



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

SELECT COMMITTEE ON SUPERANNUATION

**Reference: Portability of superannuation**

WEDNESDAY, 13 AUGUST 2003

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**SENATE**  
**SELECT COMMITTEE ON SUPERANNUATION**

**Wednesday, 13 August 2003**

**Members:** Senator Watson (*Chair*), Senator Sherry (*Deputy Chair*), Senators Buckland, Chapman, Cherry, Lightfoot and Wong

**Senators in attendance:** Senators Buckland, Sherry and Watson

**Terms of reference for the inquiry:**

To inquire into and report on:

- (a) the extent to which portability of superannuation benefits already exists;
- (b) the role of current, and likely future, barriers to portability, including exit fees;
- (c) the desirability and practicality of the portability regime contained in the draft regulations, particularly in the context of the existing structures of the superannuation and financial planning industries; and
- (d) additional consumer protection measures.

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**Subcommittee met at 4.03 p.m.****RIORDAN, Mr Gary William, Member, Superannuation Committee, Law Council of Australia**

**CHAIR**—I declare open this third public hearing of the Senate Select Committee on Superannuation as part of our inquiry into the portability of superannuation. Under our terms of reference the committee's inquiry will focus on the extent to which portability of super funds already exists; the role of current and likely future barriers to portability, including high exit fees; and the desirability and practicality of the portability regime contained in the draft regulations, particularly in the context of the existing structures of the superannuation and financial planning industries. Today we will hear evidence from a range of individuals representing the Law Council of Australia, the Treasury, the Australian Taxation Office and the Australian Prudential Regulation Authority. All witnesses who appear before the committee are protected by parliamentary privilege with respect to the evidence that is given. This means that witnesses are given broad protection from action arising from what is said. The Senate has power to protect them from any action which disadvantages them on account of evidence given before the committee. The committee prefers to conduct its hearings in public however if there are any matters which you wish to discuss in private, we will consider your request. I welcome Mr Gary Riordan from the Law Council of Australia. I invite you now to make an opening statement. Following that, members of the committee will ask you a few questions.

**Mr Riordan**—Thank you. I have a brief outline of submissions prepared by the superannuation committee of the legal practice section of the Law Council of Australia. This submission focuses on the legal issues which arise out of what now are the regulations. The committee does not purport to provide comment on government policy but instead provides comments on the regulations based on the combined experience and expertise of the committee's members in advising and participating in the superannuation industry.

I have the following brief comments to make on behalf of the committee by way of outline. In the committee's experience, portability of benefits already exists in the industry with respect to benefits which have crystallised—that is, on a member's termination of employment. Under the governing rules of the vast majority of superannuation funds, a member can already elect to transfer his or her crystallised benefits to any other nominated superannuation fund. The governing rules of some superannuation funds—in particular, those known as industry superannuation funds—allow a member to transfer benefits which are still accruing to another superannuation fund.

In the committee's opinion, this is the traditional portability model and it is based on the concept that, barring some industry instrument or award which requires otherwise, it is the employer who is the party which at law decides to which superannuation fund it will make superannuation contributions in respect of its employees. Until parliament changes the traditional contributions model by giving this decision making power to the employee rather than to the employer, it seems unnecessary to change the portability model. It is therefore the committee's respectful submission that the regulations are unnecessary and should be disallowed.

I have two or three comments in terms of the written submission dated 21 July 2003 already lodged by the Law Council of Australia. These are more particular and they are in fact the extent of what will now be the submissions by the Law Council of Australia. The first of those is that in regulation 6.34 the committee believes that there is an unintended omission where an application has been made by a trustee under what is now regulation 6.37 and APRA has not made a decision and the 90-day period has elapsed. In this situation the trustee would be in breach of regulation 6.34 but this seems to be an unintended consequence.

It is the committee's submission that some form of protection is required for a trustee who considers in the first instance that there is some material adverse effect and who does not receive a response from APRA within that 90-day period. In this case the trustee is forced to make the rollover or transfer of benefit but does so in circumstances where there might be serious economic consequences for the fund.

My second point is that there does not seem to be any protection for a trustee that effects a transfer in accordance with this proposed new division 6.5. A member who obtains a transfer and who is disappointed with the outcome of that transfer may, if it later turns out that they would have been better off staying where they were, expose the trustee to a claim. In the family law superannuation splitting context, the trustee is expressly protected when it transfers an amount in accordance with that regime. The committee believes that a similar provision should be added to the regulations making it clear that if a rollover or transfer occurs in accordance with the division the member bears the risk.

My penultimate submission is that portability has major implications for the continuity of members' death and disability insurance and has the potential to disadvantage members and their dependants, in the committee's determination and experience, quite significantly. There is an obvious link between member communication and the member being aware of the effect that his or her choice will have on his or her long-term retirement savings. As the regulations only address communication with the trustee of the current fund, it seems that the member will be responsible for obtaining the information he or she deems necessary to make their decision. Alternatively, trustees may be exposed to liability for failure to inform members about risks associated with rolling out their benefits. In these circumstances, it is the committee's respectful submission that imposing a duty of disclosure on trustees of the potential transfer or fund is onerous for trustees and expensive for funds. The committee believes consideration should be given to protective provisions for trustees in these circumstances.

Finally, if a member has chosen to transfer entitlements from their existing superannuation fund and thereafter chooses to take advantage of any cooling-off period in the transferee or recipient fund, the member should not be allowed to retransfer the entitlements back to their original fund. The regulations do not address this issue. The 'should not be entitled' concept is based on the proper and economical administration of the fund. It is therefore the committee's respectful opinion that employee choice of fund legislation is crucial to the success of the portability regime. Essentially it will avoid multiplicity of accounts. In the view of the Law Council of Australia the regulations are not sufficient to implement satisfactorily a portability regime which would apply to benefits still in that accrual accumulation phase. The committee cannot identify any apparent benefits to members or trustees in allowing portability in that accrual stage and respectfully submits that the regulations should be disallowed.

Since gazettal of the regulations, a number of the Law Council of Australia's original submissions contained in its submission dated 21 July have been overtaken or addressed to the council's satisfaction. For the purposes of convenience I want to nominate those submissions contained in that written document before the committee which we no longer press. The council's specific comments on the regulations contained in paragraphs 1, 2, 3, 4, 6 and 8 of its written submission are no longer pressed by the Law Council as, in its opinion, they have been addressed by the form of regulation as enacted and gazetted. This leaves specific issues numbers 5 and 7 as still requiring this Senate committee's consideration. Those issues I have dealt with in my opening statement. That is the submission of the Law Council of Australia.

**CHAIR**—In relation to rectifying item 7, do you have a form of words there for the member to bear the risk?

**Mr Riordan**—I do not have a form of wording with me. In subcommittee at the Law Council we considered that the text used in the family law superannuation legislation was appropriate and provided the necessary protections to trustees.

**CHAIR**—Earlier you indicated that the regulations were unnecessary because once the loss has been crystallised it could take place already, but the government's regulations envisage that there can be portability within the active account. Do you think under those circumstances, if they were to take it out of the active account, it would be necessary to have regulations? I am not necessarily saying we agree with the concept. You are saying that they are not necessary; I am saying there could be a case for them to be necessary if there is going to be a transfer out of an active account.

**Mr Riordan**—There are, no doubt, instances where that may well be the case. It was much more prevalent 10 years ago, or even five years ago, that the employer's consent to the transfer of benefits in that active stage was necessary. I will speak about two different types of funds very briefly. In corporate funds, which are those linked to the one employer, that situation most likely still obtains. So if a member of a corporate fund wanted to transfer their active benefits to another fund, they would most likely today still need the employer's consent. The other element of the component of the superannuation industry is industry superannuation funds. Nearly 100 per cent of those funds now have automatic transfer of active balances—that is, there are no restrictions on the transfer of a member's active balance as well as a member's crystallised balance. Before a period of five or six years ago a lot of industry fund trust deeds still contained restrictive provisions requiring the consent of the trustee for a transfer of active balances. In a more competitive market—certainly in the market today—those restrictions have now wholly been removed from trust deeds.

**CHAIR**—In the Law Council's view, if you are talking about portability of the active account, isn't that essentially choice rather than portability?

**Mr Riordan**—It is, in the council's opinion. It is choice by portability, save that it is incomplete choice for this reason: the portability regulations do not oblige the employer in relation to making their superannuation contributions into the future. These regulations do not require that employer's SGC contributions to follow the member. It is anticipated by the council that what will invariably happen is that, if the member transfers to fund B, the employer will still make their superannuation contributions into fund A, because that was its choice—that was the

employer's choice from day one. Many employers are not looking forward to choice in that they do not want to have to potentially write as many cheques as they have employees. So employers, quite sensibly and justifiably, say—

**CHAIR**—I was looking for the legal distinction between portability and choice if the regulations go to movements out of the active account. That is why I was seeking your legal view rather than the practical problems faced by employers.

**Mr Riordan**—The very simple legal difference is that under the proposed choice provisions once a member makes an election to move, it is 100 per cent of the member's account balance. Under the portability regulations, if a member elects to move, it is 100 per cent of only the crystallised benefit. The practical outcome is that you immediately have a doubling of the number of member accounts that exist—the active account that has remained in fund A and the new account in fund B.

**CHAIR**—Could you say that again? It did not resonate particularly clearly with me. If you are looking at portability of the active account, there is no crystallised benefit if it is active—that is the problem I had with that statement.

**Mr Riordan**—Under the proposed choice provisions, it is clear and plain that if a member makes an election—

**CHAIR**—A choice.

**Mr Riordan**—Yes, if a member makes a choice then 100 per cent of the member's account balance moves with the member.

**CHAIR**—I have no problem with that.

**Mr Riordan**—The reason that portability does not match the choice provisions is that, firstly, the member can elect to transfer his or her account balance but they do not have to move 100 per cent of it, and, secondly, it does not force the employer to follow them into the new fund with that employer's future contributions.

**CHAIR**—They have to retain \$5,000, don't they?

**Mr Riordan**—There will be a multiplicity of accounts.

**Senator BUCKLAND**—And no doubt a multiplicity of costs as well for servicing those accounts.

**Mr Riordan**—That is an anticipated consequence, yes.

**Senator SHERRY**—What you are saying—and I do agree with you—is that the portability regulations as presented and gazetted effectively mean more accounts, not fewer.

**Mr Riordan**—That is a very accurate summation of what the Law Council believes is going to happen. There are two reasons for that—and we respectfully agree with your view—firstly, it

does not compel the employer to follow the member with the employer's future SG contributions. The employer will do what it believes is in its interests, and that is entirely justifiable in terms of cost and admin to the fund. Secondly, a member who elects to take a transfer does not have to take all of their benefit; they can leave some behind and make partial transfers.

**Senator SHERRY**—At the moment, where we have multiple accounts, I think you correctly observed that, in most cases, people can consolidate those accounts. However the portability regulation does not require them to consolidate those accounts. Presumably, for a whole variety of reasons I will not go into, the reasons why people do not consolidate accounts at the moment, where they have the opportunity to do so, are not overcome by these so-called portability regulations.

**Mr Riordan**—These portability regulations, with respect, do not address that at all. They do not compel or encourage members to consolidate accounts; they encourage members to create a greater number of accounts.

**Senator SHERRY**—I want to go to the process of this hearing. We obviously advertised for submissions, and we appreciate the response of your organisation and others who have given us submissions. The normal process is that there are hearings, we make recommendations, report those recommendations and the government then responds. However we found ourselves in the unusual situation with this hearing where the government gazetted and determined the regulations part-way through the hearings before we had reported. Do you have any comment to make on this new process?

**Mr Riordan**—I do not have a comment to make about that on behalf of the Law Council other than to express disappointment with that process in terms of the manner, the role or the function this committee is meant to play in terms of reporting back to the Senate and the House.

**Senator SHERRY**—You have highlighted in your submission two areas you do not believe are being adequately dealt with by the regulations. If we accept that you are correct and your observations do necessitate fresh regulations, the government would have to withdraw the existing regulations, wouldn't it, and replace the entire regulations with the corrections that you suggest.

**CHAIR**—No, it could make amendments.

**Mr Riordan**—I am not as familiar with the process as perhaps each of the senators is. Unless the House proposes amendments to those regulations—

**Senator SHERRY**—We can't.

**Mr Riordan**—they have to be wholly rejected.

**Senator SHERRY**—Yes, that is right.

**Mr Riordan**—Alternatively, they have to be withdrawn. They have to be wholly rejected.

**Senator SHERRY**—Our option is to reject them in their totality, if it goes that far in the Senate chamber.

**Mr Riordan**—I have had an opportunity to look at those rules and I do not believe there is the ability to part amend them, so to speak. It is all or nothing.

**CHAIR**—Just for the record, Senator Sherry, I think we have taken advice from the clerks and there is a procedure whereby amendment is effectively possible.

**Senator SHERRY**—From our point of view, the chamber's point of view or the government's point of view?

**CHAIR**—The chamber's point of view.

**Senator SHERRY**—I will be interested to see that advice. It is the first time I have heard it.

**CHAIR**—You might like to articulate it, secretary.

**Senator SHERRY**—Leave it for another time; we do not need to waste our time now on that. That is certainly not my understanding of the way we have proceeded in the past with regulations. If there is a new way of proceeding, we might be quite happy to go that way.

**CHAIR**—There is a procedure or a process which allows regulations to be treated as if they are a bill, which can be amended, providing certain criteria are followed.

**Senator SHERRY**—I do not have any further questions for the witness.

**CHAIR**—On behalf of the committee, I thank the Law Council of Australia. A lot of these issues are very technical. The input from specialised bodies such as the Law Council is very valuable to the committee. We thank you very much for your appearance and for your original submission and for looking at this matter a second time, as it does involve use of your resources on a voluntary basis.

**Mr Riordan**—I am indebted to the committee for the opportunity.

[4.27 p.m.]

**CASEY, Mr Chris, Assistant Commissioner, Superannuation, Australian Taxation Office**

**JACKSON, Mr Mark John, Deputy Commissioner, Superannuation, Australian Taxation Office**

**CHAIR**—Welcome. We invite you to make an opening statement.

**Mr Jackson**—We do not have an opening statement.

**CHAIR**—We are interested in your evidence today because of the implications of surcharge and portability. That is the basis for a couple of questions that I have got. The problem is partial transfers, when part of the money is transferred from one fund to another and the portion of the member's surchargeable contribution attributable to the withdrawal may not be clear, meaning that the fund may retain either excessive or not enough surchargeable contributions when a surcharge assessment is received. Could you outline the process involved whereby you intend to handle this matter? Is it a big difficulty? People have said that it is a matter that we need to focus on. That is one of the reasons we have asked for your attendance today.

**Mr Jackson**—Mr Casey might be able to give you a more detailed description. But broadly speaking, when a member chooses to move between funds we issue an assessment based on a cycle which works something like notification of member contributions from funds in around October with assessment issuing generally in around May—although there are some earlier issues in certain cases. The difficulty for us arises where movement between funds occurs in that intervening period, so that the fund that notified us originally of member contributions no longer holds the contributions and the fund which now holds the contributions was not reported to us as the holder of the contributions. So effectively we send out an assessment notice to the wrong fund. The process there is that the fund lets us know that that has happened and we issue a revised assessment to the fund which now holds the contributions. That is the process that currently works.

**CHAIR**—But the money may be held in two funds. So do we really need, as some witnesses have suggested, an industry protocol to cover surchargeable contributions for transfers so that a standard practice applies, and can that be done by 1 July 2004?

**Mr Jackson**—There has been work done for a significant period of time around a protocol for industry interchange of information; it is known as Super EC, I believe. The work around that is well advanced. Implementation I guess is a matter of necessity. If the industry needed that to happen, I am sure it would be able to happen by July.

**CHAIR**—Mr Casey?

**Mr Casey**—I do not see that this legislation changes the requirements that are already there. I do not think that this adds new dimensions to the existing requirements for protocols, but the Super EC project, which I think has been running for a little over two years, is designed to set up

a set of standard protocols for the transfer of information between funds and it covers all aspects of data transfer between superannuation funds. Most of the larger funds and administrators are part of the Super EC group, which was set up by the industry to make that happen. So I do not see that there is anything new, or any new requirements, as a result of this which would change that.

**CHAIR**—One witness suggested that the process of collecting surchargeable contributions is largely one of goodwill between the funds, the industry and the tax office. If that is the case, since legislation et cetera in terms of the prescriptions and processes is fairly bare on the bones, might this not be an additional requirement that might tend to cause all that to be challenged?

**Mr Jackson**—Not as far as I am aware. I am sure goodwill exists in all processes between the community and government, but there are quite established arrangements for issuing of assessments and the payment of those assessments, with the variation required because of the move of membership. As Mr Casey said a moment ago, we cannot see any difference as a result of this change in the regulations. The only difference that I guess a number of people have observed is that there may be a more frequent movement between funds. That is possible, although it is up to others to estimate those kinds of numbers. But the actual core process that exists now would continue to operate in that environment.

**CHAIR**—Do you have anything further to add, Mr Casey?

**Mr Casey**—No. That is exactly right.

**Senator SHERRY**—Just on this issue, Mr Jackson: you have outlined what happens at the present time. Let's not guess what would happen in terms of the number of people who may respond to this, but let's assume that it is X number—1,000, 100,000, whatever the number is. That does create a greater workload on the tax office and on the funds, doesn't it?

**Mr Jackson**—That would be a natural conclusion of any increase in the number of people involved, yes.

**Senator SHERRY**—And a greater workload means a greater cost?

**Mr Jackson**—Yes, you would expect so.

**Senator SHERRY**—That would be to both tax office and the funds themselves?

**Mr Jackson**—Yes.

**Senator SHERRY**—Have you looked at the issue of the cost impact of this from a tax office point of view?

**Mr Jackson**—No, we have not done any costings at this stage.

**Senator SHERRY**—Why not?

**Mr Jackson**—We just have not got to that point in our cycle of looking at things.

**Senator SHERRY**—At the end of the day, the additional cost in terms of the tax office is obviously borne by the budget, the taxpayer.

**Mr Jackson**—Correct, yes.

**Senator SHERRY**—Who bears the cost in terms of the increased cost to the funds?

**Mr Jackson**—You would have to ask the funds that. I am not really positioned to be able to answer that question.

**Senator SHERRY**—It would be a pretty good guess, though, that the fund member has to pay for the cost, wouldn't it?

**Mr Jackson**—You might draw that conclusion.

**Senator SHERRY**—Just coming to you, Mr Casey: I am not sure whether you are aware that there are just over 25 million superannuation accounts and, I think, 8.7 million fund members. Are you aware of those figures?

**Mr Casey**—Yes.

**Senator SHERRY**—Are you aware that a substantial number of those people can, in fact, consolidate their inactive accounts at the present time if they choose to?

**Mr Casey**—Yes.

**Senator SHERRY**—I do not know what proportion, because I have never seen any figures, but there is a substantial number. Why don't they do it?

**Mr Casey**—I have no idea, I am sorry.

**Senator SHERRY**—We have people with, on average, 2.7 accounts. Some would have more; some might have five, seven, 10. My understanding is that they write to the fund and they have to sign an authorisation form to transfer their money. Are you aware of that?

**Mr Casey**—Yes. The member must give consent to the money transferring. If you are referring to lost members, though, we have tried to be as flexible as we can with lost members to enable money to transfer as long as funds notify their members when they find active accounts. A lot of funds, as you would know, are actively searching the lost members register now and initiating that action on behalf of their members.

**Senator SHERRY**—But for some reason many people just do not do it? That is a reasonable conclusion, isn't it?

**Mr Casey**—It would seem so, yes.

**Mr Jackson**—I think we have something like 4½ million accounts on the lost members register. I guess most of those people are in the neighbourhood somewhere.

**Senator SHERRY**—For notification of a lost member, is it two years with no communication?

**Mr Casey**—It is two years without contributions being received by the fund, or two returned pieces of unclaimed mail.

**Senator SHERRY**—Do you check the life companies, for example, to see if they are complying with that and notifying you of the lost members?

**Mr Casey**—We do compliance on lost members, absolutely.

**Senator SHERRY**—With the life companies?

**Mr Casey**—With both superannuation funds and life companies, where that is applicable. Not all life companies need to notify the lost members register.

**Senator SHERRY**—Why don't they?

**Mr Casey**—I am not really sure, I am sorry. I am not sure of the rules.

**Senator SHERRY**—This is related to the issue of portability, because these regulations claim to resolve this problem.

**Mr Casey**—The lost members register has reported to it superannuation accounts which fit into the definitions that you have spoken of there. My understanding is that in some cases life companies have accounts that are applicable; I just do not have in front of me what all of the definitions that relate to items that have to be reported are.

**Senator SHERRY**—It has been claimed to me that some of the life companies do not notify lost members.

**Mr Casey**—I would categorically say that we actively do compliance work on all people who are required to report to the lost members register. We do do that and we follow up on funds that are supposed to report.

**Senator SHERRY**—The criteria you mentioned were no contributions for two years—

**Mr Casey**—That is right.

**Senator SHERRY**—and two returned 'address unknown'?

**Mr Casey**—That is right.

**Senator SHERRY**—There would be no life company that has failed to notify the lost members register where there have been no contributions for two years?

**Mr Casey**—I am not going to say that none exist; there could possibly be some. What I am saying is that we do active compliance on that and we do follow up on funds that have not reported and that should report.

**Senator SHERRY**—In Switzerland—I do not expect you to be across the Swiss system—they automatically consolidate, using their master identification number. Do you see any advantages in automatic consolidation? Should there be, for example, an opt-out rather than opt-in of a consolidation, which is the Swiss system?

**Mr Jackson**—In what sense?

**Senator SHERRY**—In Switzerland the moneys are automatically consolidated into your last fund.

**Mr Jackson**—I understand what you mean by that but—

**Senator SHERRY**—You do not apply to do it; it is done, unless you do not want it done.

**Mr Jackson**—are you asking in an administrative sense whether that is a good outcome or the way the system should work? I guess there is a question of a debate about whether that is a policy outcome that is—

**Senator SHERRY**—Put aside the policy issue. Suppose you had an automatic consolidation regime in Australia, where the tax office coordinated that. Given your data system and your central role and coordination in that area, you could do that for a substantial proportion of lost money accounts at the present time, couldn't you?

**Mr Jackson**—That is likely, yes.

**CHAIR**—I am just trying to look at the rationale for that. It would only apply in circumstances where the member had absolute choice of where the funds went in the first place, wouldn't it?

**Senator SHERRY**—Not necessarily. There is no choice in the Swiss system at all.

**Mr Jackson**—There is, I guess, an element of that in the quarterly super guarantee changes. If we now find an employer who has not made payments, instead of raising vouchers we are able to put that money into the active account of the member. So it happens automatically, rather than a voucher going to the member, who can then decide what fund to put that into.

**Senator SHERRY**—You do that at the present time, do you?

**Mr Jackson**—Yes, as a result of the quarterly super guarantee changes.

**Mr Casey**—With SG payments, not with lost super.

**Senator SHERRY**—So you actually place it in their account if they have one?

**Mr Casey**—Absolutely, automatically. We find an account that they have got and we put it in there, rather than letting it sit there as a voucher, which is what happens under the current system.

**Senator SHERRY**—I did not realise that. What if they have more than one account?

**CHAIR**—More than one active account.

**Senator SHERRY**—Yes, they could have more than one active account.

**Mr Casey**—We have got a set of protocols. We send it to the account that has had the most recent contributions sent to it. If there are two accounts that fall into that, then it goes to the largest account. So we have got a set of protocols which we follow there, which we ran past the industry.

**CHAIR**—That is good.

**Senator SHERRY**—That is excellent. I had not heard that you did that.

**Senator BUCKLAND**—I want you to understand that I failed second grade maths, so bear with me. It is also known that I have got a particular view about one sector of the financial industry. If people were transferring partial funds from one account to another through these portability regulations, at some point tax would be paid on that money being transferred. Am I right?

**Mr Jackson**—Are you talking about surcharge?

**Senator BUCKLAND**—Any funds that are transferred from one account to another would at some period of time go from one holder of an account, or one fund management, to another fund management.

**Mr Jackson**—That is right.

**Senator BUCKLAND**—Who pays tax on that?

**CHAIR**—There is no tax there.

**Mr Jackson**—That is a rollover.

**Senator BUCKLAND**—It is a simple rollover so no tax is paid?

**Mr Jackson**—Not income tax.

**Senator BUCKLAND**—That does not in any way impact on the tax that is paid at the end of the life of the fund when it is cashed in at the end of your working life and you are entitled to take your superannuation? Does that have any effect at all?

**Mr Casey**—No, no impact at all.

**CHAIR**—There may be fees involved but nothing else.

**Senator BUCKLAND**—That is the next part of my question. Who pays the tax associated with the fees that are charged—although not so much in the industry funds—for that transfer? If it goes in to a financial planner who has a fund, tax has to be paid for the transferred funds because there is income coming to someone. If the fees are income to someone, who pays tax on those fees?

**Mr Jackson**—In the normal course of events, a fee or charge of that nature would be the income of whatever the entity is, whether it is an individual or whatever it might be, and it would be offset against the costs in a deduction sense and the net would be—

**Senator BUCKLAND**—And tax would be part of those costs?

**Mr Jackson**—It depends on the funds and the arrangements, whether it is a taxable entity or a nontaxable entity. There are a number of considerations. But generally that would be income. There would be deductions—costs—that would offset against that. Often those fees and charges are levied as a result of the costs of the entity which is raising them; they are not created out of nothing. If the entity is taxable, there would be a tax liability on the net amount, broadly speaking.

**Senator BUCKLAND**—And, broadly speaking, that would be passed on to the fund member?

**Mr Jackson**—I cannot answer for the accounting of those entities.

**Senator BUCKLAND**—It is highly unlikely, though, would you think from experience, that the fund manager would be benevolent and take on those costs?

**Mr Jackson**—I would hate to speculate.

**CHAIR**—There is no tax where moneys from one fund are rolled over into another fund unless there is an actual retirement or something like that or a withdrawal.

**Mr Jackson**—You are getting a bit too technical there for me, just off the cuff. If the money is wholly rolled over, normally there is no tax. If some is withdrawn by way of retirement benefit—

**CHAIR**—That crystallisation is the trigger.

**Mr Jackson**—That is crystallisation, yes, and then your ETPs, RBLs and the like come into play. There are certain levels and amounts, depending on whether it is taken as a pension or a lump sum and so on. But they are tax liabilities of the individual receiving the funds.

**CHAIR**—As there are no further questions, we thank you very much for the assurances that you have given to us on the issues that have been raised by other witnesses about the surcharge. That has been very helpful.

[4.47 p.m.]

**MURRAY, Mr Nigel, Manager, Superannuation, Retirement and Savings Division, Department of the Treasury**

**RILEY, Mr John, Analyst, Superannuation, Retirement and Savings Division, Department of the Treasury**

**ROSSER, Mr Michael John, Manager, Investor Protection Unit, Corporations and Financial Services Division, Department of the Treasury**

**WILESMITH, Mr Brett Anthony, Analyst, Corporations and Financial Services Division, Department of the Treasury**

**CHAIR**—Welcome. You might like to comment on matters that have been raised by witnesses that you think might further our inquiry. That would be helpful.

**Mr Murray**—I do not have an opening statement in particular, but we are certainly happy to take any questions you have on the regulations and we are happy to take your queries on any issues you wish to discuss with us.

**CHAIR**—Virtually everybody who gave evidence to the committee supported the thrust or the concept of portability. But, in terms of the presentation of the regulations, it was the bankers and the industry funds who supported the final regulations. Why do you think that is? We could not get unanimity, so perhaps you might like to speculate on that.

**Mr Murray**—It is a bit hard for me to speculate on the motives of other organisations.

**CHAIR**—Were there features attractive to certain groups and not to others? They do represent a lot of people.

**Mr Murray**—Yes. I think it would be fair to say that to some extent some funds may believe that portability could see some loss of benefits within their fund if people go to another fund. But I guess my response to that type of view would be that, if a fund is providing optimal services to its members, it really should not have anything in particular to fear from portability.

**CHAIR**—I think there was a fairly widespread view that, if there is portability out of the active superannuation account—which the regulations permit, subject to your \$5,000 and the new rules—effectively it was choice through the back door without all the education benefits, without the necessary consumer protection et cetera. Would you like to comment on that?

**Mr Murray**—Certainly. I think the government see the portability policy as being able to stand alone and apart from the choice of fund policy. They see it as bringing in benefits on its own. It is complementary to choice—and that is correct—but it can also stand on its own. There is already a strong and robust financial services reform regime in place which will impose licensing requirements on advisers. It imposes disclosure requirements on super providers as

well as advisers. On financial sector reform, there is a sort of protection framework already in place that has been designed with portability in mind from 1 July 2004, and that will be operating from 1 July 2004.

I do not think portability is choice of fund. Portability allows you to move your existing benefits from your fund, as opposed to determining where your future contributions will go. I think the ability for members to choose who manages their superannuation is an important right for them to have. It allows them to choose the fund that best suits their needs. In that context, portability can stand alone and still bring benefits. It can assist in the consolidation of accounts if an individual chooses to do so, and that is a matter for the individual to determine. Portability also already exists in many forms. Many funds already provide portability. I am certainly not aware of that causing significant problems in the industry at the moment. All that the new portability regime is really doing is extending that same right to a further group of members.

**CHAIR**—It has been put to us that essentially the regulations only help portability out of an active account, because all the crystallised benefits of inactive accounts are open to portability at the moment.

**Mr Murray**—I have heard that statement previously. The legislation does not say that funds have to provide portability at the moment. That means it is totally dependent on the fund rules. So it is quite open to a fund that has an inactive account to not allow that to be moved, if it so wishes.

**Senator SHERRY**—How many are like that?

**Mr Murray**—I am not sure of the numbers. The concept is that the legislation at the moment does not require funds to give portability. It is totally at the discretion of a particular fund. This measure ensures that all funds, subject to limited exceptions, will be required to offer the same benefits of portability to their members.

**CHAIR**—In terms of consumer protection, the government did have a fund of \$28 million for education purposes. A lot was going through the Taxation Office but not all. That money will not be available in the case of portability. Why don't you think that is necessary?

**Mr Murray**—I would not necessarily agree with that comment. The money has been allocated for both choice and portability. Obviously at some stage the government will have to make a decision on whether choice of fund is going to proceed.

**Senator SHERRY**—I am sorry, that is not right. The money that Senator Watson refers to was specifically for choice, not portability.

**Mr Murray**—I understand that was earmarked for choice and portability.

**CHAIR**—So there will be an amount of money allocated to portability?

**Mr Murray**—As I said, the money was allocated to choice and portability, which have some complementary aspects.

**Senator SHERRY**—No, that is not right.

**CHAIR**—It could influence people's attitudes if there is a significant amount of money for education. Consumer protection is one of the problems that has been raised with the committee. If you have a sum of money in mind, it would be helpful if you could tell the committee of it.

**Senator SHERRY**—That is right. If your so-called education campaign, or propaganda campaign, is to come from the choice moneys—

**CHAIR**—Education campaign.

**Senator SHERRY**—I challenge you to go back and look at the original announcement of the \$28 million and tell me where it mentions portability. It is about choice, but where is portability?

**Mr Murray**—I am happy to go back and check that. As I understand it, the intention of government was that the money allocated would cover both choice and portability.

**Senator SHERRY**—I did not ask for the intention. Where does it mention portability in the government's announcement about the \$28 million?

**Mr Murray**—I will have to go and check that.

**CHAIR**—So can you assure us that a sum of money, whether it comes out of the \$28 million or some additional money, will be allocated for education on portability?

**Mr Murray**—What I can say is that the government has had that education program in mind for choice and portability. If choice does not proceed, the government will understandably have to reconsider the allocation of money towards portability if portability proceeds on its own. But I am not in a position at the moment, because choice of fund is still government policy—

**CHAIR**—But before the debate takes place in the chamber, if it is not tonight, it would be helpful to have some indication of the amount of money that is likely to be spent on education.

**Mr Murray**—I will certainly take that on notice.

**CHAIR**—That would be good. Is there any chance of getting that by Friday? We have got a very tight reporting schedule.

**Mr Murray**—Certainly.

**CHAIR**—The Law Council put this view to us:

There does not seem to be any protection for a trustee that effects a transfer in accordance with proposed new division 6.5. That is, a member may be disappointed to have made a transfer decision if it later turns out they would have been better off staying where they were—and this may expose the trustee to claims.

They suggested that perhaps the model to look in this context was the family law splitting arrangements for superannuation, where the trustee is expressly protected when the trustee transfers an amount in accordance with that regime. Would you like to comment?

**Mr Murray**—Certainly. I guess there are some differences between the family law regime and the portability regime. First of all, the family law regime does not always require the consent of the member. It is obviously a divorce situation and it could be a court order. In that circumstance I guess there is a view that there was a need for some type of protection for the trustee. That contrasts with portability, where the member has given their consent for the rollover or transfer. It is also worth noting again that portability already exists; many benefits are already being moved between funds and many benefits are being paid out to members. In none of those situations has it been thought necessary to require some type of protection for the trustees. On that basis, I would not necessarily see it as being required here either.

**CHAIR**—I think there is a difference. In the present regime it is voluntary; it is up to the member. In a sense, we are providing a legislative prescription or process to follow, and it would appear that in order to protect the trustee we should make it abundantly clear that the member bears the risk, rather than giving people the opportunity—maybe it might not stand up in court—to come back and claim for loss.

**Mr Murray**—It still is entirely voluntary for the member under the portability regulations. There is no requirement that anyone must exercise portability. So in that sense it is no different from someone exercising portability today. They are making the decision with their consent to move their money to another fund. Given that they have sanctioned that movement, I do not really see how they would have any direct claim back to the trustee.

**CHAIR**—You do not think it is necessary, for protection, to put that in?

**Mr Murray**—I do not think it is necessary.

**Senator SHERRY**—Have you had legal advice on that?

**Mr Murray**—I have not taken legal advice on that, no.

**Senator SHERRY**—How can you say it, then?

**Mr Murray**—I am just giving my opinion, on the basis of the current situation.

**Senator SHERRY**—Will you check to see what the legal position is?

**Mr Murray**—We can check if you would like, yes.

**Senator SHERRY**—Thank you.

**CHAIR**—Again by Friday. Thank you, Mr Murray. Have you fixed up the typographical error in the draft regulation 6.37? ‘Subregulation 4’ should be ‘subregulation 6.’

**Mr Murray**—We have got it.

**Senator SHERRY**—It has been fixed?

**Mr Murray**—Yes.

**CHAIR**—On the continuity of members' death and disablement insurance, do you not think there is a need for regulations to provide a process or a procedure or to have a minimum amount to ensure that if you are going to use the active account there is some protection there in terms of insurance; or do you think the employer still putting money into that active account and requiring at least \$5,000 to be there is adequate protection to ensure there is continuing insurance?

**Mr Murray**—Firstly, if there is insurance cover based on the ongoing contributions to the fund, the movement of the benefit does not stop those ongoing contributions from going into the fund, so presumably the insurance cover will still be met from those contributions. In circumstances where the insurance deductions may be taken from the account itself, then as you have mentioned there is now this provision in the regulations for \$5,000 to be left in the account and that should provide sufficient balance for the fund to give out the necessary insurance premiums.

**CHAIR**—It has been raised with us that perhaps this process of leaving money in the account could lead to an increase rather than a reduction in the number of accounts or the opening up of new accounts. We do not know what the net effect will be overall, but it appears that there might be some new accounts opening up if we went down that line. Would you like to comment on that?

**Mr Murray**—The aim of portability is to give individuals the right to move their benefit, if they so wish. As to an argument that an individual may go out and decide to diversify over five funds, it is technically possible. Whether that will actually, practically, come to exist is probably quite debatable. It may well be more the case that the individual decides to move their inactive accounts into their existing contributory account, and hence consolidation can work in that manner.

**CHAIR**—Or to one of their other inactive accounts.

**Mr Murray**—It will be basically up to the member to decide what is in their best interests, and that is the basic aim of the portability measure.

**Senator SHERRY**—But they do not do it at the moment. We do not know the proportion who do not do it, but we have got 25 million-odd accounts and 8.7 million fund members. Why don't they do it at the moment, where they have the opportunity to do it? We know that a substantial number can do it. Why don't they do it?

**Mr Murray**—Again I cannot really speculate on the motives of the individuals out there.

**Senator SHERRY**—But you are speculating that this provision that we are considering will help with this particular problem.

**Mr Murray**—I guess the argument is that, where there is a blocker that is a legislative blocker, this provision will overcome it.

**Senator SHERRY**—But how? Let us take your argument. The argument goes that this provision—so-called portability—will allow people to consolidate accounts and reduce the number of accounts. That is an argument that has been put ad nauseam. How does it do that?

**Mr Murray**—It can assist. If an individual at the moment wishes to consolidate their accounts but the specific fund rules do not allow them to do so, then this measure will assist by overcoming that blocker.

**Senator SHERRY**—We have got 25 million-odd accounts and 8.7 million fund members. With the provisions in these regulations, if a person chooses to shift X amount from an active account at the present time—say they leave \$5,000 in the active account and transfer some more over—how is the number of accounts reducing?

**Mr Murray**—Again it is up to the individual to decide what they wish to do.

**Senator SHERRY**—I understand that. But the claim is that this will help account consolidation. How?

**Mr Murray**—The claim is that it will assist.

**Senator SHERRY**—You are claiming that it will assist. How?

**Mr Murray**—It will assist by freeing up those people who cannot currently consolidate their accounts, because of restrictive fund rules, to be able to do so.

**Senator SHERRY**—Are you saying that, as a consequence of these so-called portability regulations, the number of accounts will go down?

**Mr Murray**—I cannot really speculate on exactly what will happen—

**Senator SHERRY**—But you have been speculating.

**Mr Murray**—but one of the current blockers will disappear. I think the government's view is that that is a good thing. That may encourage people to consolidate their accounts more than before and it is beneficial.

**Senator SHERRY**—It 'may'. Can you indicate to the committee whether the number of accounts will go up or down, one way or the other?

**Mr Murray**—It ultimately relies on the individual's decision, so I cannot speculate on that.

**Senator SHERRY**—So you cannot say it will go up or down, one way or the other?

**Mr Murray**—I cannot really determine that. If the mind-set of most people is to consolidate, this measure will assist them to do so in some cases.

**Senator SHERRY**—But we know that is not their mind-set at the moment where they can.

**Mr Murray**—We do not know the reasons for that, I guess. It may be an education issue, for example.

**Senator SHERRY**—Why aren't they?

**Mr Murray**—All I can say on that is that the government's approach to addressing the issue of lost accounts is not solely based on portability. The government has a lost member register in place. Last year the ATO undertook 'unclaimed super recovery week'. I understand that the ATO has recently moved to allow online searching of the lost members register. So there are a number of avenues, and this is one of them, to address that issue.

**Senator SHERRY**—All of that is being done. Mr Riley, do you look at the number of accounts in the APRA data each quarter, or are you informed of the number of accounts?

**Mr Riley**—Yes, we are.

**Senator SHERRY**—Why does it keep going up?

**Mr Riley**—At the moment the government would argue that one of the factors is that not everyone has access to portability. We would not argue that that is the only reason but we would argue that it is one of the reasons.

**Senator SHERRY**—If this measure is passed, the expectation is that that number of accounts will start going down?

**Mr Riley**—I am not about to contradict—

**Senator SHERRY**—Hope or expectation?

**Mr Murray**—I think it would be fair to say that the government would hope that portability could assist in the number of accounts coming down.

**Senator SHERRY**—So you think that is a good policy objective, that the number of accounts should go down?

**Mr Murray**—Certainly if the individuals do not wish to have multiple numbers of accounts then it is a good policy outcome.

**Senator SHERRY**—You have mentioned safeguards and consumer protections. Could you show me, please, where the clear, simple, readable, comparable outline of fees, charges and commissions is currently required to be given to members?

**Mr Murray**—I might pass that question to Mr Rosser, who is from our consumer protection area.

**Mr Rosser**—As you would be well aware, the Financial Services Reform Act substantially improves the regulation in relation to consumer protection and significantly improves the disclosure requirements imposed on superannuation trusts.

**Senator SHERRY**—But, Mr Rosser, that was not my question, was it? My question was: where is the clear, simple, comparable, readable disclosure of fees, charges and commissions so that members can determine what they will be paying, both in terms of portability and in any fund they are in or out of? Where is that at the moment?

**Mr Murray**—I would draw the committee's attention to the recent work that ASIC has published on the report on improved disclosure practices and enhanced comparability in a fee-at-a-glance table.

**Senator SHERRY**—Let us take that up. Is that what you point to as the evidence on clear, simple, comparable disclosure?

**Mr Rosser**—I point to that as part of the framework of FSR.

**Senator SHERRY**—Can you point me to the consumer testing of that—evidence that consumers will in fact understand that ASIC document, for example? I have had a look at it.

**Mr Rosser**—As you would probably be aware, ASIC and both the major industry associations have indicated that a next step in progressing that process would be for industry and industry members to consider consumer testing that approach.

**Senator SHERRY**—So they will consumer-test it. You have had a look at it, I assume.

**Mr Rosser**—Yes.

**Senator SHERRY**—Are you confident that Australian consumers will understand it?

**Mr Rosser**—I am confident that it is a significant improvement on existing arrangements.

**Senator SHERRY**—That is not what I asked. My question was—

**CHAIR**—A step in the right direction.

**Senator SHERRY**—That is not what I asked either. Perhaps you could answer the question: are you confident that Australian consumers will understand that material that has been provided?

**Mr Rosser**—I would not want to speculate on what consumers can understand. I can certainly say that it is a significant improvement on the existing arrangements.

**Senator SHERRY**—That is not what I asked. You are in this consumer protection division, so presumably you have got to make some calls about what will protect consumers.

**Mr Wilesmith**—The ASIC model there has made some improvements in that regard, especially on comparability, because for the first time we have consensus among industry and consumer groups as to how particular types of fees are categorised, and that has been included in that table. That has been one issue there, a broad issue of consensus on those aspects, so that has certainly been afforded. It is also ensuring that all fees and charges, including elements of adviser remuneration, are included within the one section there. So it draws a number of points together into a very solid basis for going forward and looking at elements of improving comparability of fees and charges amongst funds.

**Senator SHERRY**—Even if it is understandable, is it yet law via legislation or regulation?

**Mr Wilesmith**—No.

**Senator SHERRY**—Do we have any time frame on when it will become law, either by regulation or by legislation?

**Mr Rosser**—The government has no commitment in that regard.

**Senator SHERRY**—No commitment?

**Mr Rosser**—No. The government has not made any commitments as to that. You would probably be aware of Senator Ian Campbell's press release which indicated he and the government would be monitoring very closely and expecting industry to adopt the guide as released in ASIC's report.

**Senator SHERRY**—So, with regard to the latest draft of a proposal that is claimed to inform consumers in a clear, concise, simple, understandable way, there is as yet no commitment to its becoming law?

**Mr Rosser**—As you would be aware, the industry groups that were involved in that process have developed a consensus on the way to disclose the relevant commissions, fees and charges.

**Senator SHERRY**—I understand that, but there is no commitment to its becoming law, is there?

**Mr Rosser**—I would draw your attention to Senator Campbell's press release.

**Senator SHERRY**—And there is no commitment to its becoming law. Coming back to you, Mr Rosser: you are in this investor protection unit. You obviously have experience in investor protection?

**Mr Rosser**—Yes.

**Senator SHERRY**—You have had a look at that document on the disclosure?

**Mr Rosser**—Yes.

**Senator SHERRY**—Do you think that the average punter or consumer understands it, or would understand it?

**Mr Rosser**—Again it is not for me to speculate about what individual people will or will not understand.

**Senator SHERRY**—But you are an expert in this area; you have got to make considered judgments about what would protect consumers and inform consumers. It seems to me pretty basic to your position. Why can't you?

**Mr Rosser**—As I mentioned earlier, the intention of that project was to enhance industry acceptance and adoption of standards on areas where there was the possibility of different approaches being taken. That report provides a significant improvement on the existing situation and has been, I think, embraced by the prominent industry groups that were involved in the process.

**Senator SHERRY**—I will not go back, because you are not answering the questions. You are answering what you want to, rather than answering the question I put. I have made the point and I do not think we will get it taken any further. I will have copies of a specific document placed before you. Just while it is coming up to you, Mr Murray: how long have you been in your current position?

**Mr Murray**—One year.

**Senator SHERRY**—What were you doing before that?

**Mr Murray**—I was at the Taxation Office before that.

**Senator SHERRY**—I have just handed you up a document which is provided—

**CHAIR**—Senator Sherry, before we go too much into that document I think we should make everybody aware of a submission—which is now a public document—that came in last night from IFSA, which alleges that there are two very significant errors of fact and raises a number of other qualifications. Perhaps, before Mr Murray answers you, he should be given this document. I think it may help him in terms of a response.

**Senator SHERRY**—That is up to him, but I want a response to these exit fees now.

**CHAIR**—But if these are not correct, we are compounding a problem that attention has been drawn to.

**Senator SHERRY**—But, Chair, that is up to IFSA. IFSA can provide it and the committee can consider it. We are dealing with the evidence that has been put before the committee so far.

**CHAIR**—But if we hold information that indicates that a document is wrong, I think we have got to be very careful about using that document to ask witnesses questions.

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**Senator SHERRY**—I intend to ask about exit fees, whether or not the witness has—

**CHAIR**—Yes, you can ask general questions. But if we ask in relation to particular companies then I think we have got to be very careful that those companies are not covered in this document; that is all.

**Senator SHERRY**—I am not interested in the companies. I was only made aware of the IFSA defence a few minutes ago. Anyway, to exit fees: Mr Rosser, are you aware of exit fees?

**Mr Rosser**—I am.

**Senator SHERRY**—Mr Murray, are you aware of exit fees?

**Mr Murray**—I am.

**Senator SHERRY**—Why aren't exit fees prohibited under the regulations we are considering?

**Mr Rosser**—The government's policy is to use disclosure as the appropriate regulatory tool in relation to fees.

**Senator SHERRY**—Where exit fees currently apply under existing contracts, wouldn't they act in some circumstances, depending on the level of the fee, as an issue that a person would have to consider if they wanted to exercise portability?

**Mr Rosser**—Certainly.

**Senator SHERRY**—In some cases wouldn't exit fees be a barrier if someone wanted to shift money out and suddenly saw that they had to pay hundreds or thousands of dollars in exit fees?

**Mr Rosser**—That is correct.

**Senator SHERRY**—So why aren't they prohibited under these regulations? That is what puzzles me.

**Mr Murray**—I do not think it is necessarily the case that banning exit fees will prevent a reduction in the retirement benefits. It may well be that the exit fee cost is simply translated into an annual administration cost which all members of the fund may bear instead of the exiting member.

**Senator SHERRY**—But in principle, with this issue of portability, if people want to have the right to choose to shift their money around, why should they pay a financial penalty for choosing to shift their money?

**Mr Murray**—I think the government's view is that the actual competition that will flow from portability will ensure that funds in future will not be charging high exit fees. They will not attract new members if they do.

**Senator SHERRY**—We will get to that in a moment. What about existing funds that have existing exit fees?

**Mr Murray**—I am sorry, I am not sure exactly what—

**Senator SHERRY**—How do they shift their money out if they want to? They pay the penalty, presumably.

**Mr Murray**—Yes.

**Senator SHERRY**—Is that fair?

**Mr Murray**—I guess that was the arrangement they entered into at the time.

**Senator SHERRY**—But I thought we were all about portability here—giving people a choice, the option to move their money.

**Mr Murray**—But at the same time the government cannot retrospectively address issues of that original contract that the individual entered into.

**Senator SHERRY**—Wouldn't it seem logical that in future, if a fund wants to keep money, it would introduce an exit fee?

**Mr Murray**—Obviously, how a fund charges its fees is a matter for that fund. But, as I said, in a competitive environment if the fund wants to attract new members and it is saying, 'You're going to be hit with a high exit fee,' it will have difficulty attracting those new members.

**Senator SHERRY**—But isn't this your problem? Let's assume that these regulations stand. What if a fund that the person is having their money actively paid into introduces an exit fee? There is nothing to stop them from doing that, is there?

**Mr Murray**—No. It would be a significant event, so you would expect disclosure and so forth to occur.

**Senator SHERRY**—But let's say the employer is bound to contribute to an existing fund. We know that happens in many cases. That is correct, isn't it? We do not have choice, do we—we do not have choice legislation?

**Mr Murray**—That is correct.

**Senator SHERRY**—That is the existing position. Let's assume that the portability regulations come into play and an individual can then choose to transfer part of their balance out of the existing fund which the employer is putting their money into—and they may be contributing themselves. What is to stop a fund from putting up an exit barrier, by putting on an exit fee, to stop the member from transferring the money out?

**Mr Murray**—As I have said, it is up to the fund to determine the fees and charges that apply to the fund.

**Mr Rosser**—The fund would have to balance that advantage that it might perceive with the disadvantage that might flow from its greater difficulty in attracting new members.

**Senator SHERRY**—Some funds at the present time are guaranteed a certain employer contribution. That happens at the present time, doesn't it?

**Mr Rosser**—Yes.

**Senator SHERRY**—There are some prescriptions in law that provide for the employer to pay to a particular fund, and we know that happens. What is to stop that fund from putting on an exit fee to stop people from withdrawing their money on the basis of portability? There is nothing to stop it, is there?

**Mr Rosser**—There is nothing to stop it. But, as I mentioned, it would have to consider the impact that might have on its ability to attract other members and its ability to attract additional contributions.

**Senator SHERRY**—But the fund may not be interested in attracting other members; they might be just interested in holding what they have got.

**Mr Rosser**—They may well be.

**Senator SHERRY**—It seems to me to be an understandable and logical strategy that a fund would follow. If this were enacted and allowed to stand, wouldn't they do that?

**Mr Rosser**—I think it would depend on their intentions for the future. If they intended be a closed fund, then they might see that as a desirable outcome.

**Senator SHERRY**—Doesn't that cut across the issue of portability? Why should a fund be allowed to do that?

**Mr Murray**—I guess the government's view is that it is unlikely that funds are going to do that in a competitive environment.

**Senator SHERRY**—I would not bet on it. I am just surprised that none of you blokes has thought about this.

**Mr Murray**—It has been thought about, and the government's view is that it is unnecessary to regulate exit fees as it does not necessarily address the issue in many cases, and that the competitive market forces will, hopefully, have a downward impact on fees.

**Senator SHERRY**—But we do not have a competitive market force, do we? The government's current choice proposals are not law, are they?

**Mr Murray**—No, not at this stage, but the government is still committed to choice of fund, as you are aware.

**Senator SHERRY**—But even if that becomes law, we do not have a competitive market either, because it does not apply to all funds, does it?

**Mr Murray**—There are some exceptions, but it certainly applies to a great deal of funds.

**Senator SHERRY**—There are some significant exceptions, such as funds under state awards. That is pretty significant, isn't it?

**Mr Murray**—It is a group of the funds, yes.

**Senator SHERRY**—A very significant group—probably a couple of million people, that's all! That is pretty significant, isn't it?

**Mr Murray**—As I said, all I can say is that the government's view on exit fees is that it does not believe it is necessary to regulate them.

**Senator SHERRY**—How are exit fees compatible with competition?

**Mr Murray**—I guess competition should see the exit fees reduced over time.

**Senator SHERRY**—'Should'. I notice in your submission the statement that competition between super funds will 'place pressure on funds to reduce fees and charges'. Do you stand by that?

**Mr Murray**—Yes.

**Senator SHERRY**—Do you believe fees and charges will come down?

**Mr Murray**—Time will tell. It is interesting to note how exit fees and other fees have changed over time. Certainly there were larger exit fees in products sold in the eighties and so forth. It would be fair to say that those exit fees are not as common now as they were before, and I think part of that has been the natural competitive forces bringing these fees down. I think it would be fair to assume that that may continue into the future.

**Senator SHERRY**—We will just have to disagree. It would seem to me to be logical that, if you wanted to defend your fund and hold your money, you would start putting in place exit fees as a consequence of this.

**Mr Riley**—To add on to what Mr Murray has said, I would point out that the discussion paper issued last September by the minister indicated that the government does continue to reserve the right to regulate exit fees, if there is evidence that exit fee arrangements are being structured for the purpose of preventing portability from operating as intended.

**Senator SHERRY**—We have got exit fees at the moment. There are still some exit fees about in policies that people sign up to today. So why run the risk?

**Mr Riley**—I guess the argument is that banning exit fees is not necessarily going to address the problem. One example may well be someone who is going to stay in a fund for a long time.

If they never leave that fund they will never incur an exit fee. It is actually to their advantage to have part of the charge as part of the exit fee rather than as the annual administrative cost of the fund. Capping or banning exit fees will not necessarily advantage every person. I believe the government's view is that there is no clear evidence at this stage that funds will, necessarily, sharply increase their exit fees to deal with portability. Portability already exists, as I have mentioned, for many funds. There is no evidence, as far as I am aware, that funds have been sharply increasing exit fees to deal with that situation.

**Senator SHERRY**—I am not suggesting that. But what is the purpose of the exit fees in existing funds? What do you think they are there for?

**Mr Murray**—In terms of these old products, as I understand it, they are normally part of the commission.

**Senator SHERRY**—But these are current products. These are products that people are stuck in at the moment and cannot get out of. And they are still being flogged; do not kid us. There are still products out there, with exit fees, that people join every day. Do you accept that?

**CHAIR**—Isn't the issue, Senator Sherry, one of very high exit fees versus an exit fee that just covers administrative costs? I think there will always be some sort of exit fee.

**Senator SHERRY**—Yes, of course—\$50 or \$60 admin costs. But you would accept, Mr Murray, that there are products being sold in the market today that still have exit fees over and above the basic administration costs. They are still there, aren't they, Mr Murray?

**Mr Murray**—It is interesting to have seen the *Hansard* from the committee hearings. There seems to be some dispute between different players in the industry over that.

**Senator SHERRY**—Perhaps Mr Rosser, who is more in touch with this consumer protection stuff, can answer. Mr Rosser, are you aware that there are products still being sold with exit fees?

**Mr Rosser**—There are some.

**Senator SHERRY**—Thank you.

**CHAIR**—They may not have high exit fees; I think that is the issue.

**Senator SHERRY**—Hang on, Chair. It seems that—

**CHAIR**—We must distinguish between high exit fees and ordinary exit fees.

**Senator SHERRY**—I do draw a distinction. Are you aware, Mr Rosser, that there are retail products, still being sold and purchased by consumers, that have high exit fees—that is, an exit cost over and above the basic cost of administration?

**Mr Rosser**—Yes.

**Senator SHERRY**—So you cannot guarantee that the total fees, charges and commissions will go down as a result of this legislation?

**Mr Murray**—The government's view, as I have said, is that they hope that competition will bring fees and charges down.

**Senator SHERRY**—Hope—the proof will be in the APRA quarterly survey, which contains those details. The minister has claimed that there will be administrative savings through reductions in fees and charges and reducing multiple accounts. Are you aware of any claimed saving?

**Mr Murray**—I assume that what you are referring to is simply the fact that, if you have more than one account, you will perhaps be paying annual administrative fees on both accounts.

**Senator SHERRY**—Yes.

**Mr Murray**—If an individual chooses to consolidate their accounts, they will have those savings.

**Senator SHERRY**—Are you aware of any monetary figures on the claimed saving?

**Mr Murray**—No.

**Senator SHERRY**—You might check that out, because I am sure the minister has claimed a figure at some point in time. There is not a figure supplied by you?

**Mr Murray**—Not that I am aware of, but I will check and, if we do find anything, I will let you know.

**Senator SHERRY**—Can any of the other witnesses throw some light on this? Are you aware of any advice you have given to the minister about the claimed level of savings on admin fees?

**Mr Rosser**—I am not aware of anything having been announced.

**Senator SHERRY**—Why shouldn't it apply to public sector funds? Why are they exempt?

**Mr Murray**—It is the unfunded arrangements that are exempt on the basis of not interfering with state government funding arrangements for their own superannuation funds.

**Senator SHERRY**—But this is all about portability and choice. Why shouldn't people like you be able to take advantage of these new measures, unfunded or not?

**Mr Murray**—I guess the government's view is that, to impact on the actual obligation to fund the contributions, would be extending portability too far in those circumstances.

**Senator SHERRY**—So we are not going to have full portability for everyone?

**Mr Murray**—There are some exceptions.

**Senator SHERRY**—What about in the unfunded Public Sector Super Scheme in respect of your own contributions?

**Mr Murray**—Unfunded schemes are exempted in total.

**Senator SHERRY**—I understand that, but what about where you are making contributions to the unfunded scheme. It is unfunded in the sense that the government is not funded.

**Mr Murray**—Yes, those schemes are exempted.

**Senator SHERRY**—But where the member is actually having a deduction from their salary towards it, why shouldn't they be allowed to have portability of their own contribution in those circumstances?

**Mr Murray**—I guess the government's view has simply been that, for unfunded schemes, given the structure of their benefits and so forth, they should be exempted.

**Senator SHERRY**—Why wouldn't that apply to private sector defined benefit funds?

**Mr Murray**—The private sector funds, where they are fully funded, are defined benefit funds that apply to the extent there is a withdrawal benefit for the fund and because they cease the employment relationship with that fund. So, in effect, that ceasing of the employment relationship crystallises the benefit that is able to be withdrawn.

**Senator SHERRY**—Why shouldn't a member of a private sector defined benefit fund be able to exercise portability of their contribution, for example, where it is required?

**Mr Murray**—Again, the details of the benefit arrangements for defined benefit funds, as you are aware, can be quite complicated. Often they actually depend also on the member's own contributions. It impacts on the employer's ultimate rate of funding as well. So there are complicated benefit structures there, and it is only when they cease that employment link that the benefit actually crystallises to an amount that is easily transferable.

**Senator SHERRY**—It is certainly in terms of the employer 'contribution' but, where the employee is making a contribution, why shouldn't they be able to exercise portability? It is consistent with the principle.

**Mr Murray**—Again, I guess the government has recognised that, in some cases, for practical purposes, it is best that there are some exemptions. That is one of those cases. Those members, when they do cease that employment relationship, will have access to portability, which is an improvement on the current situation, in many cases.

**Senator SHERRY**—So the principle is not to be applied universally?

**Mr Murray**—I guess the government has taken into account practical considerations in implementing the policy.

**Senator SHERRY**—But the entire super system is complicated. I am just concerned that public servants like you do not have this magnificent opportunity to exercise portability. It seems to me a fundamental contradiction.

**Mr Murray**—As I said, the government believes that for practical reasons certain schemes need to be exempted.

**Senator SHERRY**—I am just concerned about the officers before us not being able to take advantage of this wondrous new world.

**Mr Murray**—Thank you.

**CHAIR**—Thank you.

[5.30 p.m.]

**BRUNNER, Mr Greg, General Manager, Policy Development, Australian Prudential Regulation Authority**

**CHAIR**—I welcome the representative from APRA, Mr Greg Brunner. Are there any more people that you want to bring to the table?

**Mr Brunner**—No.

**CHAIR**—We invite you to make an opening statement. We also invite you to comment on matters that have been raised in the submissions or matters that have been discussed today in your presence.

**Mr Brunner**—It was not my intention to make an opening statement or any opening comments.

**CHAIR**—APRA have suggested that the need for additional liquidity in a portability environment could lead funds to either take on more risky investments to maintain returns, because there is a segment out there that has to be held liquid and has low returns to offset that, or they may be encouraged to move to more risky returns to maintain their investment return profile. Would you like to comment?

**Mr Brunner**—It is likely that portability for funds that do not have it at the moment will mean that they will have to focus their attention on the need to have some additional liquidity. This will really depend on how portability impacts on them and whether the current members of those funds actually exercise the options, which the portability regulations would give them. The overall impact on fund liquidity is a little unclear. We are highlighting that it is a potential issue that trustees would need to be mindful of. We have indicated that we expect trustees to be assessing the overall risks that they are taking and ensuring that those risks are consistent with the strategies of the fund. It is really more of a reminder to trustees that they have obligations to take into account the risk and reward equation when they are assessing the position of their members.

**Senator SHERRY**—I notice in your submission on page 3, you said:

Some industry funds will not transfer benefits whilst the member remains in the same industry, however the policy varies from fund to fund. Applicable exit fees appear reasonable.

What do you mean by 'reasonable'?

**Mr Brunner**—As you have alluded to, measuring the level of fees is not an easy task but on the basis of the information that we have available to us it would seem that the fees in that context are lower and as a consequence we have made the judgment that they appear to be reasonable. We take the view that fees, in most circumstances, should be only sufficient to cover the administration costs. That can be a difficult measure as well. Again, it depends on the sort of

actions that the trustees would need to take in order perhaps to crystallise investments to pay out moneys from the fund. But it seemed to us that the level of fees that were being charged in those circumstances reflected administration costs and not much else.

**Senator SHERRY**—What sort of range are we looking at in respect of a reasonable fee that recovers costs?

**Mr Brunner**—I do not have those numbers here; I could get back to you with that information.

**Senator SHERRY**—Is it in the thousands of dollars?

**Mr Brunner**—I would need to get back to you with those figures.

**Senator SHERRY**—You talk about reflecting the administrative costs and the costs of crystallising and shifting the moneys. Therefore, is an unreasonable fee one that charges well in excess of that?

**Mr Brunner**—It is up to funds; what fees they wish to charge is a competitive issue. It is not my position to judge what an unreasonable fee is.

**Senator SHERRY**—But you have; you have said what is a reasonable fee—you are going to get back to me with the details of it—and you have outlined your definition of what is a reasonable fee. Presumably an unreasonable fee, logically, has to be well in excess of what you have outlined as a reasonable fee.

**Mr Brunner**—In a competitive environment people can charge a range of fees.

**Senator SHERRY**—I understand that; I am not arguing about that. One of my arguments is that we should ban the damn things, but we have not got to that point yet. You have defined what a ‘reasonable fee’ is; you have used that expression in your submission. So logic would dictate that an unreasonable fee is one that is well in excess of what you have defined as a reasonable fee. Is that logical?

**Mr Brunner**—That is a statement you have made.

**Senator SHERRY**—I am asking whether you agree with me, yes or no.

**Mr Brunner**—As I have said, it is a competitive issue.

**Senator SHERRY**—But that is not what I asked. You are supposed to answer the question. You have outlined a definition of what is a reasonable fee. I do not have any argument with you; it is a perfectly reasonable explanation that you have given me. Logically do you agree, yes or no, that an unreasonable fee is one that is well in excess of what you have defined as a reasonable fee?

**Mr Brunner**—Again, it is a competitive issue for the funds.

**Senator SHERRY**—But I am not asking that. I am asking you whether you agree with me or not: an unreasonable fee is one that is charged that is well in excess of what you have defined as being a reasonable fee.

**CHAIR**—I think in answering the question one needs to consider—particularly in relation to the older type of products—the point in the sequence of the life of a product where the company wishes to recover its costs. It may be that some companies do not wish to recover too many costs in the early stages and instead pick them up in the later stages. This concept of portability impacts quite adversely on those sorts of companies. But going back over 20 years that might have been how their cost structure was determined at various points of time. So I think we have to take that into account just a little, although I must say that I am not very much in favour of extraordinarily high exit fees—and I am on the record as saying that. But I think in answering your question that probably does need to be taken into account.

**Mr Brunner**—It is certainly true that the whole structure of fees is relevant and there can be a range of fees charged; people can seek to get their costs back through a range of different fees, yes.

**Senator SHERRY**—I do not know why you are so defensive, Mr Brunner. In your submission you go on to say:

Higher exit fees in some retail/public offer funds also act as a barrier to moving accumulated benefits out to other funds, while in some cases minimum amount requirements may impose an entry barrier to a retail fund.

Do you stand by that?

**Mr Brunner**—I think that would be a reasonable assessment, yes.

**Senator SHERRY**—Where this occurs and there are higher exit fees—fees that are above what you have defined as reasonable—they act as a barrier. Isn't that going to be a barrier to portability?

**Mr Brunner**—If those fees remain high, yes, it would be.

**Senator SHERRY**—At the moment the government's choice of fund legislation has not been passed, but let us assume that these regulations stand. If that happens, we will be in a situation where we have portability regulations but not choice of fund legislation. That is right, isn't it?

**Mr Brunner**—Correct.

**Senator SHERRY**—For however long that lasts, what is to stop a fund that is receiving employer contributions—you would understand that many employers are compelled by law to contribute to a particular fund; and those contributions may or may not include some employee contributions—from introducing an exit fee in order to erect a barrier to someone exercising portability under these regulations?

**Mr Brunner**—That is a possibility. However, in making decisions to introduce fees like that, the fund trustees need to take into account the interests of fund members. So it is a possibility but it may not happen.

**CHAIR**—I am not sure that it is a possibility. It is a contract. The company would be bound by the contract or the deed entered into between the company and the member. How can they say, ‘We are altering the terms of the agreement,’ in order to lift the exit fee?

**Senator SHERRY**—They can for new members.

**Mr Brunner**—They could for new members.

**CHAIR**—For new members, yes, but not for existing members.

**Mr Brunner**—Again it would be an issue to be agreed upon by the trustees of the fund, and they would have to seriously consider whether it was in the interests of members.

**Senator SHERRY**—But is there anything to stop them?

**Mr Brunner**—No, there is nothing to stop them.

**Senator SHERRY**—At the present time we have just over 25 million accounts and 8.7 million fund members—I look at your data every quarter. The number of accounts has been growing steadily year on year, quarter on quarter. A significant number of fund members—and we do not know how many—can consolidate those accounts at the moment if they apply to the fund and fill in the forms. Is that true?

**Mr Brunner**—That is true.

**Senator SHERRY**—Why don’t they do it?

**Mr Brunner**—It is hard for me to speculate. I suspect part of the reason is that they are not aware of their rights; I think it is an education issue. It is also our view that it is simply a matter of inertia; there is a lot of inertia out there amongst fund members. In some ways consolidation for people who have multiple accounts could be quite beneficial, as has been previously mentioned and referred to by a question you have asked, Senator. If a member is paying fees to a number of funds and they are able to consolidate those moneys into one fund and pay only one set of fees, they would be better off.

**Senator SHERRY**—We are in strong agreement on that.

**Mr Brunner**—But I think inertia is a significant factor here.

**Senator SHERRY**—We know there is this problem. There might be some other reasons, but I agree with your observations. How does the portability of these regulations ensure that we overcome the problem of having this group of people who can actually exercise consolidation but do not do it at the moment?

**Mr Brunner**—The portability regulations open up the scope for consolidation to a wider group of people; they may not necessarily impact on those who already have that option. I suppose one way it may help is in encouraging consolidation through the publicity generated by the fact that it is happening—that there are regulations and that there is likely to be an education campaign highlighting to people that they have the opportunity to do this. But the regulations in themselves do not change the position of people who currently have the right to consolidate their accounts; it only broadens the range of people who have the opportunity to do it.

**Senator SHERRY**—These portability provisions apply to a fund balance above \$5,000.

**Mr Brunner**—Yes.

**Senator SHERRY**—We will have at least for some period of time and perhaps for a long time—we do not know—an employer required to contribute money to a particular fund. Employers are bound to a fund—many employers are bound to particular funds—and contributions must go into that fund. If a person exercises so-called portability under these regulations, should they stand, they can transfer X amount out of that fund into another, second fund, can't they?

**Mr Brunner**—Yes.

**Senator SHERRY**—However, they will still have moneys coming into fund A—

**Mr Brunner**—Correct.

**Senator SHERRY**—and then, I think, the provision is that they can transfer it out once a year under this provision. So they will end up with two funds, won't they?

**Mr Brunner**—Yes, they would in that circumstance.

**Senator SHERRY**—So how are we reducing the number of funds?

**Mr Brunner**—I think that there are likely to be a number of different trends occurring here. There is a possibility that people will do as you have described and transfer their money out of their active fund into another fund. If they did that, that would increase the number of accounts. But, on the other hand, because the regulations are providing portability to a large number of people who currently do not have it, that could well lead to the possibility of a reduction in the number of accounts. There are going to be things happening in both directions.

**Senator SHERRY**—That is a reasonable bit of speculation. Do you believe that the net number of accounts will be reduced as a result of this provision?

**Mr Brunner**—It is difficult to say, Senator. My view is that it will largely revolve around the publicity that the regulations receive and the education that is attached to it and how much impact that will have on the trend for account consolidation.

**CHAIR**—As a government bureaucracy, you will have a responsibility to ensure that government policy is carried out—to ensure that there is a reduction. You will not just sit there

and say nothing. Won't you actively pursue the consolidation of accounts, given that it will be government policy in terms of portability? You are sitting back there as if you are in academia. I put it to you that you are not a representative of government but that, in a sense, I would have thought there would be an expectation that you would be seeking to carry out government policy, which is to reduce the number of accounts rather than just pontificating 'Yes, it may or it may not happen'. I would have thought it was your responsibility to make sure it does happen.

**Mr Brunner**—We have indicated in our submission that we feel that education is very important for this. APRA has indicated that it believes that there are benefits that would accrue to people who have multiple accounts—

**Senator SHERRY**—No-one is disputing that.

**Mr Brunner**—so we will be pointing that out, Senator.

**Senator SHERRY**—Forgive me, Mr Brunner, but were you part of that lost moneys campaign that was launched last year? The tax office were involved, I know that.

**Mr Brunner**—Yes, that was mainly the tax office. We were aware of it.

**Senator SHERRY**—Yes, you were aware of it.

**Mr Brunner**—That is right.

**Senator SHERRY**—But it did not seem to make any difference. I know some people consolidated, but in the last issue of your super trends, your quarterly statement, the number of accounts still went up. There was a lot of money spent on that campaign last year. There was a lot of advertising, the minister was in the press quite a bit, Senator Watson did a launch and I did a launch—we were out there doing our best. There was a lot of publicity, but the number of accounts still keeps going up.

**Mr Brunner**—Well, we can but try.

**CHAIR**—There is quite a large number that did consolidate.

**Senator SHERRY**—Yes, I know and I accept that; it was great, but—

**CHAIR**—It was a worthwhile exercise.

**Senator SHERRY**—The exercise? Well, it was worth while. There was a lot of money spent, the minister was out there extolling its virtues, the tax office spent—I think it was four or five hundred thousand dollars, I am not sure—quite a bit of money, but the number of accounts still keeps going up, Mr Brunner.

**Mr Brunner**—We can but try. As I indicated, we feel that inertia is a significant issue here, and people also have the choice to have a number of accounts, if they choose to do that.

**Senator SHERRY**—Yes.

**Mr Brunner**—There may well be good reasons for them to have a range of accounts.

**Senator SHERRY**—I think that is a valid comment. Some people do, but I am sure, from the feedback that I receive, a significant number—whatever that number is—would prefer not to. One final point: the issue of churning—have you heard of churning?

**Mr Brunner**—Yes, I have.

**Senator SHERRY**—Does APRA believe that at least one of the consumer protections that needs to be in place to protect against churning is the clear, concise, simple, comparable disclosure of fees, charges and commissions?

**Mr Brunner**—We believe that that is a very useful objective, yes. Clearly it is a matter for ASIC, and work has been done in that area.

**Senator SHERRY**—Yes, I understand, but do we have that yet out in the public domain for consumers?

**Mr Brunner**—I am not in a position to comment on that. As some people have said earlier today, a good deal of work is being done in that area. I cannot comment on whether we have it or not.

**Senator SHERRY**—But APRA is doing a lot of work on fees, to its credit; I acknowledged that at estimates hearings recently. It seems to have become a lot more active. Actually, I understand that you are going to include detailed fees in a revamped data series, I think from 1 July next year?

**Mr Brunner**—That is true. However, I should point out that the data that we collect there is for prudential purposes and it will be at the fund level, not at the individual level. So, whilst the information that we collect will give us some useful insights into the level of fees that particular funds are collecting at an aggregate level, the data will not leave us in the position whereby we can make comments about how individual members of funds are being affected by fees and charges because it will very much depend on the type of portfolios they choose, the type of services they choose—a whole range of factors.

**Senator SHERRY**—I notice you say:

Accordingly, portability may have the effect of reducing costs at both the member level and the fund level.

Why will it not reduce costs?

**Mr Brunner**—I think that, again, there are likely to be factors pulling in different directions. For members, if they consolidate their accounts, clearly there is a likelihood that they will have lower fees charged to them overall, but from a fund point of view there will be increased administration charges that they will have to bear because of portability. So they are pulling in different directions there again.

**Senator SHERRY**—So we could end up with a net negative rather than a net positive in terms of fees and charges?

**Mr Brunner**—Our view is that there may be an overall reduction but it is difficult to assess at this stage.

**CHAIR**—But given that you say there is that very high level of portability at the present time, surely those charges have already been factored in to the existing scheme of arrangements? So why will there be an increased cost if portability comes around, because everybody is acknowledging there is a very high level of portability now?

**Mr Brunner**—That is true. There will be quite a number of funds where it is a new concept and they will have higher administration charges as a result. One of the other factors that is a little bit difficult to gauge at this stage is that it is possible that funds will reduce fees as a measure to increase their competitiveness in the market. Again, it is difficult to assess how that will impact.

**Senator SHERRY**—I look forward with interest to seeing whether that happens. Given that you do publish some data at the moment on the costs of fund operation—and, as I understand it, there will be more detailed information as from 1 July next year—what happens if the costs go up?

**CHAIR**—Are you talking about the cost per transaction—

**Senator SHERRY**—I am talking about the cost of operating the system.

**CHAIR**—or total cost?

**Senator SHERRY**—Total cost goes up.

**CHAIR**—That is because they are more effective transactions, though, in portability.

**Mr Brunner**—We will really just have to wait and see the outcome. As I indicated, our view is that it has the potential to reduce costs, but we will not really know until it happens.

**Senator SHERRY**—The theory is that economic competition thrives, with people shifting money around everywhere, picking and choosing. Costs surely must go down; that is the economic argument for competition, isn't it?

**Mr Brunner**—Yes, it is. As I indicated, we feel that that will be one of the impacts—that there would be a pressure on funds to reduce fees to increase the competitiveness of the fund.

**Senator SHERRY**—Why can't you assure me that this will happen?

**Mr Brunner**—I cannot give any assurances.

**CHAIR**—Can't you give us an assurance that, at the end of the day, there will be a more efficient allocation all around and that members, essentially, will benefit? That is what the purpose is. I think that you should be able to give us that assurance.

**Mr Brunner**—I am not able to give that assurance, but our view is that it is a likely outcome.

**Senator SHERRY**—So you can expect a bit of a grilling from me if it does not happen in a year or two in this brave new world.

**Mr Brunner**—Yes; I would expect that.

**Senator SHERRY**—Are you aware of what happened in the UK—the churning and movement of moneys from one fund to another?

**Mr Brunner**—Yes; I am aware of some of the things that happened in the UK. I think that trustees of Australian funds are probably mindful of some of the things that happened there as well. APRA will be looking to ensure, as part of our reforms—the licensing process, the overall risk management procedures in funds and a whole range of things that are coming in—that trustees are acting in the best interests of fund members.

**Senator SHERRY**—But it was not the trustees who were the problem in the UK. It is like here: the trustees cannot do anything about it, can they? The law requires them to transfer the money out if the member wants it transferred out, subject to the \$5,000 and the once a year rules. It is not the trustees who are the problem, surely.

**CHAIR**—Mr Brunner, I think that you should be responding. I do not want to put words in your mouth, but I think that it is fairly obvious that we have a much more rigorous regulatory regime now in Australia—and, probably, always have done—compared with what happened in the UK a decade or so ago. Things have moved along very quickly, particularly in this country. I would have thought that the likelihood of those things happening—certainly, to that extent—would be minimal now. I am surprised that you as a regulator cannot be saying those sorts of things.

**Mr Brunner**—That was my point: I was indicating that I felt that our system—

**CHAIR**—There were maybes; this is what was worrying me in your answer to Senator Sherry's question. I would hate to get into the debating chamber with him quoting back from you.

**Senator SHERRY**—Why? That is the evidence before the committee—or lack thereof.

**CHAIR**—I just put to you, Mr Brunner, that there is a need to be perhaps a bit more definite or persuasive in your answers.

**Senator SHERRY**—It is certainly not assuring me, Mr Brunner, I am afraid.

**Mr Brunner**—As I have indicated, it is difficult to assess how fund members react to the environment. I am not in a position to comment on that; I am in a position to indicate to you, as I just did, that superannuation funds in Australia are very well regulated.

**Senator SHERRY**—I have no argument about that. My argument is not with the fund; at the end of the day the trustees have to do what the trustees have to do in law. We still have commission agents—commission planners—here, do we not?

**Mr Brunner**—Yes, we do.

**Senator SHERRY**—Would you accept that it is not, at the present time anyway, easy for consumers to identify and understand the impact of the fees and commissions on moneys transferred in or out of a fund?

**Mr Brunner**—It is a very complex area and for that very reason work is being done by ASIC to ensure that people do have better information.

**Senator SHERRY**—They are doing the work, but you would accept that we are not at that point yet, would you not?

**Mr Brunner**—I think it is fair to say that it is difficult for people to work out the levels of fees and charges at present.

**CHAIR**—Thank you very much, Mr Brunner. I think that concludes our proceedings and so, on behalf of the committee, I thank all witnesses who have given evidence before the committee today. Thank you very much for appearing before the committee.

**Subcommittee adjourned at 6.01 p.m.**