COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

SENATE

ECONOMICS LEGISLATION COMMITTEE

Estimates

(Public)

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SENATE

ECONOMICS LEGISLATION COMMITTEE

Wednesday, 2 June 2021

Members in attendance: Senators Bragg, Brockman, Canavan, Kim Carr, Chandler, Chisholm, Davey, Faruqi, Gallagher, McAllister, McDonald, McKim [by video link], O'Sullivan, Patrick, Rennick, Roberts, Scarr, Siewert, Small, Dean Smith, Urquhart, Walsh.

TREASURY PORTFOLIO

In Attendance

Senator Birmingham, Minister for Finance

Senator Hume, Minister for Superannuation, Financial Services and the Digital Economy, Minister for Women's Economic Security

Department of the Treasury

Dr Steven Kennedy, Secretary

Corporate and Foreign Investment Group

Ms Roxanne Kelley, Deputy Secretary, Corporate and Foreign Investment Group

Mrs Elizabeth Williamson, Chief Operating Officer

Ms Cristy England, Assistant Secretary, People and Organisational Strategy Branch

Ms Karen Williams, Chief Financial Officer

Mr Hamish McDonald, First Assistant Secretary, Strategic Coordination and Communications Division

Ms Shannon Kenna, Assistant Secretary, Communications Branch

Mr Tom Hamilton, First Assistant Secretary, Foreign Investment Division

Mr Andrew Deitz, Assistant Secretary, Policy and National Security Branch

Ms Sharon Nyakuengama, Assistant Secretary, Compliance Branch

Mr Rob Raether, First Assistant Secretary, Business Liaison Unit

Macroeconomic Group

Mr Luke Yeaman, Deputy Secretary, Macroeconomic Group

Mr Trevor Power, First Assistant Secretary, Macroeconomic Conditions Division

Mr Damian Mullaly, Principal Adviser, Macroeconomic Forecasting Branch

Mr Nick Stoney, Assistant Secretary, Macroeconomic Conditions Branch

Mr Mark Cully, First Assistant Secretary, Macroeconomic Analysis and Policy Division

Mr Michael Kouparitsas, Assistant Secretary, Fiscal and Monetary Policy Branch

Ms Nu Win, Assistant Secretary, Structural Analysis Branch

Ms Lisa Elliston, First Assistant Secretary, International Economics and Security Division

Mr Jim Hagan, Chief Adviser, International

Fiscal Group

Ms Jenny Wilkinson, Deputy Secretary, Fiscal Group

Mr Brenton Goldsworthy, First Assistant Secretary, Budget Policy Division

Mr Damien White, First Assistant Secretary, Commonwealth-State Relations Division

Mr Matt Crooke, Assistant Secretary, Commonwealth-State Relations Branch

Mr Matt Brine, First Assistant Secretary, Environment, Industry and Infrastructure Division

Ms Victoria Anderson, First Assistant Secretary, IGR and Population Division/Centre for Population

Mr Merrick Peisley, Assistant Secretary, Population Branch

Ms Philippa Brown, First Assistant Secretary, Labour Market Policy Division

Ms Laura Berger-Thomson, Assistant Secretary, Employment Policy Branch

Ms Belinda Robertson, Assistant Secretary, Operations Branch

Ms Vicki Wilkinson, First Assistant Secretary, Social Policy Division

Mr John Swieringa, Assistant Secretary, Health, Disability and Social Services Branch

Mr Patrick Boneham, Assistant Secretary, Education, Migration and Housing Branch

Ms Amy Auster, First Assistant Secretary, Infrastructure and Project Financing Agency Division

Mr Bill Brummitt, Assistant Secretary, Infrastructure and Project Financing Agency Division

Mr Ian South, Assistant Secretary, IGR Taskforce, GR and Population Division

Markets Group

Ms Meghan Quinn, Deputy Secretary, Markets Group
Mr James Kelly, First Assistant Secretary, Financial System Division
Ms Katherine (Kate) O'Rourke, First Assistant Secretary, Consumer Data Right Division
Ms Jessica Robinson, Assistant Secretary, Policy, Governance and Engagement Branch
Mr Robert Jeremenko, First Assistant Secretary, Market Conduct Division
Mr Tom Dickson, Assistant Secretary, Corporations Branch
Mr David Pearl, Assistant Secretary, Consumer Branch
Ms Lynn Kelly, First Assistant Secretary, Retirement Income Policy Division
Mr Robb Preston, Assistant Secretary, Tax and Transfers Branch
Mr Alex Maevsky, Acting Assistant Secretary, Member Outcomes and Governance Branch
Mr Ben Dolman, Assistant Secretary, Member Outcomes and Governance Branch
Mr Peter Cully, First Assistant Secretary, Small and Family Business Division
Mr Gino Grassia, Assistant Secretary, Small and Family Business Branch

Australian Small Business and Family Enterprise Ombudsman

Mr Bruce Billson, Ombudsman
Dr Craig Latham, Deputy
Miss Alexandra Hordern, Advocacy Director

Productivity Commission

Mr Michael Brennan, Chair
Ms Nina Davidson, Head of Office
Ms Rosalyn Bell, Assistant Commissioner
Ms Rosalie McLachlan, Assistant Commissioner
Mr Ralph Lattimore, Executive Manager

Inspector-General of Taxation and Taxation Ombudsman

Ms Karen Payne, Inspector-General of Taxation and Taxation Ombudsman
Mr David Pengilley, General Manager
Mr Duy Dam, Director, Review and Engagement

Department of the Treasury, Revenue Group

Ms Maryanne Mrakovcic, Deputy Secretary, Revenue Group
Mr Simon Writer, First Assistant Secretary and Chief Counsel, Law Division
Ms Katrina Di Marco, First Assistant Secretary, Tax Analysis Division
Ms Sam Reinhardt, First Assistant Secretary, Corporate and International Tax Division
Mr Geoff Francis, Acting First Assistant Secretary, Individuals and Indirect Tax Division
Mr Marty Robinson, Assistant Secretary, International and Tax and Treaties Branch
Mr Paul Fischer, Acting Assistant Secretary, Corporate Tax Branch

Australian Taxation Office

Mr Chris Jordan, Commissioner of Taxation
Ms Jacqui Curtis, Chief Operating Officer
Mr Jeremy Hirschhorn, Second Commissioner, Client Engagement Group
Ms Melinda Smith, Chief Service Delivery Officer, Service Delivery Group
Ms Kirsten Fish, Acting Second Commissioner, Law Design and Practice
Mr Matthew Hay, Deputy Commissioner, Strategy and Architecture, Enterprise Solution and Technology
Ms Janine Bristow, Chief Finance Officer
Mr Bradley Chapman, Deputy Commissioner, Australian Taxation Office People

Mr James O'Halloran, Deputy Commissioner, Economic Stimulus Branch

Ms Catherine Willis, Australian Taxation Office General Counsel, Australian Taxation Office Corporate [by video link]

Mr Timothy Dyce, Deputy Commissioner, Private Wealth

Ms Rebecca Saint, Deputy Commissioner, Public Groups [by video link]

Mr Vivek Chaudhary, Deputy Commissioner, Debt and Lodgement [by video link]

Ms Michelle Crosby, Deputy Registrar, Australian Business Register, Commonwealth Business Registry Service

Australian Charities and Not-for-profits Commission

Dr Gary Johns, Commissioner

Ms Anna Longley, Assistant Commissioner, General Counsel [by video link]

Australian Securities and Investments Commission

Mr Joe Longo, Chair

Ms Sarah Court, Deputy Chair

Ms Karen Chester, Deputy Chair

Mr Sean Hughes, Commissioner [by video link]

Ms Danielle Press, Commissioner [by video link]

Ms Cathie Armour, Commissioner

Mr Warren Day, Chief Operating Officer [by video link]

Ms Chris Savundra, General Counsel [by video link]

Mr Greg Kirk, Executive Director, Strategy Group

Australian Prudential Regulation Authority

Mr Wayne Byres, Chairman

Mrs Helen Rowell, Deputy Chair

Mr John Lonsdale, Deputy Chair

Mr Brandon Khoo, Executive Director, Insurance

Mrs Suzanne Smith, Executive Director, Superannuation [by video link]

Mr Adrian Rees, General Manager, Superannuation

Financial Adviser Standards and Ethics Authority

Mr Stephen Glenfield, Chief Executive Officer [by video link]

Ms Amelia Constantinidis, Standards Director [by video link]

Mr Howard Cook, Accreditation Manager [by video link]

Reserve Bank of Australia

Dr Guy Debelle, Deputy Governor

Ms Michele Bullock, Assistant Governor (Financial System)

Australian Competition and Consumer Commission

Mr Rod Sims, Chair

Mr Scott Gregson, Chief Operating Officer

Mr Timothy Grimwade, Executive General Manager, Compliance and Product Safety

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

Mr Rami Greiss, Executive General Manager, Enforcement

Ms Sarah Proudfoot, Executive General Manager, Infrastructure Regulation Division [by video link]

Mr Paul Franklin, Executive General Manager, Consumer Data Right

Mr Peter Maybury, Chief Finance Officer

Mr Tom Leuner, Executive General Manager, Mergers, Exemptions and Digital Division

Australian Energy Regulator

Ms Clare Savage, Chair [by audio link]

Ms Liz Develin, Chief Executive Officer

Australian Bureau of Statistics

Dr David Gruen, Australian Statistician

Ms Helen Wilson, Deputy Australian Statistician, Social Statistics Group

Ms Jenet Connell, Deputy Australian Statistician, Chief Operating Officer, Enterprise Services Group

Ms Teresa Dickinson, Deputy Australian Statistician, Census and Data Services Group

Mr Chris Libreri, General Manager, Census Division

Mr Bjorn Jarvis, Program Manager, Labour Surveys Branch

National Housing Finance and Investment Corporation

Mr Nathan Dal Bon, Chief Executive Officer

Mr Stuart Neilson, Chief Financial Officer and Chief Operating Officer

Mr Rod Saville, General Counsel and Board Secretary

Committee met at 09:00

CHAIR (Senator Brockman): I declare open this meeting of the Senate Economics Legislation Committee. The Senate has referred to the committee the particulars of proposed expenditure for 2021-22 and related documents for the Treasury portfolio and the Industry, Science, Energy and Resources portfolio. The committee may also examine the annual reports of the departments and agencies appearing before it. The committee has set 11 June 2021 as the date by which senators are to submit written questions on notice and 16 July 2021 as the date for the return of answers to questions taken on notice.

Under standing order 26, the committee must take all evidence in public session. This includes answers to questions on notice. Officers and senators are familiar with the rules of the Senate which govern estimates hearings. If you need assistance, the secretariat has copies. 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, which I now incorporate into *Hansard*.

The extract read as follows—

Public interest immunity claims

That the Senate—

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

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

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

(1) If:

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

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

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

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

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

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

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

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

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

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

(13 May 2009 J.1941)

(Extract, Senate Standing Orders)

CHAIR: 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 the public interest that could result from the disclosure of the information or the document.

I ask members of the media to follow the established media guidelines and the instructions of the committee secretariat. As set out in the guidelines, senators' and witnesses' laptops, mobile phones, other devices and personal papers are not to be filmed or photographed. I remind everyone in the gallery that they are not meant 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.

Witnesses and senators seeking to table documents during the committee's hearings were requested to provide an electronic copy of these documents the day prior to the hearing so that documents could be circulated electronically during the hearing. Please liaise with the secretariat if you need assistance.

Senators, departments and agencies have been provided with advice on the arrangements in place to ensure the budget estimates 2021-22 hearings are conducted in a safe environment. This guidance is also available from the secretariat. I draw your attention to the QR codes available in all waiting rooms. Witnesses, observers and staff are encouraged to use the codes before entering rooms, to allow for a full record of attendance to be kept. The committee appreciates the cooperation of all attendees in adhering to these arrangements.

The committee's proceedings today will commence with the Treasury portfolio, beginning with Department of Treasury Revenue Group and the Australian Taxation Office. The hearing will then follow the order as set out in the circulated program.

Department of the Treasury

Australian Taxation Office

[09:03]

CHAIR: I welcome Senator the Hon. Simon Birmingham, Minister for Finance. I also welcome the Commissioner for Taxation, Chris Jordan, and officers from the Treasury. Minister, do you wish to make any opening remarks?

Senator Birmingham: Good morning, Chair. Thank you but no, thank you.

CHAIR: Mr Jordan, do you wish to make any opening remarks?

Mr Jordan: Yes, just brief ones, if I could, because I want to update you on a pretty major program of work that is set to reduce the regulatory burden on Australian businesses. Over the last 12 months, as you're very well aware, the ATO's support for the Australian community has been highly visible through our delivery of the economic stimulus programs such as JobKeeper, the cash flow boost and early release of super.

One of the many ways we will continue to support the reduction of red tape is by streamlining how businesses interact with government. Today, for the first time, I appear before the committee not only as the Commissioner of Taxation but also as the Registrar of the Australian Business Registry Services, or ABRS. The primary aim of ABRS is to make it easier for businesses to meet their registration obligations, saving them time and effort. We are modernising the various business registers, and we'll bring together ASIC's 31 registers and join those with the Australian Business Register, the one that holds all of the ABNs, into a single modern system. Under this modernised system, businesses will be able to register themselves and maintain the details of these registrations in one location. The ATO is working alongside our colleagues in ASIC, the Treasury and other departments to progressively roll out these improvements.

One of the first functions in this program of work, to be delivered later this year, is the director identification numbers or director IDs. This new identifier will introduce a requirement for directors to prove their identity. Those numbers will stay with directors for life, even if they stop working as directors, change their names or move interstate or overseas. Director IDs will be a significant part of our ongoing fight against illegal phoenix activity. This is really no small measure when you consider that the direct impact of illegal phoenix activity is estimated to be up to $5 billion each year. So we want to make it easier for businesses to comply with their obligations, but we want to make it difficult for those who seek to rort the system. The ABRS is a great way to help us do just that.

CHAIR: Thank you, Commissioner Jordan. I have a couple of quick questions to start off with, on the registry services role. When will that flow through to businesses? When will they see a change in the level of red tape? When will the lack of complexity start flowing through to business as a positive?

Mr Jordan: This is designed to be a program over a period of years. With 31 registries that need to be put on a modern platform, that will take two or three years of work. That's why we've prioritised the director identification numbers to get those up and running. But I think we have funding for four years to work through that program of work.

CHAIR: Excellent.

Mr Jordan: I should say that, if you're a company and you change the company name, the directors, the shareholders or your address, you can do it all there. With registration for a business name, you used to come to the tax office to get a tax file number, a GST registration and an ABN. Then you went to ASIC and got your business name, and you filed forms as to who were the directors, shareholders et cetera of the company. That will all be in one place now.

CHAIR: And the director ID is effectively going to be one of the first components of that registry?

Mr Jordan: That's right. We will roll that out later this year. We're talking to various associations and organisations about how we can facilitate that, because, as I mentioned, it is a significant piece of the armoury, if you like, to deal with illegal phoenix activity. I'd probably work on the assumption that, if you're a director of a top 100 company, you're not really doing phoenix activity with a listed company. So we're trying to work through how we can assist a large number of directors that probably are not the target of some of these activities.

CHAIR: Excellent. Thank you very much. I will offer the call to Senator Gallagher.

Senator GALLAGHER: I have some questions for revenue group on the stage 3 tax cuts. Can I start by asking what the updated cost of stage 3 is going to be?

Ms Mrakovcic: We don't actually update the costings of any aspect of past policy. All three stages of the personal tax plan, as outlined in the 2018-19 and 2019-20 budgets, were costed at the time of their announcement and then they essentially go into the revenue numbers. We don't as a matter of course revisit those and update costings over time.

Senator GALLAGHER: You don't, at all?

Ms Mrakovcic: No. Any changes to measures once they are announced, as we go through the process of updating the revenue forecast generally, are picked up in parameter variations, but we don't go back and actually recost measures.

Senator GALLAGHER: So, when you look at budget paper No. 1, chart 5.5, which—

Senator Birmingham: Sorry, which chart?

Senator GALLAGHER: Chart 5.5, BP 1, page 136.

Ms Mrakovcic: Yes.

Senator GALLAGHER: That shows us tax receipts as a share of GDP with and without policy announced since my MYEFO. Are you telling me that the tax plan, as announced in 2018-19, is what is reflected in that blue line?

Ms Mrakovcic: That's correct. The red dotted line only reflects policy decisions since the 2019-20 MYEFO. So it would pick up, for example—

Senator GALLAGHER: The bring-forward?

Ms Mrakovcic: the LMITO changes in this budget and in the 2020-21 budget, the temporary full expensing measures, the loss carry-back and basically all of the measures that have been announced since the 2019-20 MYEFO, but not, as you say, the personal tax plan that was announced prior to that.

Senator GALLAGHER: So, despite there being variations which would impact the costs of those tax cuts, you don't do that as part of an annual update process at all?

Ms Mrakovcic: They are updated in the context—

Senator GALLAGHER: Who does that? Who does the update?

Ms Mrakovcic: We do.

Senator GALLAGHER: Okay.

Ms Mrakovcic: We update the revenue forecast but we update them as parameter variations on existing policy that has already been put into the numbers.

Senator GALLAGHER: Has there been a parameter variation in the stage 3 tax cuts?

Ms Mrakovcic: We don't actually calculate parameter variations on the individual measures. We calculate parameter variations on the revenue heads in their totality. So, when we are updating the revenue forecast, we revisit what is happening to personal income tax, company tax, GST—we forecast by all the different revenue heads—but all of the policy measures, not just stages 1, 2 and 3 of the personal tax plan; all measures going back in time are updated as part of the base.

Senator Birmingham: So, if you look at the page next to the one you just drew our attention to, Senator, on page 137, that outlines in terms of revenue where there is an effect to policy decisions in this budget, such as the extension of LMITO, versus the effect of the parameter variations which are in their totality.

Senator GALLAGHER: More substantial. Yes. Okay. So I would have thought that the tax cuts were going to cost less than they would have originally been expected to have cost in 2018-19? Right? Because wages have not grown as fast as you were predicting then, for one. But you are saying that is not captured—or you can't give us a figure of what the effect of that might be on the overall cost of the personal income tax plan?

Ms Mrakovcic: There will be a whole range of things that will impact on parameter variations but, obviously, the improved employment—to the extent that employment prospects are stronger than expected or wages vary—all of those will feed into the revenue updates. But, as I said, we do not separate them by measure.

Senator GALLAGHER: Okay. Can you give me the original costings for stage 3 in 2024-25?

Ms Mrakovcic: So, basically, if you look at the measures that were taken in the 2018-19 budget, and you combine them with the 2019-20 budget, for those that were going to impact in 2024-25, basically the medium-term cost is just over $130 billion.

Senator GALLAGHER: And then can you give me the number in that 2024-25 year?

Ms Mrakovcic: I don't think I've got the 2024-25 year in front of me, and I don't think we would have because 2024-25 would have been outside the forward estimates at the time. So it gets a little bit complicated because it goes back to 2018-19. I'm happy to take it on notice and see what we can do.

Senator GALLAGHER: Okay. If you could.

Ms Mrakovcic: But it kind of varies because of what was in the forward estimates at the time of 2018-19, and obviously 2024-25 is now part of the forward estimates, but the personal tax plan—

Senator GALLAGHER: Wasn't. Which is when it was original costed.

Ms Mrakovcic: was announced previously.

Senator GALLAGHER: Yes. Okay. I get it. Do you know the parameter variations for income tax receipts in 2024-25?

Ms Mrakovcic: Yes. I suspect that 2024-25 has just come into the forward estimates.

Senator GALLAGHER: Yes. It has.

Ms Mrakovcic: So, when it appears as the first year, we don't actually have a variation in the parameter variation, if that makes sense.

Senator GALLAGHER: No, it doesn't.

Ms Mrakovcic: So, basically, when we are estimating parameter variations, we have a base that we start from. So we have a forecast for each of the years, and you know that we prepare them for the budget and the three forward years after that.

Senator GALLAGHER: Yes.

Ms Mrakovcic: Then what happens is that, with every budget, one year comes into the forward estimates, but it becomes the first year that it's in the forward estimates, and it's only once it is in the forward estimates that we calculate variations.

Senator GALLAGHER: So you only do variations effectively on those three years? The final year in the forward estimates doesn't really count for the purpose of parameter variations until it moves into being the third year?

Ms Mrakovcic: Correct. I can give you an example. If we go back to page 138.

Senator GALLAGHER: Yes?

Ms Mrakovcic: If you go to table 5.3, and you look at the line, 'Changes from the 2021 MYEFO to the 2021-22 budget'—

Senator GALLAGHER: Yes. So it doesn't include that year.

Ms Mrakovcic: You will have the effective parameter and other variations. And we have estimated that there is roughly around $25 billion upwards revision as a result of parameters across the entire revenue base in those first years, but 2024-25 is appearing in that table for the first time.

Senator GALLAGHER: Yes.

Ms Mrakovcic: We didn't have numbers for 2024-25 that were made available prior to this budget. Therefore, you don't see any. That's why you see the asterisks there.

Senator GALLAGHER: Yes.

Ms Mrakovcic: But you can see that we have kind of estimated, if you like, $21.3 billion. So that is the best estimate of parameter variations across the entire revenue head.

Senator GALLAGHER: Okay. Can you tell me what makes those figures up? Can you break it down—even if you just do it for the budget year—the $25.9 or the $26 billion?

Ms Mrakovcic: Do you mean the type of factors?

Senator GALLAGHER: Yes.

Ms Mrakovcic: Or do you mean by revenue head?

Senator GALLAGHER: By revenue head.

Ms Mrakovcic: If you go to table 5.5, on page 146—unfortunately, this combines both measures and parameter variations—that will give you a breakdown of the change between the two budgets, for example, in terms of parameter variations.

Senator GALLAGHER: Okay. So you have to work out from there what is included in the 25 or the 26?

Ms Mrakovcic: That's right. There's a wealth of information provided in the statement in terms of what is driving the different revenue heads and to what extent they are parameter variations and measures. Obviously, something like the additional year of the low- and middle-income tax offset will have an impact on the total variation of both parameters and policy in that year. The other thing that we know has been driving, for example, individuals' tax is the stronger than expected employment growth.

Senator GALLAGHER: For the purposes of government, they are working from the fact that the Personal Income Tax Plan costs $130 billion, despite it probably not costing $130 billion?

Ms Mrakovcic: That's the best estimate of what the measure was to cost.

Senator GALLAGHER: At a point in time, but a lot has happened since then, hasn't it? In 2018-19, that was true, but now a whole range of things have changed. Why don't you update it so we have a better understanding of the cost?

Senator Birmingham: It's because the parliament has legislated the tax rates. The budget and the forecasts are created, including the revenue forecasts, on the basis of the legislated tax rates that are there and have now been in place for several years.

Senator GALLAGHER: Yes, but it's not just the tax rates that influence the cost, is it?

Senator Birmingham: Anything else would, essentially, be to model a hypothetical—what if we changed the tax rates to something other than what the parliament has legislated?

Senator GALLAGHER: But you get to bank it. When you brought forward stage 2, you had a cost in one year but a bit of a save in this year to offset it. You get the benefit of it costing less, or the cost changing through your budget, but you don't report it.

Senator Birmingham: I don't have them in front of me right now, but last year's budget papers would have had the cost element of bringing forward stage 2. That cost element would have outlined, indeed, the impact on revenue, particularly for the year in which it was brought forward, and there would have been a much lesser impact in terms of the years in which it was already anticipated to take effect—logically. But there's no proposal to change the 2024-25 legislated start date of the next changes. They were costed at the time of announcement. As you've heard, there were medium-term impacts and projections outlined at that stage, but they're now just baked into the forward assumptions in each and every budget update.

Senator GALLAGHER: If you don't cost it, is it possible to get the impact on tax receipts as a share of GDP for stage 3? Would you be able to show me this graph without stage 3 in it? Do you have that information?

Ms Mrakovcic: Do you mean incorporating the original costings going back to the 2018-19 and 2019-20—

Senator GALLAGHER: I presume they're included in here, aren't they? If you took out stage 3, what would that show? Do you have that information?

Ms Mrakovcic: It goes to the same point. These were costed at the time of announcement, and this graph is put together using costings of measures only from the 2019-20 MYEFO. The further back you go, the more complicated it gets in terms of relying on costings from several years ago, because, as you pointed out, there are parameter variations. Nonetheless, in terms of the medium-term cost, the estimate that was provided at the time the policy was announced remains the best guide in terms of the cost of the policy.

Senator GALLAGHER: Even though it's probably not going to cost $130 billion? It's a guide at a point in time but it's not going to be what it actually costs?

Senator Birmingham: Budget forecasting is an imprecise science. Each year, the revenue projections and other projections within the budget are subject to these parameter variations. That's just a function of the fact that the economy grows faster or slower, employment numbers shift and wages numbers shift. All those different factors, over time, have an impact. That is why, in each of the budget updates, we provide details around the parameter variations. But they are done on the basis of the legislated tax rates and settings, not on hypotheticals of what they might be.

Senator GALLAGHER: It's not a hypothetical to update the costings of a massive expenditure like this, or forgone revenue. It's not hypothetical to ask today how much the personal tax plan is going to cost the budget.

Senator Birmingham: Those tax rates are now the law of the land. They are embedded in the legislation. Any other modelling of that would essentially be a proposal to change that.

Senator GALLAGHER: Alright, I don't think we're going to get an answer. Where can I find out how many taxpayers there are in each income tax bracket as they exist now? Is that information available anywhere?

Ms Mrakovcic: Are you asking whether we can help you with it, or are you asking whether it is publicly available?

Senator GALLAGHER: Both. You can steer me, if it's easier.

Senator Birmingham: If you help Senator Gallagher with it, we can be sure it's publicly available.

Ms Mrakovcic: We will try to help you as much as possible. I can see my colleague at the other end of the table. Between the two of us, we should be able to assist. What in particular do you want to know?

Senator GALLAGHER: I want to know the breakdown of taxpayers within the tax brackets as they exist this financial year.

Ms Mrakovcic: I might ask my colleague, Ms Di Marco, to see if we can translate it back—we have detailed tax brackets that we can take you through. But because there is so much change happening—the changes in the thresholds and the changes coming in terms of the 37c rate and all the rest of it—we'd have to try and relate it back.

CHAIR: I would have thought the numbers in the tax brackets are only going to be known when tax returns are finalised.

Senator Birmingham: I suspect it would be easiest for the ATO to give the most up-to-date—

Senator GALLAGHER: Give me the last best figures you can, acknowledging that there are changes afoot.

Ms Di Marco: While they are not quite defined in brackets, if you're happy I can give them to you in slightly lower than brackets. There are around two million taxpayers earning less than $37,000, there are around 1.2

million taxpayers earning between $37,000 and $45,000, there are around 5.1 million taxpayers earning between $45,000 and $90,000, there are around 1.5 million taxpayers earning between $90,000 and $120,000 and there are a little over 1.6 million taxpayers earning above $120,000.

Senator GALLAGHER: Do you have that broken down by gender?

Ms Di Marco: I don't have that in front of me.

Senator GALLAGHER: Does anyone have that?

Ms Di Marco: I could take that on notice.

Senator GALLAGHER: Thank you. Minister, what's going on with LMITO? In the budget, it's extended for one year. Can you explain the thinking behind that? Why have you extended it for a year? What's going to happen next year? What's the government's thinking on that?

Senator Birmingham: We've extended it as part of the economic recovery plan in response to COVID-19. We recognise that there continues to be a level of heightened uncertainty across the global economy. In ensuring that we provide additional support into the Australian economy, the extension of LMITO was a straightforward means of using the existing mechanism to provide households with some additional assistance at a time of uncertainty.

Senator GALLAGHER: The original intention with the LMITO was for it to act in that first year, before stage 2 came in.

Senator Birmingham: It was, indeed, originally there as a transition point. Then, in last year's budget, the decision was taken, even with the bring-forward, to maintain it on the basis of the COVID-19 economic recovery response. This year there has been a decision on the same grounds, really, to extend it.

Senator GALLAGHER: And then no decision has been taken beyond this budget year by the government?

Senator Birmingham: No. Obviously, in this year's budget we took around $41 billion worth of temporary targeted COVID-19 responses, with the extension of LMITO being part of that.

Senator GALLAGHER: You say 'temporary and targeted', but that is three years of this payment, effectively. Are you worried that it's not a temporary measure anymore? Presumably, if it stops, there's going to be a whole load of people affected. I don't know how many. Do you know how many people are eligible for LMITO?

Ms Mrakovcic: Ten point two million.

Senator GALLAGHER: Ten point two million taxpayers are benefiting from the LMITO and have been benefiting, presumably, around that much for the last three years. Are 10.2 million people going to be paying more tax next year?

Ms Mrakovcic: I will just explain that the LMITO was introduced, as you point out, in stage 1 of the personal tax plan, and it was designed to provide that relief. In stage 2, that LMITO was actually structurally baked into the rates and thresholds, so there was an increase in the LITO and there was an increase in the $41,000 threshold, to $45,000. Those changes, and some other consequent changes of thresholds were all designed to ensure that the LMITO actually became part of the rates and thresholds and, indeed, that people were no worse off and in some cases slightly better off, with that being baked into the numbers. As a result of that, people have been getting that benefit in the form of lower taxes throughout the period. If you like, separate to that, there was a decision made in the context of COVID-19 and the need to support the economic recovery and to get money into the hands of people—taxpayers—so that, basically, there could be support for the economy. It was designed as a way to essentially get that money quickly out there, using the existing mechanism. So there has been support, if you like, provided initially through the LMITO, which then became permanent support provided through the changes in rates and thresholds, supplemented by an additional payment which is supporting economic recovery.

Senator GALLAGHER: I understand that. I guess the question I have is about this, though: when LMITO ends—and I think I've heard the Treasurer saying it will end—10.2 million Australians will pay more tax. That's the practical effect on households.

Senator Birmingham: It was always intended as a temporary measure. We have extended it in the context of COVID, but the tax changes that it was initially implemented to act as a transition point for are still happening—or, indeed, with the stage 2, they have happened now and are delivered. So it's now serving a different purpose in that sense.

Senator GALLAGHER: Okay, but you didn't answer my question, which was: is the practical effect for one of these 10.2 million taxpayers when the LMITO ends that they will be paying more tax than they were paying the year before, or the year before that?

Senator Birmingham: It should be thought of in the same context, in that sense, as, for example, temporary payments made as part of the COVID-19 response. A range of temporary payments were made to certain households and individuals over the last 12 to 18 months as part of that COVID-19 response, as indeed many temporary payments were made to businesses in different ways too.

Senator GALLAGHER: Yes, but not three years worth of them.

Senator GALLAGHER: I guess that's the point I'm trying to understand here. Many of these households won't see it as temporary. When you get your tax or you pay your tax, you don't go back four years to say, 'This is where I was then and this is where I am now.' The practical effect is: when this ends, people—low- and middle-income earners—will be paying more tax; correct?

Senator Birmingham: Well, there are the next stages, as indicated, of tax cuts to come, impacting many people as the marginal rate is reduced down to 30 cents on the dollar, the top rate for many working Australians. The benefit, of course, of the tax cuts being embedded by the earlier delivery of stage 2 as well as stage 3 is that they are realised in week-to-week take-home pay, whereas LMITO was reconciled in a different way and is more akin to, in essence, those sorts of one-off payments that I was referencing before.

Senator GALLAGHER: I noticed the Treasurer didn't answer that question when he was asked, and you've avoided it as well. I don't have a transcript here but I'm sure I've heard the Treasurer saying that LMITO will end. Is that your position too—that the LMITO will end?

Senator GALLAGHER: Yes, the policy settings are as outlined. Clearly, we have made conscious decisions in response to COVID-19 to extend it, both in the circumstances of the bring-forward and to address, support and underpin parts of the economic recovery, but it is still there as a temporary measure, as part of that COVID support.

Senator GALLAGHER: So you won't extend LMITO next year?

Senator Birmingham: We'll consider next year's budget in the context of next year. The policy decision as it stands is for LMITO to be there—

Senator GALLAGHER: To end—

Senator Birmingham: for the period of time that has been outlined.

Senator GALLAGHER: To end on 30 June next year?

Senator Birmingham: That's what the announcement was in terms of extending it, to extend it to then.

Senator GALLAGHER: Chair, I have another block of questions which will take longer than five minutes.

CHAIR: I might just share the call around, then. Senator Roberts?

Senator ROBERTS: Thank you, Chair. Thanks, officers, for being here again today.

CHAIR: Senator Roberts, before you start, I will point out that we have a quite extensive list of senators who wish to ask questions of this group. We have a significant amount of time, but I would ask all senators, if they can, to be direct and to the point.

Senator ROBERTS: On a number of occasions, the ATO has been asked if it can provide a break-up of small business tax debt into principal, interest and penalty. The ATO's consistent reply is that this break-up cannot be supplied. Is that still the case?

Ms Smith: In the near future we will be able to provide more detail around the construct of the debts. We, last year, changed our cooperating system across to a system called ASFP. Part of the benefit of that was that it gives us these flexibilities to be able to report. For our collection activities, that's not information that is as critical to us as other information, so it hasn't been a priority to be able to produce this immediately, but we are working on that. Vivek Chaudhary, who is our head of debt, might be able to give us a bit more information. He's appearing by video from lockdown.

Mr Chaudhary: I am able to share with you that, for the month ending April 2021, the primary tax made up 81.7 per cent of all small business tax debt. A further 15.6 per cent is made up primarily of general interest but also shortfall interest. A small proportion—two per cent plus some decimal points—consists of penalties.

Senator ROBERTS: Thank you. That will be regularly available in the future?

Ms Smith: Yes, our plan is to provide that information in the future.

Senator ROBERTS: Thank you. Commissioner, are you familiar with the ATO's failed application for leave to appeal to the High Court on the gold-refining case known as ACN 154 520 199 Pty Ltd (in liquidation) v Commissioner of Taxation.

Mr Jordan: Yes, I am. I'll ask my colleague the Acting Second Commissioner, Law Design and Practice.

Senator ROBERTS: On that, some have said that the ATO's appeal was a request to enable the ATO to rely on, effectively, email gossip to justify the raising of tax debt. Would the commissioner view this as a correct interpretation? If not, what is your view?

Ms Fish: No, we wouldn't agree with that characterisation. The litigation has been ongoing for quite some time. There was an AAT hearing followed by an appeal to the Full Federal Court. On appeal to the Full Federal Court, the court found that there was procedural unfairness in the way the AAT had taken into account the evidence presented before the AAT in forming its conclusions on the anti-avoidance rules. The commissioner's application for special leave to appeal to the High Court was in relation to that aspect: whether there was procedural unfairness in the way the AAT had approached the case and, if there was, whether that impacted the outcome. So the commissioner's application for special leave related to the way that the AAT takes into account evidence before it and approaches its consideration of the issues. It was a matter of legal principle on which we applied for special leave. Now, of course, special leave having been refused, the matter will be returned to the AAT to be reheard by a freshly constituted tribunal to determine whether the anti-avoidance rules apply or not. That reconstituted tribunal will, of course, take into account the evidence put before it then.

Senator ROBERTS: Thank you. In light of Minister Stuart Robert's statement on Thursday 13 May, two days after the budget was delivered, what actions have you taken as the commissioner or within the ATO to implement this government policy that small business will not be penalised until matters are adjudicated on?

Ms Fish: I can't comment on announced but unenacted measures. The announcement that you're talking about was part of the budget measures to give the AAT powers to effectively grant a stay if the commissioner is taking debt enforcement action while a matter is before the AAT. I can't comment on the actual measure itself, because it's not yet law, but of course, in practice, we are very conscious of our effect on small businesses, and there are very few instances where we take stronger action in terms of garnishees where a matter is in dispute. Taxpayers have a lot of opportunities, and it's a part of our legal system that, if you disagree with the commissioner, you have the opportunity to first object and then have your matter heard before the AAT. Where we have a genuine dispute, in general we will pause debt collection activity and will only pursue debt collection activity where we see a risk of dissipation of assets or where there's fraud or evasion.

Senator ROBERTS: It makes it difficult when the system allows the assessor to be the reviewer, which I understand is the case within the ATO. Also, there is enormous power within the ATO, and small businesses have been hurt by this, as I understand it.

Ms Fish: In Australia we have multiple layers of review, and we've got a very strong independent review of our decisions in the form of the AAT. The AAT is constituted by Federal Court judges and other members of the profession. They are appointed by the Governor-General. They are statutory appointments to the AAT. The AAT is completely independent of the tax office and provides a review of our decisions. It will stand in the shoes of the commissioner and redetermine the matter. In addition to that completely independent review of our decisions, we have multiple layers of review available within the office. There's a statutory right of review in terms of objection, and we also now have a small-business independent review conducted before assessment. Both independent review, pre assessment, and objection, post assessment, happen in a completely separate part of the office to where the audits are undertaken. In my area, Law Design and Practice, we conduct that independent review, whereas the audit activity that creates assessments is conducted under Second Commissioner Jeremy Hirschhorn.

Senator ROBERTS: Let's move to something that is to some extent out of the ATO's control, and that's FATCA, the Foreign Account Tax Compliance Act. I understand it's a difficult issue, and I can see the smile on your face. You must be tearing your hair out. FATCA, for those who don't know, is a US law requiring banks around the world to report accounts held by US citizens who are resident in other countries, including dual citizens. Despite FATCA's significant and capricious impacts—and they're truly horrendous—on people in this country and around the world, why did Treasury or the ATO decide that individual deposit account holders were not significant stakeholders when preparing the post-implementation review of FATCA?

Mr Hirschhorn: In terms of the post-implementation review—I'm afraid I'm not aware of the review that you're referring to.

Senator ROBERTS: Apparently there's a review of FATCA. You have to make a report on deposit account holders and you have to send that report to significant stakeholders, but apparently deposit account holders were not considered significant stakeholders.

Mr Hirschhorn: I might pass to my colleague.

Ms Mrakovcic: That issue probably falls with us, but I'll have to take it on notice.

Senator ROBERTS: Thank you. I appreciate the complexity, and you're caught in the middle.

Ms Mrakovcic: As you just pointed out, FATCA is a unilateral measure. It is a decision by the US to expect information. To some extent, we try to work with other countries in terms of exchange of information. At the end of the day, the regulatory and tax framework in one country is different from that in another, and a lot of this sometimes involves trying to work with the two. But let me take the specific question on notice so that we can give you the best answer we can provide.

Senator ROBERTS: It ultimately boils down to the US blackmailing, so I'm working within that confine. While account holders are notified by their banks that their data will be sent to the ATO, pursuant to the FATCA agreement, neither the bank nor the ATO is required to notify the account holder of the actual data sent to the Internal Revenue Service in America, under the FATCA agreement. Would it be possible for the ATO to provide this information automatically through the ATO myGov portal in the same way that interest and dividend income is reported to recipients?

Mr Hirschhorn: The information that we provide to the US is a standard set of information; it's around account information. Often there will be an overlap with the information we already have in people's pre-fill—generally things like bank interest, which we already pre-fill for people. I would say we have not considered whether there is some sort of separate reporting to individuals of reported data. We would have to think about that.

Senator ROBERTS: Would you be willing to listen to some of the people being affected?

Mr Hirschhorn: We're very happy to speak to affected people.

Senator ROBERTS: That'd be good. They're very concerned about inaccuracies. They're not accusing the ATO of malfeasance, but they're very concerned because it impacts them. It entails a hell of a lot of money in accounting fees and legal fees—because the IRS is unaccountable; it's a law unto itself—and that puts our citizens in the middle of that firing line.

Mr Hirschhorn: If there is an individual who is worried about the quality of the data that has been provided, in the absence of a system based solution—which we would have to take on notice and think seriously about—individuals should not be afraid to contact the office and we'll see what information we can provide them.

Senator ROBERTS: Okay. Thank you. That's very good. The US practices citizenship based taxation. It is almost unique in that; I think there is one other country that does it. FATCA reporting includes reporting on the Australian income of Australian residents, which is taxable in Australia and for which the US must grant a foreign income tax offset—a foreign tax credit, in American technology. This is not income that is being hidden from the US tax authorities. Has the ATO expressed to its US counterpart its support of a same country exception to FATCA as recommended by the US Taxpayer Advocate?

Ms Mrakovcic: We'll take that on notice.

Senator ROBERTS: Okay. FATCA has some exemptions to reporting that are not included in the similar common reporting standard, or CRS. Under FATCA, accounts with under US$50,000 and accounts held at local client based banks are exempt from being reported to the IRS. How is the ATO ensuring that these exemptions are being honoured and data is not being over-reported to the IRS? As I said, the slightest mistakes cause Australian citizens, dual citizens and Americans resident in Australia enormous grief with the IRS. And they are innocent—the IRS is not innocent, the Australians are innocent.

Mr Hirschhorn: I will take the details of that on notice. We are very aware of those exemptions from FATCA. I will take it on notice, but I would hope to provide comfort to you in saying that we do not report unnecessary accounts.

Senator ROBERTS: Thank you. Will a privacy impact assessment be conducted in regard to FATCA reporting?

Ms Reinhardt: Privacy issues were considered as part of the original RIS that was undertaken for the 2014 legislation. The RIS explains and outlines what was done to that effect, and that was that the privacy concerns were addressed by creating a domestic regulatory environment. You have raised some issues, and the ATO and Treasury have undertaken to get back to you in relation to the current application.

Senator ROBERTS: We received a flurry of responses to questions on notice at the end of last week.

Ms Reinhardt: The responses to the questions on notice have been provided. The RIS is a publicly available document, and it outlines the privacy issues that were addressed as part of the original legislation.

Senator ROBERTS: What work has been done to verify that FATCA reporting is proportionate to the benefits of reporting to the respective governments of Australia and the United States? I'm thinking of sovereignty issues and the fact that shareholders of banks will lose. As I understand it, if we don't bend to the US blackmail, out banks can be taxed at 30 per cent. That's essentially blackmail. How much has FATCA increased tax revenues and/or decreased tax evasion, and how much has the collection of FATCA data increased the risk of data breaches and/or identity theft directed at account holders? These are significant issues affecting our citizens.

Senator Birmingham: You asked some factual questions towards the end of that, which officials have info on.

Ms Di Marco: Senator, we're going to take all of those questions on notice. We'll see where we can provide you information. Some of the questions you are asking go to cost-benefit analysis across two countries. Obviously it would be very difficult for us to provide substantive detail on that. But we are happy to go away and see what information we can provide.

Senator Birmingham: Senator Roberts, I will take on notice the general question you asked and see if there are any observations the Treasurer himself may wish to make there.

Senator ROBERTS: There are sovereignty issues. There is the cost to Australian taxpayers, who are now paying pensions to people who have been overtaxed in the United States. There are questions of unfairness. And other countries are now starting to stand up to this and start fighting it.

CHAIR: You've made your point. Thank you, Senator Roberts. Senator Rennick.

Senator RENNICK: I have a couple of questions around table 5.11 for the Treasury revenue side. That's on page 153 of Budget Paper No. 1. Could I get the workings for your large positive benchmark variations on E8 and E7, which is the main residence exemption—obviously you can take this on notice—and also the concessional taxation of employer super contributions and earnings, which is C2 and C4. Can you please show me on notice how you came up with those particular numbers. Could I also ask that those numbers be split out between houses valued between $0 and $2 million, between $2 million and $5 million, and greater than $5 million. Likewise, could the superannuation concessions be broken down by tax bracket—up to $45,000, between $45,000 and $120,000, between $120,000 and $180,000, and above $180,000.

Ms Di Marco: I think we provided similar answers to you on notice in the October-November estimates sitting.

Senator RENNICK: I asked the tax office, and then I was told to ask Treasury if I could get the split out.

Ms Di Marco: And I think that's still correct. The way we model these is as an aggregate estimate. We are not able to split them out by either income bracket or house value.

Senator RENNICK: That's fine. I want to see your assumptions on how you got these figures. Clearly you've got a formula that has come up with these numbers. I need to see the assumptions you've used to derive these numbers.

Ms Di Marco: Okay. We'll see what we can provide you on notice. These things change markedly from year to year. There are a couple of reasons for that. Firstly, you'll have changes in the economic outlook. With E7 and E8, for example, what we saw in 2018-19 was that the sale price of established dwellings fell. And when you have a look at things like capital gains tax, while that might be only one year, when you are looking at disposal periods of around eight years, that actually has a fairly significant impact on the change in gains over that period.

Senator RENNICK: That's good. That was my next question: why has the cumulative E7 and E8 dropped from $66 billion down to $47 billion in this is estimates? That's why I wanted to look at your assumptions to see how you've come up with these numbers.

Ms Di Marco: We'll see what we can provide you on notice. Another thing that might be worth talking through is that, with tax benchmark variation, the other thing that impacts on it as well is the actual value of the benchmark. So not only do changes in things like house prices impact the value of the concession; if you've got changes in things like wages and employment, that impacts the average tax rate that would be paid if it was taxed at your full marginal rates. So you've got things impacting on both sides of the benchmark equation.

Senator RENNICK: Sure. And that's why I want to ask about superannuation concessions. Seventy per cent of people are still on the age pension. That's hardly dropped in the 25 years since we introduced super. I want to see who's getting the superannuation concessions. It seems to me that if we are dropping $40 billion a year in tax concessions, which is worth $3,000 for every person who works—13 million workers—maybe it's better to give them a $3,000 tax cut up-front and get rid of super and that's a better and quicker way to pay off the house and save for their retirement.

Ms Di Marco: We'll see what we can provide you on notice. But, as I said, we're not able to provide estimates of these via income bracket or by distribution.

Senator RENNICK: Let's have a look at your assumptions, and I'll see whether I can analyse that. I have some questions that maybe I'll ask of revenue. I think I asked the tax office originally, and I got the same answer on this one: would the tax exemptions on the interest deductions granted to companies under section 26(90) also be able to be estimated? That's where Australian companies who invest offshore get an interest deduction on the money that they borrowed to buy the company offshore here in Australia, even though they don't match the income of it, so there's no symmetrical—

Ms Di Marco: We might have to take this one on notice as well. It's worth noting that some of these very complex variations that are related to specific elements of the tax law are often unquantifiable, and that's usually due to limitations of data and availability.

Senator RENNICK: I would have thought that one was all right; and the ones under sections 59(15) and 59(60).

Ms Di Marco: Section 59(15) is actually reported in the tax benchmark and variations statement, and that is also unquantifiable. That's item B20.

Senator RENNICK: The last one is a capital gains tax exemption for foreigners on the sale of non-portfolio interests. There was a case last year where the tax office ruled that the sale of water rights by foreigners wasn't taxable. I've got massive issues with that on equity grounds. I think it's nuts that foreigners can even buy water, let alone not pay tax on the sale of water rights. It's important that we quantify that sort of stuff because it's not fair that Australians pay capital gains tax and foreigners, subject to certain conditions, don't have to.

Ms Di Marco: I'll have to leave those aspects to my policy colleagues in the tax office, but I can take on notice the quantification—

Senator RENNICK: If I can get a value for it, I can then say, 'That's costing us $2 billion.'

Ms Di Marco: My suspicion is that that may also be unquantifiable, but we will come back to you on notice.

Senator McKIM: I want to start by following up a matter that I was discussing with ATO officials in the last estimates in regard to a question on notice that we submitted around the ATO providing an aggregated amount of income tax paid by Australia's billionaires. It was Mr Hirschhorn who was assisting me with that last time. Do you have an answer or a response to that question?

Mr Hirschhorn: You'll recall that we spoke about two elements, one being the potential for this information to identify taxpayers. There were also questions about how you would actually determine the tax paid by taxpayers when many of these individuals, in a sense, owned parts or all of many underlying entities which themselves pay tax.

We have been working on generating the amount of tax that these individuals pay directly. We are considering deeply the ramifications of producing this sort of number in a precedence sense. Our concern is that, if we produce potentially misleading data about specified classes of Australians, there's the potential for a lack of confidence in the tax system. For example, although it may not identify the individual, if we were asked to determine the tax, let's say, of all the people in a particular political party, there's the potential for information to be misleading and to be unhelpful for the tax system. We are deeply considering those sorts of issues in the context of this information and how that might impact how we provide that sort of data in the Senate estimates process. I would say that it is in progress, but we think it is raising novel issues for the tax system, which we are working through.

Senator McKIM: Thanks; that's helpful. Are we over the hurdle of a response to this question identifying individuals, given the discussion we had at the last estimates hearing? Have we cleared that bar?

Mr Hirschhorn: We are happy that the information would not specifically identify the tax affairs of individuals. We are concerned about these other issues around, effectively, class and—maybe not necessarily for this one—what precedent there could be if we provided this sort of information routinely in a public forum.

Senator McKIM: I understand that you're still working through that, so thank you for that. Is there still the attribution issue? Has that been overcome in terms of the datasets that the ATO has and the capacity to pull this information out of those datasets?

Mr Hirschhorn: In a sense, we have resolved the attribution issue by, you might say, ducking the attribution issue, by focusing on the tax paid by those individuals on their own behalf. We went down the path of thinking about how you might attribute, and it was really going down a rabbit hole.

Senator McKIM: Thanks for that. This is a separate topic; I'm not sure if this is a question for you or not. I want to ask whether either the ATO or Treasury has data that would enable it to say how many companies that received JobKeeper also returned a profit during the period that they were receiving JobKeeper.

Mr Hirschhorn: We touched on this a little bit yesterday with Fiscal Group. The tax office will receive information around profitability of organisations as people lodge their tax returns. Tax returns for the 2020 financial year, let's say June 2020, are coming in as we speak; most will be in by now. For the June 2021 year they will come a year later, and there are December year ends and whatnot. We will gradually be getting information in on profitability.

Ms Wilkinson of Fiscal Group indicated that there will be a review of JobKeeper and, as part of that review of JobKeeper, there will be some analytical work done to analyse how many recipients of JobKeeper were profitable. That is a non-trivial job because JobKeeper was primarily based around entities and a lot of the data is based around tax groups, so there's a little bit of apples and oranges, particularly in the larger groups. Ms Wilkinson said that will be part of the review by Treasury.

Senator McKIM: Just to be clear—I expect the answer to this will be no—given what you have just said, you don't have that information to hand for the 2019-20 financial year, as we sit here today?

Mr Hirschhorn: That is true. For us, our focus as the tax office has been on those who are eligible or not for receiving JobKeeper, which is really a turnover focus. We have not, as a result, really focused on that profitability issue to date because it was not relevant to our enforcement activities.

Senator McKIM: Understood; thanks. I have some questions on the petroleum resource rent tax. Is that for you as well, Mr Hirschhorn?

Mr Hirschhorn: It is, indeed.

Senator McKIM: I'm talking about carried forward expenditure here. After forwarding for the first time in a decade in the 2018-19 financial year, carried forward expenditure under the PRRT rose again in 2019-20, up to $282 billion. Given that oil and gas prices stayed at decade-long lows from July last year through to November last year, and have been since then at around the average decade-long level, are you expecting that carried forward expenditure will also rise in 2021?

Mr Hirschhorn: The tax office do not seek to project. There are projections around PRRT tax payable, and it's about $1 billion a year from petroleum-based projects. It seems, in terms of the 2020 year, there was about $30 billion of assessable receipts. The carried forward expenditure at the end of 2020 from those who have filed PRRT returns to date, as you point out, stabilised at around $280 billion. But we don't project.

Senator McKIM: You don't project; okay.

Mr Hirschhorn: I would note also that the thing which has driven a significant amount of the growth in carried forward expenditure was the massive development of the North West Shelf and the recent investment wave. My understanding is that there has been much less investment over the last year.

Senator McKIM: You may not be able to respond to this because you don't do projections, Mr Hirschhorn: would it be fair to say that, all else being equal, we're now two years further away from the PRRT delivering the so-called rivers of gold?

Mr Hirschhorn: Again, the best source for thinking about when PRRT will be paid by the recent gas investments remains the Callaghan review.

Senator McKIM: Your response might be the same, but I'll ask the question, anyway. There's coming up on $300 billion of deductions still hanging around. Are we 10 years off or 20 years off? Do we know when we're going to see some significant revenue flows from the PRRT?

Mr Hirschhorn: I will make two observations before handing over to my Treasury colleagues. The first is that some of that carried forward expenditure is trapped, effectively lost, carried forward expenditure; that is, carried forward expenditure on a particular investment which will never be recouped. The functional carried forward expenditure is significantly less than the $280 billion. The two big drivers of how that useful carried forward expenditure will be used are revenues from gas exports, which have been in the $30 billion a year range, and potential new investment. My second comment would be that, again, my recollection of the Callaghan review was that it projected in various scenarios, and I don't think in any of those scenarios it forecast significant resource rent tax collections from gas projects before the 2030s.

Ms Mrakovcic: If I can come in on that point, and to reiterate Mr Hirschhorn's comments, we think that the Callaghan review still provides the best long-term assessment of what's likely to happen in PRRT, but you would also be aware that a number of recommendations were made in that report, and there have been some changes made to uplift factors and boundaries around transferability of expenditures et cetera. You would expect those to start impacting on that.

It is very difficult to take a long-term view around many of these factors, particularly given what we have seen in terms of movements in oil and gas prices, and the sheer size of investment expenditures when they occur. One does have to keep one's eye on the very long term in terms of thinking about this. I think that the changes that have been made, in terms of the first response to the Callaghan review by the government, will make some changes there. I would also note that, with the second part of the review, which recommended looking at the gas transfer pricing—although that was put on hold during the COVID crisis and the need to allocate resources to deal with that—we are actively thinking about when we will be in a position, and hopefully shortly, to re-energise that review.

Senator McKIM: I think that concludes my questions for now, but I'll come back to this at a later time.

CHAIR: I'll now hand over to Senator Carr.

Senator KIM CARR: Could I get some information about the government announcement on patent boxes?

Ms Mrakovcic: We'll do our best.

Senator KIM CARR: That sounds encouraging. The Treasury announced that there would be introduced a new patent box of 17 per cent—a concessional 17 per cent rate—in the budget. I am wondering what was the process for the development of that position. Was there consultation across Treasury or was it with other portfolios or stakeholders? What was the mechanism by which that policy position was developed?

Ms Mrakovcic: I might start and then I'll hand over to my colleague. Basically the concept of patent boxes has been around for some years—

Senator KIM CARR: Twenty.

Ms Mrakovcic: Basically it has been a concept that has been flagged by a number of companies, and you'd be aware during various parliamentary inquiries and reviews there has been a focus on these. It has also been the case that over the years we've seen an increasing number of countries actually introduce patent boxes. There has been an active debate in the OECD around their effectiveness and how to ensure that they are effective without necessarily proving harmful. So I think that it's basically been a concept which has been actively raised with the government and in various reviews and it is something that has attracted increasing attention, not least because it's taking place against a backdrop of what is increasing mobility of capital and, in particular, as you'd be aware, intellectual property is particularly mobile, given the intangible nature of it.

Senator KIM CARR: I accept what you say. It has been around for 20 years and currently 14 of the 27 EU countries have a patent box arrangement; so I'm aware of that. I'm just wondering how this particular measure was introduced. Was it introduced as a result of an approach by particular companies? Why did it come up now?

Ms Mrakovcic: Ideas come from a variety of places. Various bodies make budget submissions. People come and talk to the government. There can be a number of mechanisms by which ideas are brought into government consideration and then basically the budget process is a process by which a whole range of ideas are basically considered and then decisions made by the government on what policy measures they might be interested in pursuing to the next stage of development.

Senator KIM CARR: I just want to be clear though. Was this particular initiative developed within your department or was it external to the department? Where did it come from?

Ms Mrakovcic: Ideas such as this would be developed by revenue group and basically we would develop those for consideration by cabinet. We'd send it to a review committee and—

Senator KIM CARR: I want to be clear. Did any specific companies bring this to your attention for this to be initiated now, given that it has been in the conversation about innovation policy for 20 years?

Ms Mrakovcic: There were no specific companies that raised it but we were certainly aware of submissions that were made to inquiries and that this idea had been around. We have an active dialogue with other countries that actually do have a patent box. I'm fortunate enough to sit on the CFA at the OECD; so I have the opportunity to hear from my colleagues on patent box ideas.

Senator KIM CARR: So it's in that general context rather than a specific initiative?

Ms Mrakovcic: It is in the general context but it is also in the context of being aware that there have been submissions made on this issue by a number of—

Senator KIM CARR: So why is it being restricted to medical and biotechnology patents?

Ms Mrakovcic: I think that it would be fair to say that basically there was an awareness that these issues were very much a feature of that medical and biotech space, and that was an area where the government decided that we should put some attention on. It was particularly aware of perhaps just how mobile the capital was, as I said, at a general level, and it might be specific to those areas.

Senator KIM CARR: Why was manufacturing excluded?

Senator Birmingham: Just to add to that, certainly the competitiveness for capital in that space and the transferability of IP in that space definitely factors in. The government's view as well was that it was prudent in taking a first step into patent box territory to do so in a targeted area initially, as we see how the reform works in terms of achieving its outcomes. Those sectors, medical and biotechnology, form part of the manufacturing road map priority areas, as I know you would be well aware.

Senator KIM CARR: Yes. That's why I'm interested to know why manufacturing was excluded.

Senator Birmingham: These areas do contribute to manufacturing—

Senator KIM CARR: But not this proposal? Is manufacturing included in this, manufacturing patents?

Ms Mrakovcic: My understanding is that it's not. Ms Reinhardt?

Ms Reinhardt: To the extent that these patents are operated in areas where there is manufacturing in Australia, they have the potential to increase commercialisation in those areas; so the patent box is in fact, as you've noted, for the medical and biotech sectors. Those sectors operate manufacturing in Australia; so there is the potential to impact through that.

Senator KIM CARR: I should ask you another question really. Has it been designed yet? Has the particular program here been designed or has there just been a broad announcement?

Ms Mrakovcic: There has been an announcement and there has been an intent around parameters but it is the intention to consult on the actual design—

Senator KIM CARR: I want to get to that issue. So the importance is that there's been no consultation broadly with industry or other departments to this point? Is that fair?

Ms Reinhardt: There has been consultation with other departments in the development of—

Senator KIM CARR: Which departments?

Ms Reinhardt: I'd have to take that on notice but I understand the industry department is certainly one of them; we have discussed it with them. As you are aware, a number of companies have made public statements in the past and made submissions on using patent box; so that's also information we're able to draw on.

Senator KIM CARR: This is all past.

Senator Birmingham: It's not uncommon in terms of the tax policy design approach that where a new measure like this is being taken the government announces it as budget policy and then takes it through a consultation process, which is certainly the intention here. The consultation will be getting underway this year to define the parameters of the patent box.

Senator KIM CARR: The Treasurer announced that there will be consultation with a view to expanding it to the clean energy sector. Is that a yes or a no? Are you going to expand it or are you going to talk about it?

Senator Birmingham: Let's deal with two different parts of consultation there: consultation around the specific boundaries for the medicines and biotech sector to make sure that it is designed and implemented in an effective way there and consultation in the renewable energy space which is about whether or not to extend it.

Senator KIM CARR: I just wanted to be clear about that. Thank you. I'm interested to know how you determined the figure of 17 per cent. How was that decided?

Ms Mrakovcic: I think that the best way of articulating that is to say that we looked at essentially where corporate rates were in other countries and the relationship of the patent box rate to the corporate rates. Obviously the sort of margin, if you like, between the corporate tax rate and the small business tax rates of 30 and 25 per cent and the kinds of margins lent itself to a broad number. These things are always a bit of a discussion—

Senator KIM CARR: They certainly are.

Ms Mrakovcic: But broadly there's nothing precise about it in the sense that—

Senator KIM CARR: Certainly, that's true too.

Ms Mrakovcic: There can be a range of patent box arrangements in different countries.

Senator KIM CARR: I've got the list here of the rates across the world, and 17 per cent is at the outer end.

Ms Mrakovcic: Some would argue that our corporate tax rates are also higher than most other countries as well.

Senator Birmingham: There are also movements happening in some of those corporate tax rates and potentially associated with tax box rates. Can you tell me what is this going to cost?

Ms Mrakovcic: I believe that it is costed at $200 million over the forward estimates, $100 million in each of 2023-24 and 2024-25.

CHAIR: Senator Carr, just FYI, we do break for morning tea in four minutes.

Senator KIM CARR: If you could give me just a minute or so—

CHAIR: You've got four more minutes.

Senator KIM CARR: If I can just try to finish this particular section.

CHAIR: I'm just letting you know.

Senator KIM CARR: I have some questions on the review of the R&D tax matter as well. It's just a question of how far we get with this. I'm interested to know what your forecasts are on the take-up rate. How did you conclude what are the costings on that $200 million? How did you decide upon that $200 million?

Ms Mrakovcic: This is on the patent box?

Senator KIM CARR: Yes, the patent box.

Ms Mrakovcic: I might see if we can provide some more information on that.

Ms Di Marco: Patent income itself isn't directly observable, which is the kind of tax base here. What we did was had a look at the R&D expenditure in these kinds of sectors, work closely with IP Australia, tax office, DASA, in having a look at different kinds of measures of patents in these sectors, had a look at overseas regimes in particularly the UK, and applied a relationship between R&D expenditure, their expenses, to derive a measure of patent income.

Senator KIM CARR: I see. The British have a rate of 10 per cent.

Ms Di Marco: They do have a rate of 10, yes. So it's not necessarily looking at the rate; it's having a look at what their base is and the relationship of that base to research and development.

Senator KIM CARR: Did you take into account the rate—for instance, in France, 10; the United Kingdom, 10; Ireland, 6.5? Did that influence your judgement as to the 17 per cent?

Ms Di Marco: I think Ms Mrakovcic and Ms Reinhardt spoke earlier about the rate. I wasn't focused on the rate; we were just having a look at how to cost the specifications as they would apply to Australian—

Senator KIM CARR: That's how you worked that out.

Ms Di Marco: Yes.

Senator Birmingham: As I alluded to, there was a consciousness as well that the UK and the US, for example, both now appear to be on an upwards trajectory in terms of their corporate tax rates too.

Ms Mrakovcic: You would be aware perhaps that the OECD has put quite a bit of focus on ensuring sort of situations where patent boxes are actually not a harmful tax practice and they have linked it to the research and development taking place in the country in which the patent is—

Senator KIM CARR: Yes.

Ms Mrakovcic: And that relationship between the R&D and the commercialisation is an important issue. But what I think are the kinds of considerations that would be focused on in terms of thinking about a patent box is where you are supporting research and development and then you find that, at the point in time that it's commercialised, it goes to another country but if you take that a step further, in terms of then the attraction around patents and how transferable or how mobile they are, we're conscious that businesses are making these incremental decisions on where to take decisions on research and development and where it's going to be commercialised, and this is really an attempt to ensure that those decisions around research and development and commercialisation are taken in the context of a recognition that the capital is mobile and that those decisions will be influenced by tax rates.

Senator KIM CARR: Chair, how much time do I have? Otherwise I'll continue straight after the break, if I could.

CHAIR: You can continue after the break. We'll stick to the timetable.

Senator KIM CARR: This is a very substantive point as to whether or not these things actually work; so I need to actually examine that.

CHAIR: We will suspend—

Senator KIM CARR: I will come back to it. Is the ATO undertaking a review of the tax incentive arrangements?

Ms Mrakovcic: Is this the early stage—

Senator KIM CARR: No. This is the announcement in regard to the Board of Taxation—

Ms Mrakovcic: The review of the R&D—the administration of it.

Senator KIM CARR: Yes, administrative.

CHAIR: We will pick this up after the suspension.

Proceedings suspended from 10:30 to 10:46

CHAIR: We're continuing with Revenue Group and the Australian Taxation Office, and Senator Carr has the call.

Senator KIM CARR: The consultation process that the minister has referred to: how long do you think that will take? You've mentioned here the clean energy sector and the design features in regard to the medical and biotech sectors. What's the plan for the consultation process?

Ms Mrakovcic: Again, bearing in mind the minister's comments, they are two separate issues. The plan is to prepare a consultation paper and that paper will set out a number of issues that we've been thinking about. It would basically be a discussion starter with industry around, hopefully, having the conversations that allow us to put the detail on the design. Part of that detail of the design is actually getting clarity around the boundary issues. It would basically go to a whole range of design features around it.

Senator KIM CARR: I understand what you need to consult on. I think we've just canvassed how difficult this is, so I'd like to know the time, please; how long will this take?

Ms Mrakovcic: I don't know that we have got a specific period of time, but we're conscious of the fact that the measure starts on 1 July 2022 and there is a need to get the legislation through.

Senator KIM CARR: So legislation will be required?

Ms Mrakovcic: Obviously, the consultation process will need to fit in with the planning around a start date of 1 July 2022. That's about the only detail that I can give you.

Senator KIM CARR: So legislation is required. A parliamentary inquiry will be required—I can offer you that advice—and there will be extensive consultation on that side of it, given how controversial these measures are. You are looking at this year, are you?

Ms Mrakovcic: At consultations?

Senator KIM CARR: Your end of it.

Ms Mrakovcic: I think that we are looking to go out and consult reasonably soon.

Senator KIM CARR: Thank you. I'm just wondering, in terms of the safeguard measures to apply to this, what specific measures have you got in mind to date?

Ms Reinhardt: Maybe I can step in. As you might be aware, Senator, the OECD has provided guidance on patent boxes and how they are effectively implemented. That includes guidance on things like R&D that's undertaken in the country where the patent box is offered, so we'd be looking at consulting with industry on how we best collect information on that and how we can provide certainty around what R&D is undertaken in Australia. That's often referred to as the nexus test and it's an important part of implementing the patent box.

Senator KIM CARR: That's the usual one, but there are a few others, aren't there? There's the tax avoidance issue. The main criticism of this scheme is that it's a fundamental tax rort, isn't it? That's the big complaint.

Ms Reinhardt: That used to be the criticism of the scheme prior to the OECD coming out with guidance on how the patent box should be designed in order to deliver benefits to industries that are commercialising patents and that are doing it on the basis of R&D that's undertaken in that country. I guess I wouldn't necessarily agree with the—

Senator KIM CARR: The description that it's a rort?

Ms Reinhardt: I certainly wouldn't agree that—

Senator KIM CARR: You think that's unfair?

Ms Reinhardt: Yes, I think that's unfair, and I think it comes down to the design that—

Senator KIM CARR: The point is that the Chief Economist in 2015 here in this country said:

The most important cost associated with the implementation of a patent box regime is a fall in tax revenues collected from innovative companies. Since the fall is likely to exceed revenues collected from (re)allocation of IP income to Australia, the overall return of a patent box regime is likely to be negative.

That's on page 4. Would you agree with that?

Ms Reinhardt: That was the 2015 report, and it was prior to the OECD coming out with its guidance on how to design it so that there were not harmful tax practices, and most countries have undertaken changes to their patent boxes since that point.

Senator KIM CARR: What about the 2019 conclusions of the United States NBER, the National Bureau of Economic Research? It said:

This calls into question whether the patent box is an effective instrument for encouraging innovation in a country, rather than simply facilitating the shifting of corporate income to low tax jurisdictions.

That was in 2019.

Ms Reinhardt: I have to admit to not having read that report, so I'd have to look at what it was based on. A number of these reports are based on specific country examples, and they aren't necessarily up to date on recent application. Certainly, in terms of the Australian patent box application, we would be looking to design it in a way that ensures that the R&D is undertaken in Australia and that it provides an incentive to commercialise in Australia. As you are aware, it is about the discount, as Ms Mrakovcic has said. The UK have a nine per cent discount on their corporate tax rate for their patent box. Singapore has an eight to 12 per cent discount—

Senator KIM CARR: I thought the British were on 10; the French were at 10—

Ms Reinhardt: They have a nine per cent difference between the headline rate and the patent box rate.

Senator KIM CARR: Yes, but the Irish have 6.5.

Ms Reinhardt: The Irish have quite low taxes in a number of ways. We would argue that it's about an incentive on commercialisation, which is the difference between the headline rate and the patent box rate.

Senator KIM CARR: So what's to stop the New Zealanders introducing one at 10?

Ms Reinhardt: I'm sorry?

Senator KIM CARR: What would happen if the New Zealand government introduced a patent box at 10; would that undermine our scheme?

Ms Mrakovcic: That would be a decision for them. I think one of the important things, as Ms Reinhardt has pointed out and as we discussed earlier, is that there is a link between the research and development activity being undertaken in Australia and the commercialisation. I think no country wants to be in the situation where a lot of effort and investment is undertaken in research and development, including through government incentives, for that R&D to happen in Australia only to then find it commercialised in other countries—

Senator KIM CARR: Yes.

Ms Mrakovcic: and not because of the size of the market or other issues, but purely on the basis of the tax rate. We know that a number of issues go into determining where one undertakes research and development and where one undertakes commercialisation. It's not just about the tax rates; it can go to skills, infrastructure and a whole range of other issues that are important to making those decisions. But, in a world where the link between the R&D activity and the commercialisation is becoming more important in terms of it being a harmful tax practice or not, it's important to understand that companies can be taking decisions around where their research and development is undertaken because of the incentives provided around commercialisation of it through the patent. So all of those factors are relevant to a consideration of the rate and the way that one thinks about the development of the patent box.

Senator KIM CARR: That's why it has taken 20 years to introduce such a proposition here, isn't it?

Ms Mrakovcic: I can't comment on 20 years, in thinking about—

Senator KIM CARR: All right. Was any consideration, Minister, given to the FFF review's recommendations—for $200 million, I might add—which for less than $200 million could have produced a 20 per cent rate on a collaboration premium through the current R&D tax incentive scheme that we've got at the moment? Was any consideration given to that?

Senator Birmingham: There were responses in previous budgets in relation to that work and that review.

Senator KIM CARR: You haven't done anything about the FFF review on that matter, have you?

Ms Mrakovcic: The government considered the FFF review and made a decision in response to that review—

Senator KIM CARR: Which is to do what? Nothing.

Ms Mrakovcic: I think there were a range of initiatives in the R&D space that have been announced in the last couple of budgets.

Senator KIM CARR: I don't think they actually dealt with this at all.

Ms Reinhardt: I'm sorry; I'm answering a slightly different question, but RDTI is about investment in research and development and contributes importantly on that. The patent box is about commercialisation, so it's further down the value stream.

Senator KIM CARR: No; it's the exact opposite. That's the main criticism of this. This is at the wrong end of the commercialisation process. That's the fundamental reason that people criticise this scheme. You've actually got it at the wrong end entirely. That is the major problem, you will discover, when you actually go and talk to people about this.

Senator Birmingham: Senator Carr, I appreciate that that's your perspective and understand that there are elements in global history as other countries have moved ahead in this space. We're in a position where we're able to design the reforms to the types of safeguards that have been discussed, making sure that it is actually applied to R&D that is developed in Australia and then acts as an incentive and a catalyst, hopefully, to keep more of the commercialisation of that R&D in Australia as well.

Senator KIM CARR: Minister, I look forward to seeing what you do to prevent what the United States said just in 2019 in their review about tax rorting as a result of the introduction of schemes like this. We'll look forward to that. Can I turn then to the Board of Taxation review of the RDTI? Will the same people deal with that?

Ms Mrakovcic: We will try.

Senator KIM CARR: Thank you. What's the revenue, by the way, forgone on the RDTI at the moment? I can't see that anywhere in the budget processes. Can you point me to where I can find that table?

Ms Mrakovcic: I suspect that we may have to take that on notice.

Senator KIM CARR: Annually, please, if you could.

Ms Mrakovcic: We'll take that on notice.

Senator KIM CARR: Thank you.

CHAIR: Senator Carr, I'm sorry. I will just interrupt briefly for your planning purposes. You have about another five minutes.

Senator KIM CARR: I'll go through this. Will the submissions to the review be confidential?

Ms Mrakovcic: I don't know the details around it. It will be the Board of Tax—

Senator KIM CARR: Is there someone who can help me with actually conducting the review?

Ms Mrakovcic: The Board of Tax, when it undertakes reviews, basically consults with a range of stakeholders. My understanding—and I'm relying on my recollection and understanding here—is that generally those submissions would not be made public. The best I can do is to take the question on notice and confirm my understanding.

Senator KIM CARR: Thank you; if you would, please. Particularly, given that this scheme is a jointly administered scheme with the department of industry, will the submissions at least be made available to the department of industry?

Ms Mrakovcic: I'll take that on notice.

Senator KIM CARR: Has additional money been provided to run the review?

Ms Mrakovcic: No. My understanding is that a number of reviews are undertaken by the Board of Tax over a year so, obviously, there is a base level of funding that is made available to the board in order to undertake a number of reviews each year, and this will be one of the reviews that the Board of Tax is undertaking in the current year.

Senator KIM CARR: The FFF review—

Mr Jordan: Perhaps I could add briefly to that. The Board of Tax does have a secretariat that is constituted by secondees from the Tax Office, from Treasury and very often from the private sector to support the board, which is obviously a part-time role. As my colleague from Treasury said, typically, the budget would cover two or maybe three reviews a year. Once the report is released by government, they would often publish the submissions, unless a submission asked not to be published.

Senator KIM CARR: Can we say that about this particular review?

Mr Jordan: I don't know. I'm just giving a history, having been on it for nearly 21 years.

Senator KIM CARR: I might give some background to the department; I'm very familiar with this scheme. This has already been reviewed on a number of occasions. Kate Carnell did a review of income tax R&D back in 2019 and was quite scathing in her commentary. The FFF committee undertook a review and made recommendations on this. Will that be part of the consideration?

Senator Birmingham: Importantly, first and foremost, this is a review not into the policy settings of the R&D tax incentive but into its administrative operation. Insofar as those preceding reviews have recommendations on or points of relevance to the administrative operations of the R&D tax incentive, I'm sure that the Board of Taxation will be cognisant of those.

Senator KIM CARR: Can I put those questions specifically to the Board of Taxation, or are you answering on their behalf?

Senator Birmingham: We can take those on notice, to confirm what I've just said there.

Senator KIM CARR: The terms of reference talk about reduced duplication. Is there a budgetary target to achieve reduced duplication? Does that mean a funding target?

Senator Birmingham: There's not a savings target attached to this review. It's a genuine attempt at achieving efficiencies for those who engage with the system as well as those who administer the system.

Senator KIM CARR: To what extent will cultural differences be taken into account in the review—the cultural differences between the two agencies that administer this scheme, in fact, given that Industry is the lead agency here—in terms of the review process itself?

Ms Mrakovcic: The board will do a comprehensive review and it will take account of all of the factors that it needs to, in terms of coming to findings on this issue. To the best of my knowledge, it is not being constrained in any way. It's a genuine attempt at really understanding how the scheme is administered. A number of observations have been made around the administration of the scheme, and this will be an opportunity for the Board of Taxation to explore those in detail.

Senator KIM CARR: I'll put the questions on notice. Thank you very much for your indulgence, Chair.

CHAIR: Senator Smith, you have the call.

Senator DEAN SMITH: I want to refer to an ABC news story that goes back to 12 November 2019 regarding a tax scam across the Kimberley region of northern Western Australia.

Mr Hirschhorn: Yes.

Senator DEAN SMITH: Just to familiarise yourself with the matter, the ABC report in November 2019 said:

> Over the past two months, more than $20 million is alleged to have been illegally claimed by people in the Kimberley region, after what the Australian Taxation Office … was calling a "fraudulent scheme" spread like wildfire through local communities.

Are you familiar with the matter?

Mr Hirschhorn: I am familiar with the matter. Given the effluxion of time, I do not have detailed information on that with me, but I can hopefully help you as much as possible.

Senator DEAN SMITH: Can you provide me with what you know in terms of the origins of the scam?

Mr Hirschhorn: At a very high level, this scam involved falsely preparing income tax returns, including artificially high amounts of withheld tax. It was picked up very quickly because our systems identified that there were people with very unexpectedly high amounts of withheld tax. The $20 million figure was, indeed, as I recall in the ABC report, the amount claimed, and that should not be confused with the amount of money actually received by individuals. The scam was shut down very quickly. The amount received was significantly less. I would have to take on notice how much was actually received, but my recollection is that it might have been five or 10 per cent of that.

Senator DEAN SMITH: You are right; the ABC report does credit the ATO with having identified the issue quickly and that only 42 people received incorrect refunds. Is that 42 figure correct?

Mr Hirschhorn: I'd have to take that on notice. It does not jar, but I'd have to take it on notice.

Senator DEAN SMITH: The ABC report also said that more than 700 people tried to claim an incorrect amount, worth more than $20 million; is that correct?

Mr Hirschhorn: Again, I'll take it on notice, but the numbers do not jar.

Senator DEAN SMITH: 'Do not jar.' I've not heard that at Senate estimates before, but I understand what you're saying. What collection activity has the ATO undertaken?

Mr Hirschhorn: Obviously, we take collection activity only on those who were successful.

Senator DEAN SMITH: The 42?

Mr Hirschhorn: That's 42 in inverted commas.

Senator DEAN SMITH: Agreed.

Mr Hirschhorn: You will appreciate that this is a non-routine population for—

Senator DEAN SMITH: Just explain that, for those who aren't familiar with the Kimberley region.

Mr Hirschhorn: Many of the claimants are people who are very poor and who do not have significant financial assets, which makes collection activities very complex.

Senator DEAN SMITH: The ATO has examined what collection activities could be undertaken?

Mr Hirschhorn: Indeed, we have considered compliance activities against those 42. We have considered and, in some cases, decided not to take or enforce recovery action where it would be uneconomic. Indeed, where somebody is extremely poor—

Senator DEAN SMITH: Not likely to have the ability to pay.

Mr Hirschhorn: Yes.

Senator DEAN SMITH: How many of the 42 has it been decided that compliance activity not be taken against?

Mr Hirschhorn: I'd have to take that on notice.

Senator DEAN SMITH: Is it half or three-quarters?

Mr Hirschhorn: I don't have a feel for that number. I would say that it's a significant number of the 42 where we did not pursue compliance activity.

Senator DEAN SMITH: Has that been communicated to those 42?

Mr Hirschhorn: I'd have to take on notice how we communicated those decisions.

Senator DEAN SMITH: What's the decision-making process in the ATO to decide that noncompliance activity will be taken?

Mr Hirschhorn: This is a challenge, as I say, not just on this sort of specific issue, but this is a challenge for us as part of our general administration. We have to prioritise the activities that we take, and that is both those that we pursue with audit, which sits more in my space, and within debt and lodgement, which sits more within Chief Service Delivery Officer Melinda Smith's space. Generally, those decisions are delegated with oversight. Obviously, we have safeguards on both sides—safeguards to make sure that we are taking compliance activity appropriately, so that we're not overtaking compliance activity, and safeguards on not taking compliance activity. With a decision on a matter like this, which had a community impact over and above, in a sense, individual taxpayer impacts, certainly, I had visibility of this as Second Commissioner, but I was not part of the decision-making. The deputy commissioner who reports to me had visibility of it, and I expect that a decision was made at the assistant commissioner level.

Senator DEAN SMITH: What's the quantum of funds that the ATO has effectively—my word, not a taxation word—forfeited?

Mr Hirschhorn: I will take that on notice but, as I said, it is a very small percentage of the $20 million, the ABC figure.

Senator DEAN SMITH: The $20 million was a product of the 700 people who were identified—

Mr Hirschhorn: I think the $20 million—again, all of these numbers I put in inverted commas—was the aggregate figure of all potential fraudulent claimants. The amount actually claimed was a very small percentage of that.

Senator DEAN SMITH: Do you recall what might have been the average quantum of money that was owed by those 42?

Mr Hirschhorn: I'd have to take that on notice.

Senator DEAN SMITH: The ABC report said that amounts approaching $80,000 were paid out by the tax office to these two individuals. It could be up to $80,000 to one person.

Mr Hirschhorn: Again, that would not surprise.

Senator DEAN SMITH: It would not surprise?

Mr Hirschhorn: If one or two of the 42 had received amounts of up to about that amount.

Senator DEAN SMITH: What exercise did the Australian Taxation Office go through at a local level to ascertain the scope of the scam, the nature of the people impacted and what additional assets individuals might have had that could have been called upon for them to pay the money back?

Mr Hirschhorn: I'd have to take the specifics on notice. Our first priority was to shut down the scam, which we did very quickly.

Senator DEAN SMITH: The ABC acknowledges that.

Mr Hirschhorn: Our major priority with compliance around this sort of activity is to focus on the promoter. In some ways, the false claimants themselves to some degree have been exploited by the promoter, because the promoter is often taking a fair percentage of the benefit.

Senator DEAN SMITH: That is an important distinction. I accept that, yes.

Mr Hirschhorn: Yes, so we very much focus on trying to identify the promoter, and this is across the board and not just on this one. We will have looked at the individuals, I suspect, particularly more for those with bigger false claims, to see our potential for recovery, but I'd have to take more specifics on notice.

Senator DEAN SMITH: My last question is in regard to the nature of the promotion of the scheme. Was there a promoter or promoters?

Mr Hirschhorn: My recollection is that there was a promoter who introduced the idea, and then there were some—it spread. There was a promoter, the information spread through the community and other people who were not introduced by the promoter, I suppose, copied.

Senator DEAN SMITH: The promoter, with his or her immediate conspirators: has he or she been prosecuted?

Mr Hirschhorn: I'd have to take on notice where that is.

Senator DEAN SMITH: That would be great.

Mr Hirschhorn: And, indeed, where that is between us and potentially the police.

Senator DEAN SMITH: Great. So the matter is not yet resolved.

Mr Hirschhorn: Again, I'm not exactly sure, but I will come back with where it's at.

Senator DEAN SMITH: Excellent. Thank you very much. For someone who had only a limited or high-level observation of the issue, that's been very helpful.

CHAIR: We will go to Senator Small.

Senator SMALL: I turn firstly to the opening statement made to Senate estimates on 23 October 2019. In part the commissioner said:

> We use garnishees and other firmer actions only after these attempts to engage the taxpayer have failed. On average, there have been 19 interactions or attempts to engage a taxpayer before we exercise garnishee powers.

Do you stand by that?

Mr Hirschhorn: I think the 19—I'll ask our head of service delivery to come to the table—is an average. We might deal with people multiple times, and in some rare instances there might be considerable difficulty in making contact. I'll hand over to Melinda Smith.

Ms Smith: Senator, could you please give me the context of the 19—the report that you're talking about?

Senator SMALL: Yes. That was the statement that the commissioner provided at the opening of the Senate estimates hearing that day, which dealt with a whole range of issues regarding which the ATO faced negative publicity in the months leading up to that.

Ms Smith: The number of 19—could you—

Senator SMALL: Yes, I'll give you the full quote again:

> We use garnishees and other firmer actions only after these attempts to engage the taxpayer have failed. On average, there have been 19 interactions or attempts to engage a taxpayer before we exercise garnishee powers.

Ms Smith: The 19 is a variable number, and it could be, in fact, more than that on some occasions. The approach that we take—I have our head of debt on the line to help with some more detail—depends on the risk profile of the individual we're working with. If you or I administratively lost track of something and ended up with a small tax debt, it's unlikely that we're going to send you anything other than a nudge SMS just to remind you, 'Look, this is unusual for you; you've got a tax debt due.' We find that to be very effective.

We then have the ability to make outbound calls to people. We have colour coded the letters that we send to clients now; so it's like an electricity bill. You get the first letter and the second and it goes from blue to red.

Then there's a matter of our, what we call, early intervention work. In some cases where it's gone to garnishee we will have moved straight from the first assessment being done to garnishee. It will. So none of this will be employed because the client might be someone referred from the AFP. We know that there's evidence of criminal behaviour and actually we issue the statement at the same time as we garnishee, to make sure that assets aren't dissipated.

Senator SMALL: That's very helpful. That's exactly what I was looking for, to be honest. Obviously it doesn't come as a galloping shock that the IGTO published a report on 19 March relating to the ATO's conduct with respect to PMT Pty Ltd, a gold refiner on the Gold Coast hinterland. The IGTO says in part that they are of the view:

We are unable to provide assurance that the ATO's garnishee action was reasonable in the circumstances and was in accordance with PSLA 2011/18 and PSLA 2011/14.

So I guess where an independent assessment of garnishee action is made and it is found to be anything but reasonable in the circumstances, how can the ATO continue to justify that position? It's been clear from the IGTO's independent assessment of the circumstances that this was a taxpayer who readily engaged with the ATO and in fact irrelevant considerations in the eyes of the IGTO had been included in the decision to issue the garnishee.

Ms Smith: I can't talk specifically about any particular taxpayer. I can't talk about the details and I don't have the details at hand.

Senator SMALL: So this is a public report by the IGTO which clearly assesses the ATO's conduct as anything but reasonable in the circumstances. I guess what I'm looking for is: what is the ATO doing about its actions in this area? I acknowledge that this is a difficult area of taxation collection and indeed there are very legitimate circumstances for the use of those powers. But repeatedly the ATO points to statements like 'the commission has provided on average 19 interactions to engage a taxpayer'. You clearly articulated there are instances where there are in fact no contacts made with the taxpayer before this happens.

Ms Smith: I am trying to help answer the question. Maybe I can talk a bit about how we do actually put the safeguards around ensuring that when we do issue a garnishee—

Senator SMALL: But those safeguards, or the safeguards I assume that apply to this circumstance, have been clearly assessed independently as falling short of the mark?

Ms Smith: I—

Senator SMALL: I am not looking for a PR exercise; I'm looking for what we're doing about it.

Ms Smith: No, I understand that. I don't want to do that. I do want to let you know that we have had a number of reviews done into how we actually go about collecting outstanding debt. We've got a legal obligation. We have a large debt book and we need to, by law, pursue that.

We are constantly approving. We have teams that are constantly looking at complaints, looking at how can we do things better. It's our MO. We are constantly looking at this.

We have—I am not sure where this actually falls—quite a number of changes that have been progressively made. I've been there for five years. I know there've been quite significant changes over that five-year period that actually put a lot of safeguards around ensuring that circumstances such as these—I don't know the details—where it's been assessed it's not accurate, are not okay. We take this very seriously. We understand the strength of the power and we make sure that we put significant safeguards around that.

Senator SMALL: So if on notice you could provide that detail that would be good because the ATO's apology that was issued to PMT says things like, 'I apologise for any impact,' and, 'I apologise for any inconvenience.' The IGTO has found that that apology falls short of the standards which might be expected of a revenue authority.

So I guess the point here is self-assessment is no assessment at all. The independent assessment is that we've fallen short in this space. On notice I'd very much appreciate that detail because I do appreciate the sentiment behind that.

If I can turn to another matter, please, in which the ATO's applied for special leave to appeal the unanimous decision in the Full Federal Court in Carter v Commissioner of Taxation, am I correct in understanding that the case put by the commissioner in that appeal reflects the view that after 30 June the taxpayer beneficiary cannot retrospectively disclaim their entitlements to a trust distribution? Is that a correct assessment of the case?

Ms Fish: Yes, the appeal does relate to the disclaimer of interests in trust income after the end of the year. The dispute really centres around whether a disclaimer post-30 June is effective for tax purposes where tax is assessed based on a present entitlement as at 30 June.

Senator SMALL: Perfect. Is the argument then that after that distribution is made to a beneficiary, whether or not the beneficiary has knowledge of the distribution, and they would then be liable for tax on that distribution? That's effectively what you've just said?

Ms Fish: Yes, if a disclaimer is ineffective for tax purposes and the beneficiary is still, for tax purposes, presently entitled as at 30 June the tax will flow to the beneficiary.

Senator SMALL: The law presently provides that a beneficiary can disclaim or reject trust distribution. With that disclaimer or rejection it stands naturally to follow that the beneficiary is no longer liable for income tax on that distribution had he disclaimed it?

Ms Fish: Yes, there's trust law and its interaction with the tax law and whether the effect of the trust law disclaimer had retrospective effect for tax purposes.

Senator SMALL: I understand that the commissioner had publicly accepted that disclaimers can operate retrospectively and prospectively since at least 1991 where taxation ruling IT2651 was then followed by a number of cases, which I can go through if necessary. Here's the position of the ATO since 1991.

Ms Fish: I don't have anything to suggest that's not the case.

Senator SMALL: If I'm wrong then, please correct me if I'm wrong, in the case that's being advanced in the High Court the effect of success would be such that anyone can establish a discretionary trust—that's standard—and distribute a profit to an unknown and non-consenting beneficiary and that the same beneficiary after 30 June would be stuck with a potentially significant tax liability?

Ms Fish: Of course what the commissioner and the way that Division 6 works is to effectively tax the income either in the hands of the beneficiary or the trustee. So what we need to do when we are assessing beneficiaries is work out whether they have a present entitlement to that income so that the trust income is taxed in their hands or whether no-one is presently entitled, in which case it's taxed in the trustee's hands.

So the income of the trust must be taxed somewhere. And the question really is: where is it taxed? That turns on whether there is a present entitlement to that income. And if there is, then it's taxed in the hands of those who are presently entitled; and if there is not, it's taxed in the hands of the trustee; so the income is taxed at one level all together.

Senator SMALL: Which is the status quo now but that's obviously the matter you're currently litigating in the High Court because a taxpayer is currently, and has been since 1991, able to disclaim that benefit?

Ms Fish: Disclaim it, yes, as a matter of trust. They are entitled to the payment of the amount from the trust; that's correct. I can take any further questions about the detail of the case but there are also matters of period of review as well.

Senator SMALL: But wait, there's more! What stakeholder—

CHAIR: Just for planning purposes, Senator Small, you've got about three minutes left.

Senator SMALL: Okay. On notice I will look for some detail on what consultations the ATO might have undertaken with stakeholders like Treasury on this matter. But earlier this morning I believe you said words to the effect that taxpayers have a right to independent review. Is the ATO Review and Dispute Resolution Team currently headed by Ms Andrea Jennings?

Ms Fish: The review and dispute resolution business line in the ATO is headed by Deputy Commissioner Jeremy Geale.

Senator SMALL: The same taxpayers in this matter, Carter & Ors v ATO, in January 2021 lodged a further objection which demonstrated that the ATO's calculations were incorrect as they ignored significant costs, including interest, borrowing costs, land tax, council rates et cetera—and I am happy to provide on notice all that detail. Ultimately the objection arguably demonstrated that there was no tax for profit capable of being distributed. Never mind the arguments around distribution, the underlying assessment was wrong.

Two weeks ago the ATO refused to consider that objection on the basis that it was lodged out of time. Can I ask how the ATO frames that as reasonable to litigate something that has been extensively prosecuted through the courts? You lost at the Full Federal Court unanimously. You're now going to the High Court and you won't review evidence that says the underlying assessment is wrong. I'm not looking for an argument around nuances of tax law. I'm asking if you look down a camera at the Australian people and tell them that that is the responsible and right thing to do on the part of a revenue authority.

Mr Jordan: I think we need to understand more precisely what you're talking about. We're very happy to do that because, to state the obvious, if you have trust income someone is entitled to tax.

Senator SMALL: The point is, commissioner, that the taxpayer has tried to lodge an objection demonstrating comprehensively, with forensic financial reports and whatever, that there was no income. And yet the ATO has refused to look at that objection whilst prosecuting this in the High Court, having lost a Full Federal Court case unanimously.

Mr Jordan: I—

CHAIR: I would point out that the commissioner is under certain privacy obligations as well.

Mr Jordan: This is at an extreme end of things. I would just need to know what's the background to that matter because if an objection is lodged we have to look at the objection because we've got to determine it one way or another. So you're saying we're refusing to look at the objection. We have a responsibility to make a decision on that objection; so someone must look at it within the ATO.

Senator SMALL: I've seen the correspondence from the ATO refusing to look at it. So on notice, I would appreciate a very comprehensive response as to how the ATO justifies that.

Mr Jordan: I don't want to sound defensive here but often there are two sides to a story.

Senator SMALL: And that's what I'm looking for.

Mr Jordan: It sounds somewhat unusual what you're putting. I would like to have the opportunity to see what the background to such a matter is.

Senator SMALL: I appreciate that. I appreciate your time and commentary.

CHAIR: Just for everyone's planning purposes, because there are still a number of senators with questions, we will go to 15-minute blocks. Labor will have the call, then we'll go Senator McKim, then Senator Patrick.

Senator GALLAGHER: Except, Chair, I would like to point out that there are more opposition senators.

CHAIR: Absolutely. And you have had the majority of the time.

Senator GALLAGHER: We haven't this morning.

CHAIR: I can show you, if you want.

Senator GALLAGHER: I'd be very surprised because we've had a go around the ground but—

CHAIR: You had two blocks of 30 minutes whereas nobody else has had longer than 15.

Senator GALLAGHER: Okay.

CHAIR: You have the call, Senator Gallagher. We can talk about that off line at lunchtime if you want to.

Senator GALLAGHER: No worries. It helps with the flow of the day. Thank you. Minister, can you just confirm that the IGR will be tabled or released soon, or do you have a date?

Senator Birmingham: I certainly don't have a date but yes, I can confirm it will be released in accordance with—not usual practice—the legislative requirements.

Senator GALLAGHER: You've missed those, haven't you?

Ms Mrakovcic: This is a question more appropriately put to the Fiscal Group.

Senator GALLAGHER: I know. That's why I was putting it to the minister.

Ms Mrakovcic: I think it was actually addressed by Ms Wilkinson yesterday. I think there have been—

Senator GALLAGHER: I think the Treasury said it is going to be released by the end of June. I've seen public commentary on that but I just wanted to know if that is still what we're working towards.

Senator Birmingham: My notes say the government is required to release the fifth Intergenerational Report by the end of June, and certainly my expectation is that that is what we will be doing.

Senator GALLAGHER: So it is finished by now?

Senator Birmingham: I would not say it is finished. We are still only on 2 June. There might be a bit of work still to be done.

Senator GALLAGHER: Is the government able to demonstrate, or is there any document you can release, that indicates the economic growth that will come from the stage 3 tax cuts that have formed the basis of your forecasts?

Senator Birmingham: At the time of the legislation passing there was quite a bit of debate and discussion around the economic dividends flowing from lower and more competitive tax arrangements.

Senator GALLAGHER: Has that been updated since the pandemic?

Ms Mrakovcic: There was quite a conversation at the time around the implications of the personal tax plan. You might recall that a lot of the conversation was around the benefits of enhanced incentives for participation; it was also designed with a focus on returning bracket creep. Those considerations were important in the design of the personal tax plan. There was not the economic analysis that you are alluding to.

Senator GALLAGHER: So it wasn't done, or it is not able to be done?

Ms Mrakovcic: It was not done. In terms of what may or may not have been able to be done, I would have to refer that question to my Macroeconomic Group colleagues in terms of the modelling. You might anticipate that the types of things that impact on longer term growth would come through increased participation from improved incentives to participate in the labour market, like lower average and marginal taxes.

Senator GALLAGHER: That goes to my question. It is where I started today, which was around an updated understanding of the personal tax plan and its implications both fiscally and on things like labour-force participation. In the Treasury forecast, labour-force participation declines slightly in the 2024-25 year. We know wages are very different to what they were in 2018-19, to what the forecasts were. They were forecasting at about 3½ growth. We are now forecasting it at 1¼ slightly growing to about two in the final year. This goes to the heart of my question. Why isn't the government interested in understanding that a bit more—even presuming that bracket creep is less of an issue now—if wages are growing much slower than what was expected in 2018-19?

Ms Mrakovcic: Let me make a few general observations on that. Average tax rates have been increasing for some time. It is one thing to look forward; you also need to look back at what has been happening to average tax rates over the last decade or so. There has been an increase in average tax rates and there have been some implications of bracket creep. Things like inflation and wage growth will impact on that. A number of factors are at play.

The decision around providing tax cuts to address bracket creep was broader than simply in a forward-looking way. It did not preclude that, but it was based around what had been happening historically to average tax rates as well as forward looking. When you are thinking about things like the personal tax plan, as I have mentioned, you are thinking about the impacts it will be having on longer-term growth and longer-term trends in terms of participation and how it might improve the overall supply side of the economy and change the incentives for people in terms of choosing to work more hours because essentially they are able to retain more of that income rather than pay it in tax. So that is an important consideration. But a broader range of things will impact on the assumptions around productivity growth and longer-term growth that are, for example, embedded in the IGR. You commented on participation rates—we have seen them move quite a bit in the context of the last couple of years, and even a little before COVID.

There are a number of trends going on. You would have to deconstruct a whole range of factors that are impacting on people's decisions around participation in the short, medium and longer term. I know that is not answering the answer directly but I am trying to pull a few strands—

Senator GALLAGHER: It sort of is. It makes me more interested in the information you have around this and how to make that available. If everything you say is correct—I have no doubt it is—what can you give us that explains this in light of the last couple of years? Has the government not asked to understand what the updated costs of stage 3 would be post-COVID? Is that just not a question you have asked or are interested in? You think it is legislated; therefore, it costs what it costs?

Senator Birmingham: There are a couple of points there. One is that it was a policy commitment of the government. We remain committed to delivering on and implementing policy commitments in that sense. The other more general point is that we made it a policy commitment because we were persuaded of the benefits to households of lower tax rates—particular benefits accruing by implementing the reform of eliminating tax bracket and delivering for the vast majority of Australian workers a top marginal tax rate of 30c in the dollar. We were also convinced at the time of the economic dividends that can come from those tax reforms, in terms of: the additional income that will enable disposable spending across the economy, of people being able to make their own spending and investment and savings choices, and from reforms of the overall structure of the income tax system.

In 2024-25, in terms of the parameters, we see a forecast there for strong nominal GDP growth in this budget—back up to five per cent—and for unemployment to be down, at 4½ per cent. A range of factors driven by our economic recovery plan feed into that; it is about the plan overall. These measures are a key part of our longer-term economic policy settings as laid out a number of years ago which, despite the COVID changes, we think remain as, if not more, important.

Senator GALLAGHER: What economic growth will we get from stage 3 tax cuts updated for 2021-22? What is the growth dividend for the economy? Will the tax cuts be funded by growth, as was originally anticipated?

Senator Birmingham: To unpack some of that—

Senator GALLAGHER: And to answer it.

Senator Birmingham: There are a few questions there.

Senator GALLAGHER: There were three.

Senator Birmingham: In terms of the first part of your questions, the answers are the same as we gave this morning. We don't go over and remodel decisions taken and legislated and put into budget settings a number of years ago at budget updates into the future.

Senator GALLAGHER: It has not been done, I think, was the evidence. Yes?

Senator Birmingham: In terms of the funding and the impact of those tax cuts over the medium term you can see—whether it was in this committee or the finance committee where we spent a lot of time together; I do not quite recall—that the peaking of debt levels, stabilisation and downward trend that occur are outlined on pages 215 and 209 of the budget papers. Just as those budget outcomes include commitments made in this budget, like the aged-care reforms, they also fully reflect the legislative decisions in relation to the tax reforms.

Senator GALLAGHER: That is a long way of saying that you will be borrowing for the tax cuts essentially, across the medium term?

Senator Birmingham: The continuation of deficits declining as a share of GDP is outlined in the budget. The fiscal strategy obviously outlines our objectives in terms of stabilising and decreasing debt as a share of GDP.

Senator GALLAGHER: But they won't be funded by growth, will they?

Senator Birmingham: The improving budget position is delivered by growth.

Senator GALLAGHER: Yes, but it is a very different position; it has not been updated for it.

Senator Birmingham: It is a part of that. It is a very different budget position following the pandemic but it is proving that budget position is driven by growth. A factor in that growth are more competitive tax rates that provide households with greater capacity to spend, invest and save across the economy.

Senator GALLAGHER: I have some questions about the table on page 148, statement 5 in BP1. In the 2023-24 and 2024-25 years there is quite an uptick in company tax receipts. Can someone explain—

Senator Birmingham: I think that would be the washing out of the full expensing and loss carry-back measures.

Ms Mrakovcic: That is correct.

Senator GALLAGHER: That is the year that they pay for themselves?

Ms Mrakovcic: A number of things would be going on. There would be also the general parameter improvements in terms of whatever is in the economic projections feeding through. But also it would be reflective of where the temporary measures are at.

Ms Di Marco: That is correct. Another way to think about it is that 2022-23 is particularly affected by the presence of full expenses and loss carry-back over that period. So in the subsequent years you see the impact of the policy's application having ceased, plus the clawback that you get.

Senator GALLAGHER: Now that we've hit temporary expensing, can I just ask about that? If I compare the 2021-22 budget measure with the 2020-21 budget measure—the one in this budget isn't a year's extension—are those profiles on the temporary expensing extension on top of last year's temporary full expensing to support the investment end of it?

Senator Birmingham: Yes. You're talking about the profiles in BP2?

Senator GALLAGHER: Yes. It's 27 billion, I think, costed in last year's budget and this is an additional 17.

Ms Mrakovcic: That's correct.

Senator GALLAGHER: It's not a changing—

Ms Mrakovcic: It's not a revised costing.

Senator GALLAGHER: That's where I was going.

Senator Birmingham: That's right.

Senator GALLAGHER: It is a technical term.

Senator Birmingham: This is the equivalent of last year's budget reflecting the bringing forward of stage 2 that had only indicated the revenue changes of that bringing forward, not the changes that had already been reflected in the budget.

Senator GALLAGHER: That's what I understood it to be.

Senator Birmingham: If you look at the intersection there in that table, you can see that the drop-off in the cost of the full expensing extension in 2024-25, relative to 2023-24, is overlaid with expected overall growth in terms of company tax receipts and explains why you've got that jump.

CHAIR: This is the last question for now.

Senator GALLAGHER: I will have to come back to this. Do you have any actual understanding of how well that's been utilised to date or is it too early? We've seen it reflected in some of the other data sets as capital investments.

Ms Mrakovcic: I know that the issue came up yesterday morning in terms of the Macroeconomic Group. Some of the recent results in terms of the quarterly growth in relation to machinery and equipment, generally non-mining business investment and the pick-up have been noted, as have the surveys around expectations and what companies expect. There are a lot of positive partial indicators around the fact that it does seem to be working. To go to the second point that you raised, we will start seeing clear evidence of that once returns are lodged. That will come at the end of this financial year. Hopefully, we'll start seeing some information in a few months time, but obviously it will depend on when companies launch.

Senator GALLAGHER: My final one, and then I will leave this issue: is it still expected to essentially pay for itself? The last time I think we had Dr Kennedy in here he was saying that, because you're bringing forward a whole range of expenditure, it's then offset, essentially, in later years; so that still works with the extension?

Ms Mrakovcic: That's correct. Basically, you're still, if you like, depreciating the full amount; it's just that you are able to do it upfront. That provides an extra incentive in terms of timing, if you like, to encourage the activity to be brought forward or, indeed, some additional activity.

CHAIR: We will go to Senator McKim and then to Senator Patrick.

Senator McKIM: Thanks, Chair. I just had some follow-up and further questions on the petroleum resource rent tax. I thank Mr Hirschhorn for doing some heavy lifting for us this morning. Is Mr Hirschhorn there?

Senator Birmingham: He is now.

Senator McKIM: Thanks, Mr Hirschhorn. Earlier you spoke about two different classes of carried forward expenditure with regard to the PRRT. If I understand you correctly, there's one class that you're describing as trapped or effectively lost and another class which is functional. Is my understanding correct, that you have separated the carried forward expenditure into those two classes; and could you just unpack for the committee what you mean by those terms?

Mr Hirschhorn: This is more a conceptual concept; it's not something that's really possible to quantify at a precise level. Fundamentally, PRRT is based not on a normal taxpayer-by-taxpayer basis but on a project-by-project basis. A particular project could have had a lot of expenditure spent on it, but it's not a very good project; it will never recoup the amount of investment plus uplift that's been put into it. That was particularly the case, can I say, for onshore projects before they were mostly excluded from the PRRT. Most onshore projects would never pay PRRT because they were never going to be profitable enough to recoup the expenditure.

So, really, what I was saying is that you should not think that there is a bank of 208 billion of carried forward expenditure and then do a simple, 'Oh, if we're getting 30 billion a year, it will take 10 years to chew through it', because a chunk of that 280 billion is in relation to projects which will never foreseeably pay PRRT because they will never actually recoup the investment with uplift.

Senator McKIM: I understand. Thanks, Mr Hirschhorn. You said it's not possible to quantify at a precise level. Do you have any ballpark figures that you'd be prepared to share with the committee?

Mr Hirschhorn: I do not have any ballpark figures that I would be able to share with the committee. I can take on notice whether we can provide anything. The trick is that it is project by project.

Senator McKIM: Understood.

Mr Hirschhorn: There's an additional complication in that we actually publish taxpayer-by-taxpayer specific PRRT data.

CHAIR: Would it potentially change year on year? As projects become more or less profitable, the price—

Mr Hirschhorn: Indeed. Let's say, for example, there was a massive spike in gas prices and suddenly gas was getting much more, there is a possibility that some projects which, on a particular range of gas prices we thought would never be profitable, might actually become profitable. So there is that potential. I'm not sure that I'll able to provide anything, but I'm happy to look into seeing whether we can provide something.

Senator McKIM: Thanks, Mr Hirschhorn; I appreciate your taking that on notice to see what you're able to provide. In terms of carried forward expenditure that you described as trapped or effectively lost, could that be in respect of projects that are currently operating, could it be in respect of projects that have actually finished, or could it also be in respect of projects that have not yet substantially commenced—exploration expenditure, for example?

Mr Hirschhorn: Yes. The expenditure that we report is in relation to projects which may have finished or may be at the end of their economic life. It could be those which are well-functioning, so mid-economic life. Given the nature of how we collect the data and the obligations to provide PRRT lodgement forms, the figures will generally not include companies which are yet to sell a barrel of oil or gas. There's a first lodgement obligation which is when something is produced.

Senator McKIM: Thanks for that, Mr Hirschhorn; that's useful. Would you be able to provide, potentially on notice, how many projects there are on which carried forward expenditure is trapped or effectively lost?

Mr Hirschhorn: We'll see what we can do. We can certainly provide a number of projects that we have lodgements for. We'll see what we can do in terms of other cuts.

Senator McKIM: Thank you. Just to be clear, I think you've taken on notice whether you're able to provide a ballpark figure on how much of the 282 billion that's currently in the carried forward expenditure category is trapped or effectively lost. I think you've taken that on notice; is that right?

Mr Hirschhorn: Yes. We'll see what we can do.

Senator McKIM: Thank you.

Mr Hirschhorn: I can't promise, but we'll see what we can do.

Senator McKIM: I appreciate that; thanks, Mr Hirschhorn. The *Guardian* published an article on 12 April this year that quoted Shell's 2020 annual report which stated that unrecognised losses under PRRT are expected to increase in the near future. Are you aware of that statement by Shell?

Mr Hirschhorn: Yes, I am aware of that statement by Shell.

Senator McKIM: Are you aware whether that statement is in regard to the Gorgon project, which is Australia's biggest gas project?

Mr Hirschhorn: All I'd say is that I am aware of the article. I really can't go too much beyond the article. It's a matter of public record as to the major projects that Shell invests in.

Senator McKIM: Thank you. The article's based on Shell's annual report. Are you aware of Shell's annual report as opposed to the reporting of Shell's annual report in the article?

Mr Hirschhorn: As an organisation, we are aware of Shell's annual report.

Senator McKIM: Thank you. If prices for gas remain the same, does that mean that Shell won't be paying any PRRT tax in Australia in the near future?

Mr Hirschhorn: Just commenting on the article and their comments rather than the underlying facts of Shell, the press release which says that $40 billion of losses will not be recognised. If I go back to your earlier comments or your earlier line of questioning, it is effectively Shell saying that it has $40 billion worth of carried forward expenditure, which would imply—I'm not sure if that's the tax effect or if that's the gross—that it's got $40 billion. I'm not sure if that's 40 billion of expenditure or 40 billion worth of expenditure, off the top of my head, that is, effectively, in that trapped bucket. As to the accounting test, I will confess that I am a chartered accountant, but that was a long time ago.

Senator McKIM: And I'm not.

Mr Hirschhorn: My understanding is that there's a recognition test in accounts for losses, which I think is now a balance of probabilities, but there are some tests. They are effectively saying that they cannot recognise this as an asset because they do not think it will be used by them in future.

Senator McKIM: That would put it, in your words, into the trapped or effectively lost part of the carried forward expenditure rather than the functional part?

Mr Hirschhorn: Indeed.

Senator McKIM: Thanks. Does the ATO know how many projects are in a similar situation, not in terms of the trapped issue but where carried forward expenditure is expected to increase in the near future?

Mr Hirschhorn: Can I say it's a small population which is subject to PRRT. We interact with all those companies. Our primary goal, for those who are paying, is to make sure that they're paying the right amount. At the moment that's mostly the Bass Strait oil or petroleum. For the gas companies, our main goal is to work out whether they are calculating their carried forward expenditure correctly, so that when they start eating into that carried forward expenditure they start paying PRRT as soon as they should. We are much less interested in working out whether a project is likely to pay PRRT and when. In a sense, it's a more theoretical question for us. We're cash people at the Tax Office. There is a power, as I understand it, in the recent PRRT changes—the tranche 1 changes in response to the Callaghan review—where it is possible for us to say to a project, 'You have convinced us that you will never be in a PRRT-payable position; therefore, you don't need to lodge returns any more in relation to that project'. I am not aware whether we have used that power as yet.

Senator McKIM: Thanks, Mr Hirschhorn. I have a couple of other detailed questions on those matters, but I'll put them on notice in writing in the interests of time. I wanted to ask the minister a couple of questions about the PRRT. Minister, would you accept that the petroleum resource rent tax, as it's currently constituted, is an abject failure in ensuring that the planet-cooking companies pay their fair share of tax in Australia?

Senator Birmingham: No.

Senator McKIM: On what basis are you suggesting that the planet-cooking, climate-wrecking companies are paying their fair share of tax when, in fact, Shell, which runs, at least in part, the biggest gas project in Australia, is going out publicly and saying it expects to pay no petroleum resource rent tax on the Gorgon project at all, for the life of the project? How could you possibly argue that Shell is paying its fair share of tax when it's likely, from Shell's own words, that it's going to pay no tax at all, no PRRT tax at all, on the biggest gas project in Australia?

Senator Birmingham: There are a couple of things. I will not waste the committee's time by responding to many of the more inflammatory elements of your remarks.

Senator McKIM: You don't think gas companies are cooking the planet? Have you heard of this thing called climate change?

Senator Birmingham: The officials have just taken us through some of the technical issues there, and indeed the work done by the ATO in particular to ensure the integrity of the operation of those tax arrangements. The broader point I'd note is always that focusing in on just one area of tax collection is to not note the other contributions that are made through the tax system by entities.

Senator McKIM: But one in three in the top 100 earning companies in this country pay no tax at all, Minister.

CHAIR: We'll take that as a comment, Senator McKim. We need to do a quick stocktake. Theoretically, we are out of time for this area. However, we still have senators with questions, so we will continue. Minister, are you going to stay at the table?

Senator Birmingham: I am happy to stay until the transfer point, Chair. Just to supplement an answer to Senator Gallagher before, I had a chance to look at the national accounts data. You were asking about the impact of full expensing. The national accounts data does show a rise in new machinery and equipment in private business investment, up 10.3 per cent. As one dataset, I haven't had a chance to read through the full analysis of the national accounts whilst sitting at the table, that one's germane to a question that you asked before, Senator.

Senator GALLAGHER: Thank you.

CHAIR: Thank you, Minister. Senator Patrick, you have the call.

Senator PATRICK: Just very quickly, Mr Hirschhorn, yesterday we talked about companies that were repaying JobKeeper. Could you take on notice, in order to find a balance between approval from the companies and obligations to answer the questions of the Senate, whether or not you could perhaps contact those companies, and take on notice a list of companies that have paid back JobKeeper and/or are discussing it positively with you—again, assuming they're comfortable with their name being on a list?

Mr Hirschhorn: I spoke about 47 companies; 33 who have paid and 14 who have committed or are in discussions with us about paying. I would say that most of those 47 are on the public record as saying that they were going to repay some or all of their JobKeeper. There are some on that list of 47 who are paying back privately. They have not sought to publicise their repayment.

We have been grappling, in the context of taxpayer secrecy, with what would happen if somebody promised to pay back money publicly and then did not pay back money, because that would not be great for the confidence in the tax system. I'm happy to report that at the moment that is a theoretical problem only, not a practical problem.

Senator PATRICK: Could you take on notice providing a list of those companies? If you came back and said, 'Here are the companies that agreed to provide their names'—not setting up a contest in any way about oversight—

Mr Hirschhorn: We will take that on notice and consider it. Certainly, we can definitely provide a list of those who we are aware have publicly said that they were repaying JobKeeper. We will consider what we can do with those who have not publicly said they will repay.

Senator PATRICK: Thank you very much. How are we going with Lendlease? This is the issue that we bring up at every estimates or so.

Mr Hirschhorn: Maybe to give some context—I don't talk about individual taxpayers—there is a draft ruling and determination in relation to deductions or expenditure on converting retirement village leases. I am sorry; I've got it the wrong way—leases to loans or loans to leases. I might pass over to my colleague Kirsten Fish. It's fair to say that the determination has not been finalised yet.

Senator PATRICK: It's taking a long time; that's where I'm going.

Mr Hirschhorn: It is taking a long time. I would make the additional comment that the area of retirement villages is complex because we have had previously public binding rulings in relation to certain retirement village aspects: There are interactions between our previously binding rules and this potential new determination, so we're working through those things. Of course, I would hope that a major company would not seek to say, 'I get cost base notwithstanding that I claimed a deduction because I should never have received a deduction, but you are giving me that deduction because of a public ruling.' I might pass over to my colleague.

Senator PATRICK: Often it comes down to the circumstances of the case. Certainly, even if you have potential binding rulings, there may be a circumstance that changes or puts the issue under examination outside those rulings.

Mr Hirschhorn: A binding ruling is only binding to the extent of the facts and circumstances underpinning it. It is a complex area. That is why it's taking a while to finalise.

Senator PATRICK: That's about the level of detail I wanted, anyway. I don't like you leaving the table; I like you being around. You're like one of these little lights that you turn on for your kids at night to keep everyone calm.

Mr Hirschhorn: I'll take that as a compliment, Senator.

Senator PATRICK: I apologise if it affects your career adversely that I said something nice about you.

Mr Jordan: It certainly will!

Mr Hirschhorn: It has been lovely, Commissioner!

Senator PATRICK: I might go to the commissioner now. I've had a conversation with Social Services about tax returns for paying parents—parents that are obliged to pay child support. Answers were provided on notice that a number of customers hadn't lodged a tax return for five years—79,000; for 10 years, it was 16,000; and for two years, it was 196,000. I note that, as you get closer to that, there are some valid reasons why people may not have lodged a return if they're connected to a company or something like that.

The concern is that you could have a paying parent who simply is not updating their increasing salary or a new job that they've got that would otherwise result in the payment of more child support, more support for the child. I'll read Ms Skinner's evidence when I raised this, although I think they were going to discuss it with you. She said, 'Some people aren't required to lodge tax returns; it's a matter for the tax office.' They flick-passed it back to you. I pressed them. What's happening in the space, in relation to people that are not lodging tax returns, which I understand is a requirement in law, and the interaction with child support?

Ms Smith: We have a special program for this. Where we are advised that there is a client that has not kept up to date with a child's benefits, we have a list, and we have a special program. We work closely with Services Australia on ensuring that we pursue that lodgement. Vivek Chaudhary actively manages this.

Senator PATRICK: How do we get to these numbers, that Social Security supplies me with, where they say customers haven't lodged a tax return for five years—79,000?

Mr Chaudhary: I will make a couple of overarching observations in relation to this. There is a focused lodgement enforcement agreement between Services Australia and the ATO. Through that program we exchange data. We receive cases that the Child Support Agency wants us to prioritise. Within the scope of the program, there are 10 broad priority categories. Seven of the 10 will look at aspects of whether there are multiple tax returns that are outstanding.

The number of tax returns outstanding contributes to the priorities. However, it's not the only determinant to establish the priority that is set by the Child Support Agency. We, in the ATO, will regularly pursue those cases on priority, and we report quarterly. We discuss those results and work collaboratively with Services Australia to continue to improve that system.

Apart from the cases that we receive to focus on for child support, that is not to say that our broader lodgement noncompliance programs or lodgement enforcement programs would also continue to target, either through data, information or behaviours, that we are picking up, in many cases through the black economy program, the tax avoidance task force program. We receive nearly 10,000 a year—a number of tip-offs into the tax integrity centre, for which many cases would have matters of child support. More specifically, we could identify the source of the information that you referred to, in terms of the five or more years?

Senator PATRICK: It was a question on notice to Social Security—SQ2000221. I'm trying to reconcile it. For me, there are children out there that are not receiving the correct amount of child support because a parent is not lodging their tax returns. I've raised it a couple of times with Social Security and they tend to flick it back to you guys. Someone's got to take charge of this. I would have thought it would be in the interests of the tax office, obviously, to have everyone lodging their tax returns on time, or at least reasonably on time, but perhaps a priority could be given to those where children are no doubt suffering as a result of an incorrect amount of child support being paid.

Maybe you can have a look at that question on notice and come back with an explanation as to why you think the numbers are so high, noting that, ultimately, it is supposed to be the tax office that enforces the law around those returns. Could you take that on notice?

Mr Chaudhary: Briefly, Senator, if I could give you some perspective on the reasons why we would see a number of tax returns that remain outstanding, either immediately or indefinitely, there are cases where matters of debt are not identified until late; there are cases where some of the parents may be incarcerated. There are also parents that cannot be located. Those three things apply, broadly, to any matters of non-lodgement, so they're not strictly for—

Senator PATRICK: Sure. To assist me, have a look at that question and then give me a total number of people who have not lodged tax returns that are not necessarily related to parents, just so that I can see the apportionment of it. I will leave it there, because I have one more very short line of questioning.

CHAIR: You have a couple of minutes to go, Senator.

Senator PATRICK: Thank you for that. I'll almost certainly come back. I'm going to Social Services on this on Friday and I will almost certainly come back. Commissioner, just in relation to the IGT report into PMT, the couple that own the gold company, it concerns me that we're seeing garnishees turning up again, particularly in circumstances where it appears as though communication hasn't really occurred.

CHAIR: Senator Patrick, I don't want to interrupt you but Senator Small has actually asked quite extensive questions on this. Correct me if I am wrong, Commissioner Jordan.

Ms Smith: That's correct.

CHAIR: Senator Small covered this issue in quite a lot of detail.

Senator PATRICK: I might go and read the *Hansard*. There were a couple of recommendations from the IGT. One of them was perhaps to re-apologise to them. Has that occurred?

Ms Smith: Can I take that on notice? Wherever we don't get it right we are very quick to want to remediate and apologise. If that's what's necessary, we absolutely will. I've since received a little bit of information regarding the case. So I will make sure that I'm across that and that the remediation that we take is accurate.

Senator PATRICK: So the IGT has reviewed the ATO's apology to PMT issued on or around 25 September and is of the view that the ATO should consider re-issuing its apology. That's the recommendation from the IGT. Just in general, as a last question, again on garnishee notices, I know there was a dispute about whether the ATO had any evidence or had properly recorded information as to whether or not they had contacted people. But again issuing garnishee notices is quite destructive. How do we get to the point where that occurs without that communication?

Ms Smith: I would first like to say the number of garnishees obviously that have been issued in the last few years is very low compared to where it has been. And this is in part because of COVID but it's also in part because, you might recall, we've had inquiries into this—you and I have been involved—and at the time of that inquiry we had 16 of 19 recommendations from an IGT report that we were partly through implementing. We've since had reviews done by the ANAO, the IGT and others as well as our own internal audits. We have a team constantly improving how we do this.

There are a couple of things I'd like it say. The first one is that we are putting a lot more effort—we'll be able to show you this numerically—into the early engagement with clients, the letters, the SMSs, so that we don't have to get to firmer and stronger action. It's been quite a deliberate shift and we're looking at exactly how we add that up.

I know for example we're already getting the same number of inbound calls from clients who have had so much engagement early with letters and SMSs. We've got more inbound calls coming in now than we used to get pre-COVID. So we're seeing the effects of this and we're seeing actually that in March we had 80,000 payment plans set up and in the month before—I might have got these months wrong—it was 30,000. So we're seeing actually some really positive signs. We're seeing the kept rates, the way that people are actually engaging with us and are paying those payment plans. We're delighted in seeing this getting better. So we're focusing all our metrics on early engagement.

In addition, the last thing I'll say is we've put an enormous amount of rigor around what was already a very robust process around garnishees but we've since implemented a panel to ensure that you don't just introduce a lot more safeguards. There are occasions where we do. I'll leave it at that. I don't want to go on and make it a PR exercise.

Senator PATRICK: Just on notice then can you provide your statistical and numerical picture and perhaps go longitudinally so that we can see the comparison to what you were doing perhaps back as far as 2015-16 versus where you are now?

Ms Smith: Yes.

CHAIR: That might be something where it might be worth the committee having a bit of a briefing on the change of internal processes because I think a number of senators would actually be quite interested in that.

Senator PATRICK: Yes, I certainly would.

CHAIR: Senator Gallagher, you have the call.

Senator GALLAGHER: And we break at 12.45—is that right?

CHAIR: Honestly, I suspect the minister and the officials would sooner get this section of the program done, so let's try and get through it.

Senator GALLAGHER: Minister, the Victorian government's announced another seven days as a continuation of another seven-day lockdown. Is the federal government going to step in and provide some assistance to Victorian workers and businesses?

Senator Birmingham: I've seen some information of the announcement that's been made whilst I've been sitting here. I've been sitting here all morning but the announcement was made in the last hour. I gather from what I've seen there may be some variations to some of the terms particularly as they relate to regional Victoria. We will certainly move to understand what Victoria's decisions are and assess circumstances appropriately from there.

Senator GALLAGHER: This isn't something that's a surprise, I don't imagine. Yesterday there was a lot of speculation, based on the number of cases, that this lockdown was going to be extended. Has the government not considered a financial assistance package to workers and businesses in Victoria?

Senator Birmingham: The government's provided more than $45 billion of financial assistance to Victoria through the life of the pandemic. We welcome, on top of our $45 billion, the around, I think it's, $250 million that the Victorian government announced for this shutdown to date. The number of—

Senator GALLAGHER: I'm asking about this shutdown.

Senator Birmingham: A number of Commonwealth government measures, pandemic leave payments, emergency assistance measures, as well as measures germane to those sitting at the table at present, such as lost carry-back arrangements and so on—

Senator GALLAGHER: So that's it?

Senator Birmingham: continue to provide assistance in relation to Victoria.

Senator GALLAGHER: So that's it?

Senator Birmingham: We have said over the course of the last week that we would continue to monitor the situation as it relates to Victoria and respond accordingly. We of course are monitoring that. And with this announcement having just been made we will give any consideration that's appropriate. I'm not in a position to give you any announcements at present in relation to—

Senator GALLAGHER: Has the ERC met to discuss an assistance package for Victoria in the last week?

Senator Birmingham: I'm not going to go into cabinet deliberation processes—

Senator GALLAGHER: I'm not asking you about deliberations. I'm asking if you've met.

Senator Birmingham: You're asking me about whether certain topics have been discussed. I've been sitting here all morning. I've no doubt that I'll have discussions with the Treasurer and the Prime Minister and other relevant ministers about what's occurred in Victoria just as we have had a number of such discussions over the course of the last week.

Senator GALLAGHER: The Victorian government have put in another $209 million, I think, bringing the total of their assistance up to $460 million. Does the government not think it's their responsibility to support Victorians at this point in time and with some urgency—

CHAIR: Sorry, what figure, Senator Gallagher? Seriously!

Senator GALLAGHER: In relation to this latest lockdown. It's not a joke. Businesses and casuals and workers will be losing pay in this lockdown. We're halfway through it. There's another week to go. Is there any urgency to respond to the situation as it's unfolding in Victoria?

Senator Birmingham: These are serious times for Victorians; there's no doubt about that. The scale of Victorian financial assistance to Victorian businesses, workers or households still pales into insignificance when compared—

Senator GALLAGHER: Yes, because you're the federal government.

Senator Birmingham: with the scale of Commonwealth assistance that has been delivered through the life of the pandemic.

Senator GALLAGHER: Yes, because you're a bigger government with more resources available and you've stepped in nationally, as you should.

CHAIR: Senator Gallagher, allow the minister—

Senator Birmingham: The Commonwealth government and the Victorian government are both responsible for the same number of Victorians, and you try to draw some sort of strange comparison of the size of government. Yes, we're responsible for the nation.

Senator GALLAGHER: Yes, with the revenue-raising capacity and the fiscal levers to provide that level of support.

CHAIR: Senator Gallagher, please stop interrupting.

Senator GALLAGHER: Are you pretending that the Victorian government has the same ability as you to intervene and provide support?

CHAIR: Senator Gallagher, please stop interrupting the minister.

Senator Birmingham: I wouldn't expect the Victorian government to provide nationwide responses. What we have seen through various more regionally specific lockdowns by states and territories is that they are better placed in the main to provide regional-specific responses to different communities. I appreciate this is now going for a longer period and, as I said, I would anticipate the Treasurer, the Prime Minister and I and other relevant ministers will be having discussions about the implications of this when I'm not sitting here at this table.

Senator GALLAGHER: But you don't know. You haven't been asked to attend a meeting?

Senator Birmingham: I am certain that we will be having those discussions, as we have over the course of last week and as we have had at countless intersections over the course of the last nearly 18 months.

Senator GALLAGHER: How are you certain? Why are you certain that you will?

Senator Birmingham: Because the Treasurer, the Prime Minister and I talk about these matters in one way or another on a very regular basis.

Senator GALLAGHER: So the Victorian government has put in $460 million. And as it stands halfway through the lockdown, as we now understand it, the Commonwealth is not putting in anything—zero.

Senator Birmingham: That's not true.

Senator GALLAGHER: It is in relation to this.

Senator Birmingham: The Commonwealth has a number of ongoing policy supports that apply uniformly across the country—

Senator GALLAGHER: But not specifically in relation to this lockdown.

Senator Birmingham: and provide assistance to certain individuals and businesses in different ways that will be helping Victorian businesses or individuals through this lockdown. The result of this lockdown will no doubt be that in part more Victorian businesses will call on the loss carry-back than businesses in the rest of the country might.

Senator GALLAGHER: Do you reckon—

Senator Birmingham: The result of this lockdown will be in part that more Victorians will call on the pandemic leave payments from the Commonwealth than other Australians would do so. These are measures that we already have in place that provide—

Senator GALLAGHER: You know that that does not apply to the majority of workers who will be affected by this lockdown.

Senator Birmingham: I am just refuting your suggestion that nothing is flowing to Victoria. That is not true.

Senator GALLAGHER: There is no additional support for Victoria from the Commonwealth government halfway through the lockdown.

CHAIR: Senator Gallagher, please stop interrupting the minister.

Senator GALLAGHER: There is no additional—

CHAIR: Senator Gallagher!

Senator GALLAGHER: I'm trying to ask a question.

CHAIR: He's trying to speak and you keep interrupting.

Senator GALLAGHER: He wasn't speaking.

Senator Birmingham: There is clearly additional support that flows as a consequence of Victoria's changed circumstances from the ongoing pandemic policy settings that the government had in place.

Senator GALLAGHER: The pandemic leave payments—is that it?

Senator Birmingham: And other economic supports that are there. As I've said, I fully anticipate, when I'm not sitting here, being in a position to have discussions with other relevant ministers about an announcement that has only been made whilst I've been sitting here.

Senator WALSH: What income support is available from the federal government to workers who have no income in Victoria today?

Senator Birmingham: Income support arrangements with the waivers that we've put in place in terms of normal waiting time arrangements continue to exist. So we have again ensured that the requirements for searching for work are suspended, waiting times in terms of accessing income support waivers are in place, assistance to make sure that applications for those income supports are processed quickly. We've made sure that those policy levers that again exist and would be important to Victorians at present are accessible.

Senator WALSH: So your message to Victorian workers today is to go to Centrelink and queue up and try your luck? That is your message to Victorian workers today?

Senator Birmingham: No. I'm not going to let you put words in my mouth. I've just responded to your question about what income supports are available and outlined some of those that are relevant.

Senator WALSH: The Victorian government has made a request, as I understand it, to the Treasurer for JobKeeper to be reactivated for Victorian workers. Is that something that the government will consider?

Senator Birmingham: It is a regional-specific shutdown. There would be particular challenges, especially for businesses that operate national payrolls but that have a presence in Victoria, if we were to go down that type of policy pathway.

Senator GALLAGHER: So you would rule that out because of difficulty in implementing it?

Senator Birmingham: If you logically think through the fact that you have national businesses or businesses operating across states that have a presence in Victoria, the way JobKeeper has worked to date would be a difficult approach to apply in that regard. Which is why in relation to some of these regionally specific lockdowns to date responses delivered by states and territories are able to be more effectively targeted than responses like JobKeeper, which worked as a very effective response when it could be applied informally across the country.

Senator GALLAGHER: That sounds like a 'no' to JobKeeper. Surely it is not beyond the wit of the federal government to work out how to provide wage support to affected workers within a certain geographic location. Are you saying that is impossible?

Senator Birmingham: I would not want to say that anything is completely impossible. What I was responding to before was your specific question in relation to JobKeeper.

Senator GALLAGHER: Will you consider some kind of support for workers who are going to be without wages in Victoria or have their incomes affected by this shutdown?

Senator Birmingham: That again is asking me to pre-empt any policy decisions that may or may not be made and to pre-empt discussions that I would anticipate having with the Treasurer, the PM and other colleagues outside this room.

Senator GALLAGHER: Why is it taking so long for the Commonwealth to consider some kind of fiscal support directly into the Victorian economy? I don't understand why it would take you so long.

Senator Birmingham: I don't accept that characterisation. Firstly, the Commonwealth has, as we have discussed, provided enormous magnitudes of fiscal support into the Victorian economy; a range of policy settings continue to provide support into that economy. We have for some period of time now recognised that in terms of shorter-term, regionally specific lockdowns or shutdowns, it was more appropriate for states to target and support in response to those that are separate to the national policy settings.

Senator GALLAGHER: So it is the states' problem?

CHAIR: Senator Gallagher!

Senator Birmingham: I appreciate that this announcement today extends this lockdown and that is why I expect it will be at least the subject of discussions as we assess what the consequences of it are.

Senator GALLAGHER: We look forward to hearing back about what you will do—hopefully, with some urgency. I have updates on multinational tax work. I think we have this update at every estimates. Maybe if we start with the transparency task force.

Mr Jordan: The Tax Avoidance Taskforce, are you referring to?

Senator GALLAGHER: Is that its formal name?

Mr Jordan: The Tax Avoidance Taskforce.

Senator GALLAGHER: Sorry.

Mr Hirschhorn: Before I respond to this line of questioning, I would like to clarify some evidence I gave before to Senator McKim. It is a fine point, but I want to clarify the record. The power for the ATO to declare a project as never PRRT paying and take it out of the PRRT lodgement system is part of the tranche 2 of the Callaghan reforms, and so has not yet been legislated.

Senator GALLAGHER: Sorry, Mr Hirschhorn, I was distracted. Could you repeat that?

Mr Hirschhorn: One minor point I spoke with Senator McKim about was the ability of the ATO to say to companies, 'You don't have to lodge returns anymore because you have proven to us you will never pay PRRT'. I said that that was part of the tranche 1 reforms, but we had not yet exercised the power. It is in fact part of the tranche 2 reforms, so it has not yet been legislated.

Senator GALLAGHER: Okay; you were just correcting. Let me get my task force right first; in my notes it says that the 'tax transparency task force' has been extended for another 18 months. Is that the Tax Avoidance Taskforce?

Mr Hirschhorn: The Tax Avoidance Taskforce has been extended, I think, until 2023-24.

Senator GALLAGHER: Have you got a work plan for that?

Mr Hirschhorn: Yes. To clarify, it has been extended to 2022-23. We have commitments and a work plan for that; it is a significant program.

Senator GALLAGHER: Are you able to table something today, or do you want to take me through it?

Mr Hirschhorn: I might take you through some of the successes of the task force to date, or where it is to date, if that would be helpful.

Senator GALLAGHER: Yes.

Mr Hirschhorn: The task force started in July 2016. So we are almost coming up to the end of our fifth year of the task force. It is an integrated part of our strategy but we have significant revenue results. To date we are attributing to the public groups element of the task force—it has both public groups and private groups elements—about $6.3 billion of liabilities raised, $3.5 billion of cash collections and close to $1.1 billion of what we call wider revenue effects. That is where behaviour has changed.

In the private groups element of the task force to date we have issued $5.5 billion in liabilities, collected $3.1 billion in cash and wider revenue effects of around $250 million, which brings the overall to total liabilities of about $11.7 billion, $6.6 billion in cash collections and $1.3 billion in wider revenue effects. This is significantly above our commitments to date. To give a sense of our commitments to date, which also include some tail commitments from previous programs, if I compare the $11.7 billion in liabilities, that compares to a commitment of $6.4 billion, and in cash we have collected $6.6 billion versus a $3.4 billion commitment.

Senator GALLAGHER: So you are over-delivering—is what you are telling me?

Mr Hirschhorn: The task force has significantly over-delivered to date. We will not be able to continue this rate of over-performance—

Senator GALLAGHER: Now you are doing expectation management?

Mr Hirschhorn: Senator, we have spent a lot of time together. I would not describe this as expectation management. Australia is a relatively small place. There are relatively few companies. Because our strategy has been not just to collect tax but to change future behaviour and lock in future compliance, we run out of big cases. We are at the stage where in a sense we have become victims of our own success. But ultimately we are in the great position that fundamental compliance in large corporates is significantly improving pre lodgement—not waiting for us to do amended assessments.

Senator GALLAGHER: Could you take this on notice, perhaps? I don't know whether you can break down some of the figures you have just given me into revenue heads. What areas were you able to recover that money in? Was it under the MAAL or diverted profits tax?

Mr Hirschhorn: I can give you some figures on MAAL and diverted profits, in particular.

Senator GALLAGHER: All right—and they would be part of this?

Mr Hirschhorn: They are part of this. The benefit of the MAAL and the diverted profits tax is—like all anti-avoidance rules—not so much the application; it is the behavioural change they prompt. If I talk about MAAL, what we know is that multinational companies are booking about $8 billion a year extra through their Australian subsidiaries which they previously booked as sales from places like Singapore and Ireland. Under transfer pricing rules they get to pay for the value of what is done overseas. We don't get to tax that. Our estimate is that we are collecting over $100 million extra in income tax per year from the MAAL. The diverted profits tax is acting more as a deterrent. It is harder to quantify. On the diverted profits tax, we are likely in this next year to issue our first diverted profits tax assessments on a couple of companies that did not change their behaviour.

Senator GALLAGHER: You say it is harder to measure, but then you are going to issue your first assessments.

Mr Hirschhorn: Yes. Most companies, when we came in with the MAAL and the diverted profits tax, fundamentally changed how they booked their income. They changed to billing from Australia and changed what they did. We will have a couple of assessments—

Senator GALLAGHER: You are having a dispute with a couple.

Mr Hirschhorn: Yes, we are having a couple of disputes. I don't have the numbers immediately to hand but there is often a lot of focus on e-commerce companies in this space. I think we have issued and collected—again, I might clarify this on notice—well over a billion dollars in back years from multinational e-commerce companies, including about $1.25 billion since 2016-17 in cash collections on back years. We think a chunk of that activity is because of the MAAL they were prompted to settle the back years. I cannot obviously talk about private matters, but Microsoft, Apple and Facebook have all publicly stated that they have settled tax affairs with the ATO. Probably most recently there was the December 2019 announcement by Google that they had settled their back years with a payment of $481.5 million.

Senator GALLAGHER: Thank you for that, Mr Hirschhorn. Minister, the government abandoned the digital services tax in 2019. Is anyone doing any work looking into that policy area or at alternative approaches to taxing digital services? Mr Hirschhorn was just talking about e-commerce. Is any work being done in Treasury in this area?

Ms Mrakovcic: You will recall that at the time the government made a decision not to proceed with the digital services tax it also said it was going to put its efforts into trying to achieve multilateral consensus on this issue.

Senator GALLAGHER: That's right.

Ms Mrakovcic: That was a reference to OECD-led work that has been undertaken over the past few years looking into the digitalisation of the economy and the implications for the tax framework. I sit on the steering group—

Senator GALLAGHER: That's right; I remember we have had this discussion.

Ms Mrakovcic: that is steering this work for the purposes—

Senator GALLAGHER: Is it steering, though?

Ms Mrakovcic: Senator, I would like to think that all of the midnight hours I have spent on zoom calls participating in Paris conferences rather than being there, and therefore being awake until 3am, has actually been productive.

Senator GALLAGHER: That's a bummer for you.

Ms Mrakovcic: So I would have to answer that question as yes.

Senator GALLAGHER: So that is the framework you are in—you are not looking at anything individual; you are part of this multilateral work that the OECD has been working on for some time.

Ms Mrakovcic: Correct. There was an intention to report last year. That deadline was extended to mid-2021, largely because of COVID, understandably, taking some focus away from that.

One of the big game changers has actually been the change in the US administration and obviously its own plans around corporate tax reform; but also the way that it has sought to engage with the inclusive framework, with the OECD steering this. I can say that we are making progress. There are two pillars to that work. Pillar one is about the reallocation of taxable profits to what you might call market economies, where the consumers are located. This is all about recognising that consumer participation creates value and, therefore, there should be a reallocation of some of the tax raised in what you might call producer countries to consumer countries. That's what the pillar one work is doing.

The pillar two work is around what you might call a global minimum tax rate. That has been talked about. You would have seen comments about the US in particular around challenging the race to the bottom, trying to arrest that and, essentially, trying to put some of their tax arrangements like GILTI into a kind of broader global context. Those discussions are proceeding and we are making progress.

Senator GALLAGHER: Is there any time frame—

Ms Mrakovcic: As I mentioned, there's a deadline to report to the G20 in the middle of this year. That G20 meeting is around the first week of July. Needless to say, there has been a lot of conversation and discussion going on in these last few weeks.

Senator GALLAGHER: It is gaining momentum, by the sounds of it.

Ms Mrakovcic: We are working hard to make progress.

Senator GALLAGHER: This is my final question: have you done any work on what a global minimum corporate tax rate would look like or how it would affect Australia? Have you been looking at that?

Ms Mrakovcic: Quite a lot of work has been done by the OECD in trying to look at this issue. Basically, this is a global issue and you have to understand the interactions between all the countries.

Senator GALLAGHER: Are you saying that you can't look at it in isolation? You couldn't have a look at what's being proposed and then have an understanding? Is that what you think?

Ms Mrakovcic: I'm saying that you need to have an understanding of the 139 countries in the inclusive framework and how a global minimum tax rate across the globe will impact on Australia. It's not just what we do in Australia—

Senator GALLAGHER: But, presumably, the government here would want to know what the impact would be in Australia before they sign up to doing something. They won't sign up for something that they don't understand.

Ms Mrakovcic: We are basically trying to look at this issue, with the help, obviously, of OECD information because they are the ones that actually have that country-by-country detailed information.

Mr Jordan: If I can conclude on that? Jeremy Hirschhorn mentioned the success of the task force. Australia came out pretty early on this measure with funding for us and the MAAL and the diverted profits tax.

Senator GALLAGHER: It's got a long and troubled history.

Mr Jordan: But we've sort of—

Senator GALLAGHER: Nice try. It's slightly different.

Mr Jordan: We've come out of the blocks earlier than a lot of other countries.

Senator GALLAGHER: All right.

Mr Jordan: I would say that we've reaped the rewards of that over the last couple of years. Some countries are yet to even get to the starting block, so to speak.

CHAIR: We are short of time. You have got five minutes, Senator Walsh.

Mr Hirschhorn: Chair, can I just clarify one answer that I gave before? It's one sentence.

CHAIR: Okay.

Mr Hirschhorn: My colleague Rebecca Saint, Deputy Commissioner, Public Groups, who is on screen, has reminded me that we have in fact issued our first diverted profits tax assessment.

Senator GALLAGHER: Thank you. In the interests of letting people go, we will put some questions on notice—apologies for that upfront—

Mr Jordan: Thank you very much.

Senator GALLAGHER: and let you go. Hopefully, you are off to a meeting with the Prime Minister and the Treasurer to talk about a Victorian support package that I'll read about.

CHAIR: I'll let you get away with that, Senator Gallagher, seeing as you've been cooperative. Thank you very much for your time here today. We release officers from Revenue Group and the Australian Taxation Office. Please return to your place of business or home with our thanks. We'll return after the break with the Australian Charities and Not-for-profits Commission. Thank you very much, Minister.

Proceedings suspended from 12:50 to 13:51

Australian Charities and Not-for-Profits Commission

CHAIR: Dr Johns, welcome back. Do you wish to make any opening remarks, or are you happy to get straight to questions?

Dr Johns: I'd love to make some opening remarks.

CHAIR: We are a little bit behind schedule, so I'd encourage you to be as concise as possible. You have the floor.

Dr Johns: I do understand; thank you. I made it clear to the minister and the government upon taking the commission that I would spend as much time as I could in regional Australia, visiting charities—I regard those as my constituents—and, by and large, we could say that regional Australia carries quite a burden that requires the work of charities, and it may well be under-resourced. But I find really inspiring stories as I move around. I just want to indicate where I'm travelling to, and I will eventually get to many more during my time. Recently I was in regional South Australia and we met with charities in Whyalla, Port Augusta, Port Pirie, Clare, Balaclava, Gawler and Paralowie. In March, prior to that, I did a run out west to New South Wales to Penrith, Katoomba, Bathurst, Orange, Dubbo, Gilgandra, Coonabarabran, Tamworth, Gunnedah, Muswellbrook and Newcastle. Prior to that, late last year, I was in regional Victoria in Gisborne, Woodend, Lancefield, Bendigo, Castlemaine, Daylesford, Ballarat and Geelong. Just prior to that, I was in regional Queensland in Maroochydore, Tewantin, Gympie, Maryborough, Pialba, Bundaberg, Cherbourg, Kingaroy, Toowoomba and Ipswich. I'll continue to make those runs into regional Australia because I find that there are literally inspirational stories that come from those charities, which I like to share with whoever cares to listen. Thank you.

CHAIR: I would point out there's a bit on the western side of Australia as well. We would love to see you over there at some point, Dr Johns.

Dr Johns: I shall open my map at some stage.

CHAIR: We've got indications from quite a few senators that they do have questions. I'd just point out to senators that we are a bit behind schedule. I'll give the call to Senator Chisholm, but we will try to move through as quickly as we possibly can.

Senator CHISHOLM: Dr Johns, I wonder whether you could table or provide on notice at some stage a list of which charities you met with on those trips.

Dr Johns: I think I can. We always ask permission and we always clear the fact that we're not literally investigating them at the time, so there's no embarrassment; so I think I can do that, yes.

Senator CHISHOLM: I want to ask specifically about the amendments to government standard No. 3. In announcing these regulations last December, then charities minister Zed Seselja said:

… some organisations are using their position as charities to engage in, promote and condone activities that are not legitimate charitable acts and are, quite frankly, criminal.

Do you agree with that comment?

Dr Johns: I can't comment on such statements and I can't comment on matters that are not yet regulations. We all know that there are regulations circulating in draft form, and it's a matter for the parliament as to whether they go through. I could talk more generally, but you might want to go further.

Senator CHISHOLM: Is that sort of activity something that you have become aware of in your role as charities commissioner?

Dr Johns: To some extent, yes. There is, in regulation now, a discretion that I have and the previous commissioner had to look at, say, responsible persons—that's a committee member—who may or may not have committed a crime. The government is looking at a different set of crimes, as I understand it. But my discretion to take into account the behaviour of individuals has not changed and, as I understand it, will not change; I could do those things now. The discretion has not ever been used, I might say. We have to understand here that we regulate charities, so the behaviour of an individual may or may not be an indication that the charity, if you like, is undertaking activities that are not permissible. But that's a matter for investigation and case by case.

Senator CHISHOLM: Since you became commissioner, around 45 charities have had their status revoked. How many of those would have been for breaking the law in some way?

Dr Johns: I think very few. I'll give you a list of the reasons why we had those, but very few were for breaking the law. But let me say that what happens on occasion though—I can think of a couple of examples which I can't literally share with you—some will have broken the law, and the charity will insist that they step down as a responsible person or they withdraw. So we can carry on and have a discussion with the charity that there's nothing untoward there, but that person goes. In fact, I have the power to 'remove a responsible person'; that's the language we use, and I haven't used that yet.

Senator CHISHOLM: How many charities are registered?

Dr Johns: Fifty-nine thousand.

Senator CHISHOLM: So we're talking about 45 out of 50,000-odd.

Dr Johns: Yes.

Senator CHISHOLM: Could you actually say how many of those would have been for illegal activity undertaken in an activist context?

Dr Johns: Very few. Most of our cases are around misuse of funds that may or may not be fraudulent, for instance, or they may be what we call 'for a private benefit'.

Senator CHISHOLM: Taking a leaf from the purpose and character of the organisations listed on the revocations section of the ACNC website, the number looks to be two; would that be fair?

Dr Johns: I'm sure that's accurate, yes.

Senator CHISHOLM: So, in terms of coming back to regulation 3, we're talking about a regulation that is creating a burden for over 50,000 charities to address a problem that is manifesting in two of those charities.

Dr Johns: Yes, at present, but I can't predict what may be in the regulations or what interest that might bring in the public to further scrutinise charities; we don't know.

Senator CHISHOLM: But it's not as if there has been a widespread problem that needs to be addressed through amendment to government standard No. 3.

Dr Johns: Not on our figures, but I can't speak for the government on its desire to introduce regulations.

Senator CHISHOLM: Charities are suggesting that this regulation would mean that they have to formulate and maintain disclaimers for all their staff, volunteers and supporters to protect the organisation against accountability for all their actions. Do you think that would be a reasonable requirement upon the charities?

Dr Johns: Again, I won't address the particulars of the draft regulation. It's not fair. It's not yet regulation, so it's not something that I have to administer. But I can say that the fact we haven't used the discretion to this point might be an indication as to how we operate, which is that I would need to know that a particular criminal act has taken place. We're not a police force; we're not a court of law. I would rely on others to, first of all, indicate that something is amiss, and then I would look at that person or that activity and see whether I could relate it to the charity. So it doesn't require the charities to, if you like, keep constant records on these matters, I would have thought.

Senator CHISHOLM: When you say that you would rely on others, who do you mean by 'others'?

Dr Johns: If someone is, by law, found to be guilty of something that obviously means that the police are involved and then a court of law. I don't undertake those activities.

Senator CHISHOLM: Going on to the explanatory memorandum, the ACNC commissioner's enforcement powers under chapter 4 of the act may be exercised if the ACNC commissioner reasonably believes that it is more likely than not that the entity will not comply with the government standard. This means that it is not necessary for a registered entity to be charged or found guilty of a relevant summary offence for the ACNC commissioner to take appropriate enforcement action under chapter 4 of the act. The draft explanatory memorandum points to the commissioner's belief that a charity might become involved in a summary offence; that is, an offence hasn't happened, but you believe that it may happen in the future. Can you tell us how you would come to such a belief?

Dr Johns: Again, that is in a draft regulation, and I can't comment on the draft regulation. Keep in mind that we administer entities—that is, charities—and you always have to relate a person's behaviour, who may or may not be a member of that charity, to the charity itself. That requires an investigation. You don't simply take as read that a charity is in contravention of impermissible purposes because someone, or a member of that charity, has breached the law in some way.

Senator SIEWERT: Does that mean—

Dr Johns: I'm saying that the way that we have always thought about these things is to rely on police and courts of law to find wrongdoing. It's very difficult for us to know about that sort of thing; we're simply not set up to do that.

Senator CHISHOLM: There's also currently no way for that charity to appeal or challenge that decision; that is my understanding.

Dr Johns: We haven't made such a decision, so I can't really help you there.

Senator CHISHOLM: Can a charity make a case against your belief?

Dr Johns: I don't know. I might ask Anna Longley, our general counsel, about this particular point of the rights of a charity to oppose a decision that I might make under present regulations.

Ms Longley: We would currently conduct an investigation under government standard 3 and, were we to take action in respect of government standard 3, there are ways for the charity to challenge that through a review process, followed, if unsuccessful, by an Administrative Appeals Tribunal or Federal Court application.

Senator CHISHOLM: I will put to you some comments that some charities have made that are concerned about this new regulation. Kasy Chambers, the CEO of Anglicare, said:

> Anglicare, for example, employs 29,000 staff and volunteers. Now suddenly we have to think about potential summary offences for every single one of those people …
>
> There's no reason why a charity should be responsible for what could be a volunteer that works twice a year for us. But in actual fact, we will now become responsible for their 24-hour a day, 52-week a year behaviour.

Do you have any response to Ms Chambers, the CEO of Anglicare, about the impact on her organisation?

Dr Johns: I don't want to respond to each of these persons, because it really is a matter for government and draft regulation, which I can't know yet, until it's through the parliament. I can say that our general way of operating is to look at the whole of the activity of a charity under any circumstances. It doesn't befall a charity to know everything that's going on all of the time. Of course, we always look at, if you like, measures of risk: do they know how their money is being used; do they know whether their charitable purpose is being pursued? They are our starting points.

Senator CHISHOLM: I'll put this to the minister. This is from Toby O'Connor, the CEO of the St Vincent de Paul Society national council:

> The administrative burden of monitoring all our activities is enormous and not warranted. Unlawful acts are already covered by existing criminal law. These changes increase red-tape for no good reason.

What response do you have to Mr O'Connor about the impact that it's going to have on the work of St Vincent de Paul?

Senator Hume: I'm not familiar with the intricacies of the charity. I'll have to take the details of that on notice.

Senator CHISHOLM: You're not familiar with what St Vincent de Paul do?

Senator Hume: I'm not familiar with the red-tape burden that has been imposed on St Vincent de Paul, so I'll have to take the question on notice.

Senator CHISHOLM: Legal experts are similarly floored by the government's approach here. Legal firm Arnold Bloch Leibler's submission to Treasury described the legislation as 'fundamentally inconsistent with our democratic system of government' and described the changes as 'a clear fetter on freedom of political communication and on dissent by civil society'. The Law Council President, Dr Jacoba Brasch, suggested that the proposed changes leave registered charities, including faith-based charities, at grave risk of political interference and, ultimately, will have a disproportionate chilling effect on organisations which have an important voice in matters of public policy. Would you dispute that assessment, Dr Johns?

Dr Johns: I can't add to the answers that I've already given. I might add one element: local churches, what we call basic religious charities, are not covered under our governance regulations, so they don't fall into this discussion at all.

Senator CHISHOLM: What about you, Minister? Would you have a response to those legal experts?

Senator Hume: I'm not familiar with the issues that they're talking about, so I'll have to take it on notice.

Senator CHISHOLM: Did the ACNC make a submission to Treasury's consultation on the draft amendment to governance standard 3?

Dr Johns: Yes, we have. Naturally, we've had discussion back and forth on the matter. That's a matter of drafting.

Senator CHISHOLM: Did you contribute to the ACNC Advisory Board's submission?

Dr Johns: No.

Senator CHISHOLM: Did you read and advise on it in any way?

Dr Johns: On the advisory board?

Senator CHISHOLM: Did you read or advise on it in any way?

Dr Johns: No. I'm not actually aware of it.

Senator CHISHOLM: So you're not aware of the contents of that submission at all.

Dr Johns: No. I may have seen it, but I was not part of the drafting of it, and I can't recall any discussion that we had on the matter at the board.

Senator CHISHOLM: You couldn't recall whether the commission was satisfied with the government's draft amendment?

Dr Johns: No.

Senator CHISHOLM: You don't know whether it supported the amendment as drafted?

Dr Johns: I don't.

Senator CHISHOLM: Are you able to make that submission public?

Dr Johns: The board's?

Senator CHISHOLM: Yes.

Dr Johns: That's a matter for the board.

Senator CHISHOLM: Could you take that on notice?

Dr Johns: Sure. It is a matter for the board, but I can certainly relay your request to them.

Senator CHISHOLM: It's really up to them whether they'd want—

Dr Johns: Yes; they advise me. They're a free agent in that sense.

Senator CHISHOLM: Were you consulted by the minister or Treasury while this amendment was being drafted?

Dr Johns: We have been consulted, yes.

Senator CHISHOLM: What was the detail of that consultation?

Dr Johns: The detail is that we're presented with drafts, and we make comment more about the practice of implementation.

Senator CHISHOLM: Can you give us a bit more feedback about what your discussion was?

Dr Johns: Pretty much as I've described earlier about how we proceed currently in knowing that matters are afoot within a charity and then how we proceed.

Senator BRAGG: Dr Johns, I want to ask you about a matter that I've written to you about, which is an application made by an organisation called Australians for Indigenous Constitutional Recognition.

Dr Johns: Yes.

Senator BRAGG: Basically, this organisation wants to become an ACNC registered institution. It wants to be able to provide benefits to the broader community. Your judgement has been that it doesn't satisfy the criteria to be a public benevolent institution; is that right?

Dr Johns: Yes.

Senator BRAGG: Thanks for your response. My question is: if an organisation wants to provide services around ensuring that Indigenous people can have more agency and more self-determination in the Australian nation, wouldn't that meet the criteria for a PBI?

Dr Johns: No.

Senator BRAGG: Why?

Dr Johns: The criteria for a PBI are a step above that for a charity as such. This group is a charity registered with us, but a PBI has to demonstrate direct evidence of, let's say, poverty relief. I don't want to rework this particular submission, but that's what a charity has to put before us—that there's evidence of direct activity—and in this particular case that wasn't proven.

Senator BRAGG: How would this organisation or an organisation that wanted to work on an agenda like that—which is about agency and control for Indigenous people about things like service delivery on the ground in communities—be able to demonstrate this to you?

Dr Johns: It would need to demonstrate that it has a capacity to literally deliver something to someone rather than simply to educate or have a discussion about it.

Senator BRAGG: During the plebiscite on marriage equality, there were certainly organisations that were able to receive donations which were tax deductible and which were then put to use in that campaign, ultimately, to ensure that people could marry who they wanted to marry, because that was seen to be, I assume, an improvement to their lives. I struggle to see how it would be okay to have a DGR for a marriage equality campaign but not for a campaign in support of giving Indigenous people a voice, more control and—

Dr Johns: Campaigning doesn't exclude PBI status; it's what else you do. I can't comment on other charities that you refer to. We'd have to look on a case-by-case basis at what the charity does day by day, if you like, to deliver—let's say, in the case of poverty—poverty relief. Running conferences or whatever, for instance, would not satisfy that test.

Senator BRAGG: Poverty relief is a test, is it?

Dr Johns: It's one of the elements of 'charitable purpose' and, to get PBI, you'd have to be able to do this in a direct manner. We simply follow the common law here, and there are many cases which reiterate to tell us to look for the practice of the charity: what is it setting out to do? It's not what it seeks to achieve or that it argues eloquently that what it does will solve all problems; it's what it does daily in order to address a particular issue, which may be poverty, ill-health or whatever.

Senator BRAGG: Okay, so the onus is on the organisation to prove what it does on a day-to-day basis?

Dr Johns: Yes.

Senator BRAGG: That's what it needs to do?

Dr Johns: Yes.

Senator BRAGG: Okay, thank you for answering those questions.

CHAIR: Alright, Senator Siewert, I think you were next on the list. Sorry, Senator Scarr, were you wanting questions here?

Senator SCARR: No, I'm waiting for ASIC.

Senator SIEWERT: Can I just go back to your comment: did the ACNC itself, not the advisory board, make a submission, did you say?

Dr Johns: That's terrible, you know; I can't remember. We have a lot of discussion between Treasury and ourselves on any draft regulations. so I'm going to ask Ms Longley if we actually made a submission. We make many, but did we start off, Anna, with an actual submission?

Ms Longley: We haven't lodged a formal submission in relation to that consultation, no.

Senator SIEWERT: Okay, so do I take from what you've just said that there have been a series of discussions?

Dr Johns: Yes.

Senator SIEWERT: Were you consulted before the exposure draft?

Dr Johns: No, a draft came to us. Then we're asked to comment on the practical application of the draft regulation, and that's where we enter the discussion.

Senator SIEWERT: Was that prior to the draft being released?

Dr Johns: Being released?

Senator SIEWERT: Yes, the exposure draft being exposed.

Dr Johns: It was exposed late last year. We would have seen it at that time and started discussions with Treasury about whether we saw any issues in the practical implementation of the draft.

Senator SIEWERT: So you gave your views on the implementation, not whether it was a good idea or not?

Dr Johns: No, not whether it's a good idea; how we would apply the regulation.

Senator SIEWERT: And can you just go through in a little bit more detail how it would be applied, and I can't ask for your opinion, but what the ACNC's views were on whether it was a sensible approach?

CHAIR: That still sounds like an opinion.

Dr Johns: Yes, it does.

Senator SIEWERT: No, I'm not asking for an opinion. They've given a view.

CHAIR: Whether it's a sensible approach?

Senator SIEWERT: Well, let him answer.

Dr Johns: The commission has always had a discretion to look at matters where there are criminal activities. They're now adding or wanting to add another level, if you like, of wrongdoing, so our approach is as it has always been. Nothing has really changed, so we were tending to give the Treasury the same advice on how we would normally operate in these circumstances. As I replied to Senator Chisholm on a few occasions, this is a step-by-step process. You would look at a particular behaviour, you would satisfy yourself that it meets a test and then you would talk to a charity about all of its activities and the relationship of that or those people to the charity and its activities.

Senator SIEWERT: Currently you don't act on whether you believe there's an indictable offence or a summary offence. This is actually before people are even convicted.

Dr Johns: These are new elements. If I could refer to Ms Longley again, my general counsel, do the same words already appear in regulation, Anna, with respect to, what is it, the anticipation?

Senator SIEWERT: The belief.

Ms Longley: Yes, so the draft that went out for consultation does contain the same words as are currently in governance standard 3 in relation to the powers of the commissioner to look at particular possible indictable offences or actions that could be chargeable as an indictable offence.

Senator SIEWERT: What about summary conviction?

Dr Johns: No, that's the new element. The way, if you like, I am allowed to think is not changing; there is a new offence or set of offences that may be in prospect, should the regulations go through.

Senator SIEWERT: Okay, thank you. How would you see the practical application of this new regulation?

Dr Johns: I can help you out by answering how we undertake such matters now in regulation; I can't answer about prospective things.

Senator SIEWERT: Sorry, wouldn't you have thought about this when you were giving your views to Treasury?

Dr Johns: Yes, I'll give you the same answer, if you like, that the practical application again is first of all knowing that something has taken place. Our view is that we're not a police force or a court; we would wait for others to reassure us that an offence has taken place, then we would think about approaching the charity and having discussions with it. That's a whole new step and a new process.

Senator SIEWERT: And how do you view then how ACNC would proceed from there?

Dr Johns: Well, it's pretty much like every investigation we undertake. You first of all tell the charity what you're unhappy about. We'd say, 'Look, here is something that has come to our attention. We want you to confirm that this has taken place or that these matters have occurred,' and then we would look at whether or not this is something to do with the purpose of the charity, something that the charity had created, supported, was responsible for. You have to make those links. You have to tease it out. So it doesn't automatically follow that, because someone has broken the law, I then do something to the charity.

Senator SIEWERT: Can you understand why charities are saying this will have a chilling effect on their activities, given the breadth of it?

Dr Johns: No, I can't, because that would be to comment on the regulation.

Senator SIEWERT: Okay. Can I go to the issue around the ACNC's opposition to an application by a charity to the Federal Court for a protective costs order to minimise the risk to the charity in litigation testing an aspect of the charity law? Can I ask why you oppose that, given it was actually in the review

Dr Johns: Was this the Australians for Indigenous Constitutional Recognition? Was that the case?

Senator SIEWERT: Yes.

Dr Johns: Our submission was that that charity could have gone rather than to the Federal Court, where there's a risk of losing and paying costs, to the AAT, where there's no risk and no costs are awarded, so our submission was, and the Federal Court agreed, that the matter could have gone to the AAT risk-free.

Senator SIEWERT: Right, that the was the sole reason?

Dr Johns: The other reason is that—I'm not the lawyer, but the proponents were suggesting there was something of significant public interest here. Our view was that it was not of great public interest, because this was not some great test of PBI status at all, that this was an everyman's interpretation of PBI and that this group didn't get near it, so we didn't think there was a great public interest in it. Again, the judge agreed, and had there been, the charity could have gone to the AAT in any event, risk-free, and got an opinion, a legal opinion, which we don't get, of course. We make a decision; it is not a decision that a court may or may not make.

Senator ROBERTS: Thank you for being here, Dr Johns. My questions are to do with the RSPCA Australia and Queensland. They're two separate bodies. What body oversees the activities of the RSPCA Australia at either state or federal government level?

Dr Johns: I'd have to take that on notice. We'd have to look at the register and look at its details.

Senator ROBERTS: You'll be excused if you have to take a lot of these on notice. It surprised me when I learned about this. Why in Queensland are RSPCA state inspectors who lay charges also the prosecutors in the same cases? Shouldn't they be merely witnesses?

Dr Johns: I will take that on notice, thank you.

Senator ROBERTS: Why are RSPCA Australia staff referring owners to particular vets and refusing to recognise the expertise of others?

Dr Johns: I'll take that on notice, thanks, and I'll interrupt to this extent. We will have a look at any charity's fitness for registration. We don't go beyond that remit.

Senator ROBERTS: Why would RSPCA Australia be the recipient of fines levelled at an owner of an animal when prosecuted by a state RSPCA staff member?

Dr Johns: I'll take that on notice, thank you.

Senator ROBERTS: Aren't RSPCA Queensland and RSPCA Australia separate bodies?

Dr Johns: I'll take that on notice.

Senator ROBERTS: If an RSPCA Queensland inspector tells an owner of an animal to pay a large sum of money in order to get their unreasonably seized animal returned, and if not paid the animal will be killed, doesn't that sound like extortion?

Dr Johns: I don't know, but I'll take it on notice.

Senator ROBERTS: How many animals are put down by the Queensland RSPCA in a year?

Dr Johns: I'll take that on notice.

Senator ROBERTS: Is it true that animals held by the Queensland RSPCA are given to organisations for laboratory experimental purposes?

Dr Johns: I'll take that on notice.

Senator ROBERTS: Are the RSPCA Queensland and the RSPCA Australia genuine charities or non-profit organisations and worthy of receiving Commonwealth grants?

Dr Johns: I'll take that on notice.

Senator ROBERTS: How can the Queensland RSPCA seize valuable animals from registered breeders and then on-sell them for thousands of dollars in profit for the RSPCA?

Dr Johns: I'll take that on notice, thank you.

Senator ROBERTS: How much do the RSPCA Australia and RSPCA Queensland receive from the Commonwealth in grants?

Dr Johns: I'll take that on notice. I'm sure it's on the register.

Senator ROBERTS: I don't expect you to know these. It surprised me when we found out what we found out. I'm not at all surprised that you're taking it on notice; I appreciate that. Why would anyone donate to the RSPCA Australia and RSPCA Queensland when their practices are not very charitable? Is it time for the RSPCA Australia and RSPCA Queensland to be investigated for their offensive practices?

Dr Johns: I'll take all of those matters on notice, thank you.

Senator McKIM: Good afternoon to everyone. Dr Johns, could I ask how closely the ACNC monitors financial transactions, if at all, between Australian registered entities and their international associates?

Dr Johns: We don't monitor as a matter of course. That would be a very large call on our resources.

Senator McKIM: Okay, if something was brought to your attention that met your threshold to investigate, would you have a look at the financial relationships between Australian registered entities and their international associates?

Dr Johns: Not necessarily. We would ask if there's something improper here.

Senator McKIM: You would ask the registered entity?

Dr Johns: Yes. There may not be.

Senator McKIM: Yes, sure. Do you monitor the relationship between a registered entity's income and its assets? For example, if an organisation was to have a rapidly declining income but a marked increase in assets, would that raise any red flags for ACNC?

Dr Johns: It might. We do some data-matching which might be an indication of risk either on the wrongdoing side or that a charity might run insolvent, but that's just the beginning of the work.

Senator McKIM: And what threshold would have to be met for ACNC to take anything like that further and subject it to an actual investigation?

Dr Johns: There's no financial threshold that I can quote you or that we would ever have. We would, like all of our things, discuss the particulars to see if our concerns are perhaps warranted.

Senator McKIM: Alright, thanks. Are you aware of newspaper reports analysing the Church of Scientology reports to the ACNC that show a threefold increase in assets in the last seven years at the same time that their membership is falling?

Dr Johns: I am, yes.

Senator McKIM: You are. Has the ACNC taken any action in response to those reports?

Dr Johns: I can't comment, because of secrecy provisions for investigations or compliance matters.

Senator McKIM: Okay. Is the ACNC aware of the Church of Scientology's policy of fair game whereby it condones the aggressive pursuit of critics?

Dr Johns: I'm not aware of that.

Senator McKIM: Okay. Is the ACNC aware of newspaper reports that the Church of Scientology hired private investigators to monitor ex-members of the church as an intimidation tactic?

Dr Johns: No, I'm not aware of that.

Senator McKIM: Thank you. Is the ACNC aware of the firsthand account by Nine newspapers journalists Ben Schneiders of online intimidation and harassment he has received since publishing a story about the Church of Scientology's finances?

Dr Johns: No, I can remember Schneiders' stories; I don't think I've seen the harassment allegation.

Senator McKIM: Okay, thanks. That was published, just for your reference, on 3 April this year and included reference to a Scientologist who wrote:

Could it be the dark side of his Germanic DNA gave rise to such bigoted and false claims?

Dr Johns, thanks for your engagement as far as you're able on this issue. I'm just wondering whether the allegation of such activities against the Church of Scientology would be cause for the ACNC to investigate its charitable status?

Dr Johns: Well, I'm grateful for your information. To the extent that it's extra, thank you for it.

Senator McKIM: You're not prepared to say whether or not you are investigating the Church of Scientology?

Dr Johns: The secrecy provisions prevent me from telling anyone who I am or am not investigating.

Senator McKIM: Okay, in general terms then, without relating this to any particular registered entity, if a registered entity were behaving in such a way that they were surveilling people as an intimidation tactic and encouraging their members to write racist abuse to a journalist, wouldn't that constitute a serious risk to public trust and confidence in the charity sector?

Dr Johns: My rule, if you like, my measure, would be, 'Is it pursuing its charitable purpose?' Given it's a church—sorry, given a church might be acting in a particular way, that becomes my dual measure. I ask about its purpose, I particularise its purpose and I measure its activity against that.

Senator McKIM: Okay, but again in general terms, it wouldn't be the business of a church, would it, to pile racist abuse onto a journalist that wrote about them? It wouldn't be the business of a church to surveil someone for the purposes of intimidation, would it? That would not constitute a legitimate action of a church, would it?

Dr Johns: I can't run a compliance case in public. What I can do is thank you for information which may be new to me.

CHAIR: I believe that is all we have for the Australian Charities and Not-for-profits Commission. Dr Johns, as always you go with our thanks and our best wishes for a safe journey, wherever it takes you. Thank you too, Ms Longley; you can feel free to disconnect.

Proceedings suspended from 14:35 to 14:36

Australian Securities and Investments Commission

CHAIR: I now welcome representatives of the Australian Securities and Investments Commission. Welcome, Mr Longo, for your first estimates hearing. Ms Chester, it's certainly not yours, but, Ms Court, I believe it is yours as well.

Ms Court: Well, it's my first one with ASIC.

CHAIR: That indicates that you know at least somewhat what you're getting into.

Ms Court: Yes, I do.

CHAIR: Mr Longo, I suspect this is your first one ever.

Mr Longo: Back in the nineties I did some appearances before this committee.

CHAIR: Excellent, then you also know what you're getting into. We're much kinder and gentler these days. Welcome, Mr Longo and Ms Court, to your new roles and obviously to this committee. We really appreciate making yourself available on I believe your second day in the job. So with respect, understanding that you are on a very steep learning curve at the moment, I would remind senators of that fact. But I'll hand over to you, Mr Longo. I believe you do have some opening remarks, and we'd love to hear a little bit about you.

Mr Longo: Thank you, Chair. They will be very short opening remarks. Good afternoon, Chair and committee members. I am pleased to appear before the committee today for the first time as ASIC's chair. Also appearing for the first time is newly appointed deputy chair Sarah Court. We are joined here today in Canberra by Deputy Chair Karen Chester and Commissioner Cathy Armour and, from Melbourne, Commissioners Danielle Press and Sean Hughes. Also appearing with us is ASIC's chief operating officer, Warren Day, from Melbourne, general counsel Chris Savundra and executive director of strategy, Greg Kirk, here in Canberra.Chair, I am proud and excited to have been given the opportunity to lead ASIC. I look forward to being engaged with all aspects of its work. I want to recognise the important role committees such as this play in overseeing ASIC's responsibilities. ASIC takes its accountability to the Australian parliament and people very seriously. I've made a good start understanding where ASIC is at the moment. I acknowledge it has been a turbulent few years. The aftermath of the royal commission and then COVID-19 have had a profound impact on ASIC and how we engage as a regulator. More recently ASIC has been buffeted by the changes at commission level.

I believe, however, ASIC's strength and effectiveness as an institution can be enhanced. During my first few months I will be engaging widely with ASIC staff and stakeholders with a view to understanding ASIC's current strategy and approach to regulation and enforcement. This will assist me and the commission to shape and develop ASIC's longer-term strategy. I also plan to work collaboratively with other regulators, particularly APRA.

I would like to take this opportunity to inform the committee that I've taken steps to ensure I have appropriately managed my disclosure of interests and potential conflicts of interests. In taking up the role as chair of ASIC I will relocate my residence from Perth to Melbourne by 1 July, I hope.

CHAIR: That's not a positive, surely.

Mr Longo: ASIC has agreed to pay the reasonable expenses associated with my onboarding and relocation. I've also taken steps to disclose my interests to the Treasurer and my fellow commission members and have taken steps to manage potential conflicts of interest. In conclusion, I am aware there is a lot of work ahead for ASIC and I am confident about ASIC's future. I look forward to working with this committee and to taking your questions this afternoon.

CHAIR: Thanks, Mr Longo, for that. Thank you very much for keeping it short. We do I'm sure have a lot of questions for you and the team. It must be a burning desire to lead this organisation, to relocate away from Perth, but I'll leave that to one side. Could you just give us a bit of a quick precis of where you came from before you took this role?

Mr Longo: Yes. Most recently I was a senior adviser at Herbert Smith Freehills when my family and I came back to Australia a couple of years ago. Before then I was with Deutsche Bank AG for 17 years in general counsel roles in Hong Kong and London, where I covered the Asia-Pacific and subsequently Western Europe and the UK. My role was a legal role. Before then I was head of enforcement, indeed, for the Australian Securities and Investments Commission for five years. Before then I was a partner of a law firm that did a lot of litigation, and I specialised in white-collar defence work. That's my professional background in a nutshell.

CHAIR: Excellent, thank you. Ms Court, did you wish to say anything?

Ms Court: No, Senator.

CHAIR: You're happy to go straight to questions?

Ms Court: Yes, indeed.

Senator WALSH: Thank you all for being here. I've got some questions about your work in relation to proxy adviser practices over recent years.

Ms Armour: How can I help you?

Senator WALSH: Thank you, Commissioner. You reviewed proxy adviser practices in 2018 and made no recommendations in relation to changing government policy, is that correct?

Ms Armour: Well, we did review proxy adviser practices, and we didn't have any recommendations in relation to significant changes to practices. We don't make policy. That's up to government, but in relation to the aspects of the law that we administer there weren't particular concerns.

Senator WALSH: Yes, thank you. The report said that empirical data that was reviewed by APRA suggested that the extent of influence of proxy advisers on the voting outcomes of company resolutions is overstated. Is ASIC aware of any changes in relation to that data since 2017?

Ms Armour: We haven't done the same empirical work we did in 2017 that led to our 2018 report since, so we're not in a position to comment on whether there has been any marked difference.

Senator WALSH: Sure, thank you. ASIC stated in its report 578 that proxy advisers play an important role in the market by assisting shareholders in making voting decisions and promoting a focus on corporate governance. That is a fairly broad statement about the importance of proxy advisers. Has ASIC's view changed on proxy advisers since then?

Ms Armour: No, the view that proxy advisers assist investors to consider how they want to exercise their rights as shareholders and the importance of them doing so has not changed.

Senator WALSH: I've some questions about numbers and sorts of complaints ASIC might receive about proxy advisers. Have you received any complaints about proxy advisers since that report was published?

Ms Armour: We have received some complaints, yes.

Senator WALSH: Yes. Is that something where you're able to assist us in terms of numbers? For example, do you have a total number of complaints that you've received about proxy advisers?

Ms Armour: The information I have is that we received two reports of misconduct in relation to proxy advisers. They are, if you like, formal concerns.

Senator WALSH: Yes, they're formal concerns that you're looking into?

Ms Armour: That we looked into.

Senator WALSH: Okay. Did either of those complaints come from the clients of proxy advisers?

Ms Armour: I don't have that information, I'm sorry, in front of me, so I'd have to take that on notice.

Senator WALSH: Okay, so it's likely that the complaints either came from the clients of proxy advisers who were not happy or from companies that might have received adverse reports from proxy advisers.

Ms Armour: It may be, I'm sorry; I just don't have details of where those complaints came from.

Senator WALSH: Is information about these complaints and your findings public?

Ms Armour: No. Generally what we try to do is encourage people to make reports to us when they see some concerning behaviour about anyone who operates in the area we regulate. We will examine the complaint, the report, and if we see a need to take further action we will. But we generally don't make the details of those sorts of complaints public, because very frequently when you delve into the issue there may not be a particular concern, so it can be unduly prejudicial to do so.

Senator WALSH: So without identifying detail of those complaints that it's not your practice to identify, would you be able to tell us on notice whether those two complaints came from clients or whether they came from companies that received reports?

Ms Armour: Yes, I can go back, have a look and see what information I can provide.

CHAIR: Sorry, could I just add to that, were there any complaints prior to the report as well?

Ms Armour: We can have a look.

CHAIR: I'm happy for you to take it on notice. You don't need to go back indefinitely.

Ms Armour: Yes, I was going to say I'm not sure if we would have been keeping the records separately.

Senator WALSH: Since the 2018 report there hasn't been any significant different data or any significant different opinion. You've had two complaints which you're going to give us more information about.

Ms Armour: We've had two formal reports of misconduct.

Senator WALSH: Yes, so based on that there doesn't seem to me to be a systemic issue in relation to proxy advisers, but I should put that as a question to you: is ASIC of the view that there is a systemic issue in relation to proxy advisers?

Ms Armour: ASIC's view is that we're doing our job, monitoring the activities of proxy advisers to the extent those activities are licensed. We're on the job, and that's what we're doing. Whether or not there should be a change to aspects of the regulatory environment really is a matter that government is consulting on.

Senator WALSH: This doesn't seem to be an area where you're saying, as regulators often do, that you feel you need more powers, for example, to be able to deal with any issues that might be there in relation to proxy advisers.

Ms Armour: Proxy advisers are licensed under the Australian financial services regime. There is a regulation under that regime that excludes from the regulated activities direct advice about voting on directors' elections, and I think the fact that there is this discrete regulation that excludes from our area a particular aspect of the activities of proxy advisers is interesting.

Senator WALSH: Okay, that's an area of interest for you. Has ASIC provided any briefings or advice to the government in relation to proxy advisers in the past 12 months?

Ms Armour: Personally I'm not aware if we have, but I would like to check that. I wouldn't be surprised if there have been discussions; I would need to go and check that.

Senator WALSH: Okay, so you'll take that on notice?

Ms Armour: I'll take that on notice, yes.

Senator WALSH: Was ASIC consulted prior to release of the Treasury consultation paper on proxy advisers?

Ms Armour: Again I would need to come back to you on notice with an answer to that, and we can let you know on notice the extent of any conversations with us in relation to that matter.

Senator WALSH: Yes, that would be good, if you could take on notice if you were consulted by Treasury, when you were consulted by Treasury and also what information ASIC has provided to Treasury in relation to that consultation paper

Ms Armour: Yes, and I must say we are in discussions with Treasury in relation to this proposal at the moment, so it's not that there aren't conversations occurring.

Senator WALSH: Okay. I have another block which I think I've probably got time to start.

CHAIR: You've still got about another four or five minutes.

Ms Armour: Senator, sorry, just to save you a little bit of time, I was just able to double-check on my briefing while we had a break there, and one of the reports of misconduct that we received was from a company that had been covered by the proxy advice. So it was from a company. I'll have to check on the other one.

Senator WALSH: Okay, thanks for that clarification. Senator McAllister will take our few minutes remaining.

Senator McALLISTER: I see on the website there is a note on 18 March that indicates that ASIC is not intending to use a product intervention order for either motor vehicle add-on insurance or warranties at this time. Can I ask some questions about that?

Ms Armour: I think Deputy Chair Chester will help.

Ms Chester: Senator, would you just mind repeating the question? There was some background noise.

Senator McALLISTER: I haven't asked a question yet; I was just trying to check who I should address questions to.

Ms Chester: Good, I didn't miss it.

Senator McALLISTER: Why was this decision made?

Ms Chester: So there were several reasons why we decided not to proceed at this time with the product intervention order for the sale of either motor vehicle add-on insurance or extended warranty products. Several factors led to us making that decision. First and I guess foremost, Senator, was really the pandemic-related economic shock to the motor vehicle retail sector in 2020 and its impact on the sale of motor vehicles and extended warranty products. You might recall that we have to be able to sustain that there's significant ongoing consumer detriment to have a defensible product intervention order in place, particularly as you would know that they are appealable interventions and we've already got one that has been subject to quite robust appeal.It was also informed by the government's decision to bring forward the implementation of the industrywide add-on insurance deferred sales model by three months to 5 October 2021. So we were confronted with the situation that by the time we were in a position to look at introducing the product intervention order, post the impact that COVID had on the sector such that there was a significant change to the extent of significant consumer detriment as sales came off with COVID, we'd be in a situation where we would be implementing something that the government was then just about to legislate to address more directly than a temporary product intervention order, and that is something that would then likely be in the best interests of both consumers and the industry in terms of it being a permanent policy change as opposed to a temporary product intervention order, keeping in mind that the deferred sales model was quite a complex change and it does require industry to do a lot of changes to the way that they distribute and sell the products. Thus we had only a small window of time between the time we had gone through a potential period of consultation and introduced it, and we were coming right up to the 5 October time frame that the government had in mind.

We're also very cognisant that there are important procedural and governance aspects for making the product intervention order which ASIC must follow which added to those time frames. It was really a function of COVID, a function of the government bringing forward their plans to address it in a more substantive and permanent way, which I think is always the preference of the parliament and the Senate, and a function of the procedural and governance aspects that we needed to go into.

Senator McALLISTER: Am I correct in understanding that the government's deferred sales model will not cover extended warranties?

Ms Chester: That's correct, Senator. That's my understanding as well, which is not inconsistent with the recommendation that the government responded to from the Hayne royal commission.

Senator McALLISTER: Yes, but it is inconsistent with the consumer issues that you were trying to address in the work you were doing on the product intervention order.

Ms Chester: That's right, Senator, but rest assured we are going to closely monitor what happens. There would be nothing precluding us, if we thought that there was a re-emergence of significant consumer detriment as it applies to the extended warranty arrangements, from stepping in at that time in the future. Indeed that was partly the intention of the product intervention order, if there was in place a holistic solution to the original problem. You might recall, Senator, that we weren't looking at doing it to extended warranties to begin with. That was evidence that we found when we were doing the consultation on the first product intervention order. So a problem emerged, and we extended it during the consultation period. But again significant consumer detriment fell away with COVID, and government has got the full solution for the largest part of the problem. If, as it extends to warranty extensions, significant consumer detriment were to re-emerge, we would be in there. We're keeping an eye on it, and we're collecting data.

Senator McALLISTER: Is it ASIC's view that the significant consumer detriment test needs to be met within a particular time frame, because the evidence before you is in fact that there is significant consumer detriment arising out of a whole range of practices in this sector over quite a long period of time. The fact that it has temporarily fallen away from COVID would seem an odd reason for a court to rule that you'd inappropriately exercised your power, but is that the assumption ASIC is working on?

Ms Chester: We don't take any assumptions. We really have to look at it on a case-by-case basis. We can be challenged if our data is dated. If we were relying on data from the year pre COVID for a product intervention order, sales and significant consumer detriment fell away and we then put in place a product intervention order, we could reasonably expect that would be subject to challenge.

Senator McALLISTER: I've got a couple more questions, but I'm nearly at the end. I don't want to let you off the hook, but I am nearly done. Ms Chester, is it fair to say that those offering extended warranties should consider themselves on notice?

Ms Chester: Absolutely. We've made that clear to those providers, Senator, in no uncertain terms, and I would mention that one has indicated that they will voluntarily adopt the deferred sales model that the government is proposing. So we welcome that very positive one outlier, and we're nudging and encouraging others to follow. We're on the record, we've written and it's on our website that we are encouraging them to voluntarily adopt the deferred sales method.

Senator McALLISTER: Just a final question about any learnings from this: we've been talking about this product intervention power in this forum for a long time and in other forums. This was first contemplated in 2017. The PIP was supposed to be a quick mechanism that could be rapidly deployed when you identified harm in the marketplace. But you started in 2017; it has been abandoned four years later. I just wonder if you have any reflections on how ASIC went about this process.

Ms Chester: I don't think the product intervention order in this case commenced in 2017, Senator; I think was after the Hayne royal commission when we got those powers, so it's a much shorter time frame than that which you've just articulated. It was recommended in 2017 by a previous inquiry. From memory it was actually the Murray report that recommended it. The government only acted on that with the benefit of additional work by the Productivity Commission and the Hayne royal commission, which established the metrics for significant consumer detriment. I think our biggest takeout is we need more data where we are facing problems of being timely with how we can get in there and get a product intervention order designed, placed and consulted. We can do the consultation now pretty quickly. We've really shined and buffed that down to about six weeks. But it's the data that's killing us, Senator, and it's in areas where we do not have recurrent data. It's an issue we've raised with the government, we've raised with Treasury and the Treasurer and we're waiting for an answer on. If we were to have recurrent data in some of these areas, we could implement product intervention orders in a much more decisive and quicker way so we can realise the aspirations that we all had for the product intervention order power.

Senator McALLISTER: Chair, I'll cede the call, but I do want to come back and just follow-up on that.

CHAIR: Most certainly. Just for everyone's information, we do have a long list of interested senators in this area. We are not too far behind time, but we should move through as rapidly as we can.

Senator BRAGG: Good afternoon. I have a few random questions. The first one is: do you know about AFCA?

Mr Longo: Yes.

Senator BRAGG: Where would I ask questions about AFCA?

Mr Longo: Deputy Chair Chester will take a question on AFCA, Senator.

Ms Chester: As best I can, Senator.

Senator BRAGG: As you know, in our roles as parliamentarians we come across people who require assistance from government agencies, and so we write you letters and make representations on behalf of constituents and businesses. So where does AFCA sit in that? Do we write those letters to AFCA directly, or how should we deal with issues that arise on AFCA?

Ms Chester: It depends on the nature of the issue that you'd want to raise. Are you able to elaborate?

Senator BRAGG: For example, as you know from the past couple of years of these hearings, we raise issues at the Parliamentary Joint Committee on Corporations and Financial Services where there are cases that emerge. AFCA doesn't come to Senate estimates. I'm just wondering where we ask questions.

Ms Chester: The issue you're raising is a matter for the Treasurer and the secretary of Treasury. We do have a modest role with respect to AFCA and their rule-making powers, but you're raising issues of their accountability to the parliament, to the Senate, so that's better put to the Treasury portfolio.

Senator BRAGG: So who should I ask about that?

Senator Hume: You could probably ask me, Senator. But there is currently a review into AFCA underway, so any questions that you have about AFCA or issues that you'd like to raise can be raised either through me or directly to Treasury.

Senator BRAGG: For the record I think it is important that all government or quasi-government agencies have some accountability back to the parliament, because these are important forums. Okay, that's good. On cryptocurrency, who can I ask these questions of?

Ms Armour: You can ask me, Senator.

Senator BRAGG: Thank you. So what is your regulatory role in relation to cryptocurrency?

Ms Armour: Our regulatory role, as you're aware, Senator, is in relation to financial products, and so in relation to crypto-assets the question is: are crypto-assets financial products that come within our regulatory regime? And it does depend on the particular asset, whether or not it comes within our regulatory regime. As you'd be familiar from the work of your other committee, in other jurisdictions, for example, in the United States, the CFTC, which is the Commodity Futures Trading Commission, has jurisdiction over the futures contract for bitcoin. Bitcoin is I guess treated like any commodity, and the equivalent of ASIC has a jurisdiction over the derivative contract. So it really does depend on the nature of the crypto-asset.

Senator BRAGG: Okay, but we don't have a regime for licensing markets, do we?

Ms Armour: We do have a regime for licensing markets that are markets of financial products, so if there was, for example, a market on derivatives of crypto-assets, that would come within our remit.

Senator BRAGG: Do any have a market licence at this stage?

Ms Armour: No. We have been discussing the basis on which it might be acceptable for exchange-traded funds to have underlying assets in crypto-assets and the circumstances in which the existing market licensees could offer that product, and that's something that we're interested in discussing with the market operators.

Senator BRAGG: Okay, very good. I want to ask you about this matter to do with the *New Daily* and the AustralianSuper fund?

Ms Armour: I think Commissioner Press may be able to assist.

Senator BRAGG: Okay, sure. Commissioner Press, I want to ask you about this matter which—she has just gone. She was so looking forward to the questions that she switched her camera off, I can tell. Can you hear me? It's like being on the moon. We can't hear you.

Ms Press: I can hear you, and I would have been disappointed not to have got a question from you.

Senator BRAGG: I'm sure. To cut to the chase here, the question for you, ASIC, is: if a superannuation fund is going to be giving away its data to another organisation, how does that work and what is the legal framework which allows them to do that?

Ms Press: Questions of privacy would need to go to the Privacy Commissioner. With respect to the subscription for the *New Daily*, we are aware that APRA is looking into this issue, and they will be the lead regulator on it.

Senator BRAGG: Okay, but your role is consumer protection, so surely you can't have a situation where we have an outsourced pension scheme where the participants in that scheme are allowed to just give away the data that they're given because we have compulsory pensions?

Ms Press: I think we agree here. I do think that the issues of privacy and data collection are actually still ones for the Privacy Commissioner as opposed to ASIC. I am aware, as I said, that APRA is looking into this, and given that we try not to cross over as regulators, we are letting—

Senator BRAGG: Okay, so your answer is: ask APRA. That's what I'll do. My last question is just in relation to something we picked up before, Commissioner Press, which is regulatory fines and who pays regulatory fines. I think you have a slew of cases that have either been determined or are to be determined. I'm just wondering whether or not the members of the super funds pay in the case of fines being awarded in the courts. I think you've got AMP, Rest, StatePlus, ME Bank, so what is the case in those examples? Is it the case that the members pay through the reserve, or do shareholders pay? Who pays if ASIC wins?

Ms Press: Senator Bragg, that's a very good question but a difficult one to answer, as it will turn on the facts of the case. As you would be aware, from 1 January next year the law becomes clearer. Funds are currently looking at what that means for them, and they will need to take their own advice. But at the end of the day to comment on any one case is actually almost impossible because it does turn on the facts of the case. I would note that if you're not a super fund, you do not have to comply with the same legislation under SIS.

Senator BRAGG: My last question is just one for clarification, then. Who determines the policies around the reserves? Is that an APRA policy or is that you?

Ms Press: APRA has guidance around the use of reserves and the policy settings around that. Each fund will need to have their own guidance and their own policy as to how their reserves can be used, and then of course the law oversees it as well.

Senator SCARR: I have questions in relation to activist short-selling and the information sheet that was put out by ASIC yesterday. Is that you, Ms Armour? I have a bundle of documents here I'm going to refer to, so I might get someone to pass them over to you just for the record.

CHAIR: Did you bring enough for everyone, Senator Scarr?

Senator SCARR: I have a copy for you as well, Chair. I'm going to walk through them. The first document is a price chart for an ASX-listed company called Rural Funds Group which was subject to a short-selling attack which you may be aware of, Commissioner, and it shows the calamitous fall in their share price between when the short occurred on 6 August and through to 8 August. The second document I've provided to you is a judgement of Justice Hammerschlag from the Supreme Court of New South Wales, dated 12 February 2020, and in that document, if I can quote from paragraph 126

Manifestly, the statements and information made and disseminated by Bonitas

which is a private equity group out of Texas which might be related to JR Ewing, I'm not sure, but they certainly have some of the hallmarks—

and Wiechert—

who was a senior executive at Bonitas—

were intended to, likely to, and did, induce persons in this jurisdiction to dispose of their units, or acquire units. They were also plainly intended to, likely to, and did, have the effect of reducing the trading price of the units.

And then paragraph 127:

The conduct complained of was in relation to a financial product and was in trade or commerce.

And then paragraph 128:

The disseminations which Bonitas and Wiechert made were of the most serious kind. Wiechert is no doubt a sophisticated operator. Yet, as has earlier been said, neither Bonitas nor Wiechert took the trouble to check with or enquire of RFM as to any of the matters which they broadcast. They had an obvious commercial interest in depressing the price. I have no difficulty in concluding that they did not care whether what they were saying was false.

I've also given you the judgement with respect to damages, which was also issued by Justice Hammerschlag of the New South Wales Supreme Court, and I note that in paragraph 3: claims of damages were made for $385,000 through an independent expert report prepared by Ernst & Young to rebut what Bonitas research stated; secondly, damages of $134,784 were paid to lawyers for services rendered in relation to that report; and finally, costs in the amount of $368,974 were also awarded to RFM, Rural Funds Management, in relation to the matter. I've also given you an article dated 7 December 2020 by Adele Ferguson, which is entitled 'Caught in a bear trap: How 'short and distort' attacks are costing Australian investors billions'. I quote from that, on page 7 of 8. This is from Mr David Bryant, who was managing director of Rural Funds Management:

The laws are there and available for the corporate policeman—

I think that's ASIC—

to do its job and it's not. They leave it up to the company to deal with the criminal, which is wrong.

Then on page 8 the article says:

"People can be forgiven for doubting us because of the volume of carefully planned lies but it is an embarrassment to our country that the regulators are failing in this regard," Bryant said.

CHAIR: Senator Scarr, we do need to get to a question.

Senator SCARR: I am. Commissioner, you've released an information sheet.

Ms Armour: Yes.

Senator SCARR: I've got to tell you that, from my perspective, it's pretty underwhelming. What is ASIC doing to enforce Australian law against short sellers who are totally oblivious to any concern and totally disregard any of the suggestions you provide in the information sheet with respect to engagement with companies and not using inflammatory or emotive language? What are you doing about short sellers based in overseas jurisdictions—in this case, Texas in the United States—who are just flouting Australian laws?

Ms Armour: The information sheet isn't all the things that we do, but we did think it was useful to put in one place, for everyone to access, what we thought were the best practices. But what we do is that, as you know, we review all trading that occurs on the Australian markets. We monitor the markets to see what short positions there are in stock. We enforce the short-selling laws, which in Australia do not allow naked short selling. We go and monitor situations where it looks like there could be some naked short selling. We ensure that that doesn't occur. When we see someone from overseas issuing a short report, we ask ourselves, 'How did that report get to Australia?' We ask ourselves, 'Is this person providing financial services in Australia in a way that's not permitted?' We speak with our regulated counterparts overseas about what action they may take. We examine what is said in the report. We go and examine the allegations in the report and see whether or not they are inappropriate, if existent. We look at the social media sites and we look to see whether or not there is some sort of manipulative approach being taken more broadly. It's a really important point you raise, and we totally agree that this is an area that we need to be focused on and doing our hardest work on.

Senator SCARR: I understand that, but I guess this is the point I'm seeking to make. Forgive me, Chair, for the preamble, but I did need to set the context here. Look at the trading history of this company. I've got a printout of the number of shares that were traded. On 5 August, there was about 350,000. The next day, when the short sellers mounted their attack, the number of shares traded went up to 5.8 million, and then, after the company came out of trading halt, it went up to 36.3 million shares traded. On 1 June 2021, there were only 136,000. So there are a lot of Australian shareholders in this case who disposed of their units at a loss due to this false, misleading report that came out of Texas and which a Supreme Court of New South Wales judge found to be false and misleading. The question I have is: can't we move forward, beyond speaking to the overseas regulator, and actually take enforcement action to send a message to short sellers? I suggest you read Bonitas's latest Twitter feed. I don't think they're going to change their inflammatory language because of ASIC's information sheet. Can't we have an actual strategy to send a strong message to short sellers overseas that we're not going to cop this in the Australian market? Isn't there more we can do?

Ms Armour: Absolutely. Where we're seeing that general behaviour—I can't comment on that individual Twitter feed—

Senator SCARR: I'm not sure why you can't, on the basis that this is a public case. This is a public decision in terms of RFM.

Ms Armour: Well, we can sit down and talk about the dynamics of the decision-making that went into how we dealt with RFM at some point if you think that would be constructive, but I think more generally on your point—and you are making a good point—we absolutely are very, very determined to ensure that investors in this market have comfort that there is integrity in the market, and that we do take action. So we are absolutely determined to take the action that we can, and to be as aggressive as we need to be to ensure that. So we are very happy for you to send us examples of things that you are seeing. We are very happy to take you through discussions with some of our teams about the way that we might look to do that sort of thing at a more granular level, because, you're right, it is a very important point and it is something that we are absolutely committed to dealing with.

Senator SCARR: Ms Armour, if you go back and reflect on the information statement you've just released—on the first paragraph on the second page, it says:

Our research indicates that activist short selling campaigns tend to target entities with complex and opaque corporate structures and accounting practices, or poor disclosure.

Isn't it right to say, though, that you have an example here of short-sellers attacking an Australian listed public company which did absolutely nothing wrong and, thereby, shareholders, security holders, in this country have suffered loss? It just seems to me—and I would like your comment in response to this—that the information sheet doesn't recognise that there are overseas entities doing the wrong thing, attacking the integrity of our markets, and ASIC is basically giving us: 'Well, this is what you can do in response to that. And, by the way, we will talk to overseas securities exchange commissions et cetera.' Isn't there more you could be doing to send a strong message to these activist short-sellers engaging in distortive market practices—as found by the New South Wales Supreme Court—to send the message, 'We just won't cop it in Australia'?

Ms Armour: Make no mistake about it, where there are manipulative practices in our markets in Australia, wherever it comes from, we will take all the steps that we can.

Senator SCARR: What steps were taken on RFM?

Ms Armour: I'm just wondering if this is an appropriate place to go into the details of an incident that is a number of years old. But I'm very happy to have the conversation.

CHAIR: Can I suggest that we perhaps move this to an offline briefing, because the official has offered it and we are somewhat short of time. I appreciate your passion, Senator Scarr, but it's probably something better to discuss in a closed forum.

Senator SCARR: I'm happy to leave it there.

CHAIR: Senator McKim, you have the call.

Senator McKIM: Thanks to folks for their attendance. Since the onset of the pandemic, has ASIC observed the current responsible lending obligations on consumer loans having any impact on the growth of credit?

Mr Longo: I will ask Commissioner Hughes to respond to that question and I hope the technology allows him to do it.

Mr Hughes: Good afternoon. Senator, I can approach your question in two ways. The first is in relation to consumer credit during the pandemic period. Of course, there were very low levels of demand for such credit and the major focus of the banks was not in relation to new markets but rather in terms of deferrals and refinancing, so there wasn't, to be frank, a high degree of credit growth for us to measure. But, in answer to your specific question, we did not identify any blockages from the data that we received arising from responsible lending. And, as far as I'm aware, no bank chief—in the evidence which was given to the House of Representatives Standing Committee on Economics—indicated that responsible lending regulatory requirements were posing any impediments to the flow of credit to borrowers who were seeking money.

The second answer to your question is in relation to small business lending. By virtue of the Treasurer's instrument put into effect in March 2020, the provisions whereby responsible lending requirements could be imposed if there was a mixed purpose loan and the predominant purpose of the loan was for personal purposes, such as residential purposes, that mixed purpose responsible lending obligation was put to one side by virtue of the Treasurer's instrument, and, provided any part of the loan was for business purpose, even one per cent, then there would be no responsible lending obligations imposed on the lender. That essentially continues today, so, in relation to small business lending where any part of the loan is for business purposes, responsible lending does not apply.

So, as at this point, we are yet to see any empirical evidence that would suggest that responsible lending has impeded the flow of credit to consumers. Based on the data that we have season to date, my understanding is that new loan commitments for housing rose 5.5 per cent in March 2021, and 55.3 per cent year on year.

Senator McKIM: Thank you. That's helpful and you've remarkably anticipated my next question which was about that 55 per cent growth in loan commitments for housing in the 12 months to March 2021. Would you agree that suggests actually a strong flow of credit?

Mr Hughes: Well, I'm not an economist, and that question may be one that would be better addressed to APRA and the RBA after you see us. All we can do is go off the data that we receive, but obviously there has been a very, very strong demand for loan finance for housing in the last few months and that is reflected in those numbers. All I can do is reiterate that, in terms of the bilateral conversations that ASIC has had with both major regional and smaller lenders, such as those represented by the ABA and by COBA—now discussed at an industry-wide level—we have not had any lender say to us that responsible lending obligations administered by ASIC are inhibiting the supply of credit to consumers.

Senator McKIM: Thank you. That's clear. Did ASIC change its approach in any way regarding the enforcement of responsible lending obligations in light of the government's proposed abolition of those obligations?

Mr Hughes: The first thing we did was take stock of the decision of the full Federal Court in the Westpac case that we ran. As you would be aware, ASIC was unsuccessful by a one-to-two majority in that case. Our interpretation of the law was clearly not the view of the full court. The full court sided with Westpac's interpretation. As a result of that, we stepped back and asked ourselves, in relation to the diet of cases that we had under investigation and those which we were preparing for court, whether it would be appropriate for us to proceed with those. That stocktake has essentially concluded. We do have matters that are in the pipeline that do not go to the issues that were raised in the Westpac case. But, naturally, we are not blind to the realities of the proposed reforms and we wait to see what the outcome of the government's proposed passage [inaudible] but we are not running any cases, for instance, in relation to expenditure benchmark cases that would go directly to the issues that were canvassed in the Westpac appeal.

Senator McKIM: Thank you. You have said you are not blind to the reality of the government's proposed reforms. Would it be equally true to say that you are not blind to the reality that those reforms are highly unlikely to make it through the Senate? Has that impacted on the way ASIC has proceeded in regard to responsible lending?

Mr Hughes: Our role in relation to those reforms is to advise Treasury on the impact of those reforms on the regime and to work with APRA so as to ensure that we stand ready to implement those reforms if they are passed. Whether they are passed or not has nothing to do with ASIC; that's entirely a matter for government and for this chamber.

Senator McKIM: You may have answered this in one of your earlier responses—and, if so, my apologies; I'll just ask you to respond again—but has ASIC received any feedback at all from lenders about the impact of any uncertainty regarding the future of responsible lending obligations?

Mr Hughes: I think there have been criticisms expressed in the media and by some commentators, some of whom choose to remain anonymous, that the guidance that ASIC consulted on and revised in 2019 has added complexity and uncertainty as to those obligations. In coming up with that guidance in 2019, ASIC went through one of the most exhaustive consultative processes it has undertaken in recent times, and, indeed, the lengthy number of case examples that we provide in that guidance were inserted at the request of the lenders themselves. That said, we are aware that there has been some perception that there is a divergence between ASIC's responsible lending guidance—and it is only guidance and not the law; it's simply our interpretation of the law—and APRA's enforceable prudential standards, and that is something that we looked on with some concern to make sure that that is not the case. We remain keen to work with APRA if the reforms are enacted to ensure that there is synergy between the prudential standards which will apply to ADI lenders and how they are applied by us to non-ADI lenders. I think the other area you might be referring to is in relation to some determinations by AFCA, which in relation to its jurisdiction, which is very different to ASIC's jurisdiction, may have created the sense that there's a further set of obligations that banks have to comply with. Again, that's something that we have discussed with AFCA to ensure that that lack of certainty is addressed. But to some extent we need to wait to see what the outcomes of the reforms are before we can take that much further.

Senator McKIM: Thank you. I do appreciate that. Last question: is ASIC aware of any lenders who are holding back on making loans given any uncertainty regarding the future of the responsible lending obligations?

Mr Hughes: I couldn't answer that question. I do know that lenders applying a prudent banker test may well be deciding not to approve a loan because it's not a good credit risk. But I'm not aware of lenders not approving loans because of uncertainty about future reforms.

Senator WALSH: I've got a couple of questions around ASIC's expectations of companies in relation to reporting JobKeeper. Where are they best directed?

Ms Armour: I'll try and assist.

Senator WALSH: Thank you. I understand that, in July last year, ASIC announced that entities should disclose JobKeeper receipts. What I have here is that you announced that entities should appropriately account for each type of support and assistance from government, lenders, landlords and others in the financial report and in the operating and financial reporting, and examples include JobKeeper. Is that correct? Can you confirm that you've advised that entities should account for JobKeeper separately in their financial reports?

Ms Armour: The advice we gave was where the support and assistance is significant—so where it's going to have a material impact on the organisation—yes, we do think they should be disclosed in the financial report and the operational and financial risk report.

Senator WALSH: The reporting period in question hasn't generally commenced yet, but we would have—

Ms Armour: No. We've been looking at the financial reports for the year end, 30 June 2020, and the half-yearly, 31 December 2020.

Senator WALSH: So it was retrospective and prospective?

Ms Armour: It was at the time we flagged it for people, but there is a lag, obviously, between the time people received these payments and their financial reporting of them. So far, we haven't identified contraventions of the act where a company didn't disclose appropriately. There's still, obviously, this year's reporting season to come.

Senator WALSH: You just anticipated my question by saying you haven't seen any instances where entities haven't reported correctly. There might be some instances where entities have reported JobKeeper in the context of a net benefit, as opposed to separately accounting for it. Could that be the case?

Ms Armour: We really have to have a look at the substance of the way the financial reports have been put together, the relative significance of the amounts and the way the information is provided. It's a little bit hard to generalise—

Senator WALSH: I guess it's going to be—and is—an issue of public interest.

Ms Armour: Yes.

Senator WALSH: What sorts of things are you thinking about, in terms of compliance with that advice, in relation to companies explicitly accounting for JobKeeper separately from other forms of benefit and in relation to levels of materiality?

Ms Armour: We will have to examine each particular case. Whether or not there's actually a harm for the users of the reports from the way the information has been produced is a critical question. Of course, whether or not there has been a breach of the Australian accounting standards is obviously critical as well. We're certainly monitoring the information, and we will be focusing on it again in the financial reports for 30 June this year.

Senator WALSH: So I can get an idea of what sort of work is associated with that, when you say you'd have to look at every report—

Ms Armour: We don't look at every one. We do a risk-rated, proactive review of the financial reports of listed companies and large unlisted companies. These are the sorts of things we'll take into account in our choice of companies. Then we have a look at the financial reports. We have a look at the audit judgements that were made and the critical issues for that company. Of course, if we become aware of any issues in relation to a particular company, we may separately look at that particular company as well. We do both a proactive and a reactive approach to testing these things.

Senator WALSH: Are you able to give us any numbers on how many entities you specifically examined in relation to their reporting of JobKeeper for the previous financial year?

Ms Armour: We are very close to putting together some public reporting on our reviews of financial reports, and I can give you, on notice, some information on the number of financial reports that we have looked at from, I guess, 30 June 2020 and any half-yearly or full reports to 31 December 2020. We won't have necessarily specifically looked just at JobKeeper; we will have looked at the whole report. That is one of the factors that we have flagged to the market that we take into account when we're doing our look at that report, but we can certainly give you that sort of information.

Senator WALSH: Yes, that would be helpful. If you could do that, that would be great. But your evidence to us today is that, on your reviews of this particular issue on how entities are reporting JobKeeper, on the available information that you have, you have not identified any instances of companies not reporting JobKeeper appropriately?

Ms Armour: So far, we haven't found contraventions of the act. That is a reasonably high standard because it's based on materiality requirements and accounting standards. But, so far, yes.

Senator WALSH: Thank you. Are you able to tell us, on notice or now, the total number of companies that have actually reported receiving JobKeeper in their reporting to ASIC since that advice?

Ms Armour: I'm not able to tell you, and I think that that would be quite an exercise. There are like 2,300 listed companies. The size of the total population of companies in Australia is over 2 million, and to—

Senator WALSH: Are you able to do that for the listed companies?

Ms Armour: Even that would be a significant exercise. But we can see what sample information we could put together. We'll see what we can usefully do without devoting our entire regulatory effort to that.

CHAIR: We wouldn't want you to do that.

Senator McALLISTER: Ms Chester, I just wanted to follow up on the remarks you made about the availability of data and the challenges in establishing consumer detriment in the absence of data. Can you explain to me what the impediments are to ASIC accessing this data? Is it that it is not available? Is it a resource problem? Is it a regulatory problem? What is the impediment to you having the data that you require?

Ms Chester: Thank you for the question. It's an important one that we try to unbundle so the committee can get an understanding of the impediments we're facing here. There are a couple of areas where AFCA is data poor, and largely it's because we don't have data collection powers. Yes, we can go out and issue notices to entities, but to do it entity by entity, which is what we did recently for our 'true to label' project work, which resulted in some significant regulatory outcomes, including against Mayfair and others—that was a hugely resource-intensive task. It was timely, it was expensive—and its not just in time. The areas where we lack data are the management investment schemes, or the funds management space. Think of all the building blocks underpinning our entire super system. We do not have recurrent data collection rights there. Insurance is okay because we work with APRA and they've got some data collection rights that we're able to leverage off. Super, again, we have to leverage off APRA.

The other area, though, that we're really struggling with is what I would call the non-bank sector of lending, where you know there are so many different business models. We don't have data collection powers there, and we're in a world now where you can have a consumer who will be, say, dealing with the CBA. Their debt situation may look fine, but, if you take into account a buy now, pay later lender; a payday lender; and consumer leasing of whitegoods, we do not have a cumulative debt story, and that is fundamental today for us to understand where the tipping point is for significant consumer detriment occurring so we can achieve the aspirations of the product intervention order. (1) we can do it proactively and quickly, (2) we can do it in a precise way to work out exactly what's causing the detriment—where is the tipping point and what are the business drivers—and (3) we can do it for us to be able to do it in a way that reduces the costs of ASIC, such that we're not sopping up the spilt milk after misconduct through enforcement as opposed to stemming significant consumer detriment as it emerges in a timely way. So there are three or four areas where we simply do not have the data collection powers. We've raised this with Treasury and we've written to the Treasurer about it. That's base 1. Base 2, on the climb to Everest, is really us making sure that we've got the data capabilities and the capex. I've said this before in parliamentary hearings: we've decided to reallocate money ourselves to make data capabilities a priority, and we are doing that. But we are capex poor. We have opex, and we're not able to change it into capex. In the absence of capex, we cannot become a lean, mean data machine, and that's what we really need to do to be able to really deliver on what the parliament and the Senate expects of us with the new powers that we've gratefully received.

Senator McALLISTER: Can I ask you to table—and I accept that this will be notice—the correspondence in relation to your data requirements that you've provided to the Treasurer and also any briefs, correspondence or emails that you've provided to Treasury about the same matter?

Ms Chester: I'm happy to take that on notice, but, rest assured, the engagement that we've had with the Treasurer's office has been very positive about this just being very mindful about the legislative reform program with COVID. The things that don't seem to be the immediate must-haves tend to get pushed to the bottom of the pile, but we've been on notice for five years that we need this data. I think it does need to come to the top, so I thank you for asking the question.

CHAIR: Sorry—just for clarification, have you made a formal request to government for this?

Ms Chester: Yes, and I think it's been raised in two or three parliamentary hearings over the last 18 months that I've attended.

CHAIR: And you've made this a priority internally? Obviously you have a lot of independence in terms of your budget, so—

Ms Chester: We have made it a priority internally to the extent we can. We have reallocated monies to make data analysis a priority. We've got a terrific chief data analytics officer; we've got a fantastic strategy in place; we're upskilling our lawyers, which they—

CHAIR: I'd also assume that—sorry.

Ms Chester: We're doing everything that we can do to have the capability ready to roll, but we need the actual hard data—so we need powers to be able to do that—and we need capex to be able to have the infrastructure to turn the data capabilities and then the data into something that means that we can identify the Mayfairs of the world well before they happen.

CHAIR: This would also need to be cross-agency work, I would assume? You would need to work with other agencies. Has that work been started?

Ms Chester: We discussed this at the Council of Financial Regulators. Our brethren are very positive and supportive of what we're trying to achieve here. Treasury and the Treasurer's office have been in the discussions we've had, but we would like to progress the matter.

CHAIR: We will need to keep moving. Senator Rennick?

Senator RENNICK: My first question is about cryptocurrencies. Are we going to do something about these cryptocurrencies selling themselves as a currency to begin with, given that I think most people perceive currencies to be backed by a government? They're not really that exchangeable. Some companies will accept them as a form of payment, but it's not very widespread. So I can just see there's going to be a lot of spilt milk here at the end of the day with cryptocurrencies. So are we going to start putting the same rules around them as we do with other financial products?

Ms Armour: That's really a policy question for government. Certainly, we have seen a rise in crypto-investment scams over the first part of this year—both scams in Australia and those coming into Australia, if you like. The increase in that scam activity has been quite dramatic. We have set up a task force to try and address the scams as proactively as we can. One way that an innovative new business can distinguish themselves is actually to bring themselves into the regulatory perimeter, rather than operating outside of it, if they're able to do that, because in some ways that's probably a very good distinguishing factor for the business. So we would encourage crypto-asset businesses to think about whether they can do that. But it really is a political question, I think—a policy question for government.

Senator RENNICK: That's fair enough. I just want to touch on the short-selling issue as well. The shorts in the market have a lot more advantage over longs, it seems to me, because they don't have to disclose who is shorting. So, if I'm a long and I hold greater than five per cent of the company, I have to close disclose that. If I change my shareholding by one per cent, I have to disclose that in the annual report. The top 20 shareholders have to be disclosed, even though unfortunately nowadays most of them are called nominee accounts. Shouldn't we put the same disclosure requirements on shorters as we do on longs?

Ms Armour: Again, if that was something that you thought was worthwhile, that would be a change to the beneficial shareholding arrangements in the act—

Senator RENNICK: Sure. Yes.

Ms Armour: but that could be something. As you know, we do reporting on short positions, but it is actually just on the entity and the level of the short positions.

Senator RENNICK: Yes. That's about seven days late, the cumulative one. I've always been a big believer that, when we bought stamp duty on share trading, that's when a lot of speculative activity took off and, if you had a small—one per cent—stamp duty on trading, you would take out a lot of that crazy activity.

Ms Armour: One of the very important structural elements of our market compared to some of the overseas markets is that we have quite strict rules about what covered short-selling is. You have to have a presently available right to the stock. In other jurisdictions, it's a sort of system where you can [inaudible] locate later. I think that has meant that our levels of short-selling as a percentage of the stock on offer are relatively low. Some of the figures I've heard—

Senator RENNICK: Yes. [inaudible] stock was shorted four hundred per cent [inaudible] capital.

Ms Armour: Yes. That is just not an issue.

Senator RENNICK: Yes. It's out of control.

Ms Armour: Yes.

Senator RENNICK: Thank you.

CHAIR: Senator Roberts.

Senator ROBERTS: Thank you for attending today. Firstly, to ASIC, congratulations on your recent enforcement action against AMP for fees for no service and charging fees to dead people. I hope that goes well. I know that is a comment without a question, but I do appreciate that. In your most recent ASIC enforcement actions bulletin to December 2020, you list 11 actions still pending from the Hayne royal commission. With AMP now underway, is that now reduced to 10? Can we expect further enforcement actions for bad banking behaviour?

Mr Longo: I haven't got the statistics in front of me. Perhaps—Commissioner Armour?

Ms Armour: I think Commissioner Hughes might be best able to answer that.

Mr Hughes: Yes. Thanks. Good afternoon. We can take that one on notice. I think your assumption is probably correct, because we have been netting down, if I can put it that way, the number of matters as we've gone through. If I can just make this point: we had 13 matters referred to us by the Hayne royal commission and we are going through all of those matters, as well as 32 case studies that were examined by the royal commission, which we took on. But we will give you a specific answer to your question. I think you are correct but I just want to be crystal clear on that.

Senator ROBERTS: Thank you. Do you have a dollar figure for the total cost to Australian ADIs—that's banks—for bad banking behaviour in the last five years as a result of ASIC enforcement action?

Mr Hughes: We don't have a total cost of the behaviour. What we would be able to provide to you on notice is the total amount of civil penalties and other regulatory outcomes achieved over the period since the royal commission.

Senator ROBERTS: That, in fact, Mr Hughes, is what I'm asking for. Thank you.

Ms Chester: One other aspect to the cost measurement would be the remediation payments, which we know collectively now are well above $10 billion.

Senator ROBERTS: Thank you. To confirm: you currently have 11 enforcement actions before the courts for credit misconduct. Is that correct?

Mr Hughes: That's my understanding.

Senator ROBERTS: That's for breaches of responsible lending laws?

Mr Hughes: No. Sorry. I thought you meant in relation to matters arising from the royal commission. I didn't hear you correctly. Just in relation to credit?

Senator ROBERTS: It just happens to be the same number in both cases—11. For credit misconduct, I think you have a total of 11 before the courts?

Mr Hughes: I'm going to have to check those numbers. I'm sorry. I don't have whatever it is that you're referring to in front of me.

Senator ROBERTS: I have 'ASIC enforcement update July to December 2020', page 7. There's a table there.

Mr Hughes: Can I take that on notice?

Senator ROBERTS: Sure. I appreciate you valuing accuracy. Have you changed your enforcement since the Hayne royal commission?

Mr Hughes: I don't believe that we would say we have changed our enforcement. What we have done is prioritised matters that give rise to significant consumer detriment or hardship or which relate to egregious misconduct, including matters that might undermine confidence in the market. So there has been a refocus, or a swinging, of our prioritisation of matters specifically to address those strategic enforcement priorities. We receive a vast number of reports of misconduct, which my colleague Mr Day, can talk to you about. But we couldn't possibly resource every single matter. So we put them through a process by which we identify those matters which meet our strategic priorities. We can also prioritise enforcement matters that might relate to other priorities or thematic priorities, such as misbehaviour in the OCC derivatives market or [inaudible] matters, or matters that involve predatory lending, or misconduct involving Indigenous or remote communities. So we have a number of filters which we apply when deciding which matters to take to enforcement.

Senator ROBERTS: So it sounds like ASIC is doing its job, and you're policing responsible lending provisions. Correct?

Mr Hughes: We're enforcing the laws as they exist today. We're very mindful, of course, as Senator McKim was asking me earlier, that there are reforms before this chamber in relation to responsible lending, and we will be interested to see the passage of those reforms if that is indeed what takes place. But, where the law is settled, then we will pursue those matters where we identify misconduct and there is an actionable breach that we can pursue.

Senator ROBERTS: In a briefing with Treasury—which didn't involve me, but my staff and Senator Hanson's staff were involved—Treasury advised that the reason for the decision to move responsible lending regulation from ASIC to APRA was based in large part, apparently, on the actions of ASIC in tightening lending regulations. Have you tightened the legislation or regulation in respect of responsible lending since the Hayne royal commission? If so, how? I got the impression that you haven't.

Mr Hughes: No. ASIC does not have the power—the legislative basis or any legislative basis—to change the law or regulations. Prior to the completion of the royal commission, ASIC updated its guidance number 209—regulatory guide 209—in December 2019, which provided further examples of the sorts of conduct and considerations that responsible lenders should take into account when making lending decisions. But, as I said to Senator McKim, that guidance does not have the force of law and we have not changed the rules or imposed any new obligations since that. The only thing that has happened since the Hayne royal commission is that the full Federal Court handed down its decision in the Westpac matter.

Senator ROBERTS: Thank you. Is it true to say that any tightening in bank lending practices is a decision of the banks, not of ASIC?

Mr Hughes: We don't make decisions on individual loan applications. Those are entirely matters for banks. They will have regard, obviously, to prudential standards administered by APRA; they will have regard to their obligations under the consumer credit act, administered by ASIC; and they'll also have regard to the decisions of courts and of AFCA. But a decision to advance a loan to any particular borrower—consumer or businesses—is entirely that of the bank, not its regulators.

Senator ROBERTS: Minister, would you agree that it would be possible for some people to categorise the stripping of responsible lending regulation from ASIC as a penalty for its enforcement action against the banks?

Senator Hume: No. I think that's an unfair characterisation.

Senator ROBERTS: I just want to go on record to say I appreciate the directness and quality of the responses from ASIC. Thank you very much.

CHAIR: One question for Senator Scarr.

Senator SCARR: In my one question I'm not going to get as passionate as I did in my earlier questioning. I think Ms Armour in particular did a good job answering my questions and I look forward to the private briefing.

Ms Armour: It's great that you're so interested in this area. It's very helpful for us.

Senator SCARR: Thank you. I'm glad we've ended on a good note. Chair Longo, I think you're perfectly qualified for your new position. ACLEI, the Australian Commission for Law Enforcement Integrity—and I'm not sure whether you're up to speed with this yet—has recently expanded its jurisdiction to include ASIC. That occurred, as I understand it, from 1 January this year.

Mr Longo: Yes.

Senator SCARR: I'm keen to get an update from ASIC in relation to what steps have been taken for ASIC to build a relationship with ACLEI so that you can effectively start working together, as ACLEI works effectively with other agencies.

Mr Longo: I'm very much aware of that reform and that change. I'm going to ask our general counsel, Chris Savundra, who I have discussed this with. It's an absolutely, fundamentally important part of our governance and accountability, so I'll ask Mr Savundra to take that question.

Mr Savundra: Senator, thank you for the question. You're right: we were brought, as with many other agencies, into ACLEI's jurisdiction from 1 January. We welcome that move. We had very positive and productive engagement with ACLEI in the lead-up to that transition on 1 January. We've also reviewed and enhanced our internal operations to meet that change. We've established an integrity committee, which is chaired by ASIC's chief risk officer. ASIC's chief risk officer has primary responsibility for engagement with ACLEI, for ensuring we're discharging our obligations under the relevant legislation and also for ensuring we're meeting ACLEI's expectations. We think it has gone well. We continue to have regular meetings with ACLEI, both in relation to matters that they've raised with us and vice versa, and certainly we're in the process of them getting a much better understanding of ASIC's operations. It may be a question you want to direct to ACLEI, but certainly, from our perspective, we think it has gone very smoothly and we've done very well.

Senator SCARR: Excellent. Thanks very much.

CHAIR: I've been concerned for awhile about the impact of ongoing regulatory change to the financial advice sector. I've had a brief chat in another forum with you about this, Mr Longo. In particular we've seen new regulatory burdens and new cost burdens on the financial advice sector. We've seen new educational requirements of the financial advice sector. I get continual feedback, from a wide variety of participants in that sector, that there is a degree of regulatory overload and fatigue and that they feel under an extraordinary amount of pressure. It's causing businesses to respond in particular ways—perhaps not being able to continue with clients whom they've served for many decades but who are potentially low-value clients, because the regulatory burden has become too high. Mr Longo, do you have any views on that particular sector, including ASIC's role in regulating it and whether ASIC can proactively look at reducing the regulatory and cost burden on that sector?

Mr Longo: It's a very significant and important question. For specifics, I'll ask Commissioner Press, but, from my perspective, it's really important, in order for consumers and investors to participate confidently in our financial markets, that they are able to have ready access to advice they can afford and understand. There's no question that our system at the moment is complex and that there are a range of requirements that financial advisers have to comply with. As we know, there have been a number of recent legislative changes coming out of the royal commission that have relevance to this problem as well. For my part, I am concerned about this sector. I think it's really important that consumers have access to affordable financial services advice, and it will be one of my priorities to see what can be done to address that issue.

What I would say, in conclusion, is that there has been a lot of litigation on this recently. The whole question of personal versus general advice went to the High Court. We do have a complex regime. I think one of the challenges for ASIC and for policymakers is to figure out a way of making that regime more digestible, with the practical effect of consumers having access to affordable advice. I know Commissioner Press has done a lot of work on this, and, with the leave of the chair, I might ask her to supplement my answer, in case there are some additional points that would be of assistance to the committee.

Ms Press: Thank you for the question. I completely agree that it's a really important part of the Australian financial services system. As you know, we did a consultation into access to affordable advice recently, which closed. We had over 480 submissions to that, which suggests that it's a very engaged industry and also a very important part of what we do. From that, there were a number of things that came out. There are certainly some things that we can do to make our regulatory requirements more [inaudible]. That will be a matter of how we [inaudible]. There are also a number of legislative reforms that were proposed. We have passed those through Treasury. We know that there will be a review into advice in the second half of next year. I would expect that the regulatory and legislative changes that have been suggested by industry will be considered at that time, or potentially earlier, by the Treasury and the government.

CHAIR: One of the challenges that I'm facing when talking to people in the industry is that they feel as if they are not getting the information and guidance they need to make high-quality decisions. One issue that's been raised with me recently has been requirements around using the term 'independent' and whether that's been clearly defined and is being consistently applied across the financial advice sector. Is that something that's been communicated to ASIC? Have you provided guidance in respect to obligations under those new requirements to properly declare independence or frame yourself as an independent?

Ms Press: The legislation around independence is relatively clear. I have not heard anything directly on those concerns. If there are concerns or if there is a requirement for further guidance from us on those issues, I would encourage industry to talk to us about that. However, that is defined by the legislation, not by ASIC.

CHAIR: Okay. I do have a particular case. I'm loath to mention company names in forums like this, so I'll take it to ASIC offline, but I do have a particular case where a financial advice firm owned by a group of super funds is declaring itself to be independent, and small financial advisers see that as being an inconsistent application of the law. But I'm happy to bring that to you offline, unless you wish to make a comment.

Ms Press: I would probably prefer to take that offline, but I am aware that we have looked at that situation, so I'm very happy to give you a briefing on it.

CHAIR: That would be good. Thank you for the response to my questions on notice from the last estimates round. I'm still struggling a little bit to understand the difference between the increase in the ASIC funding levy that I am being told about by individual financial advisers, which is in excess of 100 per cent, and the 29 per cent that you, Commissioner, quoted. I believe it was at the last estimates round. Can you talk me through where that differential is coming about? What is the difference between the 29 per cent and the 100, 110 or 112 per cent that I'm hearing about from financial advisers? How is that differential explained?

Ms Press: Again, I would prefer to take that one on notice. The funding levy is quite complex and difficult to explain, and I'm not sure that I will be able to do it justice with the numbers on the run. There are a lot of factors that are impacting the funding levy for advisers at the moment. We've talked about a number of them. I really don't think I have anything useful to say.

CHAIR: Okay. Also on notice then, could I get an explanation of the drivers behind the cost increase? I'm happy for you to take this on notice. My understanding is that to some degree it's been put down to an increase in enforcement activity, so could I have a breakdown of the drivers behind the increase as well? I'm happy to do that as part of a private briefing or as a question on notice—whichever you would prefer.

Perhaps you could take this one on notice as well: you won a High Court case last year against Westpac relating to superannuation funds who were positioning themselves as providing general advice. The High Court found that they were providing personal advice. Given that this issue related to super funds that were operating on a general advice model, did financial advisers who provided personal advice to retail clients end up paying any of the costs of that action?

Ms Press: I would need to take that on notice as well, as to which bucket that funding went into and therefore where the costs would go back to.

Ms Armour: We do have a formula in the cost recovery arrangements for how enforcement matters are allocated, and the formula is applied depending on the nature of the matter. We could certainly provide that information.

CHAIR: I do have more questions, but, in the interests of time and given that we are around half an hour behind schedule, I will leave it there. Once again, Mr Longo, thank you very much. I hope that wasn't too painful.

Mr Longo: Thank you, Chair. I think it's as good as it's going to get.

CHAIR: No, it can get a lot better.

Mr Longo: I hope those last remarks aren't taken in the wrong spirit.

CHAIR: I'm not sure what that means, but it can get a lot better. I will get you some more questions on notice. Thank you all very much for your time today. That is it for today for the Australian Securities and Investments Commission. We will suspend for 15 minutes and return with the Australian Prudential Regulation Authority.

Proceedings suspended from 16:14 to 16:32

Australian Prudential Regulation Authority

CHAIR: We will now resume this hearing of the Senate Economics Legislation Committee. We are in budget estimates and we have before us the Australian Prudential Regulation Authority. Welcome along once again. Do you wish to make any opening remarks?

Mr Byres: I do have an opening statement, which I think is being distributed to the committee. In the interests of time, I won't read it word for word, which I'm sure you'll appreciate.

CHAIR: We are happy to accept that for tabling.

Mr Byres: I'm happy to read it if you would prefer.

CHAIR: We'd prefer that you just give us the highlights.

Mr Byres: There are three things in the statement that I think are important to call out. First, it touches on some of the improvements we are seeing in the superannuation sector which we think are important to call out—the continuing consolidation and the continuing reduction in fees. Both of those are positives. We also highlight that there is still obviously more to do. The second thing the statement does is call out a couple of important pieces of work we have underway at present, the first being the expansion of our heatmap work to Choice products. We think the MySuper heatmaps have been very effective and we think the extension of those heatmaps will be equally effective given that we see a tale of underperforming Choice products. So that's important. Secondly, we've been doing a review of trustee expenditure, which we've talked about previously at this committee. That important piece of work is nearing a conclusion. It is probably fair to say that trustees have mixed results in terms of their ability to demonstrate quantifiable benefits to members from certain sorts of expenditure, so we are continuing to be quite active in that area.

The third and final point I would make by way of a summary opening is that much of the work we are doing is aligned with the government's Your Future, Your Super legislative reforms; issues around clear benchmarks for performance, and consequences where they are not met; increasing transparency for trustee expenditure; and tools to deal with issues that emerge over time in an effective and industry-wide way. These are all important steps and they are all quite aligned with the agenda we are already pursuing. With that, I'll pause and we would welcome your questions.

CHAIR: Thank you. We have a large number of senators who have indicated an interest. We'll start with Senator McAllister.

Senator McALLISTER: Can APRA provide a bit of an update on the current levels of household borrowing through APRA regulated entities.

Mr Byres: Are you referring to housing lending specifically?

Senator McALLISTER: Household borrowing, not necessarily for housing.

Mr Byres: I don't know how much detail you want on that. The vast bulk of household lending is obviously mortgage lending. Personal lending and credit card lending is generally a small share. If I think about the growth of household lending, a good proxy is mortgage lending growth, which is the figure I have in front of me. The latest year-on-year growth number is four per cent but, in the current housing market, that is picking up.

Senator McALLISTER: Is four per cent consistent with the long-term average or is it a higher rate of growth than—

Mr Byres: It is a relatively slow rate of growth. The growth in mortgage lending has moved up and down quite considerably over the years. It depends on economic conditions. A few years ago, when we were quite active in reinforcing lending standards among the banks, it was growing much faster—maybe seven or eight per cent—and investor lending was growing at north of 10 per cent. In the past, it's been even higher than that. So four per cent would probably be a bit below average over the long run.

Senator McALLISTER: But your indication is that it is picking up?

Mr Byres: Yes.

Senator McALLISTER: Is there any indication of a decline in the supply of or demand for credit in the household lending market?

Mr Byres: There is no indication of a decline in supply. I think banks are still available to lend if need be. There is certainly a pickup in demand for credit. As the housing market recovers, that naturally generates a demand for new credit as people look to get into the market. To this point, that has primarily been owner-occupiers and, to some degree, first home buyers—and I think that's a positive outcome—but investor lending is starting to pick up again.

Senator McALLISTER: I assume you would attribute the slightly below trend growth rate in household credit to the economic shocks associated with the pandemic.

Mr Byres: Absolutely. It's a period where total credit growth got quite low. Housing credit growth had a three in front of it. That is quite low. That is largely because, particularly during the middle of last year, very few transactions were occurring, there was no real demand for credit, and people were using their savings or the early release of super to pay down credit rather than looking to take on more credit in a very uncertain environment. But, as confidence improves, you would expect credit growth to pick up again.

Senator McALLISTER: We've talked here and in other forums about the proposed changes to APRA's mandate arising from the repeal of the responsible lending laws. Can you give us an update on the work APRA is undertaking to implement this policy.

Mr Byres: I will hand that to John Lonsdale, who is closer to it than me. But I will start with the same slight clarification or correction that I gave last time: we would say our mandate hasn't changed; we still have the same task; and, to the extent that the responsible lending obligations are being changed, it is ASIC's role that is being changed. With that, I will hand over to John.

Mr Lonsdale: Thanks, Wayne. Senator, as I think we discussed last time, APRA's main focus has been through the prudential lens—in particular, APS 220. We've refreshed that standard. That refreshed standard was to come into place at the beginning of next year. The main change we've made in light of the credit reforms is that, in the event that the government's legislation passes, we would seek to bring forward that standard to align it with the parliament's start date. There is no difference then between what's happening on the banking side and the other side. That's really the key thing we've done.

Senator McALLISTER: The passage of the legislation is not certain; it never is in any parliament. In the event that the National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020 does not pass, do you intend to make any changes to prudential standards around household lending more generally?

Mr Lonsdale: In that case, the prudential standard would remain as I've described previously—except for the start date, where we would go back to what we previously said we were going to do, which is begin at the beginning of next year.

Senator McALLISTER: So, from APRA's perspective, there is no material difference except for the commencement date?

Mr Lonsdale: Correct.

Senator McALLISTER: Mr Byres, I want to follow up on one of the issues you highlighted in your opening remarks—the extension of the heatmaps to Choice products. That's obviously a conversation we've also had on many occasions. Can you tell us a little bit more about the work plan, the approach you are taking to expanding the heatmaps, your objectives for this project, and when we should expect to see these come online.

Mr Byres: I will hand over to Helen Rowell, who has been overseeing that work.

Senator McALLISTER: Mrs Rowell, I note from the opening statement that you're going to be taking a different role. You're going to be looking after insurance.

Mrs Rowell: That's correct.

Senator McALLISTER: When does that commence?

Mr Byres: It officially starts from 1 July, but it's probably fair to say we're in transition at the moment. When Margaret comes on board, on 1 July, she will officially pick up superannuation.

Senator McALLISTER: Who is looking after insurance at the moment?

Mrs Rowell: It's spread between the three of us.

Senator McALLISTER: I see—all of you.

Mr Byres: In the sense that we have three insurance sectors. I have picked up private health insurance, John has picked up general insurance, and Helen is looking after life insurance because it has the closest connection to super.

Senator McALLISTER: Okay, very good. But you are still in charge of super for the moment, Mrs Rowell, and should answer these questions about the Choice products?

Mrs Rowell: That's correct.

Senator McALLISTER: Perhaps you could just provide a general description about your plan for the next 12 months in relation to the heatmaps for Choice products.

Mrs Rowell: Certainly, and thanks for the question. We have been working on the methodology and the approach to implementation of a heatmap for Choice products for a while now because it has always been our intention that we would extend our heatmap approach to Choice products once we had appropriate data. We've been working with external providers to get data on the scope and structure of the Choice sector, and that has helped inform the staging approach we are going to take to the Choice heatmap: we're going to commence with multisector Choice products and then extend further in the future. We are at the moment consulting informally with industry stakeholders on the method we use. In essence, we're going to apply a similar approach to what we've used in in the MySuper space, with a range of different metrics looking at investment performance over different time periods, expenses and the like. We expect to release an information paper with some initial summary insights, and outlining our approach, in the middle of the year. The timing of that is still to be determined. Our aim is to release the first heatmap for multisector Choice products in the last quarter of the year.

Senator McALLISTER: Mr Byres's opening statement indicates that the preliminary work has shown choice products are producing more variability and outcomes, and often at higher costs that MySuper products, and the tale of underperforming multisector choice products is large. Can you tell me a little bit about that analysis?

Mrs Rowell: As I said, we've been working with external stakeholders to use existing data that is available on the choice sector to do some analysis to help inform our approach. That work has—probably not surprisingly to anyone who's been involved in the super industry—just confirmed some of the conclusions drawn by the Productivity Commission and others that the range of choice products is large; the performance of those products varies quite widely, as some have quite reasonable performance and others have less good performance; and the range of costs charged to members in the choice sector is quite wide. The preliminary analysis that we have done indicates that there are some relatively expensive choice products out there that are underperforming. They will be the products that will be clearly highlighted in our heat map when we release it later this year.

Senator McALLISTER: What does this research tell you about the relative performance of products in the choice sector when compared to MySuper products?

Mrs Rowell: That is specifically what we've looked at. That's the basis of the conclusion that was in one of my recent speeches and in the opening statement, which is that, relative to a MySuper product, you've got a wider range or variation in performance, a wider range of fees, and a tale of higher fees of products. This is not necessarily new.

Senator McALLISTER: So performance is lower than in MySuper—

Mrs Rowell: Not across the board. I think there are some choice products that are quite competitive, perform quite well and are quite reasonably priced.

Senator Hume: These are trustee directed products as opposed to single-asset-class products that we're talking about.

Senator McALLISTER: You indicated that you're going to start with the multisector choice products and then expand into other parts. What proportion of the choice sector do you anticipate will be covered or in scope for the first round of the heat maps?

Mrs Rowell: It's relatively high. I haven't got that specific figure in front of me. Obviously, our intent is to expand over time to make sure we have a pretty high coverage of the choice sector. A lot of that is critically dependent on data. The first data under the new APRA data collection is not due to be submitted to us until September.

Senator McALLISTER: I appreciate that this may be in the public domain, so I apologise for asking you about it, but can you talk me through the data that will be collected between now and September? It sounds like it's critical for the ability to construct the heat maps by the end of the year.

Mrs Rowell: We've been undertaking a major data transformation program for super for the last couple of years, which is really expanding the data we collect across the whole population of super, around investment performance, expenditure, insurance—almost everything to do with super, if you like. Historically, we had much better data on MySuper and much less data on choice, and certainly at a much less granular level on choice. That data collection is now final, and the first reporting under that new expanded data collection will happen in September. That will give us the investment performance fee information that we need to be able to do heat maps for choice. In the first instance, the data that we're using for multisector products is based on external data that we have validated relative to the data we have to make sure that it's reliable.

Senator McALLISTER: You indicated that you'll be putting out a discussion paper in the middle of the year. Is it your intention that that will summarise and make public in a more comprehensive way the findings from the data research that you've referred to in your remarks today?

Mrs Rowell: It will, yes.

Senator McALLISTER: I think that's all that I have for you. Thanks, Mrs Rowell. You and I have been talking about what I considered an unreasonable exclusion of the choice products from this kind of scrutiny for some time. I'm interested that it's on the move. Thank you.

Senator BRAGG: Can I start by asking you some questions about the Hostplus and Maritime Super arrangement?

Mrs Rowell: Certainly.

Senator BRAGG: In summary, what exactly is proposed?

Mrs Rowell: Adrian, are you able to talk to that one?

Mr Rees: Sure. The transaction involves Maritime Super investing a considerable portion of its members' funds—not all of them—into a PST operated by Hostplus.

Senator BRAGG: Who was the trustee in this new arrangement?

Mr Rees: Hostplus.

Senator BRAGG: Who does the investments?

Mr Rees: Hostplus manages the selection and the design of the investment options; however, Maritime Super determines the mix or, if you like, the options that it invests its members' funds in based on the selections of their own members.

Senator BRAGG: Who's on the hook for investment risk, then?

Mr Rees: For maritime members, the maritime board remains on the hook. A way to think about it is that it's not dissimilar to maritime changing the external investment managers it might otherwise use itself. The benefit to maritime's members would be that the investment costs going into a larger pool of money would be expected to be lower.

Senator BRAGG: Who does the administration?

Mr Rees: For those members, there will be some aspects done by maritime, but aspects that relate to the PST, the pool super trust, specifically will continue to be done by Hostplus is our understanding.

Senator BRAGG: And insurance will be outsourced?

Mr Rees: When you say outsourced, insurance cover—

Senator BRAGG: Maritime isn't an insurance company, is it?

Mr Rees: No. As I understand it, its MySuper members will still be covered by the insurance arrangement it has in place already.

Senator BRAGG: Maritime Super wouldn't be doing that much in this arrangement, would it?

Mr Rees: I beg your pardon?

Senator BRAGG: What exactly would it be doing? If it has outsourced its investment and its administration principally, and its insurance, what exactly would it be doing?

Mr Rees: It continues to be the trustee for the members whose money is invested in the PST. When you say it has outsourced its investment, in essence it's currently doing that now because it has a panel of investment managers or products or whatever it does to invest the members' money anyway. It's really changed where that money is going and through a different legal vehicle. In a sense, it's still being managed by a range of managers. They choose the products for their members based on the members' options.

Senator BRAGG: It doesn't sound like it will be doing much. Is this a model that you think is a good model for the industry?

Mr Rees: We think there's probably going to be a variety of models that trustees will look at as alternatives to what I would call a pure merger, if you like. Mergers can be expensive. It can take a long time including the identification of a suitable counterparty, as you might understand. This can be done potentially more quickly. Similarly, it might be faster, and for other reasons a better approach, than a successor fund transfer, which is another way that people do it.

We're seeing a number of funds talking about a variety of different mechanisms to, if you like, pool assets to get the advantages of scale. I guess the balance we've got is that we need to make sure it's prudentially sound. Equally, we also don't want to be stifling innovation and preventing funds doing things that are in their members' interest that are compatible with the law.

Senator BRAGG: Thanks for that. On the advertising review, which we've discussed ad nauseam, how far away is that from reporting?

Mr Rees: There are a couple of different components to it. The first part is some general observations around what we've seen from what we've already received in terms of information from funds in the couple of rounds of information collection we've done. As I think we've said before, there are a dozen funds all up covering the profit-for-member and retail funds. We follow it up in more detail with a number. The particular focus will be around what we've seen in terms of governance and the process that trustees have had around making those expenditure decisions, how they've considered their legal obligations under SIS; and the development and identification of the metrics that would determine whether those programs are successful, and then whether they actually have been successful. We'll publish some, if you like, information for industry in general terms and, as I think we've also said on the record before, if we see particular examples that we think are inappropriate, we would consider taking action.

Senator BRAGG: Just so I'm certain on this: are the Greg Combet ads in scope for this particular advertising review?

Mr Rees: Activities through ISA are absolutely in scope.

Senator BRAGG: They're in scope? Can we expect there will be findings on that type of political advertising?

Mr Rees: When you say 'that type of advertising', we're not going to—

Senator BRAGG: That is an example, because that's about political advertising designed to bash up a particular political opponent using superannuation money. So I'm wondering if we're going to get some views from APRA on that.

Mr Rees: We're not envisaging our report will comment on the nature of the advertising or whether it's of a political nature or whatever. If there are particular situations or circumstances that we feel need further follow up, inquiry or investigation, we would do that. That's perhaps a matter we wouldn't talk about in the public domain. The more general question will be around what we've seen around governance and measurements around those activities.

Senator BRAGG: I think most people would say it's unreasonable for super funds to be doing direct political-style advertising.

Mrs Rowell: I think it is important to distinguish between the general review scope and the general observations we'll make and the more specific focus we will have on what individual entities are doing. I refer you back to the words of Commissioner Hayne in the royal commission, which were that not all advertising is inappropriate. If there are policy changes that might adversely affect members' retirement outcomes then there is an argument that they would be consistent with the legislative obligations of trustees.

Senator BRAGG: Onto these *New Daily* issues, they're not covered under this advertising review, are they?

Mrs Rowell: They're not.

Senator BRAGG: So that's a separate matter?

Mrs Rowell: Yes, that's a separate inquiry.

Senator BRAGG: What type of inquiry is APRA—

Mrs Rowell: I might get my colleague Suzanne Smith to answer questions around *The New Daily* issues.

Mrs Smith: We made inquiries in relation to *The New Daily* last week when we became aware of those, and we sought information in relation to trustees' decision-making process around regulatory obligations in relation to [inaudible] of *The New Daily*. We've also sought information from other entities in relation to what their practices and processes are around provision of information. So it's something that we're currently looking into, and our inquiries are ongoing. We're also liaising with the privacy commissioner in relation to that matter.

Senator BRAGG: Before we deal with that in detail, some super funds, as you know, have treated their cash in *The New Daily* as an expense, and others have treated it as an investment. What is APRA's position on that matter?

Mrs Smith: I think at the moment none of the super funds actually invest directly in *The New Daily*. They've all removed any direct ownership. So they're now shareholders in ISH, which is the owner of *The New Daily*. So I think where the super funds chose to invest in *The New Daily* is a historical position.

Senator BRAGG: So it's an investment?

Mrs Smith: I think that's the challenge. Some treated it as marketing expenditure and some treated it as an investment. We'd be looking at what the decision-making process was around any investment that they made. Funds are required to have an investment strategy, and as to how they've made a decision on whether that investment is appropriate will be the focus of what we would look at.

Senator BRAGG: Because, if it's an investment, it's supposed to make a return to members—right?

Mrs Smith: That's right. I think whenever anyone goes into an investment there's no guarantee that you will make a return at the start of that. It's then about the review process of whether the investment has returned what you expected it to do at the outset. There are no guarantees with any investment that anyone makes. I think what we're looking at is the process around the decision-making of how that fits into a portfolio and ultimately what that return is.

Senator BRAGG: If you look at the content on this platform, it's a political propaganda platform which sits there and sort of smears people. It is not an independent media outlet. It's actually been carved out from the News Media Bargaining Code. So it's not a normal investment. It can't possibly be.

Senator McALLISTER: Chair, I'm not sure that these officers are in a position to provide expert advice on the nature of the New Daily and whether or not it is an independent media organisation. That's not really their mandate or brief, is it?

CHAIR: I think the officials are in a position to make a judgement as to whether they can answer Senator Bragg's question or not. We do allow a fair bit of latitude in this committee.

Senator McALLISTER: Okay, thanks, Chair.

Senator CHISHOLM: The question refers to what is in the New Daily. It is not for them to judge what the content of the New Daily is.

CHAIR: No, but I think Senator Bragg is discussing the question of whether something is an investment or not. I think that is a legitimate question for a super fund to justify, and APRA, as the regulator, has a role in examining that. You've made the point. It's up to the officials how and if they wish to answer the question.

Senator McALLISTER: Understood. Thanks, Chair.

Mrs Smith: I don't think we are in a position to judge the content of the New Daily.

Senator BRAGG: Okay. I'm conscious of time and I want to wind up, so I ask you to take this on notice, because I think it's important. This is an organisation which has now wasted $30 million of superannuation money, so can you please take this on notice: what is your guidance on this particular investment, expense or whatever it is? I think the market needs to know. As policymakers, we need to know how these sorts of things, which are now material, are treated. So, if you could take that on notice, I would be grateful.

Mr Rees: I think I can clarify one thing. Since 2016, the New Daily has been owned by ISH, not by any fund directly. It is, if you like, an operating part of ISH. ISH has a range of shareholders, as you probably know, and they're all super fund trustees.

Senator BRAGG: Sure.

Mr Rees: How ISH as a company uses the money it has available to it to fund various parts of its activities is a matter for ISH. ISH is not regulated by APRA, and neither is the New Daily or any of the operating subsidiaries of ISH.

Senator BRAGG: Sure.

Mr Rees: It would be helpful, from my point of view, just to understand what it is that you want us to respond to, because ISH is not APRA regulated.

Senator BRAGG: Okay. There is a super guarantee system which is compulsory, and that money has been used to set up this organisation through various structures. The question is: What is the treatment that APRA is applying to that particular money that has come through the compulsory super system? Is it going to sit as an expense or as an investment? Given the scale of money that's gone into this particular program, I think it's important to provide some guidance. So, if you could take it on notice, I think the committee would be grateful.

Mr Byres: We'll take it on notice.

Senator BRAGG: My final question is in relation to this data issue. It is more of a process question. What sort of timetable is there on the issue of this data breach involving AustralianSuper and the New Daily, with two million people having their data disclosed?

Mr Byres: I would pause and say that I don't know if it's a data breach.

Senator BRAGG: Well, they've given away everyone's data.

Mrs Rowell: Suzanne, can you talk about timing?

Mrs Smith: Sure. These inquiries are ongoing. We are liaising with the Privacy Commissioner. At this stage I haven't got a time-frame, but we would expect that these discussions will be happening in the next few days and weeks, so we'll be in a position after that.

Senator BRAGG: Okay. Have you asked that super fund not to give away their data to any other third party?

Mrs Rowell: No.

Senator BRAGG: Will you?

Mrs Rowell: We're still actively engaging with the trustee to understand what the position is and what the issues are, so we haven't formed a view.

Senator BRAGG: Thank you very much.

CHAIR: I have a quick follow-up, more generally on the sole-purpose test. My memory is that you announced that you were going to review it in 2018. Has that come to a conclusion? Did I just miss it or has that not come to a conclusion yet?

Mrs Rowell: There was a Productivity Commission recommendation that said that there would be some merit in having some more clarity around the sole-purpose test and the best-financial-interests duty. We had some guidance on the sole-purpose test and its application, which we—

CHAIR: But that was quite old—is my understanding.

Mrs Rowell: It was quite old, and we were undertaking work to update it. That work has been superseded by the government's measures under the 'Your Future, Your Super' bill to change the best-financial-interests duty and the application of that duty, and so at this stage we are not proposing to release updated guidance on the sole-purpose test, until the landscape settles. Even then, there's a question as to whether we would need to provide additional guidance.

CHAIR: That's something we'll need to follow up in future. So, effectively, people in the financial advice industry and the super industry would still look to the old guidance?

Mrs Rowell: Yes, and a lot of the substance in the old guidance is still appropriate. It's just somewhat dated and written in a very different way to the way we would write guidance today.

CHAIR: Okay. Senator McDonald.

Senator McDONALD: Following the royal commission, banks have been meeting the responsible-lending criteria and there have been a whole lot of iterations about moving from the old, more paper-based systems to using technology, going forward. I ask these questions in that context. I'm concerned that business owners in northern Australia are still telling me that they're finding it difficult to access finance for viable opportunities which they're being told would be approved in other parts of the country. It's been put to me that there may be coded biases within the algorithms that banks are using to calculate risk and assess lending. Is this possible?

Mr Byres: Well, you can never rule out anything, can you? But I would suspect that, if the banking system saw an opportunity to lend to a good customer, and if somehow that was being missed and a bank was losing market share over another bank, they would be looking at why that was and responding to it. So I'm not sure that that's a likely outcome.

Mr Lonsdale: I'm not aware of that, but if you would like us to have a look at it we are very happy to. When we talk to banks about lending to business—and small business in particular—what we hear is that they look critically at the application. As Mr Byres said, if it's a good business model, they're lending. They certainly have the capital to lend, and APRA have said to the banks that they can push down on unquestionably strong applications. The key issue, though, is the macrocircumstances and confidence, I think. To the earlier question from Senator McAllister, credit growth for business has been much more anaemic than for housing, so I think that is probably the key issue.

Senator McDONALD: As a specific example, I've heard of people who tried to borrow for a home—one in Normanton and one in Richmond—and they were both told that they would get finance if they were to buy in Townsville. Would you consider investigating the possibility that there is a coded bias that is unfairly impacting rural and regional Australia, please.

Mr Lonsdale: I'm happy to take that on notice.

Senator McDONALD: We know that, when calculating risk, banks use different risk inputs based on industry. I believe this is normally done through the use of ANZSIC codes. Are banks also using different risk inputs based on geography? What about sex? What about marital status?

Mr Byres: I think banks will to some extent use all of those things and probably more that are relevant to assessing the borrower's financial circumstances. Certainly ANZSIC codes are a pretty standard set of codes. I can't think who produces them, but they're an Australian/New Zealand coding system that produces standardised industry codes and identification. There's nothing particularly controversial about them. Banks will obviously look at postcodes. They will look at borrower personal circumstances. They'll look at the full range of things in making an informed credit decision.

Senator McDONALD: I'm referring to an article that you are quoted in in the *Financial Review*, 'APRA ties climate change to director duties and risk management'. The suggestion was that businesses could use different mechanisms to balance their exposure to risk, and one might be financial cost. I'm sorry, I don't have that reference, so I'll leave that out and come back to that. I'm just trying to understand that as banks respond to APRA's signals around risk assessment for insurance and capital they're not utilising things like postcode shading and other markers for what they're perceiving as risk. But then it does build in a bias, whether it be geographically or in some of those other things that I've mentioned—marital status, if you're a single parent—because we know that the banks weren't able to comply with the amount of paperwork that they're now required to assess for responsible lending. They're using algorithms and electronic decision-making. I'm constantly getting feedback from banks that, once a credit department makes a decision, the bank is no longer able to make practical interventions the way they used to be able to in the past.

Mr Byres: I think that probably goes to the question before. You've asked us to have a look at that issue, and we'll happily have a look at that issue and come back to you.

Senator McDONALD: How do we know that risk calculations are truly reflective of risk alone and not other factors, such as the social position of any particular bank? For instance, if a bank has decided they no longer want to finance businesses within a certain resources industry or region, is there a safeguard to prevent the risk inputs being tweaked to ensure that application areas are all deemed to be too risky?

Mr Lonsdale: APRA operate through prudential standards. The key one we talked about before, which is APS 220, is not the only one. That prism requires financial institutions—banks, if you like—to make assessments of how they lend based on risk. That doesn't preclude them from taking into account other commercial considerations, and they would do that as a matter of course if they wanted to pursue particular market share in one area or not in another area; that's a commercial decision for them to make. But, from APRA's perspective, we put some minimum standards in place on how they would assess risk, and that's what we look at—that's what we police.

Senator McDONALD: Is there any data available showing industry-wide differences in risk appetite based on geography or regions across the country or things like sex and marital status?

Mr Lonsdale: I'm not aware of lending data on sex and marital status. There may be on geography. We're happy to check what is available on that if you're interested.

Senator McDONALD: I would appreciate that, because we recently had an inquiry into the northern Australia agenda where had consistent feedback from across northern Australia around the challenges of accessing capital and insurance, which the government has responded to. So I think that this is genuinely an issue. It leads me to my next questions. Referring to that article that I had, it says that you say:

… responsibility for understanding and assessing climate risks fall to the board of directors and senior management.

Given this is a non-financial measure, is APRA proposing to develop a standard on how to understand and assess climate risk, or are they going to leave it to the boards to make their own assessments and decisions?

Mr Byres: I think what probably prompted that article that you are referring to was that we put out in April—I think it was 22 April—some guidance on how to think about climate related financial risks within the banks' broader risk management obligations. That was not saying, 'Here is a new set of standards', or 'Here is a new set of regulations'. It is guidance, which is simply that—guidance. It is not binding regulation. It is saying, as a bank thinks about its credit risk and its market risk, or as an insurer thinks about insurance risk, or as a super fund thinks about investment risk, you need to think about the forces that climate change is creating and how that might change the risk and return characteristics of whatever it is you are doing, whether you are lending, whether you are insuring or whether you are investing. The guidance doesn't tell people where to invest; there is nothing that says, 'This industry should be lent to' or 'This geographic area shouldn't be insured'. But it encourages people to think about the issues and think about them in a systematic manner, to look at ways in which you can understand those risks better—because we probably get better decision-making if there is a better understanding of those risks—and also to identify opportunities that exist as well. So we're not telling people what to do, but we are saying that, all of the changes that are happening—and I'm not just talking about the environmental changes here, but the changes in government policies that are occurring, the changes in investor expectations that are occurring—are things that the financial institutions we regulate, banks, insurers and super funds, need to bear in mind as they are managing the risks within their business.

Senator McDONALD: I appreciate what you are saying, that this is not black letter regulation, that this is policy guidance. But the policy guidance from APRA is incredibly powerful. When you make statements, industry takes certain stances. I will quote from this article:

APRA breaks down climate change into three distinct financial risks: physical risk (changing conditions and extreme weather); transition risk (policy changes and technological innovation); and liability risk (stakeholder litigation and regulatory enforcement).

It also says that where financial institutions have identified material risks to customers and counter-parties they may need to consider mitigating them through "risk-based pricing", "applying limits" on sector exposures or "considering the institution's ability to continue the relationship".

Again, I want to reflect on the evidence that we had at the northern Australia inquiry, where we had many businesses that are important to the development of the northern Australia agenda—things like truck stops, service stations, housing for workforces, as well as more functional things like cattle yards and other sorts of businesses. When the Bureau of Meteorology came into give evidence, they said that they have been flagging that there will be changed weather impacts but that we are not seeing them yet. I am concerned that the policy influence from APRA has actually closed down a lot of the lending into northern Australia and you have not directed that, you have not told people to do that, but this is the response; they are now mitigating what they believe is exposure through risk-based pricing and applying limits on sector exposure.

Mr Byres: Certainly it is not the intent to close down credit to any part of the country—or insurance or investment. I think that paraphrasing that came from the media article misses an important part of what is actually in the practice guide. The actual practice guide starts by saying that APRA's expectation is that financial institutions will want to support their customers and that, in fact, the financial system, and the financial institutions within it, have an important role to play in supporting customers through a period of transition. So, that is the starting point, if you like, and the foundation for what we are saying. There is nothing in that standard that says banks should be cutting back exposures. What we are asking banks to do, though—and our obligation is first and foremost to bank depositors and for bank safety and financial system stability—is make sure that when you are making decisions you are making well-informed decisions.

Senator McDONALD: If you could follow up on that piece of investigation around geographic spread and consideration of bias in lending, that may throw up this issue that I am flagging. Again, I'm just saying, while it is not a direction of APRA, be clear that your indications are having a very powerful impact on lending in northern Australia. Thank you.

CHAIR: Senator Patrick.

Senator PATRICK: I only have one question. I am sure it will be relatively quick. I would just like to go to an issue that has been the subject of correspondence between the committee and APRA in relation to advice given to this committee, in the context of the Australian Business Growth Fund Bill. I don't know if anyone is familiar with—

Mr Lonsdale: Yes, I am.

Senator PATRICK: The issue that was raised was competitive neutrality in the context of a government backed facility. From memory, I think it was 500-and-something million dollars that the Australian government put into the growth fund. The issue of competitive neutrality—that action by the government, in effect, providing for lower risk, which means lower interest rates, which then means that perhaps other SMEs may not be able to compete in the context of offering venture capital or other such things. So, in the committee, basically the position APRA took was, 'That's not a matter within our remit'. The committee wrote to you and pointed out that actually, section 8(2) says:

(2) In performing and exercising its functions and powers, APRA is to balance the objectives of financial safety and efficiency, competition, contestability and competitive neutrality and, in balancing these objectives, is to promote financial system stability in Australia.

So there was some interaction with the committee as to why you took the view that it was not within your remit. Basically, it sort of got to a point where the final piece of correspondence that was presented to the committee said that you were 'satisfied that you had met your statutory responsibilities'. Then you talked about just looking at the capital treatment. The way you looked at this indicated you had done at least a little bit of work behind the scenes and that you had at least talked to Treasury. The committee also 'requested a summary of APRA's input to Treasury as they designed the fund', and APRA was involved in 'preliminary discussions with Treasury', and potential participating ADIs 'as Treasury designed the fund'. I am just trying to reconcile that with an FOI. I don't want to leave you blind as to the FOI, so I have asked to table this.

CHAIR: Have you got copies?

Senator PATRICK: Yes. I will just let the witnesses see the FOI. I'm not sure if you are familiar with it at all.

Mr Lonsdale: I am.

Senator PATRICK: The FOI request was from me, and it was in response to this letter, actually. It was seeking access to any written emails or advice to Treasury as to whether the effect of the passage of the Australian Business Growth Fund Bill 2019 and the implementation of the Australian Business Growth Fund would or wouldn't involve a breach of the Australian government's competitive neutrality policy. The fundamental point is on page 2 of this decision, at paragraph 5, where it says:

I have decided to refuse access to the relevant documents. My reason for the refusal is as follows:

Documents cannot be found or do not exist or have not been received.

What that tells me—and I take that at face value—is that in fact there's nothing in APRA that would show any analysis was done at all, even to the point of saying, 'We don't have to look at this.' I'm just seeking an explanation in relation to that.

CHAIR: We will formally table this, unless there's any objection.

Mr Lonsdale: I will just pick up some of those points, because there are a few points in there. Certainly, in respect of the FOI request that came in, this is the answer. In terms of APRA's role in the Business Growth Fund, I think it's important to point out that it is not an APRA measure; it is a government measure. So it's a government policy. APRA was consulted in the design before the announcement of the policy, but APRA's main focus was what would be the capital treatment of investors in the fund. APRA does not regulate the fund. APRA regulates the entities that are putting money into the fund—in particular, the major banks. We've got HSBC. We've got Macquarie. So, in making a decision on what should be the appropriate capital treatment, we looked first of all at safety, as per our mandate, and we also looked at efficiency, competition, and neutrality, which is, I think, the point that you are talking about.

Senator PATRICK: Yes, that's the bit we're focusing on.

Mr Lonsdale: We have looked at that through the prism of the entities that we regulate, which I think is a very different question to how the fund will operate and how the fund is being regulated. That is the core difference. So has APRA fulfilled its mandate? We think APRA has absolutely fulfilled its mandate.

Senator PATRICK: Of those two, which one do you say that section 8(2) of your act relates to?

Mr Lonsdale: The act relates to the entities that we regulate.

Senator PATRICK: But I would have thought that in setting this up—you say that the fund itself is not an entity that you regulate. That's essentially the answer you're coming to, even though, in this instance, the concern of some members of the committee was that it creates a situation where you might, through the funding of this, drive other legitimate companies out of business. That was the concern at the time.

Mr Lonsdale: Yes, I understand. When you look at the fund itself, the formation of the fund and the investment decisions that are made within that fund, any regulation that applies to that is not APRA's purview. What APRA is making a judgement on is what should be the capital treatment on the equity that is put in by the ADIs that are shareholders.

Senator PATRICK: So who do you say has the responsibility within the Commonwealth to ensure that the government's policies don't breach its own competitive neutrality policy? Who owns that problem?

Mr Lonsdale: They are issues for government. I can't say I'm sure, but the normal course would be that, in making decisions, government would take into account a whole range of trade-offs and issues, and competition neutrality is probably one of them.

Senator PATRICK: Okay. I'm trying to get to where that occurs. You say it's not APRA. Maybe the minister can help me out as to who carries responsibility within the Commonwealth for ensuring that the government's competitive neutrality policy is not breached in some way.

Senator Hume: That's a very good question which I'll have to take notice.

Senator PATRICK: Okay.

Senator Hume: I'm actually trying to google it right now. There is a competitive neutrality complaints process, apparently.

Senator PATRICK: I understand that. Who looks after that? I think we looked at that during the committee stage.

Senator Hume: That's a very good question. It's a separate unit of the Productivity Commission.

Senator PATRICK: Okay, that's the PC. We had them as well. Maybe you'd take it on notice: who holds responsibility for that area of policy in government? Maybe we'll have to call them to future estimates.

Senator Hume: My understanding is that, when policy and legislation are being developed, a competitive neutrality lens is put over it, but I may well be wrong, so I will take it on notice.

Senator PATRICK: But we are just hearing from APRA's perspective that it is not, in that sense, for them. So who places the lens and looks through it when we're developing policy? That is the question.

Senator Hume: Okay. I think that if it's Treasury policy it would be Treasury that would put a competitive neutrality lens on policy development.

Senator PATRICK: Would you take it on notice?

Senator Hume: I will take it on notice.

Senator PATRICK: Thank you very much. Just for the record, I'm not going to appeal this decision. I do appeal a number of them, but I think this is a reasonable decision.

CHAIR: We have a fairly hard cut-off at 6 pm due to other commitments for the minister. Senator Davey, you have the call. Could you be as prompt as possible?

Senator DAVEY: I will endeavour to be as succinct as possible. Thank you.

CHAIR: Just before you do that, though: I have had a discussion with the deputy chair and, for the information of everybody who is following along at home, we are going to move the Financial Adviser Standards and Ethics Authority to 8 pm, after the Reserve Bank of Australia. They are coming through via videoconference in any case. So we'll run APRA through to the break, and then we'll come back with the Reserve Bank.

Senator DAVEY: Thank you again for appearing. I think my questions butt onto the end of Senator McDonald's questions quite nicely, because you were talking about the climate vulnerability assessments, which we have discussed in this committee before. You mentioned that the practice guide was published on 22 April. Last time you were here, we were discussing the fact that you were working through a pilot program. Has that pilot program been completed, and is there a report?

Mr Byres: Not yet. Just to help explain, there are two key pieces of work we are doing this year that have a climate focus. The first is the practice guide, which we've talked about previously in response to Senator McDonald. That guidance applies to all of our regulated institutions, and that's out for consultation. We get feedback on it, I think, until the end of July, and then we'll aim to finalise that, taking into account whatever feedback we get, before the end of the year.

The second piece of work is the climate vulnerability assessments that you referred to. That is a much more complicated piece of work, with five banks: the four major banks plus Macquarie Bank. That's a piece of work that's looking at the implications of two different climate scenarios for those institutions, understanding what it means for their balance sheets, for their customers and for their business models, and understanding how they might respond to different scenarios. That work is still very much ongoing. We are through an initial phase of working with the five banks concerned, working through the design of the scenarios, making sure everyone's talking about the same thing, making sure we understand what the data requirements are et cetera. There'd now be a process of working out how those scenarios play out. That will be reported to us in the months ahead, and then we'll be analysing that. The answer to your question about whether there is a report is: certainly not yet, because it's still very much work in progress, and I wouldn't expect to see a report until very much towards the end of the year.

Senator DAVEY: Thank you. On 29 May, the ABC reported that you have put out a tender seeking climate risk modelling. Is that tender to facilitate this pilot program, or is this a separate set of modelling?

Mr Byres: To be clear, it's not a tender in the sense that we're actually planning to spend some money. It's actually just a request for information. It's on AusTender because that's the way you do things, but it's actually an RFI, or a request for information. It's designed to help us understand a bit better who is out there to help us with the work, because there are many aspects of this that we don't pretend to have the specialist expertise on and we don't think we should be building a big in-house capability here. So the matter that was referred to in that article was referred to as a tender, but, if you actually go to AusTender, it's a request for information, and it's really just seeking to understand who is out there and who are the consultants and experts that might be able to have some capability that we could, in future, lean on, if we need them, to help us with the work.

Senator DAVEY: This same article mentions a few groups, such as the Investor Group on Climate Change, and also ClimateWorks. Are they the sorts of organisations that you would be seeking to refer to in the future if and when—

Mr Byres: It's an open request for information, so I don't want to point to any favourites or anything at this point. We've just said: 'This is the sort of work we're doing. This is the sort of analysis that would be helpful. There's no attempt to direct it one way or the other; let's just see what we get back.'

Senator DAVEY: The article says that part of this research will do scenario mapping of more than three degrees of warming and also address the impact of 'tipping points', and what such situations would create, I'm assuming, for business. When we're talking about Australian businesses being able to access finance and ensuring that institutions are considering the whole of a business instead of just whether that business is potentially vulnerable—for example, if it's a seaside resort, one risk could be whether it will be vulnerable to rising sea levels, but, then again, what other business opportunities are there for that business? I heard just today from the Australian Petroleum Production and Exploration Association that, in their industry, they are finding themselves at a point where large international businesses with access to international finance have no trouble getting finance for their operations, but smaller Australian companies—even ASX-listed companies—don't have the same ease of accessing finance because they keep getting hit with, 'Well, you're climate vulnerable.' Yet they see themselves as a key part of the transition pathway in our climate change story. I think Senator McDonald hit the nail on the head in saying that your guidance material very much drives the behaviour of these institutions Have you got a comment on that?

Mr Byres: Yes. I think that's a really good point, and it goes partly to my comment that I made in response to Senator McDonald before that part of this is understanding the risks and not just having blanket, sweeping statements that said, 'That area or that industry or that particular company is a binary yes/no decision.' That's not really going to be helpful. What we do need is more informed analysis on not just the extent of some of the impacts but also the timing over which they occur. It's a very complicated issue, and I don't think understanding it better can be anything but positive, rather than relying on simplistic rules of thumb. So what we are trying to do is get people to understand better the risks but also get people to understand how the risk can be managed and to understand the opportunities that might also be available. Our objective is well-informed decision-making, and you're highlighting, I think, that there are already many companies out there who've thought this through, who know what they're doing in response, and who have got a plan. It's important that the financial institutions are supporting them through that, and that's quite consistent with what we are trying to achieve as well.

Senator DAVEY: I think a lot of the concern is about how groups such as shareholder activists interpret your guidelines. I've been told I've got one question left. Last time you were before me, you took a question on notice, AT061, where I was asking: as you're developing the pilot and you're working with the banks, were you also working with the resources sector or agricultural industries? You responded, and thank you for responding, that you're engaging with the five ADIs and the Australian Banking Association in the design of the climate vulnerability assessment—that's paraphrasing—so you still didn't clarify. Have you had any discussions with the resources sector or agricultural industries to design this pilot because they will be very significantly impacted by the behaviour?

Mr Byres: Sorry if that wasn't clear enough. We were trying to say that's who we've spoken to and, by implication, we haven't spoke to others yet and it remains the case that we haven't spoken to, for example, the agricultural sector yet. We're now expanding the list. I'm not sure whether the CSIRO and others are on that list since we sent the last response, so we are broadening it out as we go along and we'll continue to do so.

CHAIR: Can you send us the updated list?

Mr Byres: Happy to.

Senator McKIM: I want to ask some questions in regard to lending for housing. Firstly, APRA told the House Economics Committee on 29 March very clearly that it's not your job to solve house prices and it is not your job to solve housing affordability. When the Council of Financial Regulators sits down and discusses housing affordability, which I presume and hope that you do, who does take responsibility for that issue of housing affordability?

Mr Byres: I'm not sure that it's a Council of Financial Regulators' responsibility either. I think it's a broader government responsibility. Each of the members of the council has particular responsibilities that parliament is given. Ours relate to institutional safety and soundness and financial stability. ASIC is clearly looking at consumer protection. The Reserve Bank is looking at the macro environment et cetera, and Treasury, if anyone at the table has that broader focus, is probably the most aligned with the affordability question that you raise. The primary purpose of the council, though, comes back to, if you go back to its charter, a focus on issues of risk and financial stability.

Senator McKIM: Thanks. Lending standards at the systemwide level are your responsibility, is that right?

Mr Byres: It's pretty fundamental to making sure the banking system stays stable that there are good lending standards in place, and our prudential requirements are designed to achieve that, yes.

Senator McKIM: In the 12 months to December last year, the number of new high-risk housing loans increased at a higher rate than the overall growth in new housing lending. Is that correct?

Mr Byres: I'm not quite sure how you've defined 'high risk'.

Senator McKIM: From your statistics that you published in March 2021 that have got a subhead, I guess, of 'Residential mortgages—new loans funded' and then you've got three high-risk categories there: interest-only, LVR of greater than or equal to 95 and debt-to-income greater than or equal to six times.

Mr Byres: Yes.

Senator McKIM: These are then your stats, are they not?

Mr Byres: Yes. Debt-to-income greater than six has certainly gone up, LVR greater than 95 per cent has, I think, gone up but from a low base and probably from a low historical level, and interest-only has, I think, ticked back up, but again it's coming off a low base relative to historical average levels.

Senator McKIM: The yearly growth of those, in your figures, is over 31 per cent growth in interest-only, just over 27 per cent growth in LVR greater than or equal to 95, and 26 per cent growth in debt-to-income greater than or equal to six times household incomes. They're pretty significant growths, are they not?

Mr Byres: They sound it. Unfortunately, I haven't got the figures in front of me, so I'll take your word for it. But anything that's growing at 30 per cent is growing reasonably quickly, yes.

Senator McKIM: That is significant growth in high-risk earning. You said that you haven't got the figures in front of you. But, just to assist you, they were published in March this year and, I believe, they relate to the previous financial year. I'm wondering if you've got any figures that are any more up to date than those, or perhaps you can take them on notice.

Mr Byres: I'll take that on notice. We update the numbers each quarter, because we get a quarterly data feed from the banks, so we can take that on notice and give you the latest available data.

Senator McKIM: Thank you. I'd appreciate that. Is APRA not concerned at all about that quite significant growth in the high-risk categories of housing loans, in terms of its impact on financial stability?

Mr Byres: We're watching it. Obviously, we've said publicly that we're watching it very closely. Things like interest-only loans, as you said, have picked up, but they've picked up from a much lower base. At the time that we last intervened in the housing lending market to raise lending standards—and this is just an example—interest-only lending was running at about 40 per cent as a proportion of total lending, and it then came down to about 20. So, it's running off a much lower base now. Again, high-LVR lending has picked up, but that's associated primarily with I would say a welcome increase in the proportion of first home buyers that have come into the market over the last 12 months. I think that's a good outcome. So, yes, those borrowers tend to have higher LVRs, but I'm not sure that there's any great value in us stomping on first home buyers who are trying to get into the market.

Senator McKIM: I can assure you that I'm more worried about the investors than first home buyers.

Mr Byres: I think in more recent months we have started to see a pick-up in investor lending. Certainly the commitments to investors had been very low through 2020, but they've started to pick up again in recent months. So, I think we'll see them start to come back to the market.

Senator McKIM: Alright. Thank you. Is there a threshold in terms of the growth of high-risk loans beyond which you would intervene to direct banks to tighten lending?

Mr Byres: No. The short answer is that there isn't a threshold. I think you've got to look at it in the context of the environment. Part of it is the demand for credit and the terms on which it's given, and part of it is the underlying strength of bank balance sheets, which are certainly much stronger than they were three or four or five years ago when we last felt the need to intervene. As I said, you've got to look at it in the context of who is doing the borrowing: is it first home buyers, or is it investors? There's a big difference there. I've always resisted having a simple rule because I think it sets you up to make bad choices.

Senator McKIM: The RBA has basically printed hundreds of billions of dollars during the pandemic and given it to the banks on very, very, very good terms. It's effectively free money for the banks. Has what the RBA done in terms of providing that very, very cheap or free money changed the way APRA regards the stability of the banking system and therefore potentially changed the way APRA considers whether to intervene or not in terms of housing risk, prudential risk?

Mr Byres: I think the short answer to your question is no.

Senator McKIM: Alright, I might put the rest of it on notice.

Senator SMALL: Financial advisers have been telling me about very large premium increases for existing clients with life insurance at the same time as providers are seemingly discounting premiums for new clients. Does this mean existing clients are effectively cross-subsidising new clients in this market? If so, does APRA have a view on the appropriateness of this given that such a situation effectively encourages product replacement by advisers?

Mrs Rowell: We're talking about life insurance policies?

Senator SMALL: That's correct.

Mr Khoo: There has been an increase in premiums, particularly for individual disability income insurance. The other thing here is that that has been a loss-making line for a number of years. Over the last five years the industry has lost about $4 billion on that particular line, including a loss of about $1.2 billion over the last financial year. In that regard, the increase in premiums is understandable—because it has been loss-making for some time. The point you are making about new policies and discounting—I'm not aware of that and we haven't heard of that.

Senator SMALL: Alright, tonight you have heard it. I'm conscious of time. Could you take that on notice and articulate what you might be able to do in terms of inquiry with a view to getting to the bottom of that. Can we just explore a little bit more the point you made—that the life insurance industry itself seems to be under some financial stress due to that ongoing unprofitability. What do you believe is driving that decline, and what impact do you expect that to have on new business volumes?

Mr Khoo: The line I'm referring to, disability income insurance, is one that we have been putting a lot of work into. We have been engaging with industry on that over the last couple of years and we have introduced measures that we have required industry to comply with in order to make the product more sustainable. The industry will be required to implement those measures by October this year. Some in the industry have started introducing some of those measures already. Our expectation is that that should bring the market back to a more sensible level.

Senator SMALL: And that will apply across life insurance as opposed to just IDII?

Mr Khoo: It will apply specifically to IDII. We have actually imposed capital measures to incentivise the insurers to comply. But we have also noted to the industry that they should take account of the measures that we have imposed on IDII and apply those across other lines.

Senator SMALL: Great, thank you very much.

CHAIR: Senator Roberts, please take us home and as promptly as possible.

Senator ROBERTS: Okay. I'll reference a December 2020 headline: 'Australia's Westpac hit with a second bank regulator penalty'. Westpac broke key capital ratios, and the consequence APRA levied was to make Westpac keep more money in the bank—in other words, to comply with the law. This has the effect of reducing the bank's ability to lend, by reducing their available capital. Is that a fair analysis?

Mr Lonsdale: Just to be clear, you are referring to the press release of 21 March. Did I hear that correctly?

Senator ROBERTS: No, the headline of 1 December 2020 in Reuters.

Mr Lonsdale: At that time, there were a range of AML issues for Westpac.

Senator ROBERTS: AML?

Mr Lonsdale: Anti-money-laundering issues. APRA announced, at that time, just before Christmas, that it was taking action on three issues. It was an additional capital overlay, which I think is the point you are making, of an additional $500 million—

Senator ROBERTS: Yes.

Mr Lonsdale: on top of the $500 million that already applied, a BEAR investigation and some supervisory work, and I'm happy to talk about that. In terms of the capital impost, Westpac is a bank as per other majors who are very well capitalised. They are running CET1 in the 12s, at the moment, and they have plenty of capital to lend for worthwhile projects and housing.

Senator ROBERTS: Okay, thank you. Another headline, April 2021: 'APRA takes action against Macquarie Bank over multiple breaches of prudential and reporting standards'. The penalty there was to keep more money in the bank. That also has the result of reducing the bank's liability to lend money. Correct?

Mr Lonsdale: That's another example where a bank breached a number of reporting issues on capital and liquidity and also on stable funding. We took action on the bank and part of that action was the capital impost. I think the same answer applies, that you have a bank with considerable capital and considerable ability to lend commercially. In the case of Macquarie, they have been lending very significantly into housing.

Senator ROBERTS: A third example, a headline from October 20: 'APRA takes action against Bendigo and Adelaide Bank for breaching credential standard on liquidity'. Their penalty—or consequence; it's not a penalty—was to keep more money in the bank. That also reduces their ability to lend.

Mr Lonsdale: I think all three examples go to breaches of standards that APRA has. As we've explained to the committee previously, we have an enforcement approach. The adoption and compliance with prudential standards is critically important to safety in the system—safety for depositors, in particular. We need to take appropriate enforcement action on each one of those cases, and that's what we've done.

Mr Byres: Could I clarify one thing, Senator? You keep referring to our actions reducing the capacity to lend, and that's not quite right. When we're adding more capital to the bank, we're changing the mix in which it uses either its shareholders' money or depositors' money to fund loans. The actions we take mean, effectively, that a bank has to use more shareholders' money and less depositors' money to fund a loan, but it doesn't stop or reduce the bank's ability to lend. It just says, 'Use more of your shareholders' money, get your shareholders to put more on the table, and use less depositors' money.

Senator ROBERTS: Doesn't it reduce the bank's ability to lend and tie up more of the liquid funds?

Mr Byres: Only if they don't have enough capital to meet their regulatory requirements and then they have to stop. But, as John has said, these banks are running well above their minimum regulatory requirements. The issue is, really, that, because capital is more expensive than funding from depositors, it makes their funding costs slightly higher.

Senator ROBERTS: The first paragraph of the Reuters article reads:

The Australian bank regulator—

APRA—

said on Tuesday it was forcing Westpac Banking Corp to raise its cash reserves after it fell short of prudential standards, its second enforcement action in a year against the country's No. 3 lender.

Mr Byres: The effect of what we did was to increase the minimum amount of shareholders' money that we required Westpac to have. But they used that money, still, to lend.

Senator ROBERTS: I ask because, in a meeting on the responsible lending legislation between my staff and Treasury, Treasury indicated that a substantial reason behind moving responsible lending regulation from ASIC to APRA was that ASIC was imposing restrictions on the banks' ability to lend. You'll argue with this, then: that is exactly what we see APRA doing, is it not, because it's altering the liquidity?

Mr Lonsdale: I think we've already answered that question.

Senator ROBERTS: Yes. Since the royal commission, has APRA ever launched an action against an ADI, a bank, that resulted in a fine—a real penalty, not just complying with the law?

Mr Lonsdale: Yes, we have. An example of that would be Westpac, again, for a breach of reporting standards. It was a small fine, but it was the maximum fine that could be levied under FSCODA.

Senator ROBERTS: What was the fine?

Mr Lonsdale: It was, from memory, $1.5 million.

Senator ROBERTS: Isn't it amazing how $1.5 million is a small fine these days? Anyway—

Mr Lonsdale: We're talking about a major bank.

CHAIR: It's all relative!

Senator ROBERTS: It is all relative. Does the National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020 allow APRA to fine a bank that engages in systemic breaches of the responsible lending guidelines?

Mr Lonsdale: No.

Senator ROBERTS: What action is open to APRA to regulate low-doc home loans which are provided for in that legislation?

Mr Lonsdale: That is not something within our responsibilities.

Senator ROBERTS: We could find none. What about all the people who lose their homes, savings, marriages and mental health? Is there no consideration for the human cost of bad bank behaviour in this legislation?

Mr Lonsdale: Is that a question?

Senator ROBERTS: Yes.

Mr Lonsdale: If it is, it's not a piece of legislation that APRA has responsibility for.

Senator ROBERTS: But you will have—for responsible lending?

Mr Lonsdale: That's not correct.

Senator ROBERTS: I thought you were going to have responsibility for responsible lending?

Mr Lonsdale: What we have, as I explained earlier, is a prudential standard, APS 220. There are some very minor changes to that. APRA's current stance in relation to how it assesses credit will be pretty much what it has been for many years—no change.

Senator ROBERTS: Under the new legislation?

Mr Lonsdale: Correct.

Senator ROBERTS: APRA runs the Banking Executive Accountability Regime, the BEAR scheme, which fines bank executives for bad banking behaviour. You have taken action against the banks for bad behaviour. ASIC and AUSTRAC have caused fines on the banks of over $2 billion in the last three years. How many of the executives in charge of the banks have been personally fined through the BEAR?

Mr Byres: The BEAR doesn't give us capacity to impose fines on individuals.

Senator ROBERTS: None at all?

Mr Byres: That's not part of the legislative framework.

Senator ROBERTS: Last question, Chair: Westpac are removing night-safe wallets and advising their business customers to not accept cash. Isn't that rule No. 1 for a bank, to accept the Queen's currency? On what basis is APRA allowing the banks to make such fundamental and illegal decisions without reference to APRA?

Mr Lonsdale: APRA does not have particular standards in place in terms of what commercial activities banks undertake and the services that they provide. They are commercial issues for the banks.

Senator ROBERTS: Thank you, Chair.

CHAIR: Thank you. Just on your last point: I do think it is a little bit of an issue—and I'm not saying that Senator Roberts is necessarily correct—if banks refuse to accept legal tender, but I will leave that part there. Thank you very much for your time. Please go home with our thanks. Safe travels.

Proceedings suspended from 18:05 to 19:00

Reserve Bank of Australia

CHAIR: We resume this hearing of the Senate Economics Legislation Committee. We are in budget estimates and we now welcome representatives of the Reserve Bank of Australia, Dr Guy Debelle and Ms Michele Bullock. Welcome to the RBA. The committee recognises the central bank's independence under the Reserve Bank Act 1959, particularly with regard for its setting of monetary policy. The committee is cognisant that, while the RBA does not receive annual appropriations, it does provide parliament with opportunities to discuss its insights and performance, which the committee greatly welcomes. As such, no government minister will be in attendance with the committee while representatives of the RBA are present. As is my usual practice, I'll caution my colleagues—though we've only got one here at the moment and I know Senator Walsh doesn't need cautioning—that the RBA is an independent institution and not part of the government. I've already asked, so I know that you don't have an opening statement.

Dr Debelle: No.

CHAIR: Thank you very much for that in the interest of time. We'll go straight to Senator Walsh.

Senator WALSH: Thank you both very much for being here. The bank met yesterday and maintained your settings. You've been saying some similar things for a period of time around inflation and wage pressures remaining subdued. I'll ask you to confirm a couple of things that I think you've been saying a bit and may not want to repeat for us tonight. You've said that you won't increase the cash rate until inflation is within the target band and that wages growth is materially higher. I don't think you put a figure on the wages growth target yesterday, but in other places you've said that the bank doesn't see real wages growing until 2024 and that you would keep the current settings around the cash rate until around then, looking for real wages being sustainably around three per cent.

Dr Debelle: For wage growth to be higher than it is now, yes. For inflation to pick up to be sustainably between two and three per cent we think wages growth needs to be running higher than it is now, and the central scenario is that that won't be until 2024 at the earliest.

Senator WALSH: I think I attributed a number there about where you think wage growth might be in 2024 that might have been incorrect. Do you have some projections?

Dr Debelle: For wages growth, we haven't provided a forecast as yet beyond the end of '23, but, with any luck, we'll be getting to those sorts of numbers you're talking about in early '24.

Senator WALSH: Two and a half to three.

Dr Debelle: Hopefully more like three-plus by 2024?

Senator WALSH: Okay. In your May statement, you provided the three scenarios—the base case and so on. You did that fairly recently, but, in light of recent events, I want to check in on your thoughts about some of those assumptions. I think you assumed vaccines would be rolled out in the second half of this year, leading to a reopening of borders in early 2022, and that has already been revised by the government, by the budget, to mid-2022. We also, of course, have the now extended lockdown in Victoria. How do recent events around COVID, including those issues of vaccinations and the lockdowns, impact your thinking of your forecasts?

Dr Debelle: We forecast out until mid-2023. You're right: our forecast for the timing of when international borders would open up has pretty much aligned with that in the budget, so that didn't make too much difference. In terms of the Victorian lockdown, when we put those numbers together all of a month ago, we were working on the presumption that there may well be further short, sharp lockdowns like we've seen in a number of states over the last while. The Victorian one is a bit longer than that. What we saw with those short, sharp lockdowns was that things came back pretty quick, but, admittedly, most of them were only three days or so; things came back pretty quick. They didn't make that much difference to economic outcomes. For the Victorian one, I suppose we'll just have to wait and see—it's longer than three days, clearly—how much impact it has. I really do think, given one weekend, it's probably a bit early to tell, but it will likely be a bit more than what we saw with those other ones. At the same time, we got a growth number today which was a marginally stronger than what we had in the numbers back in May—not a lot but a bit stronger, which is good.

Senator WALSH: Obviously it's really difficult for anyone to make projections around questions like lockdowns and whether they may or may not occur, but we did hear from Treasury yesterday that, in formulating the budget, they made projections of around three metro week-long lockdowns per quarter. They were clear that they were not saying that this is going to occur but that they need something to work on. Do you have similar sorts of assumptions around the potential for further lockdowns that you're working on?

Dr Debelle: We were working on the scenario that there may well be, as I said, a few more short, sharp lockdowns. By and large, they don't seem to have had much lasting impact; things came back, as I said, pretty quickly after those ones. People stopped spending when they couldn't and then they did when they could, and it really didn't make too much difference. To the extent that our forecasts or scenarios are that precise, we allowed a bit more for that. An extended period of lockdown, as we saw over the past year, clearly has a material impact, but there are some other pretty big forces at work here too, which would probably swamp any shorter lockdowns. Where this one in Victoria lands, I'll just have to wait and see, I suppose.

Senator WALSH: The biggest factor in the baseline or upward or downward scenarios in the May statement was around the likelihood of consumer spending and—

Dr Debelle: Yes.

Senator WALSH: in particular how far households might draw down on their own balance sheets, and you identified that as the key source of uncertainty around that outlook. What are the risks that you see in that assumption?

Dr Debelle: We got another read on that today in the national accounts, and actually households continue to save about the same amount of their income—which actually still remains pretty strong—in the first quarter of this year as they had in the last quarter of last year. Spending in the quarter had reasonable growth, particularly on the services side as everything opened up through the first quarter of this year, but households still actually saved quite a bit. So the household sector is sitting on a decent pile of savings sitting in bank accounts at the moment, and there is the capacity to spend that should they so choose. We just don't know how that's going to play out in the face of the bit of uncertainty obviously still around, particularly in Victoria. That's why we highlighted it as one of the big risks. My colleague Brad Jones, who heads up our economic analysis area, talked a bit about that in a talk he gave earlier today.

But the household sector is sitting on a pretty high stock of savings. We just want to keep an eye on it. The question is: what exactly are they going to do with it? It has the capacity to provide a fair amount of impetus to the economy if they do indeed want to start to spend it. Outside of Victoria, at least, most of the opportunities to spend domestically are pretty much back—obviously not the capacity to spend on overseas trips, but we have seen a fair amount of substitution to where people can spend. As I said, that's highlighted that as an uncertainty when we don't know how it's going to play out, but it's something we're going to keep a close eye on.

Senator WALSH: So the strong consumption that you're looking for is coming more from savings from the household balance sheet than it is from projections of better household incomes given where wages are at and given where income supports are at?

Dr Debelle: What we have seen is really strong employment growth. That's boosting household incomes. To your point: what we aren't seeing—to date, at least—is particularly strong wage growth, but household incomes are actually going okay because of the very strong employment growth we've seen over recent months. That is actually supporting households and putting a lot of income in people's pockets.

Senator WALSH: In relation to your comments about continued lockdowns and the impact on consumption, is that more about confidence, or is that about just the direct hit to the economy from those sorts of shutdowns?

Dr Debelle: Well, there's the opportunity: if you can't spend, you can't spend. If you can't go to the restaurant or you can't go to the footy, you can't spend that money. You might be able to try to find something else to do. We saw over the past year that that was very much about the opportunity to spend. There is potentially a hit to confidence, but in my mind, at least, that's more about your uncertainty about your employment and whether that's going to continue rather than just a feeling of unease. But, as I said, the past year has really been about the opportunity to spend. If you have prolonged lockdowns, you just can't. Even if you want to, it's hard to.

Senator WALSH: Yes. I move to housing. You yourself, as well as the governor, have spoken about the understanding that the monetary settings have an impact on housing prices, but you've got other priorities and there are other tools that can be used there by governments. You point to other measures that governments could take around house prices. Would you want to see a greater emphasis on increasing housing supply in relation to house prices?

Dr Debelle: If you had more houses built, that would indeed restrain house price growth. We are seeing that housing construction, particularly for detached housing, is actually growing really strongly at the moment, as in there's going to be strong growth over the rest of the year. So there's strong demand for new house building, and that is actually, again, part of the transmission of monetary policy. One of the impetuses for people who want to build a new house is that, when house prices are rising; it's a more attractive proposition to build a new house. So, yes, housing supply is part of the transmission of the monetary policy settings through to the economy. That creates jobs and income for more people, but more supply also does help constrain the rise in prices.

Senator WALSH: I think you've pointed very broadly to things around supply like planning and tax concessions that could assist with supply. Can you elaborate on that at all?

Dr Debelle: There is a need for planning as long as it's appropriate and we understand why it needs to be there. We wrote a while back—I can't remember how far back—about some of this. We hear about it through our liaison program when we're talking to home builders, which we do a lot of generally but also particularly at the moment. They have their views. It's not something I can give you a detailed answer on right now. We can provide you with something.

Senator WALSH: It's levers that you point to that could be used or could be further investigated.

Dr Debelle: Yes. There's a need for appropriate planning. We're not an expert as to whether what's in place at the moment is or is not appropriate. But, as I said, in the end, more supply is going to help keep a lid on the rise in prices.

Senator WALSH: Thank you. Still on housing: you have noted many times this year that you are monitoring house prices very closely, you're monitoring lending standards very closely and you are concerned about any—I'm not sure what the term was—over-relaxation of mortgage lending?

Dr Debelle: Relaxation in lending standards, yes.

Senator WALSH: Right. What are your concerns there, and do you see any evidence of that occurring?

Dr Debelle: I will turn to Michelle to answer this in a minute because that's very much her bailiwick, but I'd say we are more monitoring the growth in lending. We definitely pay attention to the rise in house prices, but, in the framing of your question, it's more the growth in lending and particularly, as you said, what's happening with the lending standards. Let me turn to Michelle because it's actually her team that's doing the monitoring of the lending standards.

Ms Bullock: As you'd know, APRA are responsible for the supervision of the banks, and we work quite closely with them in understanding what's going on with lending standards for the banks. The sorts of things we monitor are things like loan devaluation ratios, debt-to-income ratios and serviceability metrics. These are the sorts of things that are relevant for understanding whether or not people are taking on debt that, if something happened and they lost their job, for example, they wouldn't necessarily be able to maintain their serviceability on. They are the sorts of things that APRA have information on, and they are focusing on that. APRA work very closely with the banks, and we liaise with APRA as well to understand it.

At the moment, our view is that the lending standards are not being relaxed. There's still enough credit there, and we are seeing that in that housing credit is growing, but we're not seeing in increasing credit that there is a relaxation in lending standards. Because interests are lower, it is easier for people to service their loans, but there are in-built mechanisms which mean that, when banks assess whether or not someone's going to be able to meet those repayments, they have to build in buffers for interest rate increases. So there's a range of ways in which the banks themselves and APRA can make sure that individuals are not overextending themselves necessarily in a very-low-interest-rate environment. That's the general—

Dr Debelle: And I'll add one thing to that: we don't just take the banks' word for it about what's happening on the lending standards, we have a reasonable amount of data ourselves—about 30 per cent of the representative lending out there. It's loan-by-loan stuff, so we can actually look at what's actually happening ourselves through that data and get a pretty decent read on what the sorts of characteristics are of both the borrowers and the lenders.

Ms Bullock: One characteristic of the current increase in lending is that it's typically owner-occupiers, rather than investors, and a very big first-home-buyer component. First home buyers in particular tend to have larger loan-to-valuation ratios. That doesn't mean they're more risky, usually it just means that they're early on in their careers, they're young and they don't have a lot of wealth built up. So the loan-to-valuation ratios for those sorts of borrowers are a bit higher and I think they're overrepresented in new credit at the moment—relative to what they might normally be.

Senator CHISHOLM: I think we had a discussion about this last time at estimates. I think it was Dr Debelle who said that it was strong in first home buyers. Has that changed, though, since you were last here?

Dr Debelle: No, it's pretty much held up. We were only here three months ago, I think.

Senator CHISHOLM: Time flies!

Dr Debelle: But no; it has held up, basically.

Senator CHISHOLM: No significant change?

Dr Debelle: No. What we've seen in the lending commitment side of things—not so much the actual flow of new lending—is that the investor numbers have started to pick up from a very low level. They've started to pick up over the last three months or so—

Ms Bullock: Three months.

Dr Debelle: That's probably about when we were last here. That's what we've seen, but the first-home-buyer share has actually stayed up.

Ms Bullock: It's stayed up and I would say that the owner-occupiers are still driving the growth—notwithstanding that investors are coming back.

Senator WALSH: I'll move to some questions about wages. Broadly, the last time you were here, in March, you were talking about the fact that when unemployment has been at around five per cent before wages hadn't grown as much as you might have imagined, and that the generally assumed relationship between unemployment declining and wages going up hasn't always played out in recent times as we would expect.

Dr Debelle: Yes.

Senator WALSH: Can you tell us why you're still thinking that real wages will grow towards 2024, as we talked about earlier, as unemployment goes down over that period?

Dr Debelle: Basically, the answer is that we do think unemployment is going to go lower—and to go lower than where what we got to a couple of years back, which was around five per cent. If the economy continues on the path we think it's likely to, we think that unemployment will continue to decline. It's about 5½ at the moment; we think that if we continue on the path we're on, the unemployment rate will drop below five and get into four-something-or-other. In the end we'll just have to wait and see what happens. But at some point, when the unemployment rate gets low enough, wage growth will pick up. What that point is, we're not sure, but we're pretty confident that it's lower than where it is now, which is around 5½ per cent. As you said, when we were at five per cent a couple of years back we didn't really see wage growth start to pick up. It's plausibly lower than that too, which is why we think it's certainly, in all likelihood, a number in the fours. We will just have to wait and see where exactly that is, and that's something we're certainly keeping an eye on. When we are talking to businesses, it is certainly something we talk to them about.

There are a couple of points. What we were continually surprised by, particularly leading up through until before the pandemic hit, was that we had more and more people coming into the labour force, particularly women. So the participation rate, which is the share of the workforce actually participating in the labour market or looking for work, kept on going up, and that has actually continued. The participation rate in the economy now is the highest it's ever been. At some point we think there'll be a limit to that. I suppose the other dynamic that has changed a bit is that, in particular parts of the economy, at least, there was the prospect of workers coming in from offshore to meet particular skill needs or whatever, and that obviously isn't around at this moment. So that is a dynamic which isn't present now, which was two years ago. So they're all those moving parts, and we just have to wait and see how they play out. We do think that, as unemployment gets low enough, wages will pick up. At some point we will run out of people who are able to come into the workforce.

CHAIR: Senator Walsh, I will want to share the call shortly.

Senator WALSH: Yes. Just on that question, I know that the bank has said at different times that there might be some structural things going on in the labour market that mean that that relationship isn't as clear as it might have been in the past. One of the things that I wonder about, and am engaged in in other parts of the work of the Senate, is the question of job insecurity. The rate of casual employment has generally stayed quite constant, but there are other forms of insecure work—short-hour work, rolling contract kind of work, proliferation of people on ABNs, proliferation of sham contracting sorts of arrangements. Could those sorts of factors interfere in those assumptions?

Dr Debelle: Yes. We've done a fair amount of work to try to find out what might be going on. One thing we have looked at is the casualisation of the workforce. We can't find strong evidence that that's had a material impact. That's only one element of what you've just said. It's not obviously a major driver. I'm not saying it's not having an impact, but it hasn't been a major driver, as best as we can tell. We haven't looked in as much detail at some of the other things you mentioned. We are continually trying to unpack what's going on here, because it is an important thing for us to try and understand. I would also note, as I think I said when answering your questions and others' questions on this before, that this is not just an Australian phenomenon; we are seeing it across similar countries elsewhere in the world. There have been a number of attempts to try to understand it there, again, I would say, with reasonably limited success. But, in part, that's why, in our monetary policy deliberations, rather than basing them on what we expect might happen, we are going to wait and see what actually is going to happen. When wage growth is picking up, rather than when we think it might, is going to be the key factor in our deliberations—and when inflation is picking up, rather than when we think it might. So, because of all the structural forces potentially changing those sorts of relationships, which are reasonably important to us, it is a question of waiting till we see what happens rather than basing our assessment on what we think might happen.

CHAIR: Senator Walsh?

Senator WALSH: I've got one more set of questions, if there is time.

CHAIR: One more set, okay. I will give the call to Senator Rennick.

Senator RENNICK: I want to come back to these serial numbers on the gold bars. I know you don't want to hand them out, but I would argue that, by showing that you've got those serial numbers, the gold bars are actually being counted and monitored.

Dr Debelle: I'm happy to provide them to you. I'm not comfortable in putting them in the public domain, because I don't feel that that is good for—I would say security, not physical security but the capacity for fraud.

Senator RENNICK: Yes, that's fine.

Dr Debelle: But I'm happy to work out an arrangement to be able to provide that to you at the appropriate time, but I'd rather not put that on the public record, if that's okay.

Senator RENNICK: That's fine.

CHAIR: I could also put on the table that you could provide it in confidence to the committee, and Senator Rennick could—

Dr Debelle: No, that's what I meant. I'm not sure what the arrangements are for stuff like that.

Senator RENNICK: Okay. Like I said earlier, I have a big problem with that being counted every six years, and I just want to respond to one of your replies to my questions on notice, where you didn't want to provide details of the audit because the Bank of England didn't want to disclose their custodial arrangements. I don't care about their custodial arrangements. What I care about is the fact that an Australian government official is counting that gold every year against a list of serial numbers, like doing a stocktake of that gold because it is in another country. I will just break it down very simply: if you or I lent gold bars to a friend of ours, I would doubt that we'd count it once every six years.

Dr Debelle: Three years.

Senator RENNICK: Three years, sorry. I don't know about you, but I'd want to be checking it pretty regularly given the fungible nature of gold. That's a fair enough point?

Dr Debelle: Sure.

Senator RENNICK: With regard to monetary policy, at the moment house prices have taken off. I noticed that you said in the press that the RBA wasn't responsible for house prices. While I accept that's true to an extent, you would have to admit, though, that you influence house prices—

Dr Debelle: Sure.

Senator RENNICK: because you control what I would consider to be the biggest lever on house prices, which is interest rates. It is probably fair to say that there is a fairly strong correlation between house prices and the lowering of interest rates.

Dr Debelle: Sure.

Senator RENNICK: So you do accept you have some responsibility for house prices?

Dr Debelle: Sorry, by 'responsibility', it's not our mandate to target a particular level of house prices—

Senator RENNICK: I accept that.

Dr Debelle: Do we have an impact on them? Yes. When I said 'responsibility', our responsibility is full employment and—

Senator RENNICK: And the economic prosperity and welfare of the Australian people.

Dr Debelle: Yes.

Senator RENNICK: But house prices do impact the economic prosperity and welfare of the Australian people, because, ultimately, if house prices go up, people have to borrow more money to actually pay for the house.

Dr Debelle: Right. That does boost other people's wealth, Australians' wealth, too. But, yes.

Senator RENNICK: That's right. But a roof over your head is a roof over your head. Ultimately it's the mortgage that you're going to put your nose to the grindstone for every day.

Dr Debelle: Sure.

Senator RENNICK: In terms of risk, you could have $100,000 and, if you borrow 10 per cent, you've got a $10,000 interest bill, which you can meet, or you could have a million dollar house and borrow at one per cent, and you've still got $10,000 interest. But the risk is much higher for the million dollar loan, because you've got to repay that principal. A lot of people get fooled on interest-rate-only loans. I know this is a macroprudential issue with APRA, but there is still that issue at the end of the day. Interestingly enough, if you look at the number of people retiring with a mortgage, that is now 40 per cent—and this is ABS stats—compared to what it was in 1992, when it was 10 per cent. I would argue that's not just entirely house prices but it's a big function of it. So we are destabilising what I would consider retirees' economic prosperity.

Dr Debelle: Sure, though people are making the decision to take out that mortgage. One of the other things which I think has an impact—in terms of the answers Michelle was giving to Senator Walsh's question earlier—is that the risk that households are taking on is something we do care about and something we pay a lot of attention to. I suppose the other point to note is the slow growth of household incomes is also another reason why people end up with more—

Senator RENNICK: Yes, I accept that.

Dr Debelle: Back in the day, a few years ago, when incomes were growing fast, that's the easiest way to pay off your mortgage.

Senator RENNICK: Yes, absolutely.

Dr Debelle: We've had much slower income growth, and I think probably slower than a lot of people thought when they took out those mortgages. As you say, by the time they get to the end of their working life, they are left with a higher mortgage than they thought they might have when they first took it out. That's certainly true.

Senator RENNICK: Yes. This comes back to the mandate of the economic prosperity and welfare of the Australian people. We now have retirees as well who've had their fixed income severely depleted as interest rates have gone down. Ironically enough, I think that's part of the reason why the participation rate has gotten higher—retirees have to work longer.

Dr Debelle: I think that's a fair assessment. But, in the end, we have to balance it up. If we have higher interest rates, we have higher unemployment. There are trade-offs here, so we have to try to do our best—

Senator RENNICK: That's right. So there's a trade-off here between qualitative easing and quantitative easing. So we've taken the qualitative—when I say 'we', central banks around the Western world have followed the qualitative easing and taken the easy route out—lowering the price of money—but we've now got to look at quantitative easing and we've got to do it in a way that's going to contribute to the productivity of the nation. Ironically enough, if you look at the difference between the East—China—and the West, China have actually used their quantitative easing to build infrastructure, whereas I would argue that we've just used it to inflate house prices and take on more foreign debt. To be fair, I know this is not just up to you; it's up to the Treasury and the Treasurer as well.

CHAIR: Let's try and keep to questions, though, Senator Rennick.

Senator Chisholm interjecting—

Senator RENNICK: Well, that's right. Unfortunately, though, we don't have all the levers in our hands, do we? We don't have monetary policy which we need—

CHAIR: This isn't a discussion around the room. Let's keep to questions.

Senator RENNICK: I will ask a direct question then. Should the government have control over monetary policy, given that it also impacts fiscal outlays in terms of higher pension costs? I would argue that, 25 years ago when Paul Keating said we're going to make the RBA independent, that was on the basis that politicians wouldn't lower interest rates to zero. Guess what? That happened anyway. Now we've got no fuel left in the tank. So we really need to work monetary policy and fiscal policy closely. It needs to work more closely, wouldn't you say?

Dr Debelle: I think, in what we're seeing at the moment, there is benefit in having a coordinated approach to policy. That's absolutely true. The main reason historically, at least, why central banks have independence is actually not from them not lowering rates but actually whether the governments are prepared to raise interest rates, particularly around election times. So it wasn't the unwillingness to lower; it was actually more the unwillingness to raise rates. I don't know. Obviously you have a different view, but I think our institutional set-ups served us pretty well over the last 30-odd years, but I accept that you can have a different assessment of that.

Senator RENNICK: Yes, I do.

Dr Debelle: I know you do.

CHAIR: Thank you, Senator Rennick. Senator Roberts.

Senator ROBERTS: Thank you, Chair. Thank you for attending tonight. My questions are from a much lower level of understanding than Senator Rennick, so bear with me, please. There has been a headline: 'Weak CPI will push RBA to $150bn new bond splash in August'. Could I understand that, please? The Reserve Bank uses central bank reserves to purchase $150 billion worth of Australian bonds to stimulate the economy. Is that right?

Dr Debelle: Yes, we've said we're actually going to buy 200—so, actually, more than that is what we've announced to date.

Senator ROBERTS: Where do the central bank reserves come from?

Dr Debelle: When we buy a bond, we buy it from a bank, but the bank often can buy it from someone else who owns it. The actual transaction we do is that we buy a bond from a bank and we credit that bank's account with us. So that's a liability on our balance sheet, and the asset is the government bond that we hold.

Senator ROBERTS: So it's a journal entry that creates the money?

Dr Debelle: Electronic—but, yes.

Senator ROBERTS: Yes—an electronic journal. How much have you increased the central bank reserves since the COVID restrictions started? I understand it's $100 billion then another $100 billion and now 150 which is really 200.

Dr Debelle: I can answer the question as of today—no, this is as of 26 May, sorry, not as of today. Back in March 2020, the size of our balance sheet was $180 billion and, as of 26 May, it was $450 billion, so 270 is the difference.

Senator ROBERTS: Will this money go to the banks to facilitate yet more overheating of the home loan market?

Dr Debelle: Are we trying to provide stimulus to the economy? Yes. Does it lead only to a flow of new lending for housing? No. In the national accounts today, for instance, we saw a pick-up in business investment—welcomed very much. Is some of it flowing into the housing market, as we were talking about just a minute ago? Yes, it is. We don't direct where it goes, though.

Senator ROBERTS: The next question is along those lines. Will there be earmarks, such as a sum that banks must dedicate to small business lending? Surely a composition of the economic activity goes to the security and resilience of the economy. Can you direct it?

Dr Debelle: Do we direct it? No. We have provided this term funding facility to the banks where if they increase their lending to SME businesses then we provide them more funding than if you just increase your lending for housing.

Senator ROBERTS: So that's almost an incentive to lend to small business?

Dr Debelle: It is not almost; it is an incentive to lend. We designed it to be such, yes.

Senator ROBERTS: So it's really up to the banks, but you can indirectly pull a couple of levers there to send money to certain areas.

Dr Debelle: We have set-up that scheme to do exactly that, yes.

Senator ROBERTS: If you wanted to, could you send it to, say, to agriculture, export industries, trade industries?

Dr Debelle: I think we are not in the business of picking sectors. We set settings for the aggregate economy rather than particular sectors in it. If the government so chooses that's up to them.

Senator ROBERTS: Following up on something that Senator Rennick said—we'd actually been using the term 'productive capacity' a lot—if this money that you are introducing is used for increasing productive capacity, such as power stations, railways, ports, is there an inflationary effect of using quantitative easing funds for infrastructure?

Dr Debelle: If we increase the supply capacity of the economy then, yes, that does increase the ability of the economy to grow both now and in the future.

Senator ROBERTS: Does the Reserve Bank see a limit on how much money it can print or—

Dr Debelle: History has shown, over a few hundred years, that if you go too far down this route that can go astray, yes.

Senator ROBERTS: It's an interesting question because—

Dr Debelle: How far? I don't know.

Senator ROBERTS: It's an interesting question. I first asked that similar question about quantitative easing of John Fraser when he was Treasury Secretary in about October 2016 and he pretty much laughed at me. The second Senate estimates in March he said we have some concerns but we don't seem to be able to see them. Then he admitted it in the next one. I'm not accusing him of anything. Ultimately he said on the third set of estimates questions that a lot of people around the world were surprised in his position, that we hadn't hit that limit yet. So you're saying the limit is still some way down the road?

Dr Debelle: We haven't hit that limit yet. That is indeed true.

Senator ROBERTS: The US deficit over the 2019-20 and the 2020-21 financial years is looking to come in at around $8 trillion for the two years. Are you seeing a reduced appetite for Australian government bonds as cash diverts to fund the massive deficit? Do you anticipate such a problem?

Dr Debelle: No, we are not. I don't know—I assume you have got Rob Nicoll at some point. The demand that he is seeing for Australian government bonds is actually pretty strong—

Senator ROBERTS: That's what I've have understood.

Dr Debelle: at the moment. I have no reason to suspect that won't continue to be so.

Senator ROBERTS: I'll move on to the new payment platform. Firstly, good job on the level of communication because these monthly bulletins are very informative from my staff. They are excellent. Just out of curiosity, the largest single transaction on the NPP was one transaction for $19.8 billion. So we've got to ask: who the hell paid $19.8 billion in one transaction?

Dr Debelle: I don't know the answer to that one off the top of my head. That one I really will have to take on notice.

Senator ROBERTS: This is not from government to government. It's another transaction.

Ms Bullock: It's if a private sector transaction it is probably private, but can we take that on notice?

Senator ROBERTS: Yes, please. The new payment platform has processed $1.7 trillion in financial transactions. Does that include transactions across international borders or is it just domestic transactions?

Ms Bullock: This is only domestic. This is between Australian banks.

Senator ROBERTS: Within Australia?

Ms Bullock: Within Australia. It's basically between banks in Australia. There are no international banks that would be translating US dollars into Australian dollars here. It is only Australian banks.

Senator ROBERTS: Thank you. This is my last question, Chair. In answer to a previous question some time ago the Reserve Bank assured me that the data is secure within the New Payment Platform and that companies processing the transactions can't see the data. Has the security of the New Payment Platform data ever been independently audited? I ask that because the Reserve Bank Governor has called the NPP a data rich environment. I'm wondering who is enjoying those riches.

Ms Bullock: With the way the New Payment Platform is organised the data sits with the individual financial institutions; it doesn't sit in the platform itself.

Senator ROBERTS: In the central area?

Ms Bullock: There's no central hub. The data sits within—

Dr Debelle: There's no central data hub.

Ms Bullock: There's no central data hub and there's no central switch either. It sits with the individual financial institutions and they talk directly bilaterally to one another using a decentralised network. That's how it works. The security of the data is all about the security of the data in the individual financial institutions.

Senator ROBERTS: Has the system ever been audited?

Ms Bullock: The individual banks?

Senator ROBERTS: The new payment system.

Dr Debelle: We do seek assurance on that and we're looking at the end-point security right at the moment again.

Ms Bullock: That's SWIFT end-point security, so that's a different concept again. The network itself individually is SWIFT communication hubs, if you like. The banks individually have to give affirmations or ascertain to NPP that they've met the various security requirements on their equipment, if you like, their hubs that they've got within their own environments. They have to do that.

Senator ROBERTS: Do you audit that?

Ms Bullock: We don't audit it, no.

Dr Debelle: Does NPP?

Ms Bullock: They don't audit the individual financial institutions. They ask for the individual financial institutions to attest to them that they have met the various security requirements.

Dr Debelle: Can we confirm with you on notice whether there's an independent audit of that, because in some of those attestations the bank will then need to have their own audit opinion on that?

Senator ROBERTS: Yes. That would be good. Thank you.

CHAIR: Thank you, Senator Roberts. Senator McKim.

Senator McKIM: Good evening, everyone. I'm going to tiptoe extremely carefully down the path just trodden by Senator Rennick and Senator Roberts. Dr Debelle, you recently acknowledged that record high house prices are being fuelled by ultraeasy monetary policy and that this has distributional consequences. That was in your Shann Memorial Lecture recently. By 'distributional consequences' are you talking about wealth inequality?

Dr Debelle: That's one aspect, yes. If you've got a house and its price is rising, your wealth is going up. If you don't have a house, it's not.

Senator McKIM: So you were talking about wealth inequality. You also said in that lecture that tools other than monetary policy should be used to address that increase in wealth inequality. What other policy tools are you talking about there?

Dr Debelle: I talked a bit about this when answering Senator Walsh earlier. Supply is one. Tax can have an impact. That's not in our hands; that's in your hands, collectively at least.

Senator McKIM: I wish it were.

CHAIR: The Australian people probably feel differently.

Dr Debelle: There are strong views on that.

Senator McKIM: No, I don't think they do.

Dr Debelle: Affordable transport is another. It's interesting that that has shifted over the last year or two. Where you live and work is a somewhat different proposition than it might've been two years ago. Having transport able to get you quickly to your place of work can help as well. It expands the potential supply of places that people might be willing to live and work. In the end, house prices are a function of supply and demand. We certainly have an influence on the demand side, as you pointed out, but there's also the supply side, on which we do have some impact. As I said earlier, the rise in house prices, along with governments incentives too, is engendering a very large rise in home building at the moment right across the country—and I really mean right across the country. It's regional Australia as well as the cities. That is having an impact. But anything which works on the supply side is basically what I'm referring to. I'm not an expert of supply of housing.

Senator McKIM: That's okay. But the supply and demand of credit has an impact on house prices as well, doesn't it?

Dr Debelle: Sure. I don't dispute that. That's right.

Senator McKIM: As one of the previous senators touched on, your charter tasks you with contributing to the economic prosperity and welfare of the people of Australia. In your view, what effect is the increase in wealth inequality that has flowed, as have you've acknowledged, from ultra-easy monetary policy having on the nation's prosperity and welfare?

Dr Debelle: As I pointed out in the aforementioned Shann lecture, in my mind at least, unemployment has a first-order effect on income inequality and lifetime income inequality and wealth inequality. That's one aspect at least of the trade-off we're looking at. Yes, lower interest rates do lead to higher house prices. That is true. Higher interest rates lead to higher unemployment. That has a first-order impact on inequality as well. That's the balancing act, the trade-off, that we have to take account of, and that's not straightforward. But, as I mentioned in the Shann lecture, we have to take account of that consideration as well—and we are tasked with achieving full employment.

Senator McKIM: About a third of Australians don't own their own home, and rising house prices equals rising rent. How does this increase in wealth inequality benefit that third of the country who aren't fortunate enough or rich enough to own their own home?

Dr Debelle: House prices—yes, there is an impact on inequality. But, as people get wealthier, they tend to spend more, which boosts economic activity in the country, which boosts employment, including for renters. The only other point I'd note is that in Sydney and Melbourne rents are actually still falling.

Senator McKIM: Yes, that's correct.

Dr Debelle: Rents are rising, and rising rapidly, in some parts, particularly in some parts of regional Australia at the moment, as people want to live there. That's certainly true. A stronger economy, where people are employed, has an impact on renters as well. To my mind—and it's another way to look at it—what does matter in this calculus is whether your parents have a house. Yes, one-third of people rent. A decently large chunk of that one-third, but by no means all, have a parent or parents who own a house. What I'm saying, I suppose, is that there is an intergenerational aspect. I would certainly acknowledge that that doesn't always end up as equal as well, but I don't think it's quite as clear-cut as saying that the one-third who are renting are obviously worse off as a result of this. The fact that they have a job, which may not be immediately apparent from the settings of monetary policy, is something.

Senator McKIM: Okay. Thanks. On the first part of your answer there, would it be fair to say you're talking about the 'wealth effect'?

Dr Debelle: Yes. House prices do tend to get people to spend. We have plenty of evidence of that.

Senator McKIM: Is the wealth effect basically just trickle-down economics? Is that what it is—that those who don't directly benefit rely on an indirect flow from those who do directly benefit?

Dr Debelle: I'm not sure I'd call it trickle-down economics. The circular flow of income is another way of putting it. Your spending is my income, right? That's actually more what I'd be talking about. What generates that spending is another question. But that's actually more what I'd be talking about. I don't think I'd quite put it that way. If you look at who owns houses across the income distribution, it's not just that, yes, the wealthy tend to have a high level of home ownership it's also that pensioners tend to have a high level of home ownership. So it's not a straight—let me put it another way: wealth and income distribution don't line up one for one by any means.

Senator McKIM: Alright. In answer to a question on notice I submitted last time, you quoted a March 2019 RBA research paper to support, basically, the continued efficacy of the wealth effect. But isn't it true that a July 2019 RBA research paper—Price, Beckers and La Cava—reached a very different conclusion? It stated that consistent with international research, high levels of owner-occupier mortgage debt reduce household spending, including in more normal times. Given that three of your staff have found that, how can you be so certain about the efficacy of the wealth effect?

Dr Debelle: The Price, Beckers and La Cava research piece says that when households with high debt get a shock they tend to reduce their spending by a little bit more. That effect is not larger than the overall macro effect of higher house prices on wealth. The stuff that Gianni, Fiona and Benjamin looked at said that if you have a house with more debt it means your spending is more sensitive to hits to your income. That's certainly true. That effect is not enough—no way near enough, actually—to counteract the overall impact of the wealth effect of higher house prices on spending.

Senator McKIM: Thanks, Dr Debelle. I'll go back and read that paper again with that in mind.

CHAIR: Senator McKim, we're running short on time and. Do you have a particular question you want to get on the record?

Senator McKIM: I do. Now I have to choose between my beloved questions! I'll ask about the quantitative easing. In rough terms, I think you're about $150 billion of the way through the $200 billion QE commitment that you made. Do you review the decisions you make continually around QE? And, specifically, do you really need to do the last $50 billion? Don't you think there's enough cash in the financial system already? And have you had a look at what the impact of the $50 billion of QE to come will be on house prices?

Dr Debelle: Yes, we do continually review. We reviewed that decision as recently as yesterday, and announced the outcome of said review in our monetary policy statement. Do we think about its impact on house prices? Absolutely. I don't want to give away the contents of the minutes, which come out in two weeks, but you'll see that we did actually talk about house prices—not surprisingly. As we said in the press release yesterday, we're announcing our assessment as to what more we might want to do in our July board meeting.

There's another thing we take account of: absent those measures, I'm very sure that we would have an exchange rate which would be materially higher than it is currently, we'd have interest rates which were higher than they are currently and we'd have an economy which would not be as strong as it is currently—now or in prospect.

CHAIR: We'll need to leave it there.

Senator McKIM: Thanks, Dr Debelle.

CHAIR: Thank you, Senator Walsh, for agreeing to put your remaining questions on notice. Dr Debelle and Ms Bullock, once again, thank you both very much. We wish you safe travels back to wherever you are berthing tonight! We'll possibly see you next time.

Dr Debelle: I'm sure we will. Thank you very much for the opportunity to be here again.

Proceedings suspended from 19:59 to 20:08

Financial Adviser Standards and Ethics Authority

CHAIR: We will resume this hearing of the Senate Economics Legislation Committee. We have before us the Financial Adviser Standards and Ethics Authority. Thank you very much for accommodating the late change of schedule. I'm sure you are all very well aware that this is a regular occurrence at estimates. We have your opening statement and we have all had a chance to look through it. So with your agreement, Mr Glenfield, are you okay if we just table that and go straight to questions, given the hour?

Mr Glenfield: I am happy to do so, thank you, Chair.

CHAIR: Thank you very much. We'll go straight to Senator Small.

Senator SMALL: If I could turn to the FASEA exam, I'm advised that one of the questions that is asked during the enrolment process is whether English is the candidate's first language. What's the purpose of that question, and is there anything in the design or operation of the exam that takes into account the challenges that people for whom English is a second language, for instance, might face in sitting the exam?

Mr Glenfield: Thank you for the question. You're right, the question is asked to enable us to determine which candidates do actually have English as a second language. As part of the marking process, ACER, the exam provider, benchmarks each question and looks at who made the response to see whether there was any disadvantage to a particular group. One of the particular things they look at is whether an ESL group had trouble answering a particular question—that is, did it favour against them because of the way it was written? It may come across very well may to an English speaker but it might be difficult to understand for someone with a second language. If that question proved to be very problematic for that group, it is removed from the marking so that they are not disadvantaged. That's the reason why we do it.

Senator SMALL: Has there been any such occurrence?

Mr Glenfield: To date, I don't believe we've had one that we've had to remove. ACER are very experienced at writing exam questions, and a lot of effort is put into making sure the grammar is in a way that will be understood by all.

Senator SMALL: Perfect. If something crops up on notice, that will be fine. Otherwise, I'll move on. I understand that the final exam before the deadline for existing advisers is scheduled for the five days between 4 November and 9 November this year. Based on previous exams, it usually takes approximately six weeks for the results to come out. On that basis, there will be a number of financial advisers who receive notice in the week or two before Christmas that they have in fact failed the FASEA exam. Is there an option that would allow them time to sell their business and find alternative employment, or will these small business financial advisers simply need to sell their businesses in something of a fire sale in the week between Christmas and New Year and before they are prevented from operating beyond 1 January 2022?

Mr Glenfield: There are a number of points there. It is a difficult one. We try to run the exams as long as we possibly can in the year to give people the opportunity to sit. If you don't pass, come 1 January you do come off the register. And you are correct: that means you can't give advice. You do have option, under the Corporations Act, to come back and sit the exam next year and, if you pass, you can come back onto the register. You can't give advice during the period you are off the register. So I guess the question would be: do you wait a period to try and sit again or do you think you won't pass and you need to move your business on? I don't have any power to provide an extension. The procedure under 921U is to set the exam. We don't have any power around extension of time or anything like that.

Senator SMALL: Thank you. I understand—and it's good that it's in your opening statement here as well—that 1,437 advisers who have attempted the exam are yet to pass. For those advisers who have attempted the exam more than once, what's the greatest number of attempts a candidate has had in total and then ultimately passed? And, therefore, what is the overall pass rate for advisers who have sat the exam more than once?

Ms Constantinidis: The most times someone has sat the exam to date is five and that particular person did actually pass. I'd have to take on notice the exact pass rates for each of the ones who have resat the exam. I don't have that complete information.

Senator SMALL: For these individuals who haven't yet passed, they hit the deadline at the end of this year. Is it true that they would simply be able to resit the exam or are there other requirements, such as the need to do a degree and have a year of professional service under their belt, before they can resit?

Mr Glenfield: I'll take on note that you quote the right sections of the Corporations Act. There would be two ways for them to get back. One is the route that you've just said, that you went through the new-entrant approach and you had a degree and passed the exam et cetera. But under the Corporations Act there is a section that allows them to be suspended from the bar until they sit and pass the exam. They would be reliant on future exams by the standards at that time.

Senator SMALL: I guess, in those scenarios, their current clients might be without their adviser for a period of some months or well in excess of a year and, therefore, likely to have to move to a different provider.

Mr Glenfield: That is quite possible, but I think that is what was anticipated with the legislation at any rate. The FSI—it was expected that not everybody would get through. That's a test of skill set.

Senator SMALL: Of those advisers who have failed and are yet to pass, do you have any data on how many of them received a result of between 50 per cent and the credit standard required to pass and be accredited?

Mr Glenfield: I'll take that one on notice. I don't have it with me.

Senator SMALL: Thank you. Through the analysis of exam results, has FASEA become aware of any other reasons that have contributed to advisers failing the exam, such as those related to health, anxiety or an inability to operate the technology? If any such factor has been identified, have mitigating measures been put in place to assist those same advisers to pass the exam at a later time?

Mr Glenfield: We have direct contact from some advisers who advise that they're anxious and struggling with the exam. Generally, if we have an issue like that, we will refer them to their association to try to get them assistance with that. For those who have difficulty around the technology or they have other reasons for having trouble sitting the exam, they can apply for what I would call 'special consideration'. I think ACER use a different term. There is a mechanism to do that through ACER so that we do have advisers who are given extra time. We have advisers who have done a paper based version. We have advisers who have had someone take their answers on the phone, a transcript of their answers. So there are a number of mechanisms put in place to try and help. But, at the end of the day, they do need to sit the exam. We can't exempt them from the exam.

Senator SMALL: That's understood. If, on notice, you can follow up with that detail around what the credible alternative is for a suspended adviser to come back without doing a degree et cetera, that would be great.

Senator CHISHOLM: Did FASEA consult with any part-time advisers or their representative union, the FSU, in the development of continuing professional development and professional year standards?

Mr Glenfield: A consultation was done, broadly. We released a consultation document for people to respond to. The numbers we had are also online, and who they came from. I don't know directly, and I can't recall directly, if the union put in a submission or not. Amelia, you may know that better than I do or else we could take that on notice and come back to you.

Senator CHISHOLM: You didn't seek out a discussion with the union?

Mr Glenfield: I'm not aware that we did, no.

Senator CHISHOLM: What about any part-time advisers?

Mr Glenfield: The consultation was done, largely, online, and the ability to submit. We did some round tables that held with representative licensees of advisers and their representative associations.

Senator CHISHOLM: How is a female adviser who wishes to take maternity leave meant to meet FASEA's professional year requirements?

Mr Glenfield: Amelia, do you want to comment on that one and, obviously, the professional year standard?

Ms Constantinidis: Yes, thank you. There are provisions for the licensee to be able to accommodate part-time advisers, but the standard is a minimum of 12 months. The hours that have been described in the standard, which are 1,600 hours. are taken on the basis that it's a full-time FTE but can be extended to someone that is a part-time employee. We are aware of people—I don't know the exact numbers—who have inquired of us in relation to whether they can undertake the professional year on a part-time basis and what that would actually mean in terms of a longer period that they would actually take to complete the professional year.

Senator CHISHOLM: So is that issue something that's been raised with you previously?

Ms Constantinidis: It's not an issue that's been raised. It's more an inquiry on how the standard can work, and it's more clarification of how that would apply to a part-time adviser.

Senator CHISHOLM: Okay. I've seen some complaints from advisers about the availability of exams for advisers to sit, particularly in regional areas, in light of the COVID pandemic. Is that something FASEA are aware of, and what have you done to address that, if so?

Mr Glenfield: Yes, we are aware. The principal thing we did with regard to the pandemic—we were doing it anyway, but it proved useful for the pandemic—was making the exam available online. So, rather than having to turn up to an exam centre, you can actually do it from your home, in your office or wherever you choose to do it through remote learning. We've had over 4,000 advisers do that to date, and, pleasingly, the pass rate for those doing it remotely is consistent with the rate for those coming to a centre. So that's been pleasing as well. We continue to offer the exam physically in regional centres each time, and that's based on demand in those centres. I think—Amelia, correct me if I am wrong—about 31 regional centres have run exams, as well as capital cities. So we've gone out to those centres to make it available, and we've allowed for the online version for those who can't get to exam centres.

Ms Constantinidis: I'll just correct that: there are about 15 regional areas that we've gone to.

Senator CHISHOLM: Thanks. When FASEA is abolished, who will administer the exam requirements?

Mr Glenfield: Under the proposed legislation, as I've seen it, it would be ASIC as the administrator, and the minister would be responsible for legislative approval of the exam.

Senator CHISHOLM: Okay. I'll come back to that in a second. Is FASEA now confident that all financial advisers will have a fair and reasonable chance to complete an exam before the deadline of 1 January 2022?

Mr Glenfield: I believe they have. We will have offered the exam 11 times by the end of the period.

Ms Constantinidis: Sorry, it's 15 times by the end of the period.

Mr Glenfield: Sorry, it's 11 to date. It will be 15 times by the end of the period. Each time we offer the exam, it runs over five days, and you can sit morning or afternoon sessions, or you can sit it online. If you look at that, there's an extremely large number of exams offered throughout the transition period for people to sit.

Ms Constantinidis: I might just add also that if an adviser sat from June 2019, which was the first offering, they would have had eight opportunities to pass the exam before the end of the transition period.

Senator CHISHOLM: Can you provide any updates on the transition of FASEA functions to ASIC and Treasury? Will any staff be moving from FASEA to ASIC or Treasury?

Mr Glenfield: I will give you an update on what's happening. We are talking regularly with both Treasury and ASIC about our functions and how we deal with them to prepare them for the transfer. We haven't had any indication of whether FASEA staff will transfer.

Senator CHISHOLM: Is there a date from when that is due to happen?

Mr Glenfield: I have seen a proposed date in the consultation that went out and that was 31 December this year.

Senator CHISHOLM: In the transition, what will happen to the surplus funds from FASEA?

Mr Glenfield: FASEA is funded by eight contributors on a three-year funding agreement. The agreement provides that at the end of the funding agreement, which is 30 June this year, whatever funds haven't been expended by FASEA would revert to those contributors in the proportion that they paid contributions.

Senator CHISHOLM: Can you just remind me of the funding history of FASEA?

Mr Glenfield: FASEA is a government agency. It's a company limited by guarantee. Its funding was determined through Treasury before FASEA was set up and it has signed a contribution agreement with eight contributors to put $3.9 million per year as funding for FASEA. We receive that quarterly.

Senator CHISHOLM: Okay. It was basically the big financial institutions and banks that provided financial advice. Is that how it was done?

Mr Glenfield: That is correct.

Senator CHISHOLM: Would you say there has been adequate funding from industry and government to ensure that FASEA could fulfil its duties?

Mr Glenfield: The funding, in terms of size, is a challenge for the size of the role. However, we've operated within that funding. We knew what it was, we've staffed it accordingly and we've been able to deliver. We had seven functions to deliver under the Corporations Act. We've been able to deliver those. But with anything, more funding means more people that can do broader tasks, if you like. But we've had to work within what we've got.

Senator CHISHOLM: Do you think that part of the government motivation for the transition to ASIC in Treasury is as a result of government not ensuring there is enough money for FASEA to continue?

Mr Glenfield: I don't know that it's appropriate for me to comment on the government's view on why they're doing that. It's the minister's policy, or the government's policy, at least.

CHAIR: Minister, do you want to comment?

Senator Hume: You're asking a question which is entirely unfair. When we announced the single disciplinary body, which is obviously a response to the Hayne royal commission recommendation, it simply was an opportunity for some regulatory alignment. FASEA has fulfilled its objectives very well indeed, but now we need to move on to the next phase.

CHAIR: Are you aware that the number of advisers has dropped below 20,000 for the first time, pretty much, since there's been a register?

Mr Glenfield: I am aware that it's under 20,000, yes.

CHAIR: Is that a cause for concern for FASEA?

Mr Glenfield: It's a difficult one for me to give an opinion on. We could discuss the reasons for falls, but the number has been coming down throughout the course of FASEA, which has been driven by a range of things. We've seen a particular restructuring of the industry. If you look at those big players we were referring to before, the numbers of their advisers that have reduced is significant. I was looking just the other day and our original contributors had about 6,000 advisers and that's down to around 2,000 and a bit. They're big numbers that are coming out of restructuring of the industry. There are those, obviously, that won't want to meet the higher standards. It was, I think, recognised in the FSI that that was a likely outcome. The question becomes: how many advisers do you need for the number of people seeking advice? I don't have evidence on that, so it's difficult for me to comment.

CHAIR: Fair enough. I want to follow up on a question I asked, I think, last time; it could have been the time before. If advisers do fail an exam, I think you were trying to improve the level of feedback that you could provide them.

Mr Glenfield: Yes.

CHAIR: Has that occurred. What feedback do they get now? If people are struggling with an exam or certain elements of the exam, is there guidance that you give them in regard to that?

Mr Glenfield: I think we've made good progress in that area for advisers. There are a couple of main things that we've done. One is to do with feedback. When we spoke originally, as you'll recall, the exam was in three parts: legal and regulatory requirements, ethics and client behaviour. Candidates used to get feedback that said whether they'd underperformed in one, two or three of those areas. The feedback that unsuccessful advisers are now getting is, for example, 'In the legal and regulatory compliance area, the areas you underperformed in were A, B, C and D.' It's broken it right down into which bits they've struggled with. And we've gone back, so all those who have been unsuccessful in the past can access that depth as well. That can be really important for someone who has perhaps failed two or three times, so they can look for any particular trends.

We've also started running webinars both pre and post the exam. Once you sign up for the exam, you're invited to a pre-webinar that FASEA hosts, where you can ask questions and where FASEA gives a rundown of what the exam will be about, what it will look like and what types of questions will be on it. Post exam, we run a webinar for unsuccessful candidates, to talk about the areas that unsuccessful candidates struggled with and what they'll need to look at going forward. We also do a more generic release, publicly—among those who failed, the 10 particular areas that candidates struggled with—so that advisers preparing for the exam know which areas their colleagues have struggled with in the past.

To that extent, we've taken it a lot further than we had it. We continue to supplement the practice questions that are available online with retired questions from the exam to give people a good feel for what the questions will look like.

CHAIR: Do you give advisers a mark? If they haven't passed, they don't get a mark. What's the thinking behind that?

Mr Glenfield: No, they don't get a mark. I guess it goes back to the standard procedure of a pass-or-fail exam: you get a 'pass' or 'fail' mark. What we do do is give them an indication. If they're nowhere near the pass mark, they're advised. You can apply for a re-mark, but your mark is not sufficient [inaudible]. If your mark is close to the border, the opportunity is there to apply for a re-mark. So it gives them an idea of where they sit, without giving an actual mark.

CHAIR: In the interests of time, I will leave it there. I do have a few more questions, but I'll put those on notice. Thank you very much for your time tonight and, again, apologies for the delay in your appearance. Please go with our thanks. We'll now move to the ACCC.

Australian Competition and Consumer Commission

[20:34]

ACTING CHAIR (Senator Chisholm): Thanks to representatives from the ACCC for joining us. Did you wish to make an opening statement?

Mr Sims: We've tabled one. I might just summarise it quickly, if I could. Thank you very much for inviting us along. We, seriously, always appreciate this opportunity and the importance of appearing before the Senate Economics Legislation Committee. I just wanted to quickly run through a small amount of some of the things we're doing, just to provide a bit of context.

We've had some really important consumer cases, one of which saw a $125 million penalty against Volkswagen. We had a $50 million penalty against Telstra for unconscionable conduct. I think the higher penalties that we're now getting really send a message to companies to pay more attention to consumer law. Also on the consumer side, over the last year with our COVID work, we have been working with companies to try to make sure that, when consumers are entitled to refunds for travel, subscriptions and things like that, they get them.

We've got a large pipeline of competition enforcement work. We recently had a success in the Tasmanian Ports Corporation case. That was the first time we used section 46, which was really helpful in making sure the competitor was actually able to compete. We're really pleased with that outcome. In the last year we've had all these exemptions from competition law, for anything from medical equipment and hospitals to supermarkets and telecommunications. That was really to allow a bit more cooperation during the time of COVID. We think that made a material contribution to Australia's successful emergence from the pandemic. We deal with 300 merger assessments each year, 90 per cent of which are preassessed and about 30 of which take a lot of time. Probably the main one we've got in front of us at the moment is Woolworths-PFD.

We do a lot of work on product safety. We've just had the recall of 99.9 per cent of Takata airbags. We're working on the implementation of standards for button batteries and quad bikes. We do a lot of work to raise the awareness of scams. In 2020, we received over 216,000 scam reports, which is nearly a 30 per cent increase on the previous year.

This coming year we're going to spend an enormous amount of time resetting the regulatory arrangements for NBN, because they've just lost touch with the commercial reality of the sector. We're also doing a lot of work on energy—making sure that consumers actually benefit from the 50 per cent reduction in wholesale prices that we've seen. We're also working on our LNG netback series, which helps frame price expectations in the gas market.

We're doing a lot of work on digital platforms—advertising technology, apps—and obviously monitoring the news media bargaining code implementation. We had our success against Google, in relation to Google's collection of location data on Android devices. We're very proud of our work on the consumer data right. That is something we, basically, started from scratch, and it's got off to a very successful start. We've now got 12 accredited data-recipient businesses and six that are active in the CDR ecosystem.

We've also recently given the government our *Murray-Darling Basin water markets inquiry: final report*, which tries to—or does, actually—understand the problems facing the Murray-Darling Basin water market, which is so fundamental for agriculture. We're also monitoring the aviation sector. I could go on for the next hour, but I'll pause there. I'll finish by saying that we got an increase to our budget in the 2021 budget process. We're going to set up separate divisions for competition, consumer and product safety. That will bring more focus to our work and also allow us to get much more involved in utilising data to enhance what we do and how we do it. With that, thank you. I'm happy to answer questions on that or on anything else you might like to ask us.

ACTING CHAIR: Thank you, Mr Sims. Apologies, Ms Develin, I was thrown by my chair deserting me. I acknowledge you, as well, from the Australian Energy Regulator. Did you wish to make an opening statement?

Ms Develin: No, thank you, we won't make an opening statement. We have witnesses that are in a technological vault somewhere. They're just trying to enter.

ACTING CHAIR: We might continue and, hopefully, that comes good before too long. Senator McAllister.

Senator McALLISTER: In fact, my questions are to the AER, so it might be better to wait until we've made contact with your personnel. Could I just get some clarity about something. My questions relate to the National Electricity Market and to competition within that market. Is that exclusively your province, Ms Develin, or do you also have a role there, Mr Sims?

Mr Sims: In terms of continuing monitoring, it's the AER mainly, but we get a bit involved—but it's mainly the AER.

Senator McALLISTER: What is your involvement, Mr Sims?

Mr Sims: Have we not got anybody on video link; is that the—

Senator McALLISTER: Not yet. We can come back to this. I'm just trying to get a sense. It would help me to understand what your respective roles are so that I can direct my questions appropriately when we come to it.

Mr Sims: I could quickly summarise, if you'd like.

Senator McALLISTER: Yes.

Mr Sims: The ACCC is involved in competition issues to make sure there are no breaches of the act in the electricity market. We're also involved in implementing the PEMM—what was known as the big stick legislation. The main thing we're doing under that is that we've got the power to ensure that the large reductions in wholesale market prices are actually passed on to consumers, and that's a big element of our role. The PEMM legislation also sees us getting a bit involved in potential bad-faith market manipulation. We share that with the AER, which also has roles in that under the National Electricity Rules. Everything else is done by the AER.

Senator McALLISTER: Thank you very much, Mr Sims. That's reasonably straightforward. I think we should wait until the officers come, and we'll come back to it.

Senator SIEWERT: I've been referred to you from the department of communications.

Mr Sims: Very good.

Senator SIEWERT: So blame them.

Mr Sims: They passed all the questions on to me; that's very good!

Senator SIEWERT: I'm after some information around gambling. Are you aware of gambling companies trading client information? A tiny bit of background is that what has been reported is that a person ceases with a particular gambling company and then that gambling company—it's various companies—is reported to be selling on that client information to another gambling company. This, of course, is important because the client might have chosen deliberately to disengage from gambling, and what's happening is another company is then contacting them with inducements and things.

Mr Sims: I understand the problem.

Senator SIEWERT: Are you aware of that? Has it been brought to your attention?

Mr Sims: I'm not aware, and I have a feeling my colleagues aren't either, by the looks on their faces. So, no, we're not.

Senator SIEWERT: Is it something that you can have the powers to look at? I was told to ask you, so I'm presuming it's the sort of thing you would look into.

Mr Sims: We've become involved in some data issues, because of our digital platforms work, which is perhaps why that came to us. But I think there are issues there that probably mainly involve the Privacy Act, which would be the Privacy Commissioner—do you think?

Mr Gregson: My past roles also involve our consumer work. We're not aware—at least the people in this room—of those matters coming to us, but we'll have a look and see if there is anything on our radar. Aside from privacy issues, which should be the OAIC, if there's conduct that is misleading—a failure to advise appropriately or advising incorrectly about how data would be used—that could be an issue that we could look at. Similarly, if the conduct was so egregious that it would be considered unconscionable, there might be issues for us under the Australian Consumer Law. Of course, there are also other agencies involved in licensing for matters involving gambling, and they may have license issues there as well.

Senator SIEWERT: Yes, and I'm obviously pursuing those lines of inquiry as well. If you do find that it's a problem—and I can send you some more information—are there ways under your purview that legislation can be tightened up to stop that happening?

Mr Gregson: They would be more likely to be specific legislative issues, either under privacy, for the OAIC and Attorney-General's, or, alternatively, under the gambling licensing, which would be matters to return you to the department of communications.

Senator SIEWERT: Yes. They're the ones who sent me here.

Mr Gregson: I apologise.

Mr Sims: We did take action against a health company for taking data and passing that to commercial entities so that they could target those people. We took that under misleading conduct. I think we argued there that, in a sense, the inference was that your data wouldn't be shared, yet it was. So the misleading conduct is quite a powerful instrument, but it is broad. I think, if you're dealing with quite specific gambling related issues, as Mr Gregson said, that's probably best done with specific legislation. But, seriously, we'd be quite happy to have a look at anything. We have got that health case, and, if there are parallels, we could look into it, definitely.

Senator SIEWERT: Okay. I might send you the information we've been given. You've already said you'll have a look, but I'll send you the information we've got.

Mr Sims: We'd be keen to do that.

Senator SIEWERT: Thank you very much. I told you I'd try to be quick!

Senator McDONALD: I've got a couple of topics. Each one is fairly short. I want to start with the Port of Newcastle. Is the Port of Newcastle considered a monopoly?

Mr Sims: I think it absolutely is in my book, yes.

Senator McDONALD: What is the ACCC's view of the current level of regulatory oversight on the port?

Mr Sims: Non-existent.

Senator McDONALD: Was the ACCC consulted on the budget measure 'National Access Regime—improving timeliness'?

Mr Sims: There was a government review, and we put in a submission to that, so, in that sense yes, we were. The issue that we are concerned about is where entities are privatised. Obviously the selling government wants to maximise proceeds, so they privatise a monopoly without any regulation. What happened in the case of the Port of Newcastle is that, as soon as they were privatised, they ramped the fees up by 50 per cent and added $700 million to their value, which is pretty good money if you can get it. So, it's definitely a monopoly. The state government got a lot of money for selling it, but the users are now effectively paying that 50 per cent when they shouldn't be.

Senator McDONALD: Did the Treasury seek the ACCC's input into the budget measure 'National Access Regime—improving timeliness'?

Mr Sims: As I said, we put a submission into that, so, in that sense, yes.

Senator McDONALD: What was the time line of consultation that the ACCC provided on the budget measure?

Mr Sims: It was just that submission. There was a general request for submissions. We put a submission in.

Senator McDONALD: Do you recall when that was?

Mr Sims: I don't know when our submission went in, no. I would guess around March, but I'm not sure.

Senator McDONALD: That's close enough for—

Ms Proudfoot: I believe it was late February.

Mr Sims: I wasn't far out!

Senator McDONALD: Thank you, you were very close. In your view, does the budget measure impact regulatory oversight of the port as a monopoly, and would this have a positive or a negative impact?

Mr Sims: It's a tricky issue in the sense that the way part IIIA has evolved is that it's been interpreted as being very difficult to apply to a monopoly that isn't vertically integrated. It's been used for infrastructure. The classic was when Telstra was a monopoly, and they were both a retail provider and they had the only copper wire. That's really the basis of the regime, and it's been interpreted like that for a long time. The big problem we see with part IIIA is that it's being interpreted in a way that it doesn't actually affect the Port of Newcastle as it should.

To answer your question, I think the bigger problem is with the test. That's the problem. The budget measures were meant to streamline the process, which is fine, provided you've got the right test in the first place. The other issue with the budget measures is the extent to which they are retrospective. There's an arbitration appeal in the High Court, and there is another declaration application on foot. Ms Proudfoot can correct me if I've got that wrong, but that's roughly right. Their process is already underway. What's unclear is whether the legislation will be retrospective or prospective. If it's simply prospective then those matters will continue on, and it would probably be good to test the law to make sure that they do continue on.

Senator McDONALD: I want to turn to another topic. I've had farmers contact me about the consolidation of, in this case, John Deere franchises and Zimmatic irrigation, where the franchisees are being bought out by the same company, and then you end up with pricing allocated by postcodes, with no variation in the market or ability to move stock. I understand you're looking at some sort of investigation into agricultural machinery or machinery more broadly?

Mr Sims: Yes, there are issues there. I will pass over to Mr Bezzi, who is the expert in this area, but the agriculture machinery issue has many components to it. It's not just the one you mentioned; it's whose got the access to the data, have you got the right to repair it yourself, can you get all implements to repair it yourself or do you have to take it to a dealer. And then there's the point you're making about whether you really constrained to go to one dealer and, therefore, are just getting one price. It's obviously a huge issue, because it's agricultural machinery and agriculture's really important. We've put out some early work on that, and we're going to keep working away at that. I don't know if Mr Bezzi wants to comment on the amalgamation of dealers—

Senator McDONALD: Yes, the franchises and dealers.

Mr Sims: so that they're all charging similar prices.

Mr Bezzi: We are familiar with some changes that have happened in the ownership structure of some of the John Deere dealerships and some changes that have been made in relation to the business practices that they've adopted. We have looked at some complaints in relation to those issues. I'd rather not get into the detail of an investigation, but I think what I would say is that we're still having a look, but at this stage it's unlikely that there's a breach of the competition law. But we haven't yet concluded our—

Senator McDONALD: Alright. I might send you these specific examples and you can feed that into your—

Mr Bezzi: I suspect that they overlap with some of the things we're already looking at, but it would be good to check and make sure.

Senator McDONALD: Thank you. Finally, the burning topic on my mind is regional aviation. You did touch in your opening statement on some of the work you're doing on aviation. But I wanted to come to something quite specifically, which is: what is the ACCC's view of the allocation of slots—of course, that is specifically Sydney at the moment—by the department, and do you think that the unused slots should be distributed to new entrants, so that the incumbents don't get too entrenched? What do you think about Virgin still holding on to Tiger slots, even though Tiger closed down?

Mr Sims: The slots at Sydney Airport are a crucial issue. We certainly agree with the thrust of your question—that they shouldn't be used as an entry barrier for new players. There's been a review by Peter Harris. He is an ex-chair of the Productivity Commission, and has done a range of other things. He knows aviation very well, and he's done that review and, I think, handed it to the government. So we're looking forward to seeing that. The classic example is Rex. It's now wanting to fly the main city routes. It needs slots at Sydney. It's got temporary slots. In our view, there is no doubt that it should get permanent slots. The slots are not being used. Rex may or may not succeed—we don't know—but to not be able to have a chance of succeeding because it can't get slots would be just a very bad outcome.

Senator McDONALD: We had an inquiry into regional aviation prices a couple of years ago, and, certainly, competition was one of the most important elements.

Mr Sims: Yes.

Senator McDONALD: I've seen airlines crushed in North Queensland, and I'm certainly very keen that we encourage any new entrants or expanded entrants to the market. How do we ensure that the dominant carrier does not use its market power to damage the competitor or the new entrants with capacity dumping?

Mr Sims: That's a really huge role of the monitoring work that the government's asked us to do. I should just add, though, going back to the earlier point, that whenever there's competition on those regional routes prices are lower than when there's not.

Senator McDONALD: Yes, exactly.

Mr Sims: So that's a huge issue. The key purpose of our monitoring role is to make sure that we don't have that sort of behaviour that you've just described. There are a lot of allegations made, and I can assure you we're looking at them. I guess we're trying to see what the patterns are, see what the overall effects are and understand the economics of Qantas, because, obviously, Qantas has spare planes. Are they covering their cash costs? We're all over this topic and looking very closely at it.

Senator McDONALD: Great. What will the ACCC be doing to support attempts to provide competition in this market? We would certainly be concerned if there was one bank or one supermarket that held 80 per cent of a market share. So what can the ACCC do to support competition?

Mr Sims: We've got two tools. What I almost think is the lesser tool is making sure there's no breach of the act—dumping capacity for an anti-competitive purpose or effect is one way you can breach the act. But the other thing that's quite explicit in the terms of reference given to us by government is that if we find that there are problems we can go to government with recommendations that are targeted to the problem. The government has given us a three-year inquiry and they have given us funding to do that. So we've got an expert, dedicated team and if we see problems we will most certainly be making recommendations to government.

Senator McDONALD: That is just terrific. A three-year time frame gives it long enough to see the pressures on any new entrants—as to whether they can hold on or not.

Mr Sims: It build up a state of knowledge, as well.

Senator McDONALD: I don't need to get into naming all the competitors, but one aviation company has embarked on regional routes that are too thin for competition. If they succeed in displacing the incumbent, there is a danger that they will put prices up once they are the monopoly player, or leave the route. How will the ACCC deal with that?

Mr Sims: We're looking to see just what the fundamental economics of those flights are. For example, is Qantas covering its cash costs? What's the overall effect on Rex? So we're deeply looking at all of that. Obviously, it takes time to get the information. We are using our compulsory information powers to get it. You get information, you ask further questions, but the questions you're asking are, exactly, the ones we're targeting.

Senator McDONALD: You will recall public concerns raised last year about regular conversations between the CEOs of the two major airlines, and the possibility of those CEOs discussing business matters during those private phone conversations. At the time you indicated that the ACCC is always concerned about what might be going on where senior executives of close competitors have private lines of communication. Are you aware that on the same day this year, 15 April 2021, within minutes of each other, both Qantas and Virgin announced capacity increases that brought their capacity up to 80 per cent of pre-COVID levels?

Mr Sims: Yes. We are aware of that and we are looking at that. That's been brought to our attention.

Senator McDONALD: Great. So you're following up on that—you're going to investigate whether this timing is a coincidence or some form of cooperation between competitors?

Mr Sims: Absolutely. And we're looking to see whether there's any external factor that would have caused them both to do the same thing at the same time. We're going into that with an open mind, but we're certainly looking at it.

Senator McDONALD: Terrific. Finally, I just want to ask you about refunds of flights. I think it has become an understanding in the community that some airlines refund flights and others don't. But that's actually not the deals—passengers are still complaining about ongoing hindrances and delays that mean they're not being paid refunds they are entitled to. What is the ACCC doing to follow up on this issue? Will it take enforcement action against companies that don't pay refunds—particularly if they've announced flights to places where planes can't go yet?

Mr Sims: I'll ask my colleague to address that question. He is the world expert on this topic.

Senator McDONALD: World expert!

Mr Sims: Absolutely.

Mr Greiss: We are closely monitoring the refund situation. It might be worth outlining that these refunds have arisen where the flights have had to be cancelled because of COVID restrictions. In that case, consumers have to fall back on the terms and conditions of their booking.

In some cases, their entitlement was largely to a credit with some of the cut-price airlines, but by and large all the major airlines have offered refunds for cancelled flights that have arisen because of the pandemic. The issues that you're referring to, though, relate to the sheer number of refunds to process and complications that have arisen because there are intermediaries with travel agents and companies. We're actively following and monitoring the progress of those refunds. I know in the case of Qantas that there was a particularly large volume that had banked up last year. We're only at the tail end of that. We understand that people who are entitled to refunds are getting them but the frustration is real and understood. People are obviously keen to get those refunds as soon as possible.

Senator McDONALD: I guess to be fair, this has been an incredibly difficult time for those airlines. I appreciate that their corporate sections are not necessarily filled with staff just sitting around waiting to process refunds. Thank you very much. I appreciate your time.

Senator McALLISTER: I have a couple of quick questions about the energy market. Firstly, you'll be aware that the government has made a decision to take an equity position with Snowy Hydro to allow the construction of a new gas-fired power plant at Kurri Kurri. Has any government department or minister sought advice from either the AER or the ACCC about the market implications of that investment in terms of market concentration?

Mr Sims: Not from the ACCC, but I'll pass to the AER.

Ms Savage: We haven't been asked for any advice on that.

Senator McALLISTER: There have been a number of issues raised publicly in media articles around the operation of Snowy Hydro's Colongra plant in the last month and, in particular, the outcome which saw Snowy not dispatch any power from their Colongra plant into the NEM during a period when a number of industrial facilities, including the smelter Tomago, had to go offline. Has a complaint or any concern about that been raised with either the AER or the ACCC?

Mr Sims: We've had a query from a company called Enova about the effect on their business, and that's something we're going to be looking at with the AER. I'll pass to Ms Savage, who monitors these things much more.

Ms Savage: There have been quite a number of high-price events in the last few weeks. I think you're probably referring to the prices that were achieved on 17 May, 18 May, 21 May and 25 May?

Senator McALLISTER: That's correct.

Ms Savage: Each of them occurred for different reasons. The AER has a responsibility under the law and the rules to monitor and report on prices that are over $5,000 per megawatt hour. We do prepare and publish a report into any high-price events within 40 business days.

In terms of the activity of Snowy Hydro and the Colongra generator, specifically on 17 and 18 May, that power station was actually offered into the market, but it was offered at a price that was higher than the price that was settled in the market at that time. At the same time, there was the other Snowy Hydro plant being offered into the market at the market price floor. There was about 1,300 megawatts of hydro capacity that was being offered at negative prices at that point in time. It's not really possible for us at this stage to accurately comment on what Snowy's motivations might've been around offering Colongra. We certainly have limited visibility over the contract market dynamics, but we are obviously going to investigate those high-price events and we will put out our report within 40 business days.

Senator McALLISTER: Thank you very much. Ms Develin, I think Mr Sims indicated that you have a role in responding to the complaint that has been lodged by Enova?

Ms Develin: Yes, that's correct.

Senator McALLISTER: What does that look like? What does that involve?

Ms Savage: Do you want me to take that?

Ms Develin: If you'd like.

Ms Savage: It's a similar sort of approach. The letter that has come through from Enova is querying, I guess, the instances of high prices in the market. In response to that, we will be doing those reports and that investigation into those high prices. Some of the factors that seem to have contributed to the high prices at this stage—there was very high demand due to cold weather, very low electricity generation from renewables at the time, planned and unplanned generator outages and some network outages which were limiting the interstate flows. Specifically, though, on 25 May you might be aware there was a fire at the Callide C power station in Queensland. That certainly interrupted 2,200 megawatts of baseload generation in Queensland as well as the transmission system at that time. We will respond to Enova once we've done those investigations.

Senator McALLISTER: There are various pieces of analysis floating around, but it appears that with Kurri Kurri and Snowy 2.0 it's likely that Snowy Hydro will have control over somewhere between 60 and 80 per cent of the peaking market. Is there any mechanism by which the AER or the ACCC can examine that dynamic and assess whether or not that is in the interests of consumers?

Ms Savage: Part of the AER's role is to actually do a report every two years into the competitiveness of the wholesale electricity market and its performance. We put out a report last year that talked about the amount of flexible capacity in the National Electricity Market. We see that flexible capacity as becoming increasingly important because it's necessary to firm the variable renewable energy sources, particularly solar as it goes down in the afternoon.

The Australian Energy Market Operator defines flexible capacity as capacity that can be available within 30 minutes. If you take that definition, Snowy Hydro currently controls about 5,000 megawatts of flexible generation capacity. That's over 40 per cent of all flexible capacity in the National Electricity Market and 72 per cent of the capacity in New South Wales. With Snowy 2.0, which is another 2,000 megawatts, and the investment at Kurri Kurri, we see that that would increase Snowy Hydro's flexible generation share to about 54 per cent in the National Electricity Market and 83 per cent in New South Wales.

We have a role from a compliance and enforcement perspective of making sure that market participants comply with the National Electricity Rules. We of course are taking enforcement action for any breaches. Some of the core provisions there make sure that the way in which these generators bid—that they do that in accordance with the rules, that they follow the dispatching instructions that are given to them from AEMO and that they follow the generator performance standards. As I said, we do have a broader role in reporting on the general competitive nature of the market. I might turn to Mr Sims on any specific competition issues.

Senator McALLISTER: Thanks. That's a really comprehensive answer. I think I'm testing the patience of my fellow senators, and it's quite late at night, so I have a couple more simple questions that I'd like to ask and then I'll cede the call to someone else. Are you planning any specific action to examine the impact of the increasing levels of concentration in the segment of the market I think you described as the flexible market once 2.0 and Kurri Kurri are brought on? Eighty-five per cent of the market in New South Wales seems to me to be very high.

Ms Savage: Currently, in the report we did last year, we did flag the fact that there is significant concentration, but we haven't seen any evidence of any generators at this point in time misusing that. From our perspective, we'll continue to do those reports, but that's the extent of our powers in that state.

Senator McALLISTER: Has Snowy Hydro breached the National Electricity Rules in the last five years?

Ms Savage: Certainly we have, as the AER, taken previous enforcement action against Snowy Hydro, but it was not in the last five years. In 2015 they were ordered to pay $400,000 in penalties for failure to comply with dispatch instructions.

Senator McALLISTER: Any enforceable undertakings issued against Snowy Hydro by the AER?

Ms Savage: There was an enforceable undertaking issued at that time, that was in 2015.

Senator McALLISTER: Any civil proceedings with Snowy Hydro?

Ms Savage: We don't currently have any matters on foot with Snowy Hydro.

Senator McALLISTER: I might leave it there, Chair, given the time. Thanks very much for your assistance.

Senator ROBERTS: Thank you for attending tonight. In reference to your report of the Murray-Darling Basin water markets inquiry, is it a fair representation of your findings to say, 'There is a lack of quality, timely and accessible information for water market participants. The ACCC's analysis has highlighted the need for significant improvements in the consistency and completeness of the Murray-Darling Basin water market trading'?

Mr Sims: That sounds like what we've found. That rings a lot of bells. It's, obviously, a very complex market. I guess it's just sort of evolved. Water administrators have been much concerned with the allocation of water rather than the trading of water. I think our general judgement is that there are a range of things that need to be done to get the market working properly and to address the problems you have just correctly summarised, because it is such a fundamental market for farmers.

Senator ROBERTS: I haven't read your report, but one of my staff who was intimately involved in the Murray-Darling Basin says it gives you an A plus.

Mr Sims: Very good. I appreciate that. I will pass it on to the team.

Senator ROBERTS: We have been all over the Basin and we have listened to a lot of people and it makes total sense. Schedule 3 of the Water Act 2007 specifies that all trades should be recorded in a register of water trades. Your report notes the failed attempt by the Murray-Darling Basin Authority to introduce a national water market—following which they just gave up trying. Is implementing this 14-year-old law compatible with the findings in your report about the need for improvements in water trading data transparency?

Mr Bezzi: If I understand your question, Senator, you are asking me whether the recommendations in our report will improve transparency in the water market, and, yes, our answer to your question is that's what they are intended to do, that's one of the big problems that we think needs to be addressed. There are some other issues as well: integrity of some of the mechanisms to ensure that people have confidence in the integrity of the market and the conduct of the players in the market; making data available more generally, in a more consistent way across the whole market, so that people can use it for their purposes. There are a whole range of different recommendations that we think will be carefully considered by the implementation panel over the next year or so.

Senator ROBERTS: I didn't want to interrupt because it was music to my ears, but what I was specifically after was: is a register of water trades consistent with your report?

Mr Bezzi: Yes, absolutely, and either a single register or registers that are compatible and that record data in a consistent way.

Mr Sims: That's a classic example of what is missing. There's no doubt about that. And that, again, reflects the way it has evolved and the way it very much needs to improve.

Senator ROBERTS: From page 182 of the report:

> … 89 per cent of the volume of all large investor spot allocation purchases and 67 per cent of the volume of all large investor spot allocation sales in the Southern Connected Basin in the 2018–19 water year were attributed to one investor.

Can you indicate who that investor was?

Mr Bezzi: I don't think it would be appropriate to do so.

Senator ROBERTS: That is why we need a register. We would know the answer if we had a transparent water register, correct?

Mr Bezzi: Yes.

Senator ROBERTS: This is just a statement. Without a water trading register shady or crooked operators can hide, and I am not saying that they are shady or crooked, but—

Mr Bezzi: The difficulty is that we don't know whether there are shady or crooked operators—

Senator ROBERTS: Exactly, that is the problem.

Mr Sims: We don't know. If the market was working with all the normal regimes then that would make bad behaviour much, much, much harder. So we don't know, but the system opens itself to that.

Senator ROBERTS: Open the cupboard; the cockroaches scatter when the light hits them. Page 185 of your report indicates that in 2018-19, 63 gigalitres of water was traded from above the Barmah choke to below the choke. Is that correct?

Mr Sims: There are only 780 or so pages, Senator. If it's in the report, it's very likely to be correct. No—it is correct.

Senator ROBERTS: It is correct, okay. Is this figure net or gross? In other words, we know that 63 was traded from above and moved to below the Barmah choke—was there a corresponding trade moving water from below the choke to above the choke?

Mr Bezzi: That would be taking the water upstream, and that's a very difficult thing to do.

Senator ROBERTS: It is.

Mr Bezzi: Conceptually, there are ways in which trades can occur where that happens.

Senator ROBERTS: But that figure would be—

Mr Bezzi: I expect it's a gross figure, but it would be pretty close to being a net figure. We can take that on notice.

Senator ROBERTS: Thank you. In Senate estimates last Friday, Andrew Reynolds, the Executive Director of the Murray-Darling Basin Authority, testified that there was no transfer of water from above to below the choke, since any trade below was matched by a trade back the other way. This is not what your thorough and detailed investigation has found, according to my staff. Is that correct?

Mr Sims: Look, I think it's best we take it on notice. We've got the question and we'll certainly get back to you. We should have the information.

Senator ROBERTS: Your data came from voluntary information disclosures. Put simply: the trades you examined were the trades people wanted you to see. Is there a chance the trades were hidden from the ACCC inquiry?

Mr Sims: No.

Mr Bezzi: That's not correct. We used compulsory powers to compel the production of a large amount of the data and the information we received. Some of it we did receive voluntarily from state government agencies, but a very large proportion of it we obtained using compulsory powers.

Mr Sims: That's why we can paint a picture that others couldn't, because we had the information-gathering powers. That's why we were able to put all the data together in the way we did. Without the powers the study wouldn't have had the same thoroughness.

Senator ROBERTS: Thank you. I'll move on to a separate topic now to do with market power. The Commonwealth Bank has announced that they are investing $30 million in ecommerce startup, Little Birdie. So far so good. The bit that concerns me is the Commonwealth will add the Little Birdie ecommerce portal directly into their banking app. Is the Commonwealth Bank using its market power to grow a business that it has an interest in?

Mr Sims: Senator, I don't know if any of my colleagues have a comment, but the Commonwealth Bank has probably got 25 per cent of the home loan market. It's obviously the biggest bank. In terms of what they're doing, there are a lot of other players in the market. We're certainly happy to keep an eye on it but, I think, with all else going on in the market, it would be a bit early to call that market power. It's an interesting development. They are trying to match a range of other digital players—fintecs offering various services. I think we almost see it as an encouraging sign to improve the mix of economic activity. But I accept they're a big player and when big players do things like that we have to monitor it carefully.

Mr Bezzi: I might add, if you don't mind Mr Sims, we have a dedicated unit within our agency that focuses on financial services competition issues, actively monitors these sorts of developments and reports to a financial services competition board. I think that is a very good mechanism for really tracking what's going on in competition and financial services.

Senator ROBERTS: It's just that the banks, as Mr Sims pointed out, have got enormous power. The four of them have enormous power, and if they get behind something—

Mr Bezzi: If they all do the same thing, that's a different matter. As I understand it, it's the Commonwealth Bank on its own making that move. If they all did it collectively that would be a very different matter, and that could well breach competition laws.

Senator ROBERTS: Westpac is now offering white-label banking services, Afterpay, as their first customer. Does ASIC have a point at which the banks could be considered to be misusing their market power. You just mentioned one example.

Mr Sims: You mentioned ASIC; I think you meant ACCC.

Senator ROBERTS: Yes.

Mr Sims: Again, I think it's fairly early days. I think it's part of all the rich developments that are going on that we are monitoring very closely.

Mr Bezzi: There are a number of white-label services provided by various banks. Citibank, for example, provides white-label credit card facilities. In a sense what Westpac is doing is a pro-competitive thing—entering into an activity that enables Afterpay to provide a fuller range of services than it currently does. We see that as a way for them to become a more viable competitor within the financial services market.

Senator ROBERTS: This is my last question for the ACCC. How about Westpac shutting down banking facilities for cash-handling companies so that it can direct their retail customers to use one specific cash-handling company that they have a financial arrangement with, essentially debanking? Where does this slippery slope end if we let banks to do this and they eventually own everything and force companies they don't own out of business?

Mr Sims: I'm not aware of that particular issue. I'm happy to take that on notice and have a look at that. We certainly are interested in debanking. We made recommendations about that when we did an inquiry into foreign exchange, because we think there has to be rules that people can meet so that they can't be debanked in an ad hoc way. We're very concerned about debanking, but I don't think we're aware of that particular—

Mr Bezzi: Sorry, Mr Sims. We are aware of certain commercial arrangements that have been made that have been having an impact in the cash delivery market. There are a couple of firms that dominate that market. We've had a close look at some of the arrangements there. It'd be interesting though to understand whether you're referring to one of the things that we've looked at or whether it's a new issue. That might best be done by taking your question on notice.

Senator ROBERTS: Would you like one of my staff to contact you?

Mr Bezzi: Yes, that would be helpful.

Senator ROBERTS: Thank you.

CHAIR: Senator Canavan, your one question.

Senator CANAVAN: I have one question by promise and agreement. I was following up with my colleague Senator Susan McDonald on the Port of Newcastle. I think the senator raised questions around the changes in the budget to the National Access Regime. Have you been asked to contribute at all to a regulatory impact statement for those changes to part IIIA?

Mr Sims: No, we have not.

Senator CANAVAN: Would you expect a RIS to be prepared for such a change to competition and consumer laws?

Mr Sims: It would be good if it were because obviously we need to make sure the changes are prospective and not retrospective. That would be something we would have an interest in.

Senator CANAVAN: Good. Thank you.

CHAIR: Thanks.

Senator CHISHOLM: I have some questions that I want to cover off around the Measuring Broadband Australia program. The ACCC received an additional $7.7 million over four years to continue that program; is that correct?

Mr Sims: That's correct.

Senator CHISHOLM: In September 2017 the government announced that the ACCC would receive $7 million in funding to conduct a speed-monitoring program over four years. This is cost recovered through a telecommunications industry levy. In a media release from 7 April 2017 the ACCC said:

> The program will use hardware-based devices to perform remote testing of around 4,000 households to determine typical speeds on fixed-line NBN services at various times throughout the day.

How many active hardware based monitoring devices were deployed into households as part of the program?

Mr Sims: I don't know whether Ms Proudfoot is on the system or not. She did speak earlier. I don't know whether she has that to hand or we have to get back to you.

Ms Proudfoot: I am on the call, Mr Sims, but would like to take that on notice please.

Senator CHISHOLM: Okay.

Mr Sims: We must be getting pretty close to that I would have thought, but I don't have the number either.

Senator CHISHOLM: We understand it typically ranged between 1,100 and 2,000 depending on the reporting period. Is that a fair observation?

Mr Sims: I'd need to check the numbers. I'm sorry, Senator, it's a while since I've looked at that.

Senator CHISHOLM: Would Ms Proudfoot have anything to add to that?

Ms Proudfoot: No, sorry.

Senator CHISHOLM: Was there a significant gap between the 4,000 devices the ACCC claimed would be monitoring and what was actually delivered?

Mr Sims: I don't know. What I do know is that it did take a while for the program to ramp up. We believe all the findings that we've had are statistically significant and we are absolutely convinced that putting out those speed comparisons has done two things. It's forced companies to compete against each other to make sure their speed is appropriate and it's also ensured they get enough capacity off the NBN to provide good speeds. So the program has been enormously beneficial, but I would really need to get back to you on those numbers.

Ms Proudfoot: We did conduct a review late 2020 ahead of discussing with the government whether we would seek funding to extend the program and found the Australian Communications Consumer Action Network, Choice and the Regional, Rural and Remote Communications Coalition were particularly supportive of the program and extending it to fixed wireless given the benefits it provides consumers in selecting reliable and high speed broadband services. So we had that feedback through from the consumer representative groups.

Senator CHISHOLM: Who did the ACCC contract to deliver the program?

Ms Proudfoot: The program is delivered by SamKnows.

Senator CHISHOLM: What's their background? Where are they based?

Ms Proudfoot: They're based in the UK and they were contracted through a tender process.

Mr Sims: But they also do the same work for in other countries—

Ms Proudfoot: including New Zealand.

Senator CHISHOLM: Were there no locally based companies that were capable?

Mr Sims: It's been a long time since we did that tender, but I think we certainly wanted companies that had the experience to do it, and this company had done it around the world. But we'd have to take that on notice. We did that tender some years ago. I honestly cannot remember.

Senator CHISHOLM: Did they receive the full $7 million in funding over the four years?

Mr Sims: We would have to get back to you to know how that funding was allocated.

Senator CHISHOLM: I go to my previous point about whether the actual 4,000 homes were monitored. If that wasn't met—and my information is that it was somewhere typically closer to 1,100 to 2,000—was there some way of adjusting what was paid if they didn't deliver on what was promised?

Mr Sims: I would have to get back to you. I'm sorry; it's been awhile since I've looked at this program. Unless Ms Proudfoot has anything else to add to that?

Ms Proudfoot: No. I'm sorry, Mr Sims. I would note that the funding total includes staffing within the ACCC to support the program. It is not a massive number of staff, but it would indicate that the full amount does not go to SamKnows.

Senator CHISHOLM: On 29 March this year the ACCC had to issue a correction to a media release. The correction was issued and said:

> The error occurred because four broadband performance measuring devices, called whiteboxes, were allocated to services that couldn't be correctly validated. The updated figures now exclude data from these four units.

Is the sample size so sensitive that four incorrectly allocated monitoring devices were enough to have the ACCC update its entire report and issue a public correction?

Mr Sims: That does not ring true to me. Again, we'd have to get back to you. I'm sorry; we don't have the expert on that online. But the statistical significance of our results is extremely robust. It's taken a while to get some of the smaller players in who don't have many customers. We've also had issues about people using the 12/1 service, because often people using the 12/1 service aren't interested in having their speed monitored, because they're not that interested in the speed. But, for the vast bulk of our findings, four white boxes being inoperable would not make a difference. I will have to take that on notice.

Senator CHISHOLM: Is the ACCC seeking to retender Measuring Broadband Australia now that the program has been extended?

Ms Proudfoot: We will be, yes.

Senator CHISHOLM: Do you think the ACCC can deliver the current program for less cost?

Mr Sims: I think we would have estimated the cost in putting the project forward.

Ms Proudfoot: The program's funding includes an extension for NBN fixed-wireless networks competing with the NBN as well as higher-speed NBN fixed-line services, so there will be more delivered for the $7.7 million.

Senator CHISHOLM: Will that include gigabit speeds under the extended program?

Ms Proudfoot: It will, yes.

Senator CHISHOLM: I have some questions about the fuel security service payments. I will try to knock them over very quickly. With regard to the fuel security service payment, the $2.3 billion subsidy to keep Australia's remaining oil refineries open, the ACCC prepares an annual fuel report and is as knowledgeable about fuel prices as anyone. Was the ACCC consulted on the policy and its consumer impacts?

Mr Sims: Yes, we were. The original proposal was to find the program with a levy on consumers, and we weren't comfortable with that. As a result of our representations, it's just been funded from the budget, not from a levy on consumers, so we did have input into the program.

Senator CHISHOLM: The policy is predicated on the assumption that, if refineries were to close, the price of petrol would increase by 1c per litre. Do you believe that would be the case?

Mr Sims: We've had discussions with the department and we have had a different view on that. We don't think the refineries closing would have an effect on the petrol price. That's a contested view, but that's our view.

Senator CHISHOLM: To be clear: you don't think there would have been an increase in price?

Mr Sims: No, we see this measure as something to do with fuel security rather than a price issue. Our evidence has been that, when refineries close—and we've had a lot of them close—it really doesn't have an effect on the price. There are a lot of arrangements that need to swap out, because obviously you turn the refinery owned by one person into a terminal owned by many, but in the end you're importing the product anyway. Our view—and it's probably not the department's view—is that it doesn't affect the price.

Senator CHISHOLM: Has the ACCC been provided or briefed on modelling that the government has relied on to claim that, if the refineries were to close, the prices would increase?

Mr Sims: I'd have to get back to you on whether we've actually had access to the modelling, unless Ms Proudfoot knows. I'm not aware of that one way or another.

Ms Proudfoot: I don't believe that we have seen the modelling or that.

Senator CHISHOLM: Has the ACCC conducted its own analysis of the subsidy and its potential impact on consumer fuel prices?

Mr Sims: No, we haven't. Our view is that it's a subsidy to keep the refineries going. It kicks in when refinery margins get below a certain level. There are concerns by some on the market that the money given to those refiners will be used to lower their retail prices and cause an anticompetitive effect. It's not clear to us that that's the case. Our initial view is that it shouldn't have much effect on the market, but it's something we'll certainly watch.

Senator CHISHOLM: Are there any competition law implications of a subsidy that advantages one segment of a consumer market and disadvantages another?

Mr Sims: I don't think there's a competition law issue when it's the government making a policy proposal. I don't think it can violate competition law. My colleague on my right is not moving, so that must be the case.

Senator CHISHOLM: According to the ACCC's own reports, including the 2018 report on petrol prices by major retailers, independent fuel chains consistently offer lower prices. This policy, by its nature, will create a structural market advantage for the refiners and a structural disadvantage for the independent retailers. What will be the results in terms of fuel prices?

Mr Sims: I think it's very hard to tell, because that money is going to keep a refinery open that arguably and quite likely would close. Therefore, the money has been estimated to be such to keep the refinery open. So if they're being compensated for that, it is not obvious that that money would be used to distort the retail market. I know there are concerns out there and I know some of the independent players are concerned. Certainly one of those is a very good, low-price fuel offering, and they are concerned. I've actually had that discussion myself with the chief executive of that company. We basically agreed to disagree. I just said I can't see that it will have that effect that he believes it will have. But it's certainly something we'll monitor.

ACTING CHAIR: And do you think that the potential implications would be greater for regional Australia, given that often those independent retailers are more prevalent in those areas?

Mr Sims: I'm not sure. The city with the very strong independent retail chains is Sydney. It's got three or four of them that are really low priced and they've each got quite a lot of petrol stations. So it depends where you are. If you were in Cairns, the two small independents—but they're single owners—offer very cheap petrol. So it differs all around the country, as to who's offering the lower prices. It's not obvious. I think those independent chains are particularly powerful in the main cities, so they'd certainly have an effect there. Yes, they have an effect in the regions. I wouldn't say their effect is bigger in the regions than it is in the city.

ACTING CHAIR: Thanks, Mr Sims. Senator Roberts, I believe you've got two final questions?

Senator ROBERTS: Yes, on AER, thank you. The AER exists to ensure energy consumers are better off now and in the future. You may be aware that—

ACTING CHAIR: You'll have five minutes.

Senator ROBERTS: I commissioned Dr Alan Moran to estimate the cost of subsidies to renewables and that he estimated these at $6.9 billion in 2018-19. Do you agree with such estimates, and if not, have you made your own?

Ms Proudfoot: Thanks for the question, Senator. No, we have not made any assessment of that at this stage.

Senator ROBERTS: Okay, I'll send you some material, because we're going to put other questions on notice after these first two. In earlier hearings—this is still part of the first topic—other regulatory agencies have said that renewables are now the cheapest source of energy, but at the same time they support the need for ongoing subsidies. Do you concur with this?

Ms Proudfoot: Certainly, we would see large-scale wind and solar, particularly, as being the cheapest forms of new investment in large-scale energy at this point in time; that's correct.

Senator ROBERTS: Okay. This is the second question. AEMO, in its integrated system plan for the national electricity market, identified $17.4 billion of transmission investments by 2040 to accommodate its projections involving a doubling or trebling of rooftop solar, together with more than 26 gigawatts of new grid-scale renewables. AEMO's estimate that identified projects amount to $17.4 billion and exclude most of Snowy 2.0 costs. In reality, isn't AEMO's projected $17.4 billion in transmission expenditure a further subsidy to wind and solar energy, which is itself only viable as a result of regulatory subsidies and direct support from government in fiscal assistance, and contracts?

Ms Proudfoot: My understanding of the AEMO's integrated system plan is that the current actionable projects under that plan are probably closer to about $10 billion. The purpose of that plan is to actually make sure that they optimise consumer benefits as Australia goes through the energy transition. So, essentially, what AEMO does is it looks at the technological, economic policy and power system developments and then aims to minimise the cost and the risks of adverse events to build the least-cost future power systems.

Senator ROBERTS: Okay. Thank you very much.

ACTING CHAIR: Thanks, Mr Sims and the ACCC; and thanks, Ms Savage and the Energy Regulator for their time tonight. We very much appreciate you being here with us on a Wednesday night.

Senator ROBERTS: Thank you very much. Thank you all.

Australian Bureau of Statistics

[21:43]

CHAIR: Welcome again, Dr Gruen. I believe you have some opening remarks. Please go ahead.

Dr Gruen: Thank you, Chair. I'd like to give a brief update on preparations for the 2021 census. Census night, which is Tuesday 10 August, is now 69 days away. A census is the most comprehensive snapshot of the nation and tells the story of how we are changing. It covers 10 million households and over 25 million people. Census data is used to update electoral boundaries, determine the GST distribution between states and territories, and facilitate planning by governments, businesses and the community. It tells us about the economic, social and cultural make-up of the country.

After the outage of the 2016 online census form, and with the continuing COVID-19 pandemic, I'd like to explain some of the enhancements we've made to ensure we deliver a safe, secure and effective census.

We've worked with PwC and Amazon Web Services to rebuild, completely, the census digital service, including cybersecurity protections informed by the Australian Cyber Security Centre and other experts. There will be an extended period available to complete the census. People won't have to wait until census night to fill in their form. They can complete their form online or on paper when they receive their instructions in the mail, in late July, provided they know where they'll be on 10 August. There are two new questions: one about long-term health conditions and one on Australian Defence Force service. These additions are the first significant changes to the questions collected in the census since 2006.

The health and safety of the community and our staff is paramount. We have a census COVID-safe plan, which we tested last year in our major census test, and we're well placed to respond in the event of a COVID-19 outbreak during the census period. Having said that, COVID outbreaks do complicate our preparations as well as our general data-collection activities.

The 2021 census advertising campaign will begin in early July, and we'll have more than 20,000 field officers working across the country to help people complete their census. It's important that the census counts everyone. We have special processes to count people experiencing homelessness and people in establishments such as aged-care homes, hospitals and hotels. We also provide support options for people who are deaf, hard of hearing, blind or have low vision. This includes providing resources in Auslan and the ability to order braille and large-print forms, working with the relevant non-government organisations.

Census information will be translated to help members of Indigenous and multicultural communities complete the census. Information for people from a multicultural background will be available in up to 29 languages, and there is a telephone interpreter service. For people living in remote Indigenous communities the census will be conducted over an extended period, between July and August, providing more time to cover vast areas and visit multiple communities. We recruit census staff from remote communities to help people in those areas complete the census through face-to-face interviews.

As you would imagine, conducting a census is an enormous logistical exercise that takes years of detailed planning, involving everything from building more than 50 IT systems to purchasing over 100,000 masks for our field staff to ensure they are COVID safe. I'd like to thank ABS staff and our partners in the government and private sector for their hard work and dedication in getting us to where we are now, well prepared and ready to deliver a census that informs Australia's important decisions, such as where to build hospitals and schools, set up businesses and provide government and community services.

The census is not the only thing that ABS does. Let me end by acknowledging ABS staff for their dedication over the past year, rising to the challenge of producing new more timely statistics in response to COVID-19 in addition to our regular statistical work program.

CHAIR: Thank you, and thank you for keeping it very concise. A couple of questions jump into my mind from the opening statement though. One is about the extended period and the fact that you don't seem too worried that, by extending the period, the level of accuracy about where people are on the night of the census would, presumably, be expected to degrade slightly. Does that mean that question wasn't so important as 'usual place of residence'? I'm interested in how you think this factors in to the census as a time series.

Dr Gruen: We are asking about 10 August; the census documents ask about 10 August. If people are uncomfortable filling the census in before 10 August, they don't have to. The other thing that people can do is start their census without necessarily completing it.

CHAIR: I accept all that. Given that there would have to be a degrading of the level of certainty you have in the accuracy of that particular data point, that doesn't seem to concern you. The advantages of broadening the time outweigh the disadvantages of weakening—

Dr Gruen: That's what we think. There are benefits in response rates from making it easier for people. We think the degradation, to the extent that there is one, is very small.

CHAIR: My second question concerning your opening statement relates to the fact that, obviously, we still are in a pandemic. Talking about face-to-face interviews, have you built into the program the possibility of your agents or field operatives needing to be out in the field perhaps two weeks in advance of starting? Are there contingency plans if there is an outbreak in a particular state?

Dr Gruen: There definitely are contingency plans. We had a dry run late last year, which involved 100,000 dwellings right across the country, and parts of the country were in lockdown at the time that we conducted that test. There is always the option of people filling it in online; they don't have to fill it in on paper.

CHAIR: I'm thinking more in terms of remote communities but also making sure you and your staff protect remote communities.

Dr Gruen: As I said in the opening statement, for remote communities, we give ourselves more time to—

CHAIR: So that's part of that contingency plan.

Dr Gruen: Yes, that's part of that.

Ms Dickinson: We also seek in remote communities where we can to have somebody from that community trained up in community to do the data collection, where that's possible.

CHAIR: Excellent. Senator Chandler.

Senator CHANDLER: Thank you, Chair. For the purpose of collecting accurate data on sex, how does the ABS define 'male' and 'female'?

Dr Gruen: We actually released a press statement just recently, which you may have a copy of?

Senator CHANDLER: I don't have a copy of that statement to hand, no.

Dr Gruen: In terms of the questions that we are asking, we are asking about sex not gender in the census. A person's sex is based on their sex characteristics such as their chromosomes, hormones and reproductive organs.

That's what the basis of the question is. For a substantial majority of people, the answer to that question will be male or female.

Senator CHANDLER: I've also had a look at the standard that you've developed around sex gender variations of sex characteristics and sexual orientation variables, and that contains a statement that, while typically based upon sex characteristics observed and recorded at birth or infancy, a person's sex can change over the course of their lifetime. Is that the cohort that you are, in effect, referring to that won't answer male or female, as per what you just said?

Dr Gruen: There is a small proportion of people who are born intersex with some characteristics of male and female. So, for a small proportion of people, the appropriate answer will not be male or female, so there is a third option.

Senator CHANDLER: Just refresh my memory what that third option is?

Dr Gruen: Non-binary sex. And there's a slightly different treatment, depending on whether it's the paper form or the online form. In the online form, the options are male or female, and then there is a hyperlink in a situation in which one of those two descriptions is not appropriate for that person. But most people will not go to that hyperlink; they will simply answer the question male or female. And, in the case of the paper form, it actually specifies the third option.

Senator CHANDLER: Do you stand by the accuracy of the statement within your standard that says that a person's sex can change over the course of their lifetime?

Dr Gruen: We do.

Senator CHANDLER: On what basis?

Dr Gruen: Obviously sex at birth is an important criterion for judging, and I think one of the ways of answering this question is to be focused on sex at birth. We are talking about a pretty small proportion of the population. But, in terms of the statement that I read out about chromosomes, hormones and reproductive organs, in principle, people can undergo hormonal changes which would be relevant to their sex.

Senator CHANDLER: Was there a biologist on the working group that put this standard together?

Ms Dickinson: We'll have to take that on notice.

Senator CHANDLER: I thought that might be the case.

Ms Dickinson: There was a very wide variety of people that were involved and consulted.

Senator CHANDLER: On notice, then, could you perhaps tell me the names of all of those organisations that were involved in the working group?

Ms Dickinson: We can do that.

Dr Gruen: Yes, we can do that.

Senator CHANDLER: Thank you. I also understand that the ABS consulted with international statistics departments and entities on the sex and gender standard. Do you know if the UK's Office for National Statistics was one of those organisations?

Dr Gruen: We can take that—

Ms Dickinson: Yes, they were.

Senator CHANDLER: Was that consultation before March this year when the ONS was found in court to be providing incorrect guidance on sex and gender questions?

Ms Dickinson: That I don't know. We'll find out the time line.

Senator CHANDLER: That would be appreciated. Thank you very much.

CHAIR: Senator McAllister.

Senator McALLISTER: There will be a few questions from me, and then I'll hand over to Senator Walsh. I want to ask some fiscal questions about the operation of the budget. The women's budget statement on pages 83 to 85 of BP 2 includes an initiative which reads as follows:

- $30.0 million for Australia's National Research Organisation for Women's Safety and the Australian Bureau of Statistics to continue collecting evidence and data on FDSV …

That's family, domestic and sexual violence. What proportion of that $30 million will go to the ABS?

Ms Wilson: My understanding is that around $12 million of that package will come to the Australian Bureau of Statistics.

Senator McALLISTER: In the Treasury PBS at page 65, there are the new measures which affect the ABS, but the Women's Safety Package is not amongst them. What is the mechanism by which that $12 million will flow to the ABS?

Ms Wilson: I expect that to be under some sort of memorandum of understanding. Those details will be worked out with the Office for Women.

Senator McALLISTER: So it's your understanding that that money is allocated to the Office for Women?

Ms Wilson: Yes, that's my understanding.

Senator McALLISTER: Will the ABS be spending any more on family, domestic and sexual violence data per year as a result of this measure?

Ms Wilson: I'll have to take that on notice. Some of the details are still to be worked out with the Office for Women, and we will also be partnering with the Australian Institute of Health and Welfare as we think about how we're going to undertake that work.

Senator McALLISTER: Thanks. Senator Walsh has some additional questions, Chair.

CHAIR: Senator Walsh.

Senator WALSH: Dr Gruen, I've got some questions about the story that was in the *Sydney Morning Herald* today about the ABS providing a provisional classification for the Transport Asset Holding Entity as a public non-financial corporation in 2015. What was the ABS's role in relation to the Transport Asset Holding Entity?

Dr Gruen: Statements were released both by ourselves and by the head of NSW Treasury today on this topic. Do you have the benefit of those statements?

Senator WALSH: I don't, no.

Dr Gruen: I can tell you what we said, if that's helpful. We issued a press release today along the following lines:

The ABS classifies government entities for inclusion in official statistics. These classifications are made independently, based on standards set out in the International System of National Accounts and Government Finance Statistics manuals.

TAHE—

the Transport Asset Holding Entity—

met the criteria to be a Public Non-Financial Corporation when it was classified by the ABS in 2015.

Classifications may be reviewed if the ABS becomes aware of a change to structure, operating environment or other circumstances including legislative changes. The ABS is not aware of any changes that would require a review of TAHE.

When new entities are being established, or changes made to them, the State Treasuries inform the ABS of the characteristics of the entities—

We have a series of criteria to determine what classification to apply, and that has to do with whether the government controls the entity, whether it's an institutional entity, whether the government-controlled institutional unit is a market or non-market producer et cetera. So there are a series of criteria that we use to determine what our classification is. That's not in the press release. I'm just giving you further information—

The NSW Treasury has not advised the ABS of any changes to how the TAHE operates as an entity of the NSW Government, nor have we identified any information—

that would be relevant—

The ABS is committed to transparency in how we classify entities. Further information will be published on our website outlining the classification process for all entities.

But, broadly speaking, there is an international standard that we adhere to. We apply the criteria that that international standard specifies, and, on the basis of those criteria, we come to a view about what the appropriate public-sector classification is.

Senator WALSH: The media release you just took us through—is that on your website? How has that been distributed?

Dr Gruen: It's on our website.

Senator WALSH: We had a quick look on your website and we couldn't see it.

Dr Gruen: It's under 'Media centre'. I found it myself, rather than somebody giving it to me, so it's there.

Senator WALSH: That's impressive. Thank you. So you're confirming that you provided that classification back in 2015.

Dr Gruen: Yes.

Senator WALSH: And the classification was provided on the basis that it would meet the key milestones that are outlined in the article—is that correct?

Dr Gruen: No, not milestones. We are simply applying the international standards to determine what type of entity it is. We're not making financial judgements about it or anything like that. We're just making a judgement about what classification it fits into. We're not assessing the sorts of things an auditor would assess. We're simply saying: what type of entity is it? Is it a public non-financial corporation or not?

Senator WALSH: Can I get you to respond to a couple of things that are in the article?

Dr Gruen: I think I have the article in front of me. This is the article by Adele Ferguson and Matt O'Sullivan?

Senator WALSH: Yes. Thanks for confirming that. At the top of where the article continues from page 1—

Dr Gruen: Sorry, I've got a typed out version. Give me a paragraph.

Senator WALSH: Several paragraphs in:

The ABS, which sets the rules on classifying government entities, agreed to allow the government to gain the benefits upfront on the proviso the new entity would meet key milestones in the "transition" to a commercial government-owned corporation by July 2018, according to a document marked "Cabinet in confidence" in 2016.

Dr Gruen: I'm pretty confident—and I'm happy to check this—that we would not be writing a cabinet-in-confidence document to the New South Wales government. We would be assessing this thing on our own criteria and then publishing the result. If there is a cabinet-in-confidence document dated from 2016, I suspect, given the nature of this article, it's a cabinet-in-confidence document written to the New South Wales cabinet by somebody else, not us. We don't write documents for the New South Wales cabinet, as you would imagine.

Senator WALSH: Yes. I accept that you've just, I think, refuted the content, but if I could just ask you about that again—you didn't set any conditions for this entity to receive the ABS classification that it received?

Dr Gruen: No. Let me give you a simple example. If you're asked whether something is a cat or a dog and you say it's a dog, there are no conditions; it's just a dog. That's sort of what we're doing. We are asked for a classification of this entity and we give you a classification of the entity. We don't provide conditions. It's just that kind of entity. Now, if circumstances were to change, and the nature of the entity changed, then we could in principle change our advice.

Ms Wilson: Subject to the same criteria.

Dr Gruen: Yes.

Senator CHISHOLM: You weren't there at the time that this was done, though.

Dr Gruen: True.

Senator CHISHOLM: Are you absolutely certain that there was no engagement from the ABS with the New South Wales bureaucracy about how they'd achieve this?

Dr Gruen: I'm happy to take that on notice, but certainly the information that I have before me is that this classification is based on the System of National Accounts 2008. Those are the criteria on which we base these decisions, and I don't think there have been any changes to those criteria since 2015.

Senator CHISHOLM: I feel as though you're dealing in the abstract and we're putting to you the specifics of what was in the article. I just feel there's potentially a disconnect there.

Dr Gruen: We're happy to take on notice whether there was any interaction in 2016 with the New South Wales government.

Senator CHISHOLM: You'd presume the cabinet-in-confidence document was based on some sort of discussion that they'd had with the ABS.

Ms Wilson: We have not seen the cabinet document, obviously, so we can't comment.

Senator CHISHOLM: Have you been through any of the documents or correspondence that the ABS might hold from that time?

Dr Gruen: Not in detail, but I'm happy to take it on notice.

Senator WALSH: In terms of taking Senator Chisholm's question on notice, can you tell us what correspondence there might have been between the ABS and the New South Wales government in relation to this matter? Can we have copies of that?

Dr Gruen: I'll take it on notice, certainly.

Senator WALSH: If that correspondence exists, can we have copies of that correspondence and can we know who was in communication with whom, if that occurred, both from the ABS side and from the New South Wales government side?

CHAIR: Is this a mechanical exercise, from your point of view, or is it something whereby an official will reach out to you and say, 'We need this classified'? What's the process?

Dr Gruen: It's not completely mechanical, because the judgement we're coming to is whether, amongst other things, it's a market or non-market producer. We have to come to a view about whether the prices it charges are a reasonable reflection of market prices or not. That's one of the judgements we have to make. So it does require judgement, but, as for the exact process—

Ms Wilson: Sometimes the ABS will undertake reviews of state entities, from time to time, just to check that our classifications remain accurate, or we may discover information ourselves that might lead us to redo the criteria. Again, we would have a look to make sure that we are classifying for inclusion in official statistics as per the System of National Accounts. So that can be part of the process.

Senator WALSH: You're describing how you would deal with it today. The article and the questions that we have are about what happened in 2015 and whether there were things that should have happened after that as well. Are you able to tell us that, when the provisional classification was given, it met all of the relevant criteria at the time?

Dr Gruen: I'm not aware that it was a provisional classification that was given.

Ms Wilson: No. We'll take that on notice.

Dr Gruen: I thought there was a classification given. I don't know whether it was provisional.

Senator WALSH: So your evidence is that the classification was given—it wasn't provisional, because it met all the criteria at the time?

Dr Gruen: Yep.

Senator WALSH: Does the analysis that appeared in the *Sydney Morning Herald* today, the article by Adele Ferguson and Matt O'Sullivan that we've been referring to, give you any pause to look at that original classification again?

Ms Wilson: Unless we are given new information, no it doesn't. For us to have a look at the classification, we would need to be advised by the New South Wales Treasury of any changes to how that operates as an entity. We have taken a few questions on notice for you this evening—

Senator WALSH: And we've got quite a few more questions. You said advice from the New South Wales government would need to be provided for you to trigger the review. What is the basis of that in terms of the underlying powers that you have? Do you believe you require that information from the New South Wales government? It would appear from that article that there is a huge conflict of interest there if you're saying you require a referral of some concerns about the classification from the New South Wales government.

Dr Gruen: I think it is fair to say that what we are doing is applying a set of criteria to determine the appropriate classification of this entity. If we were in possession of information that suggested to us that an earlier classification was no longer appropriate, then we are in a position to change that classification.

Senator WALSH: Is there not information contained in that article that would prompt you to reconsider the classification—for example, the various reports that are referred to in the article?

Dr Gruen: Let's take that on notice. We certainly haven't reconsidered the classification in the time since we read this article this morning. What we were doing was preparing for possible questions about this rather than reconsidering the classification. We are very happy to take it on notice and answer those questions.

Senator WALSH: So you're open to reviewing the classification but you haven't made a decision as yet about whether to review it?

Dr Gruen: I wouldn't put it quite like that. What I would say is that we have no evidence that leads us to want to review the classification. We are happy to look at this document carefully and let you know if there is anything in it that would lead us to want to change the classification.

Senator WALSH: Are you going to do some sort of investigation from here about whether the classification is appropriate? What is going to trigger you to investigate whether the classification remains appropriate?

Dr Gruen: Your questions are going to lead us to provide you with an answer as to why we are comfortable with the classification that we came up with in 2015—or otherwise, depending on where we get to. You're asking us to assess this classification in the light of this article and we are happy to do that.

Senator WALSH: Okay. It's obviously become a matter of public interest and there are some issues that the ABS needs to address and provide transparency on. So it seems that you need some sort of process to do that.

Ms Wilson: The process that we would undertake, as Dr Gruen has outlined, is that there is a series of criteria that we would, again, go back and look at. So there's a whole range of things under the three steps that Dr Gruen outlined. When it comes to process, if we discover new information then that would cause us to go back and relook at the criteria and look at the classification. I can't remember if Dr Gruen also noted that, in the NSW media statement that they put out today, again there wasn't new information in that. They're saying that again it's a public non-financial corporation.

Senator WALSH: I guess I'm genuinely now unclear from the evidence that I'm getting across the table about whether you are going to do some work, some form of investigation, to assess the merits of the original decision and to assess whether the classification is appropriate today.

Dr Gruen: I wouldn't put it that way. The way I'd put it is: you have asked us, is there anything in this article that would lead us to change our view about this classification? As far as I know there is nothing. But you are asking that question and we are taking it on notice. So, on the basis of the question that you are asking us, we are happy to respond to that question.

Senator WALSH: Yes. Your answer is that, because we're at Senate estimates, in terms of the Senate estimates process you're willing to provide us information that we've asked for.

Dr Gruen: Yes.

Senator WALSH: But other than that, you are not prompted to do a review for your own purposes—

Dr Gruen: Yes.

Senator WALSH: you are not prompted to do a review of the appropriateness of the classification of this transport asset holding entity.

Dr Gruen: Every year entities like this and other entities that we provide classifications for provide an annual report. Those are public documents which we are party to, so we get to see them every year. If something had happened between 2015 and now, on the basis of any of those annual reports we would have acted on that. It is not as though we have set this in 2015 and then gone and done other things. We get information every year in their annual reports. Now we're being asked to respond to a newspaper article, so we are happy to provide you with our response to that newspaper article, if that's what you want.

Senator WALSH: Yes, we do want that. You've taken a number of questions on notice, and thank you for that. If the NSW Treasury never came to you with new information or updates then my understanding is that you would not ordinarily be triggered to do anything in relation to this entity.

Dr Gruen: Other than annual reports every year, so if an annual report made it clear that something material had changed.

Ms Wilson: If we ourselves identify information about a change in structure or operating environment or any other circumstances then of course we go back and we reapply the criteria. But at the moment we're not aware of any changes that would require a review of the transport asset holding entity.

Senator WALSH: What are the types of factors that you would have to see that would change the classification of this entity?

Dr Gruen: I can read you the steps. Is the entity an institutional unit? Then there's a bunch of questions about that. Does the government control the institutional unit? Is the government controlled institutional unit a market or non-market producer? Those are the kinds of questions we are required to provide answers to—in other words, government controlled units will be classified as market producers if they sell the majority of their output at economically significant prices. So there are questions like that.

Senator WALSH: Yes.

Dr Gruen: It's all in the public domain. These are part of the System of National Accounts 2008, and it's all in the public domain. We use the criteria as specified in these international documents to make a judgement about what classification government entities fall under.

Senator WALSH: Thank you. Just for the avoidance of doubt on this issue, which has public interest—I do think you addressed these questions earlier, but I just ask you to do it again. This issue of the deadlines that were reported, around a deadline of July 2016 for legislation and a deadline for a CEO and a board, your evidence was that the classification was not provisional; it was just given. Your evidence was that these deadlines just don't mean anything to you at all. You're not familiar with them. You don't have any knowledge of them. You don't know where they've come from. They don't relate to anything that you know about or would deal with.

Dr Gruen: What you've asked us to do is go back and look, and we are happy to do that, but, as things stand at the moment, those statements you made are correct.

Senator WALSH: Yes, as at today this doesn't ring any bells with you, essentially.

Dr Gruen: No, that's right.

Senator WALSH: Okay.

Senator McALLISTER: Just a final question about documentation. Senator Walsh asked you to provide, I think on notice, any documentation that was provided to the New South Wales government back when this classification was first provided. In addition to that, can you please provide the correspondence from the New South Wales government to the ABS that initiated consideration of this entity on the first occasion?

Dr Gruen: Happy to take that on notice.

Senator McALLISTER: Thank you.

CHAIR: Alright?

Senator WALSH: Thank you, Chair.

CHAIR: That is it. The ABS can go with our thanks and all our wishes for a safe journey back to wherever you are staying tonight.

National Housing Finance and Investment Corporation

[22:23]

CHAIR: We will now move to lucky last, representatives from the National Housing Finance and Investment Corporation. Welcome. Thank you for appearing so late in the evening. I know it wasn't your choice, but we do appreciate the effort that people go to. Did you wish to make any opening remarks, or are you happy to get straight to questions?

Mr Dal Bon: I'm happy to go straight to questions, thank you.

CHAIR: Excellent answer! Senator McAllister, you have the call.

Senator McALLISTER: Thank you very much. I wanted to ask about the Family Home Guarantee in the federal budget. Is the scheme capped at 10,000 places over four years, or is this an estimate of uptake?

Mr Dal Bon: The details around the scheme are still being finalised in the investment mandate, but our expectation is it's 10,000 places based on the information we have at this stage.

Senator McALLISTER: Sorry, but that is the information that is in the budget. Are you saying that the government is yet to decide whether this is a demand-driven scheme or a capped scheme?

Mr Dal Bon: The information we have is that it's 10,000 places. I'm just noting that the investment mandate is still being finalised.

Senator McALLISTER: Okay. Minister, you understand the difference between a capped scheme and a demand-driven scheme. What is the answer? Is this an estimate that we think 10,000 are going to be interested, or is there a hard limit that there are 10,000 opportunities available?

Senator Hume: We have budgeted for 10,000 over four years, and we'll see what the demand is like.

Senator McALLISTER: I see.

Senator Hume: That's all we've budgeted for.

Senator McALLISTER: Alright. Thank you. And the cost of that over the forward estimates?

Mr Dal Bon: Those estimates are probably best referred to Treasury in terms of the costings.

Senator Hume: I should have them at my fingertips, Senator, so I will find them and get them to you.

Senator McALLISTER: How many single parent families are there in Australia?

Senator Hume: Around 124,000 is the estimate that I have. Sorry, forgive me: it was 124,000 single parent families that Treasury estimated would potentially qualify for this scheme.

Senator McALLISTER: Yes. But how many single parent families are there in Australia?

Senator Hume: I don't know.

Senator McALLISTER: Are you aware that the current purchase price caps mean that, in Launceston, there are almost no properties that are available for a single parent with two children and that are able to be purchased under the current price cap of $300,000?

Mr Dal Bon: Sorry, to clarify your question, Senator, do you want me to answer whether there are any properties available in Launceston?

Senator McALLISTER: Are you aware of the significant public discussion taking place in Launceston about the fact that there are almost no properties available for a single parent with two children that would be able to be purchased at the moment under the current price cap of $300,000?

Mr Dal Bon: I'm not aware of that particular discussion, Senator. I'm aware of broader issues in terms of house prices in Tasmania.

Senator McALLISTER: A recent article in the Launceston *Examiner* says that there is essentially very little—perhaps no—housing stock that meets the property price caps that have been set for the Family Home Guarantee. The article says, 'Only two reasons come to mind for this situation. Either the federal government wanted to restrict the number of applications and therefore chose a price threshold to do just that, or these decisions were made in Canberra with no research applied to the number of families who could take advantage of the otherwise thoughtful scheme.' Minister, which is it?

Senator Hume: This is a brand-new scheme, Senator McAllister, and getting the calibration for that is not an easy task. These are the numbers that Treasury has suggested to us. But, if it doesn't work or if the uptake isn't correct, then it will be adjusted accordingly.

Senator McALLISTER: Do you agree, Minister, with the member for Bowman, Andrew Laming, who said that applicants should just keep driving to an area away from Launceston to find something for less than $300,000?

Senator Hume: Well, Andrew Laming wasn't part of the development of this policy.

Senator McALLISTER: So you don't agree with Mr Laming?

Senator Hume: I don't agree with that statement.

Senator McALLISTER: Minister, will you commit to lifting the cap for Launceston and places like it?

Senator Hume: This program hasn't even begun yet, Senator McAllister, so I'm not going to commit to changing it yet.

Senator McALLISTER: You don't see any problem with the information I put before you that the analysis suggests that there are no properties in Launceston that could be purchased under this scheme? Why should people in Launceston be locked out because your policy design isn't functional?

Senator Hume: This is a brand-new policy, as I said, and we want to make sure that it's calibrated correctly. That feedback will be taken on board.

Senator McALLISTER: So you won't commit to lifting it. Will you consider looking at lifting it?

Senator Hume: That sort of feedback is very useful. So thank you.

Senator McALLISTER: Why not commit to lifting it tonight?

Senator Hume: Because we haven't even begun this program yet, Senator McAllister. We're not changing a program we haven't begun.

Senator McALLISTER: You've set a whole lot of parameters, and they're parameters that will not work in northern Tasmania.

Senator Hume: We think this is a really exciting program, and it allows for single parent families to enter the home market for the first time. It's an extraordinarily exciting opportunity. We want to make sure that it's available to as many single parent families that qualify as possible.

Senator McALLISTER: Alright then, Minister. Thank you. You sort of said that the calibrations are yet to be bedded down—

Senator Hume: No, I didn't say that, sorry.

Senator McALLISTER: I'm sorry—you said the program was just beginning—

Senator Hume: 'It hasn't begun' is what I said.

Senator McALLISTER: Okay. You said something about calibrating it. I don't quite understand whether it means that the settings are fixed or they're not. 'Calibrating' usually suggests that you're going to adjust things.

Senator Hume: It's a brand new program, and we want to make sure it is calibrated correctly, but we don't normally calibrate policy on the basis of a single newspaper article in Launceston.

Senator McALLISTER: On the NHFIC website there is a note for single parents that warns:

The necessary legislative changes to the NHFIC legislation, the NHFIC Investment Mandate and the Scheme Rules are not yet in force.

Accordingly, the final form of the Family Home Guarantee scheme may differ from that described in the fact sheet.

What will happen to single parents if they prepare an application for a family home guarantee based on the scheme as described in the fact sheet, and you then subsequently change it?

Mr Dal Bon: If I understand the question correctly, the scheme doesn't start until 1 July. As I was saying before, some of the details are still being finalised, such as the investment mandate, which was reflected in the statement you just referred to. We would expect the act to be updated and the investment mandate to be finalised, in which case we can finalise any changes to the fact sheets. That would be done before the start of the scheme on 1 July.

Senator McALLISTER: So in four weeks time?

Mr Dal Bon: That would be the expectation.

Senator McALLISTER: So this thing is starting in four weeks time. When will single parents expect to see an updated investment mandate, updated scheme rules and an updated fact sheet? Have we got a time line?

Mr Dal Bon: In terms of the passage of the amendments to the act and the IEM, that's not something I can determine. I think the intention is to get those changes through as quickly as possible, and then the scheme rules and the fact sheet can be finalised.

Senator McALLISTER: Minister, Mr Dal Bon is obviously keen to update the fact sheet. When do you imagine he will get an updated investment mandate and scheme rules?

Senator Hume: Applications won't be available until the scheme is finalised, and that will be done as soon as possible.

Senator McALLISTER: So not on 1 July?

Senator Hume: As soon as possible.

Senator McALLISTER: So the 1 July start date isn't actually set in stone? You're not committing to that?

Senator Hume: Applications will be available the moment the scheme is finalised.

Senator McALLISTER: I thought Mr Dal Bon just told us it was all starting on 1 July?

Senator Hume: That's the intention.

Senator McALLISTER: I see; it's one of those 'we've announced it but we might not get there' sort of commitments.

Senator Hume: No; we will definitely be providing 10,000 new-home opportunities to single-parent families on the basis of the applications that are made over the next four years.

Senator McALLISTER: Not on 1 July? Okay. What will happen to any unissued family home guarantees at the end of the four years?

Senator Hume: It's a four-year scheme, and there are 10,000 places available. If we continue on with the scheme after four years, I imagine a decision would be made then.

Senator McALLISTER: Thank you.

Senator McDONALD: Thank you for your attendance this evening. I note that, on page 43 of the ANAO report, a June 2019 KPMG report recommended that NHFIC institutionalise governance arrangements in relation to services provided by EFA. The ANAO, in January 2021, observed that NHFIC had not sufficiently formalised the services arrangements with EFA. During this period, why did NHFIC fail to sufficiently formalise such a material contract?

Mr Neilson: The SLA between Export Finance Australia and NHFIC was put in place in 2018, when NHFIC was first formed. There were a number of different services that were provided. Those services included set-up services for the conduct of the business, and then there were ongoing services that were provided. The ANAO report focused on some of the governance arrangements in terms of KPIs for services that were being provided. I think it's important to note that NHFIC and Export Finance are actually in the same building, using the same systems in many cases, so it's not like a normal third-party agreement with an external vendor, where there would be some of those types of KPIs. To give you an example, the payroll that NHFIC has is run by Export Finance

Australia. There are metrics around that, that people be paid on time. Those are the metrics that have been in place, but the ANAO thought there should be some more governance around those particular metrics. We have undertaken that. The first set of metrics went to our audit risk committee in February, and there is another set of metrics going to the audit risk committee on 8 June, for the next arc, and we are contemplating rolling over the agreement with Export Finance Australia.

Senator McDONALD: Did you audit or review the invoices charged by EFA during this period to verify that services were actually provided?

Mr Neilson: Me personally?

Senator McDONALD: The organisation—NHFIC, or you, or anyone else.

Mr Dal Bon: I can speak on behalf of NHFIC. Yes, we verified from a NHFIC perspective the invoices that were provided.

Senator McDONALD: Has the board ever expressed concerns to you about the oversight and performance of the EFA contract?

Mr Dal Bon: Not that I recall, but I will take that on notice and make sure that that is the case.

Senator McDONALD: What has NHFIC specifically done to respond to recommendation 1 of the ANAO report?

Mr Neilson: Recommendation 1 was to do with the service level agreement. There have been a number of things we've done in order to address that. One of the things we've done is to instigate formal meetings between Export Finance Australia staff and NHFIC staff. The idea of those meetings is to ensure that, of the services that are being provided and received, if there are any issues they can be escalated to the appropriate executives.

As I mentioned before, there are KPIs in place. The services have been broken down into three key areas. One is called core. Core services are things like payroll, accounts payable and IT support, and there are KPIs around those. Then there are common services, which are things that may be more ad hoc in terms of the services required. Then the third area is more specialist resources. To give you an example of specialist resources: we have recently done another bond issuance. We will look to Export Finance Australia's treasury to provide some advice for us—so that would be on an ad hoc basis, not a regular type of service being provided. In terms of that recommendation, as I mentioned we went to the board in February with some KPIs and we are going to the board again on 8 June with further KPIs to address that issue. I should also say that our internal auditors, McGrathNicol, have looked at some of the work we're doing, and they will be opining on that as well.

Senator McDONALD: I note on your website that you have a new CFO, Stuart Neilson. What date did you commence employment with NHFIC?

Mr Neilson: 1 April 2021.

Senator McDONALD: The website mentions you were the CFO of EFA prior to becoming the CFO of NHFIC. On what day did you cease working for EFA—so stopped having an email address with or access to the EFA systems?

Mr Neilson: I effectively left the EFA payroll on 31 March and joined NHFIC as a full-time staff member on 1 April.

Senator McDONALD: Did you act on behalf of EFA and NHFIC at the same time at any point between leaving EFA and joining NHFIC?

Mr Neilson: No, I didn't.

Senator McDONALD: Have you ever signed off on payments from NHFIC to EFA prior to ceasing employment with EFA?

Mr Neilson: No, I haven't.

Senator McDONALD: The NHFIC annual report mentions that NHFIC strives to 'maintain the highest professional and ethical standards'. Do you think you've upheld this?

Mr Neilson: Yes, I do, Senator.

Senator McDONALD: I'll turn to the Victorian government and NHFIC media releases, dated 15 May, about NHFIC's funding for the Victorian PPP: $400 million out of the $500 million build cost—is that correct?

Mr Dal Bon: In terms of the precise figures, I can dig those out for you in a moment. I'll firm up the exact figures, but there was around $345 million in terms of non-aggregated finance. Additionally, there was about $50 million in funds provided through the infrastructure facility.

Senator McDONALD: Can you provide a breakdown of the funding? What were debt, grants et cetera?

Mr Dal Bon: As I just mentioned, the debt figure was approximately $345 million and there was $50 million or so in the NHFIC financing. In terms of the breakdown between grants and loans: as I understand it, loans were roughly $38 million and the grant component was $9.5 million. In total, that's $47.6 million.

Senator McDONALD: Okay. Was NHFIC the only lender for the senior debt component?

Mr Dal Bon: That's correct.

Senator McDONALD: Can you explain why no commercial banks participated in this project?

Mr Dal Bon: At the end of the day, that was a decision by the consortium that we supported. We certainly went into the Victorian transaction with a desire to share the debt with private providers. In the case of the particular consortium that was successful, my understanding is that they approached private financiers but were unable to attract private finance.

Senator McDONALD: That's interesting—that wasn't my understanding. Is NHFIC crowding out the private capital market in its activities?

Mr Dal Bon: Obviously, that's quite a broad question. The way we approach financing goes back to the original purpose for which we were set up, which is to assist the growth of the community housing sector. The community housing sector experiences difficulties in attracting finance, given the nature of the subsidised housing that the community housing sector supports. Because the yields from subsidised housing can be relatively low it can be very difficult to attract private finance, because of the funding gap. In addition, a lot of the bank finance that's provided is relatively short term—three to five years. So there's that issue of refinancing risk every three to five years.

One of the main reasons why NHFIC was set up was to provide that cheaper, longer term finance to assist community housing providers to grow. We've certainly taken the approach, where we can, of working with the private financiers. For example, there's a project in New South Wales where we've partnered with Cbus. NHFIC is providing senior finance and Cbus is providing junior debt. We've also had many conversations with private financiers about how we share the senior debt, potentially, particularly in the construction phase.

Senator McDONALD: Great—so you're testing that understanding of what the private capital market is willing to provide?

Mr Dal Bon: Oh, we've done that since day one.

Senator McDONALD: Alright. Across all other new-build projects that NHFIC has funded, what is the average level of NHFIC funding as a percentage of the total build cost?

Mr Dal Bon: I'd have to take that question on notice.

Senator McDONALD: Thank you. Would the Victorian PPP deal have progressed without NHFIC funding support?

Mr Dal Bon: In terms of the successful consortium—and I should point out that there were three consortiums, and the financing arrangements across those three consortiums were different—there were private financiers in other consortiums. In terms of this particular transaction—

Senator McDONALD: I'm asking: would this project have progressed without NHFIC funding support?

Mr Dal Bon: I think that's a very difficult question to answer. But certainly my understanding is that it would have been difficult for this particular consortium to progress without NHFIC financing.

Senator McDONALD: I have a view that there were private financiers who were disappointed not to have been included in this project, and I'm concerned—because this is a terrific project; there's a terrific funding model—that we've just had an inner-city Victorian deal that's made up more than 10 per cent of the total available guarantee. How many other housing projects—particularly in regional Victoria, where it is harder to attract finance—were overlooked in order to support this Victorian government project?

Mr Dal Bon: Just so I can understand the full question: in terms of the last part of the question, about projects that were overlooked, the way NHFIC works is essentially that as projects come to us we have a look at them on a first come, first served basis. I don't believe there was any overlooking of regional Victorian—or otherwise—projects. In terms of the information you have—

Senator McDONALD: Well, perhaps I could just ask, on notice, how many regional Victorian projects has NHFIC funded to provide social and affordable housing? You can take that on notice and give a more-detailed answer.

Mr Dal Bon: Yes, sure. Obviously we've funded Haven, which is a community housing provider that has projects across regional Victoria. But in terms of trying to identify the exact number of properties that have been located, I'm happy to come back to you on notice. Do you want it just for Victoria, or do you want the metro-versus-regional numbers for other jurisdictions as well?

Senator McDONALD: That would be terrific. I'd like to see it for every state.

CHAIR: Thank you, Senator McDonald. I'll give some time to Senator Faruqi.

Senator FARUQI: Good evening, everyone. Thank you very much for being here this late to answer our questions. It shouldn't be the case, but here we are. I might start off with some questions on the Family Home Guarantee, because I am very concerned that this is basically going to be a government debt trap for single mums and nothing is being done to rein in house prices or to build the amount of affordable and social housing that we need. Are any mechanisms put in place to ensure that single parents are not left unable to pay their mortgage when interest rates rise—which they are going to—since they will have 98 per cent debt on the property.

Mr Dal Bon: We are the implementing agency. In terms of the design of the initiative, that is Treasury. So I guess in terms of questions around the general design, Treasury are probably best placed. But perhaps I could just make a comment. The participating lenders will still have to satisfy responsible lending and obviously assess the credit worthiness of applicants in terms of determining whether it's appropriate for that particular applicant to obtain a place.

Senator FARUQI: So, questions like modelling around the scheme—in terms of whether there are any estimates of how many single parents you expect will default on their loan or whether the department estimated how many years single parents will be left paying off this debt—are questions for Treasury as well, as to whether they have done any modelling around that?

Mr Dal Bon: I think they're best directed at Treasury.

Senator FARUQI: So you don't know anything about whether there has been any modelling to answer those sorts of questions?

Mr Dal Bon: I don't know.

Senator FARUQI: Could you take that on notice?

Mr Dal Bon: Yes, sure.

Senator Hume: I think we can say that the scheme has been based on the new home guarantee scheme and there hasn't been a single default in that scheme.

Senator FARUQI: The new home guarantee scheme doesn't have the two per cent.

Senator Hume: It has five per cent.

Senator FARUQI: Yes, exactly. So there is a bit of a difference there, and it's not for single parents either.

Senator Hume: No, but they have the same criteria; the lenders apply the same criteria.

Senator FARUQI: There was a discussion happening earlier about the fact sheet. This is the only information available as yet. I was just wondering if there will be a complete set of guidelines on how the scheme will be administered.

Mr Dal Bon: Yes. We have existing schemes—the First Home Loan Deposit Scheme, the new home guarantee, now the Family Home Guarantee—so there's an existing set of documentation, for example, that we use to provide instructions to the lenders in terms of the scheme rules, and then there will be a suite of information that will be prepared that will work with the panel of lenders in terms of providing that information in due course.

Senator FARUQI: Yes. So the scheme has been announced, but that information is not available. When will that be available, and will it be published?

Mr Dal Bon: The scheme rules are not published. That's information between NHFIC and the panel lenders. The customer-facing information, as we were saying before, we anticipate that that information would be ready before 1 July.

Senator FARUQI: Does the department recognise that the Family Home Guarantee and First Home Loan Deposit Scheme and the First Home Super Saver Scheme do not actually solve Australia's housing affordability crisis? Many economists have actually warned that these schemes will further inflate housing prices.

CHAIR: I think that's probably one for you, Minister.

Senator FARUQI: Did you recognise that, Minister?

Senator Hume: I think that housing affordability is a very complex area. It is driven not just by federal government policy and policy settings but also by state government policy settings as well as market forces. What we have tried to do here as a government is give more Australians an opportunity to get into the homeownership business and move out of rental accommodation or social housing.

Senator FARUQI: To be saddled with more debt, I think is what you've done there.

Senator Hume: I think people appreciate the opportunity to buy their first home or perhaps, after they've experienced a family breakdown, to re-enter the homeownership market.

Senator FARUQI: So you do recognise that this will not solve the housing affordability crisis?

Senator Hume: I think that solving housing affordability is difficult to do, particularly from a federal government perspective. I'm pleased though that one of the measures that we announced in the budget this year, which was the expansion of the downsizer contribution, is expected to, in fact, improve the supply side of the housing market, something that federal governments really don't have much control over.

Senator FARUQI: Probably they should. But, sorry, just to answer my question—you are an expert in this area—will any of these schemes do anything to solve the housing affordability crisis?

Senator Hume: I think that I've just answered your question. One of the schemes—

Senator FARUQI: I understand there was no answer to my question.

Senator Hume: You didn't let me finish my sentence.

CHAIR: You don't get to choose how the minister answers the question, so let's move on.

Senator Hume: One of the schemes the government has implemented this year is an expansion of the downsizer contribution, which is expected to add around $10 billion worth of property back into the market over the next 10 years.

Senator FARUQI: Moving on to social housing, in last year's budget the Affordable Housing Bond Aggregator liability cap was increased to $3 billion. Since the October 2020 budget what has been the value of the loans provided to community housing providers by NHFIC?

Mr Dal Bon: In terms of the broad commitments that we have at the moment, that is approximately $2.5 billion, just over $2.5 billion. We have obviously a pipeline of transactions in addition to that that, at various stages, development—

Senator FARUQI: My question is very specific: what is the value of loans provided to the community housing providers since October 2020?

Mr Dal Bon: Do you mean the additional loans compared to where we were at October?

Senator FARUQI: Yes.

Mr Dal Bon: I'd have to take precise number on notice.

Senator Hume: I can probably help you a little bit there, Senator. We've continued to make significant ongoing investments in housing, with more than $9 billion in housing homelessness programs announced in the budget this year. That's up on last year. That includes $1.6 billion paid to the states and territories under the NHHA, the National Housing And Homelessness Agreement, that supports housing outcomes for about 1.7 million Australians. There is an expected $3.5 billion in Commonwealth Rent Assistance to help eligible Australians on welfare payments pay their rent. And we've also announced an additional $124.7 million in funding, which will allow the states and territories to bolster public housing stock or to meet their social and community housing responsibilities.

Senator FARUQI: Thanks for that, Minister. My questions were specifically about the bond aggregator. You've taken that on notice. Since the bond aggregator was set up, what has been the value of loans provided to community housing providers in total?

Mr Dal Bon: The total commitment, as I say, is just over $2.5 billion. In terms of just some of the other key statistics that relate to those figures, we've had $1.5 billion in terms of NHFIC bonds. That includes a bond we issued last week to support the Victorian transaction that Senator McDonald was referring to. We estimate that we have supported close to 13,000 dwellings and saved the CHP sector close to $420 million in interest savings over the time of the loans.

Senator FARUQI: Do you have a sense of how many social housing dwellings those loans have been able to facilitate building?

Mr Dal Bon: In terms of social housing dwellings, Senator, I would need to come back to you.

Senator FARUQI: If you could come back to me and let me know. Do you have any idea, like is it a thousand or 1,500? Any idea?

Mr Dal Bon: In terms of the 13,000, we produce a social bond report on an annual basis, and that gives a breakdown of all the transactions that we've supported over the course of the year. Typically the proportion of social to affordable is quite high for the community housing providers. Typically you would look at at least 80 per cent, for example, as a rule of thumb. But in terms of precise numbers, I'm happy to come back to you.

Senator FARUQI: The precise number of social homes. That will be good.

Mr Dal Bon: Just to clarify, you will be looking at the property supported, so that would include refinancing as well as new supply. Is that what you are interested in?

Senator FARUQI: Yes. So you don't keep those numbers with you? I'm surprised you provide these loans and you don't have any idea of how many homes—

Mr Dal Bon: We have the numbers in terms of the total homes we provide, but in terms say that split between social and affordable—

Senator FARUQI: Okay. So 13,000 is the total homes you said.

Mr Dal Bon: That's right.

Senator FARUQI: Since the bond aggregator.

Mr Dal Bon: Started, correct. In three years. Just under three years.

Senator FARUQI: So in three years it's 13,000 homes and some are affordable but you said there was a percentage.

Mr Dal Bon: Yes. So just in terms of the social bond report that we put out once a year, that goes through and profiles all the transactions that we have supported in terms of community housing providers. When you have a look at the profile, we have a split in that profile in terms of the proportion between social and affordable.

Senator FARUQI: Okay. If you could take that on notice and provide it to me.

Mr Dal Bon: Sure. No problems.

Senator FARUQI: I'm sure you're aware of the 2018 modelling by the Australian Housing and Urban Research Institute, which found that the shortfall in social housing was 433,000 and that 36,000 new units per year were required over the years to 2036 to meet the projected future, which was 727,000 homes. My question is: does NHFIC recognise the enormity of the discrepancy between what the federal government has committed to in terms of funding social housing and what is required? And my question for you, Minister, is: how are things going to change?

CHAIR: We are going to have to leave it there. That will need to be the final question, but please answer.

Senator FARUQI: It is the final question.

Senator Hume: I'm not entirely sure how I could possibly answer that question.

Senator FARUQI: Why?

Senator Hume: How are things going to change?

Senator FARUQI: Yes.

Senator Hume: I don't think they need to change, but thank you very much for the question. Can I clarify, before we move on, an answer to a question that Senator McAllister asked earlier, which was about the start date for the Family Home Guarantee. The reason I couldn't answer that it was confirmed it was going to be 1 July is because it is entirely dependent on passing the legislation, so that will occur, I assume, in the next sitting fortnight.

CHAIR: Thank you, Minister, for that clarification. The committee will conclude its hearings for today, in its consideration of the Treasury portfolio. I thank NHFIC for being here so late at night. I thank Minister Hume for being here most of the day, and I thank officers across the Treasury portfolio and agencies.

The committee's consideration of the 2021 budget estimates will resume tomorrow morning at 9 am, with the Industry, Science, Energy and Resources portfolio. As always, I thank Hansard, broadcasting and our secretariat. Senator McDonald thank you for being here with me all day.

Committee adjourned at 10:59