I haven't seen the article. I see the allegation that you've raised tonight—if it is that you would like us to go and look at that, I can arrange for that to occur. But, outside of that, we've had nobody else raise any issues with us about that.

Senator KETTER: So, you've had two situations that have come to light in relation to these companies. The question is: what does it take for you to form the view that there is a systemic concern about the operations of the company?

Mr Day: I think that's a difficult question to answer when put like that, Senator. If it is that there is a second we'll go and look at it, and then form a view about that. Is that systemic—

Senator KETTER: But this is the second—

Mr Day: Well, I don't know that it is the second because we didn't form the view that it was the case in the first case, Senator. If it had been, there would have been action we would have taken.

CHAIR: Senator Ketter, we can come back to this, if you like, but your time's expired. Can I go to Senator Abetz, then we'll come back to you.

Senator ABETZ: Thank you to the officials from ASIC. I note that, following my expose of deficiencies in GetUp's registration details in the last estimates, GetUp has now radically overhauled its constitution at a special

meeting on the 19th of July this year. This revised constitution appears to have been received by ASIC on the 26th of July.

Mr Price: That is correct.

Senator ABETZ: And can you advise why it wasn't put online or made available to the public until just the last few days?

Mr Price: I can.

Senator ABETZ: Backlog of work?

Mr Price: No, not at all. The notification documents that were lodged with us were actually incomplete.

Senator ABETZ: Were incomplete?

Mr Price: Yes. They were returned to GetUp for rectification and—

Senator ABETZ: I thought they were going to hire expensive lawyers as a result of the matters that I raised, but clearly they didn't get their documentation right.

Mr Price: Regrettably, even expensive lawyers sometimes get things wrong. In any event—

Senator ABETZ: Is that right, Deputy Chair?

Mr Crennan: Do I have to answer that question?

Senator ABETZ: No—no, rhetorical; my apologies.

Mr Price: In any event, on the 1st of October, GetUp resubmitted the documents and then the documents became public on the 16th October. It is our practice in these cases that the documents retain the original date that they had put on on them—the 16th.

Senator ABETZ: Are you able to disclose what the deficiencies were?

Mr Price: I don't have that information to hand.

Senator ABETZ: Can you take that on notice.

Mr Price: Yes; I'm happy to.

Senator ABETZ: Thank you, Mr Price. The second lot of documents that were filed were the ones that have the handwritten markings on the documentation—is that correct?

Mr Price: I haven't personally reviewed them myself.

Senator ABETZ: Alright. So, do the revisions relate to GetUp's constitution include retracting the false representation that it is in fact a charitable purpose?

Mr Price: I'd like to actually take that on notice. That matter hasn't been raised with me previously.

Senator ABETZ: Right, because I have raised previously that they inserted in, I think, 2015 into their objects that they were a charitable purpose in pursuing progressive politics. But, for charitable purposes, they are not registered as a charity, and I have criticised this on a number of occasions as potentially misleading the public. I believe that now that has been deleted.

Mr Price: Perhaps if I can make one comment: the nature of a company's constitution is effectively simply a contract between the company and its members, and so it has in many senses no greater regulatory importance than that. So, it's not possible for an outsider to attack it or enforce it. Nonetheless, I'll take the matter you raised on notice.

Senator ABETZ: If an organisation asserts that it's set up for a charitable purpose, it may attract donations, unwittingly, with people believing that it's charitable and therefore their donations might be tax deductible.

Mr Price: Certainly, I'm aware that the Australian Taxation Office has a strong interest in whether entities are established for a charitable purpose or not.

Senator ABETZ: Can you confirm that other changes include abolishing the requirement to list, or openly disclose a list of full members, in an attached schedule.

Mr Price: Yes. That's my understanding, Senator.

Senator ABETZ: Are you aware that, when I raised this matter of schedule 1—and I think I showed it, with a bit of drama last time, as being a completely blank page—GetUp! responded publicly to say it was just an administrative oversight?

Mr Price: Yes, I am. I recall our discussions last time.

Senator ABETZ: They have amended their—what do I call this?

Mr Price: Constitution.

Senator ABETZ: Their constitution to delete that requirement and therefore their newly produced constitution no longer has that requirement in it at all.

Mr Price: Perhaps if I can make a quick observation. There is no requirement for company constitutions to have that requirement in them. If I can add one further thing though: there is a requirement in the law that means companies need to keep a register of members. So you don't need it in your constitution. The law actually imposes a requirement—

Senator ABETZ: But GetUp! was saying it was so transparent and wonderful and that everybody ought to follow their example, then of course deliberately did not, I would suggest, have its list of members. Then, when challenged about it, it has now changed its constitution to no longer require that of themselves. But can I ask: given that it was in the constitution, how long does GetUp! have to maintain its records, and could people request an inspection of the records, as it was required prior to the change on 19 July this year?

Mr Price: Section 173 of the Corporations Act—I mentioned the Corporations Act has some requirements around member registers—requires that a company must allow any person to inspect a register, such as a register of members. In answer to your question, that register of members needs to extend over the last seven years, from my understanding. That is section 169.

Senator ABETZ: Any member of the public can—

Mr Price: There are restrictions about who can inspect company registers, and those restrictions were actually put in place by parliament. It wasn't so long ago. It was in response to concerns that people, such as a gentleman by the name of David Tweed, were inspecting company registers and then using that information to make low-ball offers to people to buy their shares in circumstances—but, yes, people can—

Senator ABETZ: But, with a company such as this there are no fears to be bought, as I understand it.

Mr Price: No. That's right. Perhaps I'll take that on notice, because it is a company limited by guarantee. So it's not the typical shareholder situation. I'm also cognisant that there were those changes that were put in recently, so I would like to take that on notice.

Senator ABETZ: Thank you. Did the changes also include abolishing the category of ordinary members?

Mr Price: As far as the constitutional amendments went?

Senator ABETZ: Yes.

Mr Price: I would like to check that also.

Senator ABETZ: If you could take that on notice, and whether they abolished corporate membership of GetUp!

Mr Price: I shall do.

Senator ABETZ: And then, also, did they abolish all clauses in relation to the setting up and maintenance of registers of members in accordance with the act? Although in clause 2.13, the secretary is charged with maintaining the members' register available for inspection by members.

Mr Price: Yes, that's my understanding, but, again, just to note, my understanding is also it's not illegal to omit clauses in that way, noting also that, even if there is no clause in the constitution, there are those provisions that require member registers to be kept in the Corporations Act itself.

Senator ABETZ: In respect of this organisation, which asserts that everybody ought do what it doesn't do, is it legal for GetUp! to erase from its constitution the requirement to keep membership records available for public inspection in accordance with the act?

Mr Price: As I say, my understanding is it's quite common for companies to include provisions in their constitutions about the keeping of the register, but it's not illegal for a constitution to omit such a reference.

Senator ABETZ: But, for one that prides itself on openness and transparency, it is somewhat interesting—and you needn't comment on that, Mr Price.

Mr Price: Of course, I do want to emphasise again for *Hansard* that there are separate provisions in the Corporations Act, and even if there's nothing in the constitution, those provisions in the Corporations Act will apply about keeping member registers.

Senator ABETZ: But such a provision would mean that it decreases the transparency, doesn't it, if there is such a clause in the constitution?

Mr Price: Well, I think if there is a clause in the constitution, perhaps people might read it and understand their rights from reading the constitution.

Senator ABETZ: Or indeed the lack of rights now?

Mr Price: Of course, if they were to read the law or had some appreciation of what the law requires, they might similarly realise that there are equivalent provisions there about member registers, so it really depends on individual members' understandings.

Senator ABETZ: I think you agreed that you would take on notice the question whether a member of the public can still make an appointment to go and inspect GetUp!'s current membership register?

Mr Price: Yes. As I said, there are rights to inspect registers, but certainly in relation to companies limited by shares, there are restrictions around those. So I would like to give you a complete answer.

Senator ABETZ: Yes. They do have to keep their records for seven years.

Mr Price: For seven years is my understanding, and that's in accordance with section 169 of the Corporations Act.

Senator ABETZ: GetUp!'s old constitution, in clause 1.6 said: 'GetUp! must pursue GetUp!'s objects,' those objects being at that time, 'to advance progressive public policy in Australia where that advancement furthers a charitable purpose'. Were they bound to act as a charity in those circumstances, namely, from December 2014 through to July 2018?

Mr Price: If I may, I'll take that on notice. As I said before, one of the issues around company constitutions is, effectively, they're a contract between companies and the members, so there's no real enforceability that attaches to that beyond that point. But I'm happy to take it on notice.

Senator ABETZ: Could I also ask whether changes to GetUp!'s constitution abolishing the requirement for directors' conflicts of interests to be recorded in the minutes, which is new clause 11.9, is appropriate.

Mr Price: I think company constitutions, as I said, are really a contract between the company and its members. They may add additional rights to rights that exist within the Corporations Act itself. So that question of, 'Is it appropriate?' I mean really—

Senator ABETZ: Or is it legal, I should ask?

Mr Price: My understanding would be that it is legal.

Senator ABETZ: But, of course, quite ironic for a company that demands transparency and accountability from everybody but itself, so conflict of interest need no longer be recorded in the minutes. Have they also introduced payments for their directors in this new constitution? If you could say yes to that—you nodded in agreement, but that won't be recorded in *Hansard*.

Mr Price: That's my understanding; I would like to check.

Senator ABETZ: If you could. Thank you very much.

Senator KETTER: I have a couple of quick follow-up questions of Mr Day, then Senator Keneally will take over. Just going back to the questions in relation to Mr Robert and his companies, Mr Day, you asked me whether I would want you to follow up on that issue. On reflection, I think it would be worthwhile for you to have a look at that issue of Mr Robert's resignation from Cryo Australia, in light of those two incidents that we have talked about tonight.

Mr Day: Very good. We will.

Senator KETTER: Thank you. Also, can I ask whether, under the Corporations Act, Mr Robert met his requirements under a company constitution or replaceable rules in resigning as a director or if there was a breach in announcing his resignation and delaying the notification to ASIC. I understand a company is required to notify within 28 days.

Mr Day: As I intimated in my answer to the earlier question from you, yes, there are laws there about the time within which those lodgements have to occur, and there is a breach that's possible there. So that is something we'd look at as part of that.

Senator KETTER: Thank you.

Senator BUSHBY: It's not entirely inconsistent for Mr Robert—what he said about resigning, and the delay in notification to actually be—

Mr Day: Absolutely.

Senator BUSHBY: It's quite possible he could have resigned—

Mr Day: It's in fact quite common that—

Senator BUSHBY: but the register would not have shown it.

Mr Day: Absolutely. It's quite common that you see someone announce or make a public statement that they have removed themselves or are no longer a director, and then the lodgement happens—

Senator BUSHBY: And the effectiveness of a resignation of a director would be upon notification to the company?

Mr Day: As far as the company's register, yes. It just won't show on our register.

Senator BUSHBY: Exactly, that's right. But in terms of ceasing to act as a director, that is the effective date—

Mr Day: Correct. That's the important—

Senator BUSHBY: regardless of notification.

Mr Price: I should add that there are—

Senator KENEALLY: Sorry, are we going to have an extra few more minutes on this, Chair?

CHAIR: I've already offered you an extra five. I just wanted to—

Mr Price: I was just going to say there are—

Senator KENEALLY: Before Mr Price started a longer answer, I just wanted to be clear on the time.

CHAIR: Would you like to continue on the issue of Minister Robert until it's done?

Senator BUSHBY: I just wanted to clarify that point.

CHAIR: Mr Price?

Mr Price: Done.

Senator KENEALLY: I have some questions on initial coin offerings. Has ASIC decided whether ICOs are a financial product or service?

Mr Price: That's an excellent question.

Senator KENEALLY: Thank you, Mr Price!

Mr Price: The answer is: it depends. I'm sorry to give a lawyer's answer. The term 'initial coin offering' is not a term of art; it is not a single structure. So, depending on the actual legal structure of what's being offered, it might be a financial product, it might be a commonly-managed invested scheme, it might be a security, it might be a derivative. However, it might not be a financial product at all. Regardless of that, there is one very important legal obligation that will always apply, which I want to make very clear: you can't make misleading or deceptive statements about these products, regardless of their legal structure. We have actually taken a delegation of power from the ACCC, so we don't need to worry about what the legal structure of the offering is. Regardless of the legal structure of the offering, we will review it if it comes to our attention to make sure that misleading or deceptive statements are not being made about these products. That is very important.

Senator KENEALLY: Okay, that's interesting. How does that regime compare to those overseas?

Mr Price: In our regime—except for the bit about us having jurisdiction to look at misleading or deceptive statements regardless of the structure—the regulatory position in Australia whereby you need to look at the particular nature of the offering to work out what sort of product it is and how it is regulated is, I would say, the more typical approach that regulators from around the world have adopted. For example, in Singapore and a variety of other jurisdictions. But there are other approaches that other jurisdictions take. For example, I understand that in the People's Republic of China the products are prohibited. But certainly that is not the more common regulatory framework for these sorts of products.

Senator KENEALLY: Thank you. What is ASIC's anticipation of ICOs in the capital-raising space in 2019?

Mr Price: There was ACCC data around the amount of money that had been raised from ICOs. More generally, there seems to be a lot of enthusiasm for these products. However, compared to traditional financial products, the amount raised by them in the Australian market, I would say, is quite small. Unfortunately, there are a large number of ICO offerings that are quite clearly scams. So the other message that I want to get out clearly is that people need to really do their homework and be very careful before investing in an ICO. There was a good *Wall Street Journal* article, I think from about May of this year, that indicated their view that around 20 per cent of the ICOs they reviewed, and they reviewed over 1,000, were scams. They worked that out by simply checking whether people on the management team actually existed, checking whether the photos of the management team were stock photos from the internet and checking whether the place of business that the people were operating from actually existed.

Senator KENEALLY: I apologise, did we actually get an answer though to the question of your anticipation?

Mr Price: Not a dollar figure. What I did say was that I anticipate it to be small compared to other fundraising mechanisms in Australia.

Ms Armour: Globally it has been growing at an exponential rate.

Senator KENEALLY: Do you have an anticipation in 2025 of ICOs and the capital raising space? Is there any work that has been done to give us a sense of the growth?

Mr Price: In terms of sense of the growth it is growing quickly. I would expect it would certainly expand on where it is at the moment. Perhaps more material amounts of money will be raised through these mechanisms, but as I said, there are some challenges associated with them. A key message for consumers in this area is: do your homework, because there are a variety of very well credentialed pieces of work that show a large amount of these are straight-out scams, and you can lose all of your money very quickly.

Senator KENEALLY: Does ASIC have clear guidance and case examples for the application of chapter 60, financial products and fundraising, to the blockchain sector?

Mr Price: Yes. We have an information sheet in relation to ICOs and crypto-assets more broadly, and how existing laws apply to that, and that is information sheet 225, which deals with initial coin offerings. It was issued on 1 May 2018.

Ms Armour: We have also an information sheet on distributed ledger technology.

Mr Price: More generally—that's correct.

Senator KENEALLY: No number for that one? Sorry!

Mr Price: I can't recall, but I'll get it to you before the night's out.

Senator KENEALLY: Thank you very much. I have a few other questions on ASIC court action. In the 18 months to 30 June 2018, ASIC reported that it commenced 13 criminal actions and 56 civil actions in relation to financial services misconduct. Given the extent of the misconduct revealed at the Financial Services Royal Commission, Mr Shipton—or to anyone else in your team—do you believe that ASIC should have issued more court proceedings in this period?

Mr Shipton: It's difficult for me to make comment on historical points in time or historical references. What I would like to say is that there are valuable lessons to be learnt over the period of time that ASIC has been in existence and over its history. Clearly, one of the clear lessons and one of the clear points that is coming, and highlighted from the interim report, is that we need to be very deliberate and serious about increasing our court enforcement tools. I did mention, I think in one of my earlier responses, that two-thirds of our enforcement action is actually court based and so we don't resile from that.

I'll also make another observation, again over the arc of history when it comes to enforcement statistics, whether it is ASIC or any other regulator anywhere in the globe, there will always be some degree of volatility. There will be cases which will be bigger and cases which will be smaller, but ultimately it all comes down to a deliberate strategic setting and footing. We are certainly pivoting at this point in time to be very clear and very robust about our use of court-based enforcement tools.

Senator KENEALLY: Has any government minister expressed concern to ASIC that the number of court proceedings that ASIC has been involved in over the past 18 months is too low?

Mr Shipton: There have been discussions with members of the government, but to the best of my knowledge there has not been a direction or an observation to that direction. Certainly, there have been conversations of encouragement, and conversations enquiring as to our response and our strategic planning and our strategic processes—which, of course, we would welcome, as we welcome feedback, inputs and suggestions from this committee and other important stakeholders.

Senator KENEALLY: Do you believe that ASIC's current funding is sufficient to enable it to engage in an increased volume of litigation?

Mr Shipton: Funding is a matter, ultimately, for the government and we respect that process. As Senator Hume asked me earlier, we actually have additional funding to accelerate our book of enforcement actions that we would like to accelerate. And, of course, we would always be in a position to be discussing with relevant agencies, sister and brother agencies, as well as the government, about funding and resourcing for our enforcement activity moving forward.

Mr Crennan: Senator, may I supplement that answer in terms of matters going forward: in response to the provision of extra funding and the accelerated enforcement outcome initiative, as the chairman of the enforcement

committee—of which I've been the chairman for a couple of months; I've been here less time than Mr Shipton, obviously—I asked to conduct a number of analyses of, for example, how many briefs would go to the CDPP over the next two years and how many extra ones, and also how many civil penalty cases we would expect to see over the next two years. Obviously, that's an imperfect science; however, with some precision, the briefs that are expected to be provided to the CDPP were calculated—and the complexity is able to be calculated too, by various parameters. Our extra funding is for two years, so that was driving our analyses. The expected increase I've calculated as about 81 per cent, but that's over a two-year period, of criminal briefs going to the CDPP. In terms of civil penalties, there's also a significant increase expected, and that's an increase of about 90 per cent next year. Once again, this is driven somewhat by happenstance. It sort of depends what happens in a particular year. But the metrics certainly demonstrate there is expected to be a very significant increase of the civil penalty matters, which will then maintain at that same increased volume over the second year.

Senator KENEALLY: That's very helpful, thank you.

Senator PATRICK: I'm just looking at the royal commission executive summary, and I recall reading this on the day. It says:

When misconduct was revealed, it either went unpunished or the consequences did not meet the seriousness of what had been done. The conduct regulator, ASIC, rarely went to court to seek public denunciation of and punishment for misconduct.

It went on to say some other things, and there was a point in there that stood out to me, which was:

Passing some new law to say, again, 'Do not do that', would add an extra layer of legal complexity to an already complex regulatory regime.

I have here the explanatory memorandum to the bill that was introduced, and perhaps I will ask you about that. But in response to the first point I made about his view about the regulator—and I know you're new to the role, Mr Shipton, but you have been there since, is it January or February?

Mr Shipton: February.

Senator PATRICK: February. Can you tell me what you have done since that time? And maybe just keep it short for today, and perhaps provide more detail on notice. Is there something you can provide this committee that shows that things have changed between when you started and now?

Mr Shipton: The first thing that we did when I arrived is look at and change our governance processes, how we make decisions, because I actually—

Senator PATRICK: I'm really talking about outcomes. I'm trying to get the metrics here—

Mr Shipton: The process is important for the outcomes, and that process then led to delivering a number of months ago a strategic plan to the government about the outcome of accelerating our enforcement activity and that's what we're doing. We are now accelerating. We are moving cases through the processes faster because we have more resources and more funding. We have also started a new supervisory approach in relation to the large financial institutions, the big four and AMP. We have an onsite supervisory program which is the first of its kind in Australia. That is a new strategic regulatory initiative that we believe that we can build and catalyse change.

CHAIR: Can I just clarify: when did those supervisors actually start work in the big four and AMP?

Mr Shipton: This week. In fact, they're going into one of the institutions in the next couple of days, and we have been meeting with the institutions in relation to this program in recent weeks because this is something that we said we would start in October and it has started and we have these men and women going into the financial institutions this month, this week. We also have accelerated and started a similar process in relation to superannuation whereby we are going to have increased supervision in relation to superannuation. We are also starting a program and works to develop the regulatory technology. These are demonstrable acts and therefore, we can clearly show that the processes about improving our strategic governance are actually leading to changes in what we're doing. Secondly, we have started, led by Mr Crennan, a review of our processes in and around enforcement. We want to make sure that they are best in class and are actually responsive to the messages that we're hearing.

Senator PATRICK: I'm sorry to interrupt, but I'm limited in my time. Once again, you're talking about processes. I can imagine going back to previous commissioners and they could stand and provide comfort by way of words or tell me about processes. I'm talking about, noting what Justice Hayne said, a demonstration that things have changed. Has there been an increase in the use of power? Can you provide some examples of that? Has there been an increase in the number of prosecutions? Can you provide some examples of that? I'm happy for you to take that on notice. I'm looking for a difference in terms of measurable outcomes. I understand you have to go through the process change. I'm a simple person; I look for output.

Mr Shipton: We actually have mentioned—because they've been accelerating enforcement—that we are referring certain organisations to, or we are in the process of liaising with, the Commonwealth Director of Public Prosecutions. That is a clear output of the accelerated enforcement processes.

Senator PATRICK: Once again on notice, because I want to move on, without divulging company names and so forth, can you provide some metrics in respect of output—that is, exercise of a power to cause something to change?

Mr Shipton: Sure, and I'm very happy to do that, but the other thing I will say is a lot of this acceleration is taking place within the confidential shell that we have to act under.

Senator PATRICK: Sure, and I'm not asking for names of companies. Just tell me: 'We've done this. We've got these five briefs that have gone off.' I'm not after names of companies.

Mr Shipton: We would be very happy to provide more detail about how these processes are accelerating and I would be very happy to provide detail about these new supervisory initiatives.

Senator PATRICK: I'm after details of output—not process. I'm after the details that show that the very thing that Justice Hayne—and I recognise it's early and you might end up saying it's too early. I want a metric that I can use, so that I can come back in six months time and say, 'Let's retest against that metric of output.'

Mr Shipton: You're absolutely right to say that it's a continuum. I think developing a framework for you to come and continue to test us on that continuum is the right approach, and we'd be happy to engage.

Senator PATRICK: That would be helpful. In relation to those officials who are going into the large four banks, I'm not against it, but I have one concern, and that is about privacy—that is we now have government officials going into a bank, and presumably their role is to check on the banks and not on the customers of the banks?

Mr Shipton: That's correct.

Senator PATRICK: Can you just give me some idea of how you can ensure that there are going to be no breaches of privacy in the context of an ASIC officer seeing something that then somehow makes its way to the tax office or to somewhere else? What positive restrictions do you have in place that protect privacy?

Mr Price: There are some very significant restrictions around sharing of information at the moment. They're set out in section 127 of the Australian Securities and Investments Commission Act. They basically prescribe circumstances under which we can share information. But, apart from that, the information that we obtain as part of our regulatory activities needs to be held confidentially.

Senator PATRICK: Perhaps the point of concern is around 'prescribed agencies'. It might be the case that someone can demand you provide information on something that you've picked up as a result of your activities inside the bank—not about the company but about a customer of the bank.

Mr Price: Sure. I suppose the point I'd make is that parliament has passed these restrictions and protections, and, as part of our work now, even not being in institutions, we will often receive information from a financial institution that pertains to a particular client. These are not new or novel issues in many ways. As I said, the protections that exist within the ASIC Act are actually very significant, and they're protections we take very seriously.

Senator PATRICK: On notice, could you direct me to the section?

Mr Price: It's section 127 of the ASIC Act, which is the Australian Securities and Investments Commission Act.

Senator PATRICK: I think you did say that—thank you. There was one comment that I was bit curious about, Mr Shipton. You said that funding is a matter for government. If you understand that we are an oversight body for both ASIC and the government, are you saying that, if you were in a position where you felt you were not being funded sufficiently to perform the functions that the parliament has required you to perform, you would withhold that information from the committee?

Mr Shipton: I think that's a bit of a hypothetical, but you can always be assured that I will be frank and honest as to where I believe the position of ASIC is.

Senator PATRICK: Senator Keneally asked a reasonable question, which was: 'Do you think you are being funded appropriately?' Your response was: 'That's a matter for government.' From an oversight perspective, that's an unacceptable answer. There's no restraint, in my view, on you saying, 'Actually, I think I'm underfunded in a particular area.' Then it is a matter of government, but that shouldn't be withheld from an oversight body like the Senate.

Mr Shipton: With due respect, I'm not withholding anything from you, Senator Keneally or, indeed, this committee. I was making an observation in response to the earlier question about a conversation which I believe is not just about funding but also about the broader positioning. We very much operate and are able to operate within the funding envelope that we're given, and we're happy to have a frank and honest discussion about that funding envelope, where we can operate within it and how our operations would expand if that envelope was to expand. If that envelope was to be reduced, then we would have a frank and honest discussion about where that reduction would be. This is all about calibration, and please be assured that I'm very willing and open to having that direct conversation about how our capabilities would be calibrated depending on the funding.

Senator PATRICK: I'll just move to my last question, if that's okay, which relates to what Justice Hayne said about how new laws might actually make things more complex. I'm just looking at the explanatory memorandum here. Without prejudice to my position on the bill—we haven't looked at it, and we will look at it with an open mind. Question 1: perhaps a minute or so on whether you think that this is perhaps at odds with what Justice Hayne has suggested in the context that it is creating new laws. And secondly—and it's really in relation to the directions power that we talked about—will I find the appropriate checks and balances? Because whenever we give a power, we like to make sure there's a proper check on it.

Mr Shipton: I will ask Deputy Chair Crennan to supplement, but I want to be very careful that we're not passing commentary about whether a bill does or does not meet a standard or whether it passes an observation made in the royal commission. I'd like to separate the discussion, if I may, by just making the point that we believe that these penalties are not new laws. They are technically new laws, but they're not creating new obligations. What they are doing is giving us tools to enable effective administration and provide effective deterrents for existing laws, for existing regulations. But I'll ask Mr Crennan to supplement.

Mr Crennan: There's not much more to say except that it's really a combination of two things. It's adding penalty provisions to sections that didn't have any, so that's giving us scope, which is very important from our perspective. It's also an increase—it's three things really—of penalties across the board, which effects more powerful regulation. And, thirdly, it's adding civil penalty provisions to sections that hitherto only had criminal sanctions, which have a higher burden of proof. So it's improving the landscape of litigation outcomes and relief that we can pursue. So it's not making it more complex; it's actually making it more attractive.

Senator PATRICK: Okay, so that frames out nicely as they walk away.

Ms Armour: Importantly, we'll have a disgorgement-of-profits remedy.

Senator PATRICK: You didn't answer the question about checks and balances in relation to directions and powers.

Ms Armour: When ASIC exercises any of its administrative powers, we are subject to the checks and balances of the administrative processes. So we would expect that those checks and balances would be built into a process of us exercising them.

Senator PATRICK: What's an example?

Ms Armour: For example, if we exercise our power to ban someone from providing financial services, if we haven't exercised that power appropriately, that person may appeal to the Administrative Appeals Tribunal and then to the court.

Senator PATRICK: So the new directions you referred to before have a similar arrangement?

Ms Armour: Yes. We can take that on notice and give you a more detailed response.

Senator PATRICK: All right, that would be helpful. Thank you.

Senator McALLISTER: I have some quite fact-based questioning that I want to talk to you about, and there's not a great deal of it. If we could move through it relatively quickly, I think the opposition senators would be in a position to conclude our questioning quite quickly. I wanted to ask you about the enforceable undertaking that you entered into with Thorn Australia, which is the business that owns Radio Rentals and Rentlo Reinvented. I understand that, as part of that, Radio Rentals admitted to breaching the National Consumer Credit Protection Act four times in each of over 275,000 consumer leases that it entered into over the three years between 2012 and 2015, which is quite a large scale of unlawful activity. Of the 275,000 consumers, each of whom were subject to four breaches of the National Consumer Credit Protection Act, how many will receive compensation from Thorn?

Mr Saadat: I think we might have to take that on notice. The remediation program that's associated with that outcome requires about \$6.1 million in refunds to consumers as well as another \$13.8 million in refunds for consumers who overpaid their accounts. I don't have in front of me the number of consumers who will be receiving a refund, but I can take that on notice and come back to you with that information.

Senator McALLISTER: But some of the consumers will miss out on compensation—is that correct?

Mr Saadat: The way that the remediation programs that we arrive at work generally is that they include a number of parameters that include automatic refunds to a cohort of consumers. That inevitably means that some consumers won't automatically receive a refund or remediation, but that does not mean that other consumers can't seek remediation directly with the entity or through the dispute resolution process. That's something that we're alive to and that's something that does occur in practice.

Senator McALLISTER: When you say you're alive to it, is it your view that that's a flaw in the methodology presently used for establishing these remediation processes?

Mr Saadat: It's an inevitable limitation in any remediation program that's designed. What we try to do to maximise the proportion of automatic refunds is design the remediation program such that it achieves a balance between simplicity and ensuring that customers receive exactly what they should be paid. There is a trade off that occurs as part of that process. The reason we want to maximise automatic refunds is that, if we don't have a situation of automatic funds—of cheques just being posted out or payments being made directly into customers' bank accounts—typically what would happen is that a customer would then receive a letter that is requiring them to take some action before they receive a refund. In our experience, consumers generally don't respond well to those kinds of letters, so we try to design those remediation programs so that automatic refunds are going out.

Senator McALLISTER: Have any government ministers, their officers or anyone from Treasury discussed the content of this enforceable undertaking with ASIC?

Mr Saadat: Not that I'm aware of, but I can take that on notice.

Senator McALLISTER: Thank you. Can I move to a different but similar set of questions? I want to ask about enforcement actions against Malouf and Spaceship. Is that also you, Mr Saadat?

Mr Saadat: I can talk a little bit about Malouf; not about Spaceship.

Senator McALLISTER: Let's start with Malouf, because we can do them in sequence. In the Federal Court proceedings against Malouf Group, how did ASIC arrive at a figure of \$1.1 million for consumer remediation payments as part of the enforceable undertaking?

Mr Saadat: I will have to take that on notice, Senator.

Senator McALLISTER: What was the total estimated consumer detriment as a result of Malouf Group's unconscionable conduct and false and misleading representations, which I note that they admitted to?

Mr Saadat: Sorry, I'll have to take that on notice as well.

Senator McALLISTER: I want to ask you a broader methodological question, because I understand that Malouf Group were not required to repay the entire amount of the detriment that was suffered by consumers. I wonder why it is not a baseline requirement for an enforceable undertaking that any benefit that's gained from misconduct at the expense of consumers does get refunded? Why is that not a baseline expectation for you in establishing these arrangements?

Mr Saadat: You said that your understanding is that that wasn't the case with Malouf?

Senator McALLISTER: It's a bit hard to tell based on your answer, but that is what I'm advised.

Mr Saadat: In terms of the way we arrive at enforceable undertakings, a variety of factors are taken into account when we do that. Our primary focus is to understand the detriment or the harm that's caused to consumers and to remediate that harm. That can vary depending on the nature of the conduct and the nature of the financial services. As Commissioner Armour pointed out earlier, the new penalties regime that ASIC will have if the legislation is passed will introduce a disgorgement remedy, but there is no current disgorgement remedy available to ASIC. Generally, the way we approach enforceable undertakings is to have it such that we use provisions that we can take to court if necessary in arriving at those agreements, because if we think that the enforceable undertaking isn't appropriate, we'd have to take that matter to court.

Senator McALLISTER: Of course. Is there anyone in the room who can talk about Spaceship? You indicated, Mr Saadat, that that's not your special area.

Mr Mullaly: I'll try and answer your questions.

Senator McALLISTER: Thank you. I just have a couple of questions. I understand that there was a \$12,600 infringement notice to Spaceship Financial Services in relation to marketing statements that you believed were misleading.

Mr Mullaly: Sorry, I missed the last part.

Senator McALLISTER: I understand that the infringement notice related to misleading advertising.

Mr Mullaly: Yes, misleading representations.

Senator McALLISTER: Did ASIC require Spaceship to offer compensation to consumers as a result of that misleading advertising campaign?

Mr Mullaly: I would have to take that on notice, but I'm not sure that we did. I would have to confirm that.

Senator McALLISTER: But Spaceship did benefit from the campaign. It would have received payments as a consequence—

Mr Mullaly: Well, potentially it did. One would think that the purpose that it engaged in it was to attract more members. We were concerned about it. I'm not sure that we'd had any indication of any loss to consumers. I'm not sure that we had any indication of widespread complaint by members of the fund or other consumers.

Senator McALLISTER: Did you prepare an estimate of the benefit that Spaceship obtained through the advertising campaign?

Mr Mullaly: I would have to take that on notice.

Senator McALLISTER: Okay. Chair, that's it for me. Thank you for your answers.

CHAIR: Are there any more senators with questions for ASIC? Before I let you go, I was remiss to not welcome Ms Press along to her first Senate estimates. I'm very glad that we didn't inflict too many difficult questions. No, Mr Crennan, this is not your first; this is your second. We just went easy on you on the first, so you don't remember it.

Mr Crennan: I've been to PJCCFS but I haven't been to Senate estimates.

CHAIR: Forgive me! Welcome to Senate estimates, Mr Crennan.

Mr Price: Chair, I indicated that I'd try and find out the information sheet on distributed ledger technology for Senator Keneally. It's ASIC information sheet 219.

Senator KENEALLY: Thank you. I appreciate that.

CHAIR: There being no further questions at this time for the committee's consideration of the 2018-19 supplementary budget estimates, we'll resume tomorrow morning at nine am with further examination of the Treasury portfolio, starting with ACCC. I thank Minister Seselja, officers from the Department of Treasury and witnesses who have given evidence today to the committee.

Committee adjourned at 22:37