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Current Issues in Financial Systems Regulation

Overview

2.1 The Australian Securities and Investments Commission (ASIC) appeared before the committee at a public hearing on 14 September 2017 as part of the review of ASIC's 2016 Annual Report.

2.2 Key issues examined at the hearing included surveillance and enforcement, and the financial services regulation framework. In particular, the committee took evidence regarding banks attributing interest rate increases to regulatory requirements, mortgages based on factually inaccurate information, and investigations being undertaken by ASIC into the life insurance industry.

2.3 The committee also took evidence regarding recent allegations against the Commonwealth Bank of Australia (CBA), climate change as a risk consideration, and competition in the banking sector.

Surveillance and enforcement

Banks claiming interest rate rises are due to regulatory requirements

2.4 In June 2017, statements were made by the major banks in relation to interest rate increases. The statements followed an announcement by the Australian Prudential Regulation Authority (APRA) to further reinforce residential lending practices. In particular, the committee noted a media release by CBA that stated: 'To meet our regulatory requirements, variable interest only home loan rates for owner-occupiers and investors will increase by 30 basis points.'[1]

2.5 The committee expressed concern about banks claiming that interest rates rises are due to regulatory changes, and asked if ASIC would be concerned by disproportionately larger increases that could not be justified by particular regulatory changes. ASIC confirmed that it would be a concern and stated:

> In effect, it would go to whether the public justification or explanation for the interest rate rise was inaccurate, false or misleading and therefore in breach of the ASIC Act. We have noted concerns around this. We are looking at this issue. We will be working with the ACCC, who, as you know, have a specific brief to look at some of the factors that have contributed to interest rate setting.[2]

2.6 The committee was encouraged to hear that this is a matter of interest to ASIC, and will be scrutinising this process in the future.

Australian Financial Complaints Authority

2.7 In the 2017-18 Budget, the Government announced it would create a new dispute resolution framework—the Australian Financial Complaints Authority (AFCA)—for external dispute resolution and greater transparency on internal dispute resolution by financial firms.[3] The Bill that will establish AFCA was introduced into Parliament on 14 September 2017.[4]

2.8 The committee noted the anticipated commencement date of 1 July 2018, and asked for an update on ASIC's preparations for AFCA. ASIC responded that it is very supportive of the creation of a single authority, and is working closely with Treasury, the various schemes and other stakeholders:

> We think it will bring greater consistency to the decision making around consumer complaints. These schemes collectively handle

1 CBA, 'Commonwealth Bank changes home loan interest rates', *Media release*, 27 June 2017, <https://www.commbank.com.au/guidance/newsroom/ Commonwealth-Bank-changes-home-loan-interest-rates-201706.html>, accessed 14 September 2017.

2 Mr Peter Kell, Deputy Chairman, ASIC, *Transcript*, 14 September 2017, p. 1.

3 Budget 2017-18, *Banking and Financial Services,* <http://budget.gov.au/2017-18/content/glossies/factsheets/html/FS_Banking.htm>, accessed 20 September 2017.

4 Parliament of Australia, *Treasury Laws Amendment (Putting Consumers First – Establishment of the Australian Financial Complaints Authority) Bill 2017,* <http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=s1093>, accessed 20 September 2017.

> several hundred thousand inquiries a year, so they're vitally important for consumers. With the associated increase in the monetary limits and the jurisdiction, especially around small business, that's going to cover a lot more people. There's a fair bit of work to do to bring the schemes together.[5]

2.9 ASIC outlined for the committee its anticipated role in AFCA:

> ASIC will have new powers under the legislation, including a directions power, to ensure that if there are any issues with the way the scheme is operating we can step in. We will also be part of the new requirement for financial services firms to report their internal disputes, which we think is going to provide a really important level of transparency around how they're dealing with customers. That will come out from regulatory guidance through us, and we're keen to continue working with the panel that has been set up under Malcolm Edey.[6]

Competition in the banking sector

2.10 The committee recognised the importance of competition in the banking sector, and noted its previous recommendations to encourage competition. In particular, recommendations from the Review of the Four Major Banks (First Report) to require a new focus on banking competition,[7] and to make it easier for new banking entrants.[8]

2.11 While noting that one of the key challenges in banking sector competition is encouraging innovation, ASIC commented that it is about 'getting the balance right between encouraging innovation to get the benefits for the community…and at the same time maintaining a robust regulatory framework so people still have trust and confidence in the services and goods they're purchasing'.[9]

2.12 One of the measures ASIC has undertaken to foster competition in the banking sector was the creation of ASIC's new Innovation Hub:

> I'm pleased to say that, since we setup our Innovation Hub in March 2015, we've worked with over 200 entities in relation to the provision of financial services or credit, we've provided 164 of

5 Mr Peter Kell, Deputy Chairman, ASIC, *Transcript*, 14 September 2017, p. 9.

6 Mr Peter Kell, Deputy Chairman, ASIC, *Transcript*, 14 September 2017, p. 9.

7 House of Representatives Standing Committee on Economics, *Review of the Four Major Banks: First Report*, November 2016, p. 21.

8 House of Representatives Standing Committee on Economics, *Review of the Four Major Banks: First Report*, November 2016, p. 53.

9 Mr John Price, Commissioner, ASIC, *Transcript*, 14 September 2017, p. 2.

> those entities with informal assistance to help them navigate through the regulatory system and we've issued 35 new licences... ASIC is very keen to play its part in ensuring that fin-tech start-ups can have a streamlined path through our regulatory system so that they can provide financial and credit services and a healthy degree of competition in our economy.[10]

2.13 The committee also questioned ASIC about competition in the credit card sector. While noting two of the major banks have recently introduced low-rate credit cards, the committee sought ASIC's view on why the other major banks were not offering a similar product. ASIC advised that it is undertaking a review into the sale and usage of credits cards:

> …focusing particularly on how consumers use their cards, particularly where consumer debt levels are high through time or where consumers have products that are obviously poorly suited to their needs or behaviours. We're also having a look at the effective balance transfers on aggregate card limits.[11]

2.14 ASIC noted that part of the issue in the credit card sector is 'the product and the way that the fees, charges and interests rates are calculated that means consumers themselves have difficulty identifying and driving competition and moving to the better products'.[12] ASIC commented that this complexity is a barrier to 'that sort of demand-side competition coming into play'.[13]

2.15 When asked if there is enough competition in the credit card sector, ASIC commented that it was not sure, but that adding more cards to the overall market would not drive better outcomes. ASIC suggested that better customer outcomes might be achieved:

> …if there are ways to ensure that the cards that offer much better value are more prominent and if things like some of the ways in which balance transfers encourage a form of competition, which doesn't really offer much benefit to consumers, can be minimised. I think we can do more about competition. That's what we're saying to the Productivity Commission as well.[14]

10 Mr John Price, Commissioner, ASIC, *Transcript*, 14 September 2017, p. 2.

11 Mr Peter Kell, Deputy Chairman, ASIC, *Transcript*, 14 September 2017, p. 12.

12 Mr Peter Kell, Deputy Chairman, ASIC, *Transcript*, 14 September 2017, p. 12.

13 Mr Peter Kell, Deputy Chairman, ASIC, *Transcript*, 14 September 2017, p. 12.

14 Mr Peter Kell, Deputy Chairman, ASIC, *Transcript*, 14 September 2017, p. 13.

Mortgages based on factually inaccurate information

2.16 On 11 September 2017, investment bank UBS released findings from its survey of more than 900 customers who took out a home loan in the 12 months preceding August 2017. The survey found that only 67 per cent of people responded that their home loan application was completely factual and accurate, down from 72 per cent of 2016 borrowers.[15]

2.17 UBS estimates that around $500 billion of outstanding home loans contain misstatements about income, assets, existing debts or existing expenses.[16] As a result, UBS suggested that 'mortgagors are more stretched than the banks believe, implying losses in a downturn could be larger than the banks anticipate.'[17]

2.18 When asked whether it was concerned about the UBS report, ASIC indicated that while it was aware of the report, it disagreed with it 'in relation to where things stand today as distinct from where they possibly were many years ago.'[18] ASIC advised that it has been working on responsible lending and loan fraud over many years and took the view that 'things have improved significantly in terms of responsible lending.'[19]

2.19 In relation to the survey's finding that consumers believed loan underwriting standards had not changed recently, ASIC noted that 'for many consumers the additional work and additional steps that banks and other lenders are taking to verify someone's financial situation won't be apparent to them.'[20]

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15 UBS, *Australian Banking Sector Update, UBS Evidence Lab - $500 billion in 'Liar Loans'?*, 11 September 2017, p. 1. The USB Evidence Lab conducts an annual detailed online survey of Australians who had recently taken out a mortgage to buy residential property. The 2017 survey comprised 70 questions and covered 907 participants across all states and territories in Australia. UBS claims the results to be representative of Australian mortgage borrowers.

16 UBS, *Australian Banking Sector Update, UBS Evidence Lab - $500 billion in 'Liar Loans'?*, 11 September 2017, p. 15.

17 UBS, *Australian Banking Sector Update, UBS Evidence Lab - $500 billion in 'Liar Loans'?*, 11 September 2017, p. 1.

18 Mr Michael Saadat, Senior Executive Leader, ASIC, *Transcript*, 14 September 2017, p. 5.

19 Mr Michael Saadat, Senior Executive Leader, ASIC, *Transcript*, 14 September 2017, p. 5.

20 Mr Michael Saadat, Senior Executive Leader, ASIC, *Transcript*, 14 September 2017, p. 5.

2.20 ASIC advised the committee that it is currently examining more systematic approaches to addressing loan fraud:

> ASIC gets reports of loan fraud from a number of sources, and we've taken action against almost 100 credit representatives in the market for loan fraud, and we continue to focus on that. But we've got a project underway at the moment that is looking at loan fraud more systematically to identify how we might be able to address loan fraud in a way that doesn't necessarily require us to take on every single individual who's alleged to have engaged in loan fraud and look at more systematic solutions to that issue.[21]

2.21 ASIC gave evidence to the committee that it has a legal action underway in relation to banks using indexes as opposed to using proper expenses in mortgage applications.[22] The Chairman added that:

> …frankly there's no reason they shouldn't challenge the estimates, because when you think about it, particularly if your bank account is with that bank, they have a pretty good idea of what your expenses are from the data they have. Even if they don't have your account, they have access to big data. They know pretty well how much in a particular locality somebody's cost of living is, roughly. So, there's really no excuse for not challenging it if the expenses don't look at least reasonable for the area they're living in.[23]

Non-compliant financial advisors in the life insurance industry

2.22 The committee noted current public confusion regarding statements made by ASIC in relation to the number of potentially non-compliant financial advisers in the life insurance industry.

2.23 The committee asked ASIC for clarification of whether it believes 50 financial advisers were at greater risk of having high lapse rates, or whether 50 per cent of advisors were potentially non-compliant. ASIC noted that it is currently collecting data about advisors with high life insurance lapse rates and explained:

> As part of the initial data that came through, we identified around 500 advisers with potential issues around higher levels of lapse rates. Of course, there may be quite legitimate reasons why people are being switched or moved between products. We can't go in and undertake high-intensity surveillance of every single one of

21 Mr Michael Saadat, Senior Executive Leader, ASIC, *Transcript*, 14 September 2017, p. 5.

22 Mr Greg Medcraft, Chairman, ASIC, *Transcript*, 14 September 2017, p. 5.

23 Mr Greg Medcraft, Chairman, ASIC, *Transcript*, 14 September 2017, p. 5.

> those. We've narrowed it down to a much smaller pool in the first instance to go and look at and do more in-depth surveillance.[24]

2.24 While ASIC remarked that some media articles suggested only those people were possibly causing problems, it added that 'we are still, unfortunately seeing some problematic advice around life insurance in the surveillances that we undertake.' [25]

2.25 ASIC added that the potential number of non-compliant financial advisers in the life insurance industry is 'not limited just to that smaller target group that has come up through our first data-gathering exercise.'[26]

Bank bill swap rate investigations

2.26 The committee asked ASIC for an update on its investigations into the alleged manipulation of the bank bill swap rate by some Australian banks. ASIC advised that:

- proceedings against the National Australia Bank (NAB), the Australia and New Zealand Bank (ANZ), and Westpac are set down for a hearing as to liability towards the end of October 2017, with mediation thought to be occurring before 9 October;[27] and
- inquiries in relation to the CBA were continuing, but that there is still 'plenty of time to take action.'[28]

Director appointment

2.27 The committee was interested in hearing about the process for appointing a director of a company, and whether there is currently an identification (ID) check requirement.

2.28 While ASIC noted there is no ID check requirement to become a company director, the person's consent is required prior to appointment. When asked if the government or the Black Economy Taskforce has consulted with ASIC about the proposal to adopt director ID numbers, ASIC confirmed that it has been discussed by the Black Economy Taskforce. ASIC commented that 'while it's a matter for government, we think that the adoption of a director identification number would be something worthy of consideration.'[29]

24 Mr Peter Kell, Deputy Chairman, ASIC, *Transcript*, 14 September 2017, p. 10.

25 Mr Peter Kell, Deputy Chairman, ASIC, *Transcript*, 14 September 2017, p. 10.

26 Mr Peter Kell, Deputy Chairman, ASIC, *Transcript*, 14 September 2017, p. 10.

27 Ms Cathie Armour, Commissioner, ASIC, *Transcript*, 14 September 2017, p. 8.

28 Mr Greg Medcraft, Chairman, ASIC, *Transcript*, 14 September 2017, p. 9.

29 Mr John Price, Commissioner, ASIC, *Transcript*, 14 September 2017, p. 8.

Regulatory framework

Regulatory Guide 97

2.29 On 2 March 2017, ASIC issued Regulatory Guide 97 (RG 97), a guide for insurers of most superannuation products and managed investment products issued to retail clients, which are required to make disclosure in accordance with the enhanced fee disclosure regulations. RG 97 provides guidance on how to disclose fees and costs in Product Disclosure Statements (PDSs) and periodic statements.[30] In response to questioning, ASIC confirmed that there have not been any changes at a government level to legislation related to RG 97 since 2013.[31]

2.30 The committee asked ASIC about recent media coverage of RG 97,[32] and whether the Minister's office had contacted ASIC about the media coverage. ASIC responded that it had 'discussions with the minister's office and a brief conversation with the minister.' [33]

2.31 The committee noted ASIC's response to an article published in the *New Daily*, which disputed allegations that RG 97 would not require platforms run by private sector super funds to make costs disclosures in their PDS.[34]

2.32 When asked if ASIC's response to this article was a result of a request from the Minister, ASIC stated:

> No, that was as a result of the fact that some of the articles and some of the information that was out there was inaccurate or wasn't clear. This has been a reasonably contentious area. You are talking about requiring industry participants to undertake more efforts to disclose fees and charges. It's had a lot of media attention and it's had a lot of consultation. There have been concerns expressed by industry participants as to how it worked. We regularly put up information about RG 97 on our website and we have done that again in this case.[35]

30 ASIC, *RG 97 Disclosing fees and costs in PDSs and periodic statements*, <http://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-97-disclosing-fees-and-costs-in-pdss-and-periodic-statements>, accessed 20 September 2017.

31 Mr Ged Fitzpatrick, Senior Executive Leader, ASIC, *Transcript*, 14 September 2017, p. 14.

32 See, for example, The New Daily, *New super rules hit consumers' returns with uneven playing field,* <http://thenewdaily.com.au/money/superannuation/2017/08/31/new-super-rules-hit-consumers-returns>, accessed 20 September 2017.

33 Mr Peter Kell, Deputy Chairman, ASIC, *Transcript*, 14 September 2017, p. 3.

34 ASIC, *ASIC response to New Daily article*, <http://asic.gov.au/about-asic/media-centre/asic-responds/asic-response-to-new-daily-article>, accessed 20 September 2017.

35 Mr Peter Kell, Deputy Chairman, ASIC, *Transcript*, 14 September 2017, p. 3.

2.33 When asked why ASIC chose to only respond to the *New Daily* article, when other media outlets had reported on the same issue, ASIC stated that it wanted to get its response out quickly and explained: [36]

> There are probably two reasons. One is that the New Daily article was probably more comprehensive than the other articles and, in particular, it focused on the issue around how platforms were going to be treated, and that is one thing that we wanted to explain our approach around. The material in the response that we put on our website was in a media release, but the response we put out on our website we hoped covered all the issues that were out there.[37]

2.34 The committee noted that the *New Daily* is owned by industry super funds, and asked ASIC if this had any effect on ASIC's decision to respond to their article. ASIC responded that it was 'not related to the ownership of the publication'.[38]

2.35 When asked about the application of RG 97, ASIC confirmed that RG 97 applies to all types of superannuation. ASIC added that 'it also applies to managed funds, so it is applicable to disclosures about fees across the board'.[39]

2.36 In response to questioning, ASIC confirmed that platforms were not treated differently to other superannuation funds in terms of investment vehicles and the disclosure regime under RG 97:

> Whichever vehicle you use, if you're a platform you will be required to disclose the platform fees and the underlying fees which will be in the product disclosure statement. If you are not a platform, those fees should be disclosed as a result of disclosure through a PDS of the underlying vehicles, which have been described in the regulatory guide as interposed entities or interposed vehicles.[40]

2.37 When asked about whether an investor in a superannuation platform would receive exactly the same disclosures in a PDS as a member of a traditional super fund, ASIC stated:

> Typically, if you're talking about a standard fund, for the fund itself there won't necessarily be a variety of options. That's why, typically, you would have a disclosure statement for the platform

36 Mr Peter Kell, Deputy Chairman, ASIC, *Transcript*, 14 September 2017, p. 4.

37 Mr Peter Kell, Deputy Chairman, ASIC, *Transcript*, 14 September 2017, p. 4.

38 Mr Peter Kell, Deputy Chairman, ASIC, *Transcript*, 14 September 2017, p. 4.

39 Mr Ged Fitzpatrick, Senior Executive Leader, ASIC, *Transcript*, 14 September 2017, p. 8.

40 Mr Ged Fitzpatrick, Senior Executive Leader, ASIC, *Transcript*, 14 September 2017, p. 5.

> and an underlying disclosure statement associated with the products and the platform. For a fund that is a single fund, it would have a product disclosure statement.[41]

2.38 The committee questioned whether an investor in a platform would have to read the PDS for the platform and the PDS for each underlying product to be informed of all relevant fees and costs. While ASIC noted that it would depend on the route the investor has taken through the platform, ASIC recommended platforms 'clearly articulate what would be the total costs underlying through the platform and through the underlying investments and that be provided to the investor.'[42] ASIC added:

> We will be undertaking surveillance of the sector to make sure that the platform operators are ensuring that that information is provided clearly and that there's no gaming or any attempt like that. That's because that would be totally contrary to our policies. So we're alive to the fact that, if a platform operator wanted to obscure things, we want to be onto that and make sure that that doesn't happen.[43]

2.39 The committee was interested in the case where there is no reported fee, as the fee is netted out prior to the investment return. ASIC confirmed that this type of fee structure should be reported, and that it is 'seeking to get to a point where the discussion is not focused solely on issues around fees, for example, but is actually looking at what is the net return, which is a far more useful indicator of the benefits to the consumer.'[44]

ASIC Industry Funding

2.40 On 1 July 2017, industry funding legislation came into effect that will see regulated entities receive an invoice for ASIC's regulatory services delivered in the prior year.[45]

2.41 When asked for an update on the ASIC industry funding model, ASIC provided the following proposed timeframe:

- October 2017: Cost recovery implementation statement published, which will include levy cost pools for each subsector for the 2017-18 financial year
- March 2018: Indicative levies for 2017-18 are to be published

41 Mr Ged Fitzpatrick, Senior Executive Leader, ASIC, *Transcript*, 14 September 2017, p. 13.

42 Mr Ged Fitzpatrick, Senior Executive Leader, ASIC, *Transcript*, 14 September 2017, p. 13.

43 Mr Ged Fitzpatrick, Senior Executive Leader, ASIC, *Transcript*, 14 September 2017, p. 13.

44 Mr Ged Fitzpatrick, Senior Executive Leader, ASIC, *Transcript*, 14 September 2017, p. 8.

45 ASIC, *ASIC Industry funding*, <http://asic.gov.au/about-asic/what-we-do/how-we-operate/asic-industry-funding>, accessed 20 September 2017.

- June 2018: Indicative levies for the 2018-19 year are to be published
- July 2018: Portal opens to stakeholders, where they can enter data from the 2017-18 financial year to enable ASIC to better price what the levies will be
- October 2018: Further cost recovery impact statement published, which will include levy cost pools for each subsector for the 2018-19 financial year
- January 2019: First invoices sent to stakeholders for the 2017-18 financial year.[46]

2.42 The committee was encouraged to hear that ASIC is communicating regularly with regulated entities to help them comply with their obligations, and will be monitoring the implementation of this model in future hearings.

Risk Management

AUSTRAC allegations against CBA

2.43 On 3 August 2017, the Australian Transaction Reports and Analysis Centre (AUSTRAC) initiated civil penalty proceedings in the Federal Court against CBA for non-compliance with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act).[47]

2.44 The committee noted that ASIC had met with CBA in the days prior to the allegations becoming public, however this issue was not raised. When asked whether ASIC was confident that CBA would communicate with ASIC more effectively than it has in the past, the Chairman stated:

> As I said, I met two days before with the chairman of the Commonwealth Bank, the chair of risk and the chair of the audit committee, something I initiated when I became chairman six years ago. There was no mention of what happened. Then I saw the announcement and, about a week later, the chair called me in to apologise. Timeliness and transparency are big issues in this one. As you know, we are looking at them in terms of making inquiries in relation to continuous disclosure, directors' duties, breach of financial services laws and disclosure in financial

46 Mr John Price, Commissioner, ASIC, *Transcript*, 14 September 2017, p. 9.

47 Federal Court of Australia, Chief Executive Officer of the Australian Transaction Reports and Analysis Centre v Commonwealth Bank of Australia, 7 August 2017, <http://www.fedcourt.gov.au/services/access-to-files-and-transcripts/online-files/atr-v-cba>, accessed 17 August 2017.

> statements. That is where we are at the present time. We are gathering large amounts of evidence at the present time.[48]

2.45 ASIC advised that making a determination on these matters 'sometimes depends on the level of cooperation we get.'[49]

2.46 When asked if the current system of risk management is adequate in light of recent issues with CBA, the Chairman commented:

> Do I think there are issues? Clearly, recent events have highlighted that there are issues, certainly with CBA, in terms of their system of internal control. That is something that APRA's new panel will have a look at. I expect there are issues that will emerge from what we are looking at in terms of conduct issues.[50]

Banking Executive Accountability Regime

2.47 In relation to the current system of risk management, ASIC noted the new Banking Executive Accountability Regime (BEAR), announced in the 2017-18 Budget, that will make senior bank executives more accountable and subject to additional oversight by APRA.[51]

2.48 The Chairman commented that the BEAR will deal 'with the prudential issue of accountability of management where there is poor conduct that results in prudential systemic issues.'[52] While noting that the BEAR was a good starting point, the Chairman added:

> What I've said, and I've said this to the Treasurer also, is that probably it's something that needs to be thought of more holistically—that that power also extend to ASIC in terms of dealing with something that may be not a prudential issue to the entity or system, but it actually could be a major conduct issue to shareholders or to customers.[53]

Climate change

2.49 The committee was interested in ASIC's view of a recent speech given by Geoff Summerhayes, APRA Executive Board Member, regarding climate

48 Mr Greg Medcraft, Chairman, ASIC, *Transcript*, 14 September 2017, p. 3.

49 Mr Greg Medcraft, Chairman, ASIC, *Transcript*, 14 September 2017, p. 3.

50 Mr Greg Medcraft, Chairman, ASIC, *Transcript*, 14 September 2017, p. 5.

51 Budget 2017-18, *Banking and Financial Services,* <http://budget.gov.au/2017-18/content/glossies/factsheets/html/FS_Banking.htm>, accessed 28 September 2017.

52 Mr Greg Medcraft, Chairman, ASIC, *Transcript*, 14 September 2017, p. 6.

53 Mr Greg Medcraft, Chairman, ASIC, *Transcript*, 14 September 2017, pp. 6-7.

change challenges and prudential risk,[54] and a legal opinion on directors' duties authored by barrister Noel Hutley SC.[55] In his speech, Mr Summerhayes stated:

> To begin with a generalisation, while climate risks have been broadly recognised, they have often been seen as a future problem or a non-financial problem.
>
> The key point I want to make today, and that APRA wants to be explicit about, is that this is no longer the case. Some climate risks are distinctly 'financial' in nature. Many of these risks are foreseeable, material and actionable now. Climate risks also have potential system-wide implications that APRA and other regulators here and abroad are paying much closer attention to.[56]

2.50 ASIC stated that it was familiar with the speech by Mr Summerhayes and Mr Hutley's legal opinion, however ASIC thought the opinion was 'fairly unremarkable'.[57] In response to questioning about risk management in different markets, ASIC noted that, depending on the circumstances of the company, climate change may be a foreseeable risk. ASIC went on to state that 'depending on the circumstances of the company, what needs to be done to manage those risks needs to be carefully thought about.'[58] ASIC added that:

> As you probably know, ASIC has made some public statements on this, both in its regulatory guide *247 Effective disclosure in an operating and financial review* and in its corporate finance reports that are put out regularly to the market. In those we encourage directors to take a proactive approach to strategy and risk management that highlights risks, such as climate risks and various other risks, and we encourage directors to understand and continually reassess the risks that may be applicable to their business.[59]

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54 APRA, *Australia's new horizon: Climate change challenges and prudential risk*, <http://www.apra.gov.au/Speeches/Pages/Australias-new-horizon.aspx>, accessed 22 September 2017.

55 Mr Noel Hutley SC, *Memorandum of opinion: Climate change and directors' duties*, <http://cpd.org.au/wp-content/uploads/2016/10/Legal-Opinion-on-Climate-Change-and-Directors-Duties.pdf>, accessed 22 September 2017.

56 APRA, *Australia's new horizon: Climate change challenges and prudential risk*, <http://www.apra.gov.au/Speeches/Pages/Australias-new-horizon.aspx>, accessed 22 September 2017.

57 Mr John Price, Commissioner, ASIC, *Transcript*, 14 September 2017, p. 10.

58 Mr John Price, Commissioner, ASIC, *Transcript*, 14 September 2017, p. 11.

59 Mr John Price, Commissioner, ASIC, *Transcript*, 14 September 2017, p. 10.

2.51 On the topic of scenario planning, the committee noted Australia's commitment under the Paris Climate Agreement to 'hold average temperature increase to well below 2°C and pursue efforts to keep warming below 1.5°C above pre-industrial levels.'[60] ASIC indicated that while risk management might include scenario planning, that it is 'very case specific.'[61]

2.52 The committee questioned ASIC on whether it would be concerned if the chair of a publicly-listed company was conducting scenario planning in accordance with a four degree target, rather than two degrees. In response, ASIC stated that 'what would really concern me is if entities' internal risk management processes are not starting to include climate risk as something that has to be considered.' [62] ASIC added:

> As Mr Hutley has indicated, in many circumstances there may be foreseeable risk. In terms of judgements about the extent of that risk and how that risk should be managed, the courts have been loath over many years to second-guess judgements of directors, and so I would need a far greater degree of information about that particular statement—that context, Santos's business—in order to make an informed judgement.[63]

Conclusion

2.53 ASIC has an important role to play in corporate, market, financial services, and consumer credit regulation. ASIC helps to ensure that markets are efficient and fair for both consumers and investors.

2.54 The committee was encouraged to hear that ASIC was concerned about claims that the banks were increasing their profitability by claiming interest rate increases were solely due to regulatory requirements. The committee will continue to scrutinise this process in the future.

2.55 ASIC has also undertaken significant work to prepare for the implementation of the industry funding model, including significant communication and consultation with regulated entities. The committee notes the preparations for the model, and will monitor the implementation at future hearings.

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60 Australian Government Department of the Environment and Energy, *Paris Agreement*, <http://www.environment.gov.au/climate-change/government/international/paris-agreement>, accessed 22 September 2017.

61 Mr John Price, Commissioner, ASIC, *Transcript*, 14 September 2017, p. 11.

62 Mr John Price, Commissioner, ASIC, *Transcript*, 14 September 2017, p. 11.

63 Mr John Price, Commissioner, ASIC, *Transcript*, 14 September 2017, p. 11.

2.56 The committee will also continue to monitor ASIC's performance, particularly in relation to the Government's new banking and financial services initiatives, and will maintain scrutiny of ASIC in relation to its surveillance and enforcement activities. This includes ASIC's investigations into the life insurance industry and the banking sector.

Mr David Coleman MP
Chair
6 December 2017