



COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

SENATE

ECONOMICS LEGISLATION COMMITTEE

Estimates

(Public)

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ECONOMICS LEGISLATION COMMITTEE

Wednesday, 6 April 2022

Members in attendance: Senators Bragg, Chisholm, Gallagher, McDonald, Patrick, Rennick, Roberts, Scarr and Walsh

TREASURY PORTFOLIO

In Attendance

Senator Birmingham, Minister for Finance

Senator Hume, Minister for Superannuation, Financial Services and the Digital Economy

Department of the Treasury

Dr Steven Kennedy, Secretary

Corporate and Foreign Investment Group

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

Ms Cristy England, Assistant Secretary, People and Organisational Strategy Branch [by video link]

Mr Adrian Daley, Acting Assistant Secretary, People and Organisational Strategy Branch [by video link]

Ms Tarnya Gersbach, Chief Financial Officer [by video link]

Mr Rob Raether, First Assistant Secretary, Business Liaison Unit [by video link]

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

Ms Shannon Kenna, Assistant Secretary, Communications Branch

Mr Peter Johnson, Acting First Assistant Secretary, Foreign Investment Division

Ms Amelia Henty, Assistant Secretary, Policy and National Security Branch

Ms Sharon Nyakuengama, Assistant Secretary, Compliance Branch

Mr Andrew Deitz, Assistant Secretary, Investment Review Branch

Macroeconomic Group

Mr Luke Yeaman, Deputy Secretary, Macroeconomic Group

Mr Trevor Power, First Assistant Secretary, Macroeconomic Conditions Division

Mr Damian Mullaly, Assistant Secretary, Macroeconomic Forecasting Branch

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

Ms Vicki Wilkinson, First Assistant Secretary, International Economics and Security Division [by video link]

Ms Katherine Tuck, Assistant Secretary, Indo-Pacific and National Security Branch [by video link]

Ms Christina Garbin, Assistant Secretary, Multilateral Forums Branch [by video link]

Mr Patrick D'Arcy, Assistant Secretary, Trade, International and Industry Branch

Mr Jim Hagan, Chief Adviser International

Fiscal Group

Ms Jenny Wilkinson, Deputy Secretary, Fiscal Group

Mr Brenton Goldsworthy, First Assistant Secretary, Budget Policy Division

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

Ms Philippa Brown, First Assistant Secretary, Labour Market, Environment Industry and Infrastructure Division

Ms Lisa Elliston, First Assistant Secretary, Social Policy Division

Mr David Webster, First Assistant Secretary, Infrastructure and Project Financing Agency [by video link]

Revenue Group

Ms Maryanne Mrakovcic, Deputy Secretary, Revenue Group

Mr Simon Writer, First Assistant Secretary and Chief Counsel, Law Division

Ms Katrina Di Marco, First Assistant Secretary, Tax Analysis Division

Mr Paul McCullough, First Assistant Secretary, Individuals and Indirect Tax Division

Mr Martin (Marty) Robinson, Acting First Assistant Secretary, Corporate and International Tax Division

Markets Group

Ms Meghan Quinn, Deputy Secretary, Markets Group

Mr James Kelly, First Assistant Secretary, Financial System Division

Ms Katherine (Kate) O'Rourke, First Assistant Secretary, Consumer Data Right Division [by video link]
Ms Belinda Robertson, Assistant Secretary, Data Economy and Consumer Data Right Governance Branch
Ms Emily Martin, Assistant Secretary, Regulatory Frameworks Branch
Mr Robert Jeremenko, First Assistant Secretary, Market Conduct Division
Mr Tom Dickson, Assistant Secretary, Corporations Branch
Mr David Pearl, Assistant Secretary, Competition and Consumer Branch
Ms Lynn Kelly, First Assistant Secretary, Retirement Income Policy Division [by video link]
Ms Melissa Bray, Assistant Secretary, Advice and Investment Branch
Mr Luke Spear, Assistant Secretary, Member Outcomes and Government Branch
Mr Adam Hawkins, Assistant Secretary, Tax and Transfer Branch
Mr Peter Cully, First Assistant Secretary, Small and Family Business Division
Mr Gino Grassia, Assistant Secretary, Small and Family Business Branch
Ms Mary Jeffries, Assistant Secretary, Payments Performance Branch

Australian Taxation Office

Mr Jeremy Hirschhorn, Acting Commissioner of Taxation
Mr Bradley Chapman, Acting Chief Operating Officer [by video link]
Ms Deborah Jenkins, Acting Second Commissioner, Client Engagement Group
Ms Melinda Smith, Chief Service Delivery Officer [by video link]
Ms Kirsten Fish, Second Commissioner, Law Design and Practice [by video link]
Mr Ramez Katf, Chief Information Officer [by video link]
Ms Janine Bristow, Chief Finance Officer
Ms Emma Rosenzweig, Deputy Commissioner, Superannuation and Employer Obligations [by video link]
Mr Nick Shizas, Assistant Commissioner, General Counsel [by video link]

Australian Charities and Not-for-profits Commission

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

Australian Securities and Investments Commission

Mr Joe Longo, Chair
Ms Sarah Court, Deputy Chair
Ms Karen Chester, Deputy Chair
Mr Sean Hughes, Commissioner [by video link]
Ms Danielle Press, Commissioner [by video link]
Ms Cathie Armour, Commissioner [by video link]
Mr Warren Day, Chief Operating Officer
Mr Chris Savundra, General Counsel
Mr Greg Kirk, Executive Director, Strategy Group [by video link]

Australian Competition and Consumer Commission

Ms Gina Cass-Gottlieb, Chair
Mr Scott Gregson, Chief Executive Officer
Mr Tim Grimwade, Executive General Manager, Consumer Product Safety
Mr Rami Greiss, Executive General Manager, Consumer and Fair Trading
Ms Melinda McDonald, Executive General Manager, Competition [by video link]
Ms Sarah Proudfoot, Executive General Manager, Infrastructure Regulation [by video link]
Ms Suzie Copley, Acting Executive General Manager, Mergers, Exemptions, and Digital [by video link]
Ms Morag Bond, General Manager, Digital Platforms Branch [by video link]
Mr Paul Franklin, Executive General Manager, Consumer Data Right [by video link]

Mr Matthew Schroder, General Manager, Infrastructure and Transport - Access and Pricing Branch [by video link]

Australian Prudential Regulation Authority

Mr Wayne Byres, Chairman

Mrs Helen Rowell, Deputy Chair

Mr John Lonsdale, Deputy Chair [by video link]

Ms Margaret Cole, Executive Board Member

Ms Renee Roberts, Executive Director, Policy and Advice Division

Mrs Suzanne Smith, Executive Director, Superannuation Division

Reserve Bank of Australia

Ms Michele Bullock, Deputy Governor

Dr Christopher Kent, Assistant Governor (Financial Markets)

Committee met at 09:02

CHAIR (Senator Scarr): I declare open this meeting of the Senate Economics Legislation Committee. The Senate has referred to the committee the particulars of proposed expenditure for 2022-23 and related documents for the Treasury portfolio, the Industry, Science, Energy and Resources portfolio, and elements of the Infrastructure, Transport, Regional Development and Communications portfolio. The committee may also examine the annual reports of the departments and agencies appearing before it. The committee has set 14 April 2022 as the date by which senators are to submit written questions on notice, and 27 May 2022 as the date for the return of answers to questions taken on notice. Under standing order 26, the committee must take all evidence in public session. This includes answers to questions on notice.

I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee.

The Senate by resolution in 1999 endorsed the following test of relevance of questions at estimates hearings: any questions going to the operations or financial positions of the departments and agencies which are seeking funds in the estimates are relevant questions for the purposes of estimates hearings. I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has the discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. The Senate has also resolved that an officer of a department of the Commonwealth shall not be asked to give opinions on matters of policy, and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. In particular, I draw the attention of witnesses to an order of the Senate of 13 May 2009 specifying the process by which a claim of public interest immunity should be raised, which I now incorporate in *Hansard*.

The extract read as follows—

Public interest immunity claims

That the Senate—

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

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

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

(1) If:

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

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

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

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

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

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

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

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

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

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

(13 May 2009 J.1941)

(Extract, Senate Standing Orders)

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

An officer called upon for the first time to answer a question should state their full name and position for the *Hansard* record, and witnesses should speak clearly into the microphone. Please make sure all mobile phones are switched off or turned to silent. I remind senators and witnesses in the hearing room that microphones remain live unless I instruct otherwise, for example, at suspension or adjournment. For witnesses participating by videoconference, please mute your microphone as the default, and unmute your microphone when speaking.

I ask members of the media to follow the established media guidelines and the instructions of the committee secretariat. As set out in the guidelines, senators' and witnesses' laptops, mobile phones, other devices and personal papers are not to be filmed or photographed. I remind everyone in the gallery that they are not permitted to speak or interfere with the proceedings or with witnesses at any point during the hearing. Security is present and they will be asked to remove anyone who does not follow these instructions.

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

Department of the Treasury

[09:05]

CHAIR: The committee's proceedings today will commence with the Treasury portfolio, beginning with the Treasury's Corporate and Macroeconomic Group. The hearing will then follow the order as set out in this morning's adopted program. I now welcome Senator the Hon. Simon Birmingham, Minister for Finance. I also welcome officers from the Treasury. Would the minister or officers like to make an opening statement?

Senator Birmingham: Good morning, Chair. Good morning, Senators. It sounds like you've read that opening statement a couple of times this week.

CHAIR: I have. It's one of my favourite readings.

Senator Birmingham: Indeed. No opening statement from me. Thank you, Chair.

Mr Yeaman: No, thank you, Chair.

CHAIR: Senator Gallagher.

Senator GALLAGHER: I have some questions for Corporate first, if I could. My first one is about the ad 'Australia's Economic Plan'. Is that part of the campaign that has the shoes in it online? Is this part of the same one?

Ms Kenna: Yes, it is.

Senator GALLAGHER: That went through all of the approvals through the government advertising process?

Ms Kenna: Yes.

Senator GALLAGHER: Can you give me an update on the cost of the campaign?

Ms Kenna: No further update on expenditure since last week.

Senator GALLAGHER: When would you normally update that? I think last week you gave me updates from the 6th up to that date.

Ms Kenna: As at the end of the month, basically.

Senator GALLAGHER: Have there been any changes to the campaign or any additional purchasing of ads?

Ms Kenna: No.

Senator GALLAGHER: I think last week you were going to check for me what the out-of-home components meant. You weren't sure whether there were cinema ads?

Ms Kenna: That's correct. I can confirm there is cinema as part of the buy, online and digital video, regional press, regional out-of-home advertising, social media advertising, TV, print and radio.

Senator GALLAGHER: In respect of the print one, this is what runs, is it?

Ms Kenna: That's one of the options, yes.

Senator GALLAGHER: And there are other options, are there?

Ms Kenna: That's correct.

Senator GALLAGHER: I can't recall from last week whether you were able to give me a breakdown of what you're spending on print?

Ms Kenna: No, because we won't have those figures until the media buy is actually finalised.

Senator GALLAGHER: When will the media buy be finalised?

Ms Kenna: It's due to be finalised on 16 April or obviously sooner if the federal election is called.

Senator GALLAGHER: So, that's when you get the final figures?

Ms Kenna: That's correct.

Senator GALLAGHER: Do you specify the proportions you'd like to see with how that spend is placed?

Ms Kenna: Yes, we work with Universal McCann, which is the whole-of-government media buyer, and work out how to break down across the different channels how we are going to best deliver the campaign. That's based on their advice given their expertise in the field.

Senator GALLAGHER: This is probably a question for the minister. Does that look like a Liberal Party ad to you? When I opened the paper, I thought that was a Liberal Party ad. It's the same colour you use.

Senator Birmingham: Not especially, aside literally from the fact that there's a shade of blue in it—not even the same shade of blue in our campaign material; otherwise, it looks clearly like a government ad.

Senator GALLAGHER: I must say that when I opened it I thought that is a Liberal Party ad. It looks very similar, I imagine, to the ones you are going to be running in the campaign. Does it strike you as a Liberal Party ad? You've seen a lot of them?

Senator Birmingham: I have seen a few and, no, I suspect there'll be much stronger Liberal Party branding on Liberal Party ads, and a much stronger call to action.

Senator GALLAGHER: It's sort of a subliminal Liberal branding, perhaps, this one. We'll see where that goes in the end. On Corporate and some appointments that have been recently made—there have been two made to the Productivity Commission. Have there been other appointments that the Treasurer has made in the last two weeks? Are they all notified? Could you talk me through how that happens? If the Treasurer makes an appointment, is there a time where they have to be notified or announced? It depends on the position, I imagine is the answer, is it?

Ms Kelley: Normally it's notified on 21 March. Senate order 15 report was submitted for tabling, and that report provided a list of departmental and agency appointments and vacancies covering the period 25 January to 10 March 2022 inclusive. In that report, the Productivity Commission positions in particular were noted as vacancies, and there were some further announcements by the Treasurer since then. Normally we obviously abide by the Senate order reporting, but obviously there are announcements post that reporting as well.

Senator GALLAGHER: Mr Stokie and Alex Robson have been appointed to the Productivity Commission. Both are former Liberal staffers, I understand, Minister? You worked with these people?

Senator Birmingham: Which individuals?

Senator GALLAGHER: Martin Stokie, appointed as Commissioner of the Productivity Commission, and Alex Robson appointed as Deputy Chair of the Productivity Commission. Both are former Liberal staffers.

Senator Birmingham: Mr Robson, I'm aware, has a very rich and deep CV in terms of his work, including most recently as Australia's Ambassador to the OECD. I think his economic skills and background are extensive. I should say 'Professor' Robson in relation to Alex Robson. I'm not aware of whether I have met with Mr Stokie, but I gather he's currently the head of PwC's economic and policy team, which obviously denotes his high economic and policy skills, and that they are well regarded not just inside government but outside of government.

Senator GALLAGHER: Yes, I'm sure. I'm not questioning their CVs. Is there a merit process for these positions? Do they go through a merit process of applications or a shortlist of people being considered?

Ms Kelley: Treasury commenced an open merit based selection process in October 2021 to permanently fill the existing and potential commissioner vacancies at the Productivity Commission. We engaged an executive search firm, NGS Global, to assist the department in the selection process. The positions were advertised in the *Australian Financial Review* and the *Australian* newspapers on 15 and 16 October 2021. They were also advertised on the Treasury website, LinkedIn and Seek. Applications closed in November, and the normal processes were followed in line with the governing legislation and the Australian Public Service Commission's merit based selection process that apply for seeking government and Governor-General approval to appoint new members to the Productivity Commission. And then four new appointments, as you were aware, were announced in March.

Senator GALLAGHER: Once you have gone through that, do you provide a shortlist to the Treasurer, or do you provide, 'This is a list of candidates who've applied who meet the criteria', and then it's a matter for the Treasurer?

Ms Kelley: That is correct.

Senator GALLAGHER: That would have happened in this case?

Ms Kelley: That is correct, yes.

Senator GALLAGHER: Do you know how many applications you've had for those positions?

Ms Kelley: I'd have to take that on notice. I don't have that with me.

Senator GALLAGHER: I noticed there have been a few other appointments to the competition tribunal and the energy regulator. Are similar processes taken for those in terms of applications and advertisement of positions, or is that different because the legislation might be different?

Ms Kelley: There are different rules governing different appointments, but for the particulars of those ones it probably is best to talk to the Markets Group when they're here because they're the group that actually works with those agencies.

Senator GALLAGHER: Can we expect more appointments in the next few days?

Senator Birmingham: I'm not sure as to whether the Treasurer has any others to announce or make at present, as to what's on his desk. If he does, I'm sure he'll make them or announce them in the usual way.

Senator GALLAGHER: We'll wait and see on that front. I thought I just had one more section for Corporate, but I can't think of what it is at the moment, sorry.

Senator CHISHOLM: I have some questions in relation to the spending in the budget, and statement 3 on page 73 of Budget Paper No. 1:

This Budget delivers the next stage of Australia's plan for a stronger future with \$39.3 billion in total decisions. The government has committed an additional \$39 billion of spending in the budget—is that correct?

Mr Yeaman: I believe that's correct, yes, in broad terms.

Senator CHISHOLM: Page 73.

CHAIR: It is the fourth paragraph on page 73, if that helps.

Mr Yeaman: Yes, I have that now. Thank you.

Senator CHISHOLM: Do you expect this additional spending to have a material impact on inflation?

Mr Yeaman: The short answer is, no, we don't. The overall fiscal position is what we look at when we think about inflationary impacts. When you look at the fiscal consolidation that's occurring over the course of the forward estimates and between the previous year and this financial year, there's quite a significant fiscal contraction built in. At the margin, all additional spending in some way finds its way into the economy, and that will have an impact. In terms of materiality, when we think about size, this is a significant package in terms of cost-of-living impacts, but when you think about it from a broader macro perspective and the size of the overall economy we don't expect that to have a material impact on inflation.

Senator CHISHOLM: What about the impact on interest rates with that level of spending?

Mr Yeaman: It's the same broad answer. When you think about the material impact, the size of the overall economy and other factors at play currently, including in particular global factors in play and that the Reserve Bank is watching, we don't believe that level of spending will materially change the profile of interest rates.

Senator CHISHOLM: I also had some questions on the preparation of the budget. We had Mr Kennedy on Friday talk about price increases over the last year and occurring before the war in Ukraine started. When did the Treasurer first ask for advice on the fuel excise cut?

Mr Yeaman: That may be a question for Revenue Group later in the day. Those requests would have gone to our Revenue Group or our Fiscal Group. I don't have the precise date of that. We think about the macro perspective. Policy measures are matters for Fiscal Group and Revenue Group. I'm happy to flag those questions with them before they arrive.

Senator CHISHOLM: Do you want me to keep going?

Senator GALLAGHER: Macro doesn't have anything to do with putting together advice around the cost-of-living measures in the budget?

Mr Yeaman: Understanding it is a somewhat fine distinction, we look at the overall macro impacts on the economy of various measures. We look at the broad macro settings. But the design of policy measures and advice around those is a matter for Fiscal Group and Revenue Group.

Senator GALLAGHER: You would think there is some crossover, because presumably you would be advising on the cost-of-living pressure. Or the government would seek advice from your area, through Dr Kennedy.

Mr Yeaman: If I can assist, going to the earlier question, we think about the overall fiscal stance. We think about what the appropriate settings are for fiscal policy on the whole. We think about what the overall impact of the suite of measures would be on the macro economy. But questions around the design of measures—

Senator GALLAGHER: The specific measures.

Mr Yeaman: We can assist in the context and frame the broader advice for government, but as to how government then responds, the advice on that is a matter for Fiscal Group.

Senator GALLAGHER: So, your role is to say, 'Yes, there are cost-of-living pressures across the economy. A response to this in the budget is sensible', and then it's off to fiscal and revenue to work out what the specifics of that are?

Mr Yeaman: To an extent, yes. We would provide a view on what we think the overall inflation profile would look like, what the international factors are that are driving inflation here in Australia, and then whether it's appropriate or not to provide policy support for individuals would be advised from our Fiscal Group.

Senator GALLAGHER: Do you provide advice on the issue of wages? Obviously you do in terms of the forecasts. What about in terms of the case before the Fair Work Commission? Do you have a role there?

Mr Yeaman: It's primarily with our Fiscal Group. We have a labour market team in Fiscal Group that looks at broader policy settings around wages and the labour market. We support them heavily and Mr Power's team supports them heavily in providing factual information on the state of the economy, and recent trends in those key aggregates, and our forecast, our view, of the outlook going forward.

Senator GALLAGHER: Mr Power, that's your area, is it? You provide advice to fiscal, did you say?

Senator Birmingham: Mr Power is head of the Macroeconomic Conditions Division.

Senator GALLAGHER: I'm just trying to recall where you said Mr Power provides advice to.

Mr Yeaman: We feed in input. In terms of how Treasury engages in those processes, that engagement is led—

Senator GALLAGHER: On the wage case.

Mr Yeaman: On the wage case. That is led by our Fiscal Group. They work and engage on our submission to that through government. Mr Power's division supports that process by providing advice on the macroeconomic outlook, forecasts and recent trends in key aggregates around wages and the labour market.

Senator GALLAGHER: I read the government submission last night—I think it must have been published on Friday—to the wage case before the commission. It has a heavy Treasury flavour to elements of it, with bits that you see basically republished from here in it.

Mr Yeaman: Yes.

Senator GALLAGHER: So, that's your area, is it, Mr Power? Why does it come through Fiscal Group?

Mr Power: The contribution that we make, as Mr Yeaman said, is to providing the overall wages outlook. The reason I would say it's led out of Fiscal Group is because with the submission, if you like, it's a labour market policy distinction. We provide the macro view, and the policy component is done out of Fiscal Group. Of course, that submission goes to what sorts of actions the Fair Work Commission might take. That's the distinction I guess that we draw inside Treasury.

Senator GALLAGHER: Minister, have you read the government's submission to the annual wage review?

Senator Birmingham: No, not in detail; I haven't.

Senator GALLAGHER: Is it a cabinet-approved document? You would think it would go through cabinet, wouldn't it? It's the Australian government's submission to the Fair Work Commission.

CHAIR: Senator Gallagher, I'm struggling with how we are dealing with the macro group within Treasury, talking about the submission of the government to the Fair Work Commission.

Senator GALLAGHER: It's linked to the issue of wages.

CHAIR: There are many things that are linked to the issue of wages. That's an extraordinarily—

Senator GALLAGHER: And it has large components out of this budget as part of the submission?

CHAIR: Yes, I am sure, but there's still the question as to whether or not it falls in this section of the program.

Senator GALLAGHER: Where would you suggest it falls?

CHAIR: Obviously, there are industrial relations hearings occurring.

Senator GALLAGHER: No, I have questions around—

CHAIR: It would properly fall within the Fair Work Commission. If the minister is happy to answer the questions, I'm happy to provide the minister with the opportunity.

Senator GALLAGHER: We had long discussions about wages here last week. Those were all in order.

Senator Birmingham: There are many different pathways that a document becomes an Australian government document or submission to a different review. They certainly aren't all cabinet sign-off. They can be signed off by cabinet committees, subcommittees or indeed through processes of approval between the relevant ministers and the Prime Minister.

Senator GALLAGHER: But you don't recall this one? You don't recall whether you've seen it or whether it went to cabinet?

Senator Birmingham: I think the process for this one is between relevant ministers and the Prime Minister.

Senator GALLAGHER: Could you check that for me, because it doesn't make that clear, I don't think, on the submission. It says on behalf of the Australian government. I would have thought it would have been a document that the cabinet had signed off on.

Senator Birmingham: All documents in that sense are published on behalf of the Australian government, from different departments, agencies, et cetera, and that doesn't mean that they've all walked through the cabinet room.

Senator GALLAGHER: But considering how critical wages are in the cost-of-living discussion, why is it that it's essentially a repeat of previous government submissions to the wage review? It's almost identical to ones that have been handed to the Fair Work Commission in recent years, and it doesn't seek an increase in line with the cost of living?

Senator Birmingham: We touched a little bit last week with one of your colleagues in relation to what is an agreed government position in relation to the role that we play in the annual wage review as a government, and that is to provide information around economic conditions, labour market conditions and other factors to help the commission in their deliberations. The commission, I'm confident, will determine an increase in minimum wages, but it is their decision to determine what that increase is. The role that we think government can most usefully play is to assist the commission through the provision of factual information. The submission is built each year off the back of the type of factual information that we have available to us. The facts change, but if it has a similar look to it, that's because it is the same sort of dataset, the same sort of factual information that we are providing, updated for the facts of this year as compared with previous years.

Senator GALLAGHER: For Australia's lowest-paid workers, the government's submission is silent on whether there should be a wage increase in line with the cost of living.

Senator Birmingham: The government fully expects that there will be a wage increase. The question for the commission will be how much.

Senator GALLAGHER: You don't think the government has a role in advocating on or forming a view about what that might be and at least keeping up with the cost of living?

Senator Birmingham: We don't think it's the government's job to legislate and establish an independent umpire to make the decisions about what that minimum wage rate should be and at the same time for the government to present a separate view itself as to what it should specifically be. We have the independent umpire for a reason. The different parties all make their submissions. We think the government plays the most constructive role by providing all of the potential analysis and information to help the commission make the most informed decision possible to help low-income Australians and those in receipt of the minimum wage to receive a fair wage rise, one that is commensurate with inflationary and other conditions. But equally for the commission to make sure that they are making a wage determination that also takes into account other factors in the economy in terms of its impact on the labour market, inflation and the like.

Senator GALLAGHER: I think the government has been clear that you want to see wages get moving. The RBS certainly has. The Treasury Secretary has made comments about the need to see wages growth. This is the opportunity for the government to actually say that in a submission to the Fair Work Commission. I agree with not putting a figure on it. I don't think we're asking you to do that. But I am intrigued as to why you've basically sent the same submission that you've sent for the last three years. I think 2020 was slightly different, because of the COVID pandemic, and you made some separate comments there. But as to why wages growth is so important—the government would not express a view on it to Australia's lowest-paid workers.

Senator Birmingham: Our approach does stand in contrast to the fact that the last Labor government didn't make any submission at all in its final years.

Senator GALLAGHER: So, what, we're going to go back nine years and blame the Labor Party for this?

Senator Birmingham: No.

Senator GALLAGHER: They did make submissions in the past and they did argue for wage increases in line with cost of living; yours doesn't even do that.

Senator Birmingham: The last time you had the chance to you didn't make a submission at all. The approach we've taken is a consistent approach, which is one of presenting all of the information there. The government would wish to see Australians receive the largest possible wage increase, subject to all of the other factors that the Fair Work Commission has to weigh around the impact of that wage increase on labour market conditions, on inflationary conditions and on other economic factors. It's why we have this process in place through the Fair Work Commission that enables employee and employer representatives to make their cases and their arguments quite transparently, to present their evidence, and the government provides its evidence and information to assist the commission as a government-established entity with the task of independently determining the minimum wage rates, to fulfil that task with as much of our expertise and analysis available to it. But we're not in the business of creating a dog and telling it when to bark in that sense. The commission is there to make those determinations independently and to do so on behalf of the nation and on behalf of government.

Senator GALLAGHER: But you don't see the Australian government's role as, in its submission, forming a view about whether a pay rise in line with the cost of living is appropriate? You actually don't express that in your submission. So, it's not clear what the government is arguing for. That's what submissions are for, aren't they, to argue a particular point of view?

Senator Birmingham: At its heart, that's the job the commission is undertaking.

Senator GALLAGHER: Yes, based on submissions.

Senator Birmingham: It's to determine what pay rise is appropriate weighing the different factors of cost-of-living pressures or inflationary pressures, but also the impact of any rise on inflation or on the labour market, the balance between the impacts in terms of delivering a wage rise to employees, but also the viability and ability of employers to grow and create more jobs or opportunities. They're matters for the commission to weigh and determine. That's clear in terms of the purpose of this activity. We think the government's most useful role cannot be to become an advocate in that process for one side or the other of the arguments, but to ensure the commission is best informed to come to a view that is fair for working Australians that also delivers optimal outcomes for future economic growth of the nation.

Senator GALLAGHER: Does the government support an increase to minimum award wages?

Senator Birmingham: We will support whatever increase the commission determines.

Senator GALLAGHER: But does the government support an increase to the award wage of minimum work—

Senator Birmingham: We expect the commission will determine an increase.

Senator GALLAGHER: But do you support it?

Senator Birmingham: We support the commission in their determination and we will support whatever that increase is.

Senator GALLAGHER: Why can't you say whether or not the government supports an increase for minimum wage workers in this country? Why is that so hard?

Senator Birmingham: It's not hard. We—

Senator GALLAGHER: It is hard; you're not doing it.

CHAIR: Senator Gallagher, you've asked the same question three times. I expect you're not going to get a different answer.

Senator Birmingham: We expect the commission will determine an increase. We support the commission in their work through the provision of information, and we will support whatever the size of increase the commission determines.

Senator GALLAGHER: You have to, don't you? You have to support it once the determination has been made.

Senator Birmingham: We have an independent commission and we support it in its work.

Senator GALLAGHER: But I'm asking whether or not you support an increase for minimum wage workers in this country. Does the government support that?

Senator Birmingham: That's the purpose of the process that's underway, and we support that process with the information that we provide, and we will support the outcome of that process. We don't see government as an advocate in that process. There are plenty of advocates fronting up to the Fair Work Commission in that process. We see government as providing the assistance of our analysis and information to help the commission come up with the fairest possible outcome in response to the arguments of the different advocates.

Senator GALLAGHER: So, you support a process, you'll support the outcome, but you'll stop short of saying whether the government actually supports a wage increase for people earning 20 bucks an hour?

Senator Birmingham: We fully expect the commission will determine a wage increase, and we support them in that work and we will support whichever figure they come up with in terms of its implementation.

CHAIR: Senator Gallagher, two minutes.

Senator GALLAGHER: The point I'm making is your submission doesn't support an increase. You sitting here are not supporting an increase. Why?

Senator Birmingham: Are you proposing that we should put a figure on it?

Senator GALLAGHER: No, I'm not.

Senator Birmingham: So, you—

Senator GALLAGHER: I'm trying to get you to say—

CHAIR: Order! Minister, whilst I understand there's a political nature to this discussion, of course, it's a role of members of the committee to ask the questions, not the Minister to ask the questions to members of the committee. Senator Gallagher, you have the call.

Senator GALLAGHER: I've already said I wasn't asking for a figure from the government, I was asking whether or not you supported an increase for the lowest wage workers in this country, around 2.7 million of them, who are relying on this case. Previous governments have made applications through their submission that they support an increase, for example, in line with the cost of living. Your submission does not do that. We know how important it is to get wages growing. Your budget has the lack of wages growth as a particular feature, and yet you're not playing any active role in arguing the case for the lowest paid workers, which presumably will flow through to the most needy families in the country. I just can't understand why you would be doing this, and why it would be so hard for you to actually form a view as the government.

Senator Birmingham: We don't follow the gesture politics of your side, which seems to be of this view. You've just confirmed it here in terms of the minimum wage case. It's also your position in terms of the case in relation to aged care workers that you want to somehow stand there and say, 'There should be an increase, but we won't say how much.' So, you're going to play this funny gesture politics of dangling out—

Senator GALLAGHER: It's not gesture politics. It's leadership.

CHAIR: Senator Gallagher, the minister has a right to finish his answer, and this will be the last answer before I have to share the call.

Senator Birmingham: They're dangling out a carrot but not saying whether it's 10 cents or \$10 in terms of what the view of the Labor Party is in those matters. We're holding a principled position. The principled position is that we have an independent umpire in the Fair Work Commission. We back them in their work. We fully expect them to determine an increase in the minimum wage. We support them going through that with all of the evidence and information that we, as government, can provide. We will support whatever independently determined outcome they come to. We don't seek to put government on one side of the proponents or the other in the debate that is there, but to ensure that we get the optimal outcome for low-income workers in terms of the size of the wage increase that they receive and the optimal outcome also for the operation of the Australian economy and businesses to keep jobs growth strong and our economic growth strong. In terms of driving stronger wages growth, it's why we have in this budget measures in relation to skills, digital investment and infrastructure—all designed to help in terms of the productivity of the country, all pointing to the fact that as we move out of the extraordinary disruptions of COVID, real wages growth is forecast from 1 July this year moving through each of the forward estimates years thereafter.

CHAIR: Thank you, Senator Gallagher.

Senator GALLAGHER: I think I just have to respond to—

CHAIR: No, sorry. Senator Gallagher, you don't have to respond.

Senator GALLAGHER: It's not gesture politics.

CHAIR: Order! You don't need to respond.

Senator GALLAGHER: I do need to respond.

CHAIR: No, you don't need to respond. Order!

Senator GALLAGHER: You can't just say that on the record and then not have a response.

CHAIR: Order!

Senator GALLAGHER: On an issue like this, we won't have that.

CHAIR: Order! You'll have an opportunity to have the call again during this session. Minister, I just want to flesh out this issue a bit further. In terms of the federal government's approach to making these submissions, the reference was made to identical submissions. It's really a question of the approach has been consistent in terms of making the submission, is that correct, in terms of the purpose of the submission made by the federal government and the information it should contain in order to inform the work of the Fair Work Commission?

Senator Birmingham: That's right. The submission details the increased strength of the labour market, the improvements in employment outcomes, and it also details the impacts that we're seeing in relation to inflation, some of the expectations around that as well. They're all important factors for the commission to weigh in determining what is an optimal minimum wage increase.

CHAIR: So, from the federal government's perspective, it's a question of providing all the relevant information and analysis which the organs of the federal government produce in terms of considerations which the Fair Work Commission, in terms of discharging its independent obligations, would be interested in, and making sure that the Fair Work Commission is armed with the benefit of that information and analysis in terms of coming to its independent determination; is that the approach?

Senator Birmingham: That's right. The commission receives a wide range of submissions, most of them from advocates and proponents arguing for different levels of increase to the minimum wage. From the government's perspective, we provide them with as much analysis and as much expertise as can be furnished through the submission approved by the Treasurer and Minister Cash through the processes of their agencies and departments, and from there, with the type of analysis we have canvassed before at this committee, the Fair Work Commission is able to make, we hope and trust, the most informed determination that keeps the labour market strong, keeps the economy growing, and helps minimum wage Australians with an appropriately calibrated wage increase.

CHAIR: And that, indeed, is the role of the Fair Work Commission, not of the government, to actually independently assess all of those factors and make an independent determination; is that correct?

Senator Birmingham: That's what the legal structure of the Fair Work Commission is established for—to make those independent determinations in this annual process that they undertake to do in a routine way. As I said to Senator Gallagher before, government fully expects it to be a wage increase; the only question is, what is the scale of that increase? And in terms of the scale of that increase, all of the information we provide, we hope, will lead the commission to make the best decision possible for Australian workers both of today in terms of what they receive in their take-home pay, but also into the future in terms of the continued growth of jobs in the economy to provide opportunities for those still entering the labour market.

CHAIR: So, it's your expectation there will be an increase, but the magnitude of that increase is a matter properly within the jurisdiction of the Fair Work Commission, and the government will, of course, respect the determination which is made by the Fair Work Commission, and that's how the system works; is that correct?

Senator Birmingham: The government respects the outcome of the determination of the Fair Work Commission. We fully expect there to be an increase. The size of that increase is one for the commission to determine consistent with their independent mandate and against the expertise and information they receive and the submissions and arguments they hear.

CHAIR: Those submissions are from a large array of stakeholders who I am sure will all be prosecuting their own cases, representing their own constituents and stakeholders fiercely as they always do in these matters; is that correct?

Senator Birmingham: They certainly receive a wide range of submissions. I am sure some contain greater expertise and analysis than others; all contain various opinions. The government believes that the most constructive role we can play to assist the commission in coming to an evidence based conclusion is for us to provide as much of the analysis, evidence and information that can assist the commission to distil the opinions and arguments of the different proponents in the process down to something that will support a fair outcome for workers, businesses and the economy.

CHAIR: Thinking that through, that's really important, isn't it, in the context of the information as it's presented, the information and analysis as presented by the government has an objective flavour to it in the sense that this is the analysis of Treasury or the other relevant departments with respect to the economic factors; it doesn't have attached to it a submission calling for a particular outcome, which provides an objectivity in terms of the data and analysis provided by the federal government for the benefit of the Fair Work Commission? Is that correct?

Senator Birmingham: I think there would be a risk if government appeared to be taking the side of one party or the other party through such a case that then the objectivity of the analysis and information we're presenting could potentially be undermined. Whereas by keeping to a factually based approach in relation to the information and analysis provided, we trust it helps the commission come to the best possible outcome for wage earners in Australia and the economy.

CHAIR: Absolutely; I agree with that. Mr Yeaman, I just want to ask you some questions about inflation pressures, which is obviously a relevant issue in terms of the work being undertaken by the Fair Work Commission. How does Australia place, from an international perspective, in terms of inflationary pressures at the moment?

Mr Yeaman: I will pass to my colleague Mr Power, but at a high level we are certainly seeing much more muted inflation pressures here in Australia than we have seen globally, particularly in the US, UK and a number of other countries across Europe. My colleague Mr Power may want to add some facts to that.

Mr Power: Inflation has risen in Australia, but as you've noted, other countries, particularly in Europe and also the US, have experienced higher inflation over the last year or so. That's due to a few factors. One of them is energy. Obviously there are recent impulses coming through from oil but price pressures are already building on some of those economies, particularly around electricity and other fuels. One of the other factors which I think Dr

Kennedy spoke to last week was how tightness in the labour market, particularly in the US and UK, also played into that. In some cases that's because participation hadn't come back in the same way that it had in Australia following the pandemic. From a relative perspective, Australia's inflation at around 3.5 per cent at present is well below where we are in the US or UK, which—

CHAIR: Sorry, how far below?

Mr Power: Broadly, it's about four percentage points. The US is in the sevens. For the UK, a recent number I think was 6.2. I'm happy to confirm and check those. Basically, between we're between three and four percentage points in a through-year sense against those comparable economies.

CHAIR: Our inflation rate is about 40 per cent or so lower than it is in some of those other OECD countries; is that correct?

Mr Power: That's right, particularly against those economies I just mentioned, but in other European countries again you're seeing significant inflation in Germany and others in Europe.

CHAIR: I'm just interested in how that compares historically in terms of Australia's inflation rate being so much lower, which obviously has tremendous benefits to Australians, than other OECD countries? How often does that occur, that level of discrepancy?

Mr Power: You would have to go back and look at the data.

CHAIR: I'm not asking you to take it on notice. I'm just interested, because it seems quite a level of magnitude.

Mr Power: It is a large magnitude at the moment. One of the key differences, as I mentioned, is building energy prices prior to the invasion in Ukraine. There were already significant pressures. There are categories in some of those economies, particularly motor vehicles and others, that were significantly outpacing the situation in Australia. It's also the case that in the US, for example, goods demand is much higher than it had risen to here in Australia. So, it is a large spread at present and there are obviously some specific factors that are driving that.

CHAIR: Presumably because inflation pressures in Australia are more moderate than they are in overseas jurisdictions' comparative economies, that means there's less pressure on interest rates perhaps than in those economies; is that correct?

Mr Power: Yes, broadly, that's right, and obviously there's a lot of market commentary around the US Fed and the expectations for interest rates there relative to Australia. Obviously a number of economies have started their tightening cycle already compared to Australia. So, we're a little behind partly because of inflation pressures, of course, that you've mentioned here in Australia.

CHAIR: In one sense you can refer to it as a tightening cycle, and in another sense it's normalisation, isn't it?

Mr Power: That's correct. Obviously the situation where we are now, at 0.1, is highly unusual. We would expect, as has been expected for a long time, that interest rates would normalise over a period once the cycle had come to an end.

CHAIR: I just want to come back to this issue of wage growth. The expectation embedded in the budget is that wage growth is expected to continue to increase; is that correct?

Mr Power: That's right. The estimates that are in the budget show an increase in wages over the forward estimates period. It picks up from this year, and then goes to 3.25, and then it goes to 3.5 further out in the forward estimates, obviously because of significant tightening in the labour market, and some reductions in spare capacity that we've seen, including record high participation rates and a reduction in the underemployment rate.

CHAIR: In terms of assessing that wage growth, there are a number of particular factors or measures by which you can assess that wage growth. Can you just walk through some of those measures and what we should be considering in terms of what are the more relevant measures in the current environment where you have these almost record high participation rates in the Australian labour market?

Mr Power: There is some information in the budget papers. Obviously we forecast and provide the wage price index, which has the profile that I just mentioned. We also provide some information about average earnings on a national accounts basis, which shows us, as we expect, that will rise or increase a little bit faster than the wage price index. There's a couple reasons for that. The wage price index is a relatively slow-moving series that tracks particular occupations and the wages they receive. The average earnings on a national accounts basis is a different measure. What it does is take into account other payments that workers might receive. This could include overtime, bonuses, wage rises that employees receive when they change jobs, as a result of tightness in the labour market. What you do see often in periods of tightness is that the average earnings on a national accounts basis might pick up, is more responsive, if you like, because it takes into account those other factors than

the wage price index, which just follows, as I said, wages in a particular occupation over time. That's partly why that information is in the budget, to show the average earnings on a national accounts basis is rising faster over the forward estimates than the wage price index.

CHAIR: Thank you for that. That's a positive news story. Senator Chisholm.

Senator CHISHOLM: I have some questions about the longer term impacts of the budget. On 15 June last year at a CEDA speech the Prime Minister said, 'And that's why we have a plan to lift growth, not just for the next few months, just not for now but the next five years; we need to lift our economic growth rate by more than one percentage point above trend to beat the expected pre-COVID-19 GDP by 2025 to catch back up to where we were before COVID hit.' That is from a speech the Prime Minister made last year in a long list of big announcements that we've not heard much about sense in terms of a plan to lift our economic growth rate. How is that plan going?

Senator Birmingham: At present the plan has been progressing quite strongly, if you compare it against the international conditions; our recovery has outperformed major advanced economies. The outlook for real GDP has strengthened in the near term, and the investments we continue to make are about strengthening it over the longer term as we continue to progress.

Senator CHISHOLM: But isn't growth forecast to slow over the forward estimates?

Senator Birmingham: I'm happy to talk about some of the considerations they apply there in terms of the further out you get in budget projections the way in which certain factors are assumed to normalise or gravitate towards previous longer term trends; that, in a budgeting sense in elements, is about applying conservative and more reliable forecasts in terms of budget and the outlooks and how they underpin that. But what we've demonstrated so far is that our performance has been able to both exceed expectations in terms of what we had forecast and exceed international comparisons as well.

Senator CHISHOLM: Going back to my actual question, which was: growth is forecast to slow over the forward estimates; that's correct, isn't it?

Mr Yeaman: We have very strong growth in the near term as we rebound out of COVID-19 and then growth gradually settles down from that point onwards. As the minister said, and as we outlined in the budget papers, beyond the first two years where we have applied a detailed forecast methodology, we then gradually move back towards what we consider longer term trends in the economy for both underpinning factors such as productivity, participation and population. Those are based on assumptions we have canvassed with this committee a number of times in the past. Particularly with the productivity assumption, we assume a 30-year average of 1.5 per cent. That's what underpins our longer term growth. I would certainly describe the near-term outlook in these forecast as a strong growth outlook, and then we have a somewhat mechanical process and assumption based process from that point onwards that drives the economy back to its long-term potential rate of growth, and that's what's driving the slowdown that you describe.

Senator CHISHOLM: But the Prime Minister made that speech less than one year ago. I just don't see any evidence of how this is carried out in the budget. So where is the long-term plan for growth?

Senator Birmingham: In terms of the forecast in projections, you heard the fact that we continue, beyond the first couple of years, applying the same metrics as have historically been applied. I'm sure if we had deviated from those metrics as a means of presenting the budget papers, you and others would have been quick to criticise any such deviation. We're sticking with those metrics in how we present the budget papers and the analysis.

The growth expectations and the government's plans to help drive growth exist in areas of our investment in skills and apprenticeships across this budget, building on the previous couple of economic statements. They exist in our transition of tax incentives to drive investment and growth in business from the last couple of budgets, where we have had economy-wide incentives to support investment by businesses through full expensing to, in this budget, our support for measures such as the 120 per cent deduction for small business investment in skills and the 120 per cent deduction for small business in their digital capabilities, which are about lifting the growth potential of those key parts of the economy.

The continued advance of the patent box tax reforms from what we announced last budget to this budget is, again, about creating an environment that encourages greater commercialisation and development of products that have been innovated in Australia, where the research and development occurred, into actually being commercialised and manufactured in Australia. The investment in infrastructure be it Inland Rail and intermodal terminals are about moving freight faster across the country. The investment in the regional agenda of high-growth potential hubs around the country, particularly in support of infrastructure within them, are also about lifting our export performance and growth opportunities. They're the types of things that are at the centre of our

detailed plan for economic growth to maintain the above international comparison performance that we have been achieving of late.

Senator CHISHOLM: That's all we have for macro, Chair.

CHAIR: I have a few follow-up questions on growth. In that speech to CEDA, there's a quote from the Prime Minister. It says, 'Growing our economy all comes back to getting people back into jobs.' Mr Yeaman, can you provide some analysis with respect to how we have gone in getting people back into jobs—the unemployment figures which are considered in the budget?

Mr Yeaman: As we have canvassed with this committee before, the strength of the labour market is certainly one of the key factors that has surprised on the upside coming out of this crisis.

CHAIR: Sorry—it has surprised on the upside' in terms of the employment outcomes?

Mr Yeaman: Yes. Certainly, the labour market has performed more strongly than we and other economic forecasters had expected as we came out of COVID. We discussed in the past that one of our key concerns coming into the crisis was the experience of past recessions, where, in some cases, it's taken eight to 10 years for the unemployment rate to return to pre-recession levels. In this case, the unemployment rate is now at four per cent, which is historically low and below pre-crisis levels. We have more Australians in work today than we had prior to the crisis. The participation rate, in particular, has been one area that has continued to outperform our expectations and is currently at or close to record highs. So it is certainly the case that the labour market has significant strength in it and significant momentum in it at the moment.

CHAIR: The Prime Minister said growing our economy all comes back to getting people into jobs. How do our unemployment figures compare in an international context to, again, some of our major trading partners and peers?

Mr Yeaman: The key international comparison that is cited regularly is a number of other countries, particularly the US, still haven't got employment levels back to the level they were prior to the pandemic. Australia has exceeded our pre-pandemic levels, so that is an area where we have outperformed. On participation, there's been much public commentary around the so-called 'great resignation'. That's been a key factor in the US that's adding to inflationary pressures there. My colleague mentioned earlier that in the US they have seen a number of people leave the labour market and not come back to the labour market to participate over the course of the pandemic, whereas in Australia, as I said, participation rates are at near-record highs. So that's been a key difference internationally.

CHAIR: Minister, just running through, as you did, some of the initiatives contained in the budget, if you turn to page 9, budget paper No. 1, budget priorities, the first dot point is, 'Building a stronger and more productive economy to create more jobs by: Backing small businesses with tax incentives to digitalise their operations and upskill and train their employees.' Is that designed to increase growth?

Senator Birmingham: It is. We have seen how we can drive performance in terms of tax incentives on changing behaviour and achieving positive outcomes for the economy. I referenced before the full expensing measures that we had applied to stimulate business investment. You can see elsewhere in the budget papers that they are driving significant growth in business investment, particularly non-mining business investment, which has lagged at previous times, so we have succeeded there. The good thing about that type of investment is that growth in plant, machinery, equipment et cetera isn't just stimulating economic activity now but is also making those businesses more productive and competitive into the future.

In this budget, the point you have just highlighted around small business tax incentives to digitalise their operations and upskill and train their employees is a more targeted approach. Taking the same theory, by creating a stronger incentive there—in this case, a 120 per cent deduction that those small businesses can employ—we expect to incentivise small businesses, who are such a big employer across the economy and a growth engine for jobs, to invest more in their workforce, to invest more in the digitalisation of their businesses, be it in accessing more efficient cloud based solutions or in embracing e-invoicing and measures that can help their cash flow management or the like, all of which are about making them more productive and competitive, allowing them to grow faster and employ more Australians.

CHAIR: Is another initiative, transforming Australia's manufacturing capability through the modern strategy, a policy position, a program, that drives growth?

Senator Birmingham: Yes. It's complementary to some of the things I spoke about before in terms of encouraging businesses to invest in their growth capacity, in updating or modernising their plant or machinery, in pursuing new supply opportunities. If I pick three major announcements in my home state that come to mind, under the Modern Manufacturing Strategy, we have supported Fleet Space, a company that is developing satellite

manufacturing facilities in Adelaide's western suburbs that will not only help deliver on our space industry agenda but will create a new manufacturing activity in Australia. We have supported Saab in software manufacturing, not only in the defence sector but also with capability or potential for elsewhere. We're supporting Thomas Foods International, traditionally a large meat exporter from Australia, to now establish plant based protein manufacturing facilities in Australia, seizing opportunities in a big new global growth sector around plant based protein foods and the diversification of that business, not just exporting grains or legumes to the rest of the world but providing for the type of manufacturing activities that can value-add those grains and legumes in Australia, and create more jobs and growth in Australia as a result.

CHAIR: So it supports growth?

Senator Birmingham: There are many others across the rest of the country. I can recite off the top of my head those in my home state a little better.

CHAIR: I'll give you one final reference which is highly relevant in my home state of Queensland, and which I know Senator Macdonald is passionate about, and that's the \$2 billion Regional Accelerator program. That's designed to drive growth and productivity in regional areas, isn't it?

Senator Birmingham: It is, Senator Scarr, recognising that regional Australia contributes around 67 per cent, I think, of Australia's total exports and generates around 82 per cent, I think, of Australia's goods exports. So regional Australia is not just a wealth generator for the regions; it's a wealth generator for the whole nation. By investing in that Regional Accelerator program, we're seeking to stimulate further growth in the regions, and also build, as I think Senator Macdonald explored here the other day, on some of the changing population trends that are seeing actual population growth pressures in parts of regional Australia. So we're seeking to leverage that opportunity. The Regional Accelerator program overwhelmingly, though, is using existing programs, such as those under the Modern Manufacturing Strategy, to effectively deliver support dedicated to the regions, but it's leveraging existing mechanisms of government to do so.

CHAIR: Thank you, Minister. Senator Gallagher, do you have some more questions in the macro area?

Senator GALLAGHER: Yes, I have a couple of quick ones.

CHAIR: You have the call.

Senator GALLAGHER: Minister, in your budget for this year, the 2021-22 year, the CPI is forecast to go up 4½ per cent and the wage price index, 2¾ per cent. That's right?

Mr Yeaman: It's 4¼ per cent, the CPI.

Senator GALLAGHER: Sorry, 4¼ and 2¾ What does that mean for real wages this year?

Senator Birmingham: Senator, that does mean that inflation is growing ahead of the wage price index. We had quite a discussion with Dr Kennedy last week about the different measures of wages growth, which are explored within the budget papers, and the alternative to the WPI, which is, as an alternative, showing faster rates of growth at present. But the government's recognised these sorts of pressures from the inflation price spikes that have flowed through to the economy, especially in relation to oil price spikes, and it's why this budget contains a carefully targeted cost-of-living package that responds in a targeted and responsible way for Australians.

Senator GALLAGHER: So real wages are going backwards this year?

Senator Birmingham: Senator, the impacts of that do depend upon which measures of wages growth you use. But, as I say, the government has recognised some of the unique factors of the global inflationary pressures that are flowing through into the Australian economy, and it's why we've got the cost-of-living package, which also builds on the tax cuts that our government previously legislated and which themselves have significantly increased take-home pay for many Australians.

Senator GALLAGHER: But, according to your table 2.1, Budget Paper No. 1, page 37, real wages are going backwards by 1½ per cent, correct?

Senator Birmingham: Senator, you're not misreading table 2.1, I don't believe.

Senator GALLAGHER: I'm not misreading it.

Senator Birmingham: But, Senator, as I have just indicated, the government's conscious there are some unique inflationary factors that are flowing through from overseas at present. As you've already heard, in evidence this morning, Australia is withstanding some of those inflationary factors better than many comparable nations. The government's response to helping Australians deal with those inflationary pressures is to build upon the extra disposable income we've provided to Australians through our tax cuts by also providing for the cut to fuel excise and the additional support measures to households outlined in this budget.

Senator GALLAGHER: I'm not misreading it, which means you're not going to say that there's a real wage cut; you're not going to accept that or say that out loud. Is that where we're at?

Senator Birmingham: Senator, we can go over, again, the issues that we went through with Dr Kennedy around the AENA and what it's showing in relation to wages as well.

Senator GALLAGHER: I listened to all of that.

Senator Birmingham: What the government doesn't deny or dispute is that there are inflationary pressures flowing into Australia from overseas and that we have responded to those inflationary pressures with a carefully calibrated cost-of-living package of support that builds on the tax cuts that are already providing additional disposal income, take-home income, to Australians. It's important always in these matters to recognise that what people actually take home in their wage packets, net of taxation and other factors, is what they have available to deal with the direct cost-of-living pressures, and tax cuts have increased their take-home pay significantly.

Senator GALLAGHER: So you're saying that people have enough more than enough money to deal with the cost-of-living pressures? Is that what you're saying?

Senator Birmingham: No. I'm not going to let you put words in my mouth.

Senator GALLAGHER: But that's what you're saying.

Senator Birmingham: No.

Senator GALLAGHER: That is what you're saying.

Senator Birmingham: It is not what I'm saying. I said that we recognise the particular pressures, especially from the spike in oil prices, and that is precisely why we've responded with a targeted cost-of-living package in this budget to support those Australians who are feeling those pressures at present.

Senator GALLAGHER: To finish this up, if you accept that there's a role for government to provide support on the cost-of-living side, why, then, is the government not accepting the responsibility to show some leadership on the wages side? If we accept that, from table 2.1, real wages go back 1½ per cent in this year, why, then, is the government not able or not willing to say they want to see the minimum wage increase?

Senator Birmingham: I don't accept the premise of your question in that the government's entire economic plan is about driving economic growth in Australia—driving jobs growth is outlined in the budget—and achieving the outcomes that see real wages growth from 1 July this year onwards. That is absolutely what our plan is focused on. Sustainable wages growth isn't achieved by virtue of a government writing a submission to a statutory body, Senator Gallagher. Sustainable wages growth is achieved by having economic strength, having strong businesses, and having strong jobs growth. That's what helps to sustain wages growth into the future across the economy, not what seems to be the Labor Party policy of, the government should write a letter.

Senator GALLAGHER: It's not about writing a letter; it's about showing leadership, again. I totally disagree with you that this is about some sort of gesture politics—they were the words you used before. If your budget says wages are going backwards by 1½ per cent, and, lucky everybody, you might nudge slightly ahead of inflation by three-quarters of a per cent at the end of 2024, is that what you call sustainable wages growth? Is that the best that people can hope for?

Senator Birmingham: What the budget shows is a return to real wages growth. That will also occur in an environment where stage 3 of our tax cuts will be implemented in the next term of parliament, if our government is re-elected.

Senator GALLAGHER: He will never have had it so good.

Senator Birmingham: I can't guarantee what will happen if a Labor-Greens alliance is formed, but, if our government is re-elected, stage 3 of our tax cuts will flow through. They will ensure that around 90 per cent of Australians pay no more than 30c in the dollar as their top marginal tax rate.

Senator GALLAGHER: Those tax rates are locked in, and you know that.

Senator Birmingham: I don't know what gun the Greens will hold to your head if the Australian people elect a Labor-Greens alliance.

Senator GALLAGHER: You do; you know that. Come on, you're better than that, Simon. We have been very clear on that. So sustainable wages growth to you is people nudging ahead in the 2023-24 year? But there's no role for the government to show some leadership in this year when, clearly, on your numbers alone, people are doing it so tough. Your answers won't change.

Senator Birmingham: The reason we have a detailed plan for the economy is that we know that it's actually complicated and complex to make sure you sustain economic growth, jobs growth and drive an environment that achieves real wages growth—that it's not achieved by simple gestures of writing a letter to a statutory body.

Senator GALLAGHER: It's leadership—something that your government doesn't have.

Senator Birmingham: You actually need the economic conditions to achieve it. That is precisely what our budget plan outlines. It's what is absent in relation to your party. What we saw from Mr Albanese last Thursday night was a complete void when it came to policies or statements in relation to tax and small business or regional Australia and the type of growth that our plan focuses on for the future.

CHAIR: Senator Gallagher?

Senator GALLAGHER: I don't think I'm going to get any further with him, thank you.

Senator McDONALD: I'd like to step back into the real world of what's really happening in regional Australia: the massive workforce shortage and the competition for wages. I want to take you to page 57 of Budget Paper No. 1, where you very clearly talk about AENA being a more representative measure of wages, and where you say that wages, including bonuses, have picked up in recent quarters and that Single Touch Payroll data shows that workers who moved jobs in 2021 typically experienced pay increases of between eight and 10 per cent. I appreciate that the last line of questioning was around award wages, but what are you seeing more broadly across the wages market; in particular, in regional Australia, where there's such a workforce shortage?

Mr Yeaman: I'll pass that question to Mr Power.

Mr Power: I won't go back over the way that we thought about average earnings in the national accounts, and how it does pick up those additional payments that we talked about. Part of the reason we think we're seeing that in the average earnings measure is some of the tightness and job shifting going on in certain sectors—and also in cities, but no doubt in regions. That pressure, in people shifting between jobs for higher pay, is one of the reasons that the average earnings measure is driving faster than the Wage Price Index. Those shortages and the significantly elevated vacancies are really driving a bit of pressure into that system.

Senator McDONALD: I'm seeing employers who are competing for workforce offering all sorts of incentives in addition to cash—vehicles, accommodation. Some of that is reflected in the Single Touch Payroll data, but how do you get a handle on what's really happening within the labour market? I understand that the RBA, for example, goes out and does regional visits. Do you get data like that?

Mr Power: My colleague might like to speak to the way we look at the Single Touch Payroll data. My group in Macro Group does really quite an extensive liaison program where we talk to businesses about some of the pressures they're seeing, whether they're expecting to increase headcount and how they are attracting workers in the same way that you just mentioned. A lot of the information we have had through that liaison channel over the last six months, I would say, has been that there are some payments outside base wage situations. It could be incentive payments to sign on. It could be bonus payments and other payments, which I guess go into an overall package. They go into the overall income of an employee but don't necessarily fall directly into the base wage rate. Again, that's why you see the difference between some of the measures.

Mr Yeaman: We do our own liaison program. We go out and talk to businesses. The Reserve Bank has its own program as well. It is probably more detailed than ours, but we share information with them. We've all been looking closely to see how the tight labour market is going to be reflected in wages from here, and we haven't yet seen it coming through very strongly in the Wage Price Index, although, as we forecast, we expect to see that gradually picking up from here. But it is certainly the case that we're hearing consistent stories. Western Australia, in the mining sector, is one area where we're hearing this quite a lot, and there are other areas of regional Australia where we're hearing it. But it's not only in regional Australia; we're hearing it in other parts as well. I mentioned professional services, I think, on Friday as a key area where we're hearing this too.

It is certainly the case that, as a first step, employers are using these other forms of remuneration. They're using promotions, bonuses, retention bonuses and other forms of incentive to help attract and retain the best workers they can find. That is flowing through, and that's what we're seeing in the average earnings measure of the national accounts; that's what's starting to flow through there. And we're now just starting to hear some stories—and we'll have to watch this closely going forward—that some of those are translating into higher base wages as well for some of those workers. That's a process we expect to see play out over the next few quarters. But we're hearing similar things to what you're hearing: employers are competing for workers and they're using these other tools to attract and retain.

Senator McDONALD: Something that's not reflected in the conversation from the other side is the number of businesses that are using shorter hours and are closed at times when normally they would be open. Employers say

they can't keep working the hours they're working because they can't get a forklift driver, they can't get staff to work in their businesses. Have you done any estimates of how much the economy has been constrained by the lack of workforce?

Mr Power: We're certainly aware of all those things you've mentioned. We follow quite closely the way spending and output are tracking. We haven't been able to identify the wedge that might be occurring because of that, but we're certainly aware of some of the things you've mentioned—for example, kitchens not opening for their usual menu or span of hours, and businesses having trouble with certain occupations. We haven't been able to isolate the difference for that. The way that flows through is ultimately through production and spending, which we are watching, and business turnover, for example, which is a component we've looked at as we devise our outlook over the next couple of years.

Senator GALLAGHER: Who does the budget books? Is that your area?

Ms Kelley: Yes.

Senator GALLAGHER: Normally you have a table of major initiatives in the overview. It's not in this one. Was there a decision to take it out?

Ms Kelley: That might be a question for Fiscal Group.

Committee suspended from 10:28 to 10:45

Senator GALLAGHER: Ms Wilkinson, I don't know if you heard, but I just asked corporate about the mystery of the missing major initiatives table that is usually in the front of the overview. I think it has been like that since 2006. It had a table of that type. But it's not in this one.

Ms J Wilkinson: That's right. We went through a reasonably extensive design process around the glossies in the lead-up to this budget. We looked to make a number of changes to make them more accessible. We've tried to have a better table of contents and better infographics through the document that can help people who absorb information in different ways and absorb it better. We had received feedback about tables not being very useful in the document, because lots of people find it harder to read tables, so we did remove them in the text itself. There were previously a number of pages at the back of the glossy. There was a payments table; there was also an economic parameters table; there were about four tables, I think. You're right, we did remove those from the glossy. There was a discussion between the Treasury, the design team, the people who were leading the glossies and the Treasurer's office around the value of those tables. I'm very happy to say that since these have been published, we have received lots of feedback from lots of people about how useful those tables are. Going forward we would certainly be putting them back. We have received enough feedback that it's clear that those tables were accessible. What we were trying to do was to remove some of the replication between the white books and what was in the glossies. We have received that feedback and we've taken it on board.

Senator GALLAGHER: Not from in here, necessarily, but more broadly?

Ms J Wilkinson: Yes, more broadly.

Senator GALLAGHER: I particularly think the overview was a document that people could pick up and leave the other ones behind, if you wanted to be across the major payments, measures, parameters, all of that.

Ms J Wilkinson: Maybe we were under the illusion that lots of people like reading the white books. We've discovered—

Senator GALLAGHER: That might be a Treasury thing.

Ms J Wilkinson: It might be a Treasury thing.

Senator GALLAGHER: It might stretch to Finance.

Senator Birmingham: I think it does! When you started waving it around I thought, I didn't bring the glossy with me; I only have the books.

Senator GALLAGHER: This is the shorthand, cheap version of the budget. So you expect they will go back for the next one?

Ms J Wilkinson: The content of the glossies is always a matter for government, but we would certainly be providing the feedback that we have received, which is that lots of people have found it—

Senator GALLAGHER: When you say the design team did an assessment of the budget, was that all of the budget books or just the publication side?

Ms J Wilkinson: This year it was specifically the glossies. Over the last 12 to 18 months we have been making incremental changes to the white books, introducing coloured graphs, improving some of the format and layout, that sort of thing. That has been happening incrementally over time. In this particular budget process we

had a careful look at the glossies themselves, using our comms team, obviously using advice from the officers as well about the feedback they were receiving. That was useful in terms of the design of the glossies. We received feedback that in previous glossies there was too much text and that was a bit overwhelming for people, so we have tried to take that on board. I am sure they will continue to evolve as we keep getting feedback about what works best.

Senator GALLAGHER: Do you do that internally—your comms area does the design and you do the content?

Ms J Wilkinson: There are a few different ways in which we have done it over time. In my group, budget policy division is responsible for the glossies, but we work very collaboratively with the people in our corporate design area. My teams who contribute to elements of the glossies have ideas about what the infographics could look like, and they work with the comms area about how that could work. We get feedback from the officers about particular infographics they think would be useful. A few years ago, if you looked at a glossy, it would look much more like a Treasury document in terms of there being lots of graphs, for example, and less infographics. I guess we have used feedback from a range of different places, but particularly our corporate design area, to have a more updated document.

Senator GALLAGHER: This is all done internally—you don't outsource the work?

Ms J Wilkinson: It's all done internally.

Senator GALLAGHER: Or the review of what went in?

Ms J Wilkinson: No, we didn't have an external review that informed this. It was an internal review and then internal work with the Treasurer's office.

Senator GALLAGHER: How late are these produced? When do these go to the publisher?

Ms J Wilkinson: I don't have all the specific times, but the white books and glossies are all finished broadly at the same time. They all have various printing deadlines. Ms McKenna from the comms side looks after the actual printing. We get it all together and get it all fact-checked. When I say 'we', the team in Fiscal Group that is responsible for it gets it all to the point of being ready to be printed and our comms area have the direct relationship the CanPrint and do the actual printing. Maybe I will ask Mr Goldsworthy. He can probably give you a bit more information. He was very close to it this time and can give you a sense of roughly what the times are when things go to the printer.

Mr Goldsworthy: Broadly speaking, it would probably be Friday through to Saturday or Sunday where the various documents would be printed. As Ms Wilkinson was saying, my colleagues manage that relationship with the printing service. We try to sequence and stagger the printing of the documents to ensure timely delivery.

Senator GALLAGHER: That's budget on Tuesday, printing starts commencing on Friday?

Mr Goldsworthy: Broadly speaking. We try to get some books to the printers earlier.

Senator GALLAGHER: Like the portfolio budget statements and things like that?

Mr Goldsworthy: They are handled separately. Budget Paper 2 is often the first one we try to get to the printer.

Senator GALLAGHER: So you have locked down measures.

Mr Goldsworthy: I don't have the exact details with me, but my recollection is that probably the first one might go on Thursday, then in a staggered fashion through to Saturday or Sunday.

Senator GALLAGHER: So it's a pretty stressful weekend for you, is it, Mr Goldsworthy?

Senator Birmingham: The stress is well shared around!

Senator GALLAGHER: You don't want any last-minute print errors being drawn to your attention on Sunday afternoon.

Mr Goldsworthy: It's not ideal, no.

Senator GALLAGHER: Were there any?

CHAIR: I'm sure you would have found them!

Mr Goldsworthy: Errors?

Senator GALLAGHER: In the budget?

Mr Goldsworthy: Nothing of substance that required—

Senator GALLAGHER: An addendum or something ?

Mr Goldsworthy: I am just trying to think through.

Senator Birmingham: History tells me that there is usually a department who would need to make a correction to their PBS.

Senator CHISHOLM: Or a veterans' affairs minister who does a press conference.

Senator Birmingham: That's not so much a correction to the budget statements. The additional details that we've canvassed there will be reflected in PEFO.

Senator GALLAGHER: Yes, indeed. The books are printed, in your best recollection, from Thursday to Sunday.

Mr Goldsworthy: That's right.

Senator GALLAGHER: Presumably, changes can be made up to the point that they head to the printers. Is that right?

Mr Goldsworthy: Yes. We go through a thorough fact-checking and sign-off process prior to authorising the printing of the books. Through that process certainly some changes are made at the last minute, but obviously we try to bed down the substance of the documents in advance of that because obviously it creates greater risk for error if we're making substantial changes towards the very end.

Ms J Wilkinson: I think there's a difference between changes in text and changes in the tables.

Mr Goldsworthy: That's right.

Senator GALLAGHER: Yes, because some of them are linked, aren't they?

Ms J Wilkinson: Absolutely.

Senator GALLAGHER: They appear in BP 1 and other books. I've solved the mystery of the missing table. I'm happy with that. I put my hand up as being one of the people who liked it a lot, so I'm happy to hear it's returning, hopefully.

I want to ask a question about the error made about the measure relating to the PBS. Obviously Fiscal Group costed the measure that was spoken about in the House but not featured in the budget.

Ms J Wilkinson: The Department of Finance are responsible for those costings.

Senator GALLAGHER: So you don't do that at all—the PBS one, the scripts?

Ms J Wilkinson: No. That's a Department of Finance costing. I am almost certain. Minister?

Senator Birmingham: I would have thought so as well, but essentially revenue measures are costed by Treasury and payment measures are costed by Finance.

Senator GALLAGHER: Okay. I would have thought you would have had some role in that one.

Senator Birmingham: Are you talking about the lowering the safety net threshold measure that's—

Senator GALLAGHER: I'm trying to get to the bottom of—

Senator Birmingham: at page 105 of BP 2?

Senator GALLAGHER: There are really two measures: one that featured in the budget and one that didn't; aren't there?

Senator Birmingham: There are thousands of things that don't feature in the budget.

Senator GALLAGHER: The thing that makes this one slightly different is that this one featured in a speech given by the Assistant Treasurer and then also featured in a speech given by Senator Hume, so it must have had more of a life in the budget than others that were perhaps dropped earlier, because there had been a speech written about what the government was doing—cutting general patient category from \$10 for all scripts. That didn't feature in the budget. But you're saying Treasury doesn't cost that at all?

Ms J Wilkinson: The Department of Health works with Finance to cost most measures in the Health portfolio, unless they've a particular revenue link. If it's a minor revenue link, Treasury gets involved. If it is a revenue item then Treasury is responsible for costing it.

Senator GALLAGHER: Okay. We've let them go, unfortunately. I'll have to ask them questions next time—hopefully, not from this side of the table. What measures do you get involved in then?

Ms J Wilkinson: When you say 'involved'—

Senator GALLAGHER: Do you have oversight? Presumably when there is a fiscal impact of a decision taken, does your group—

Senator Birmingham: In the full contestability of decision-making, we let Treasury well and truly have an opinion on what they brief the Treasurer on and how they engage in the process, but there are those clear delineations of responsibility when it comes to things like who's responsible for costings and which agency drives that to a point of finalisation. You don't want contestability over the facts and the documents as published, but contestability in the decision-making process is something, of course, that all agencies involve in where it's relevant.

Senator GALLAGHER: Ms Wilkinson, at some point you would have line of sight on all of the things in Budget Paper No. 2, would you, even if you don't have overall costing responsibility for it?

Ms J Wilkinson: Yes. These measures all come through decision-making processes, predominantly the Expenditure Review Committee, and I attend all Expenditure Review Committee meetings and so therefore have visibility around decisions that are taken by government but also more broadly. Obviously my team, along with other parts of Treasury, briefs the Treasurer ahead of those meetings.

Senator GALLAGHER: I feel like I'm in *deja vu*. We have spoken about this before, I feel. But I'm just going to keep going. Let's look at the Investing in Skills Development and Growing Australia's Workforce measure. It's on page 76. I've just randomly chosen this one. It has a Services Australia component and an Education, Skills component. Would that be led by those two agencies?

Ms J Wilkinson: The policy will be led by the Department of Education, Skills and Employment. They'll lead the policy. They will be responsible for working with Finance around the cost. When that's been determined, there will be discussions with Services Australia, who would be the delivery agency. Then, if there are revenue implications, for whatever reason, we get involved through Revenue Group, through our Tax Analysis Division.

Senator GALLAGHER: The cost-of-living package that was announced in the budget included the cost-of-living tax offset, the cost-of-living payment and the temporary fuel excise relief, in particular. Would Treasury have led on that work, and would that have crossed your area and Revenue, or mainly Revenue—although there are payments there too, aren't there?

Ms J Wilkinson: That's right. The temporary reduction in fuel excise is led out of Revenue Group, with the costing being the responsibility of Revenue Group. The additional payment, through the lower and middle income tax offset, is a Revenue Group item, and so that's the responsibility of Revenue Group, and again the costing is the responsibility of Revenue Group. Then the one-off payment to individuals is a DSS measure, so that work is led out of the Department of Social Services, with costings from Services Australia. But I think that is one where there is a revenue component to that, so our Revenue Group get involved in the revenue impacts of that additional payment.

Senator GALLAGHER: In terms of the work that you do in the budget, what's the biggest part of it, from your group's point of view?

Senator Birmingham: How long is a piece of string!

Ms J Wilkinson: Through Budget Policy Division, we have responsibility for bringing together the whole budget. We're responsible for bringing together all of the material in the white books, the glossies. We are the key part of Treasury that's responsible for coordinating the advice to the Treasurer ahead of decision-making meetings. We obviously work very closely with our colleagues in Macroeconomic Group and Revenue Group around the different chapters which are in, particularly, Budget Paper No. 1. There are some chapters where we literally hold the pen. For example, we hold the pen on budget statement 3; Macroeconomic Group holds the pen on budget statement 2; and Revenue Group holds the pen on budget statement 4, but we manage the whole process of pulling that together. One of the critical things that we manage is the QA process around all of these documents.

Senator GALLAGHER: Okay.

CHAIR: I think that's all we have for Fiscal Group. Thank you.

**Australian Charities and Not-for-profits Commission
Australian Taxation Office**

[11:05]

CHAIR: We will now move to Revenue Group, Australian Taxation Office and Australian Charities and Not-for-profits Commission. Senator Chisholm, we have ATO here now. Revenue Group are on their way. If you've got questions for ATO we could kick off now if you're happy with that.

Senator CHISHOLM: Have we got Charities as well?

CHAIR: Do you have any questions for the ATO first?

Senator GALLAGHER: It's useful to have Revenue there—

Senator CHISHOLM: At the same time.

CHAIR: I appreciate that. Maybe Senator Bragg can start, and we'll see if Revenue come.

CHAIR: Senator Bragg, do you want to ask your questions to the ATO first?

Senator BRAGG: I was just wondering what sort of input you might be providing to the Board of Taxation on their new inquiry into all the digital asset taxation issues.

Mr Hirschhorn: I'm not sure whether I've been joined yet by my colleague Kirsten Fish, Second Commissioner, Law Design and Practice, who is responsible for that relationship with the board of tax. We ordinarily contribute to reviews of the board of tax. As the commissioner is an ex officio member of the board of tax, we will provide secretarial resources and also, where we're asked for perspectives on how the law currently applies, we will of course provide that, as we have to the specific committees on that topic.

Senator BRAGG: Does the board of tax make a judgement independent of the commission?

Mr Hirschhorn: Yes. The board of tax is its own organisation under the leadership of Rosheen Garnon. Treasury and the tax office are both on the committee of the board of tax, but it's mostly made up of private-sector individuals. Its reports are made in its own right. Usually the ATO has a contribution. Usually its input is respected, but they are reports of the board of tax.

Senator BRAGG: So they'll publish their own report. What sort of information do you think that they would ask you for? Would it be taxpayer data or aggregated data? Would you do research for them? I'm interested in what sort of input you would be providing to the board.

Mr Hirschhorn: We will provide input that they request. That could easily include some population data at an aggregate level. Obviously we can't provide specific taxpayer data. We will provide them the information that we have to help them do the most effective report that they can.

Senator BRAGG: Have they asked you for information yet?

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

Senator BRAGG: Can you?

Mr Hirschhorn: I'm not sure if Second Commissioner, Law Design and Practice, Kirsten Fish has arrived. If we can take that on notice and maybe come back to you if we can get that during the session?

Senator BRAGG: Thank you, Mr Hirschhorn.

CHAIR: Do we have representatives of Revenue here now?

Mr Hirschhorn: Not yet.

CHAIR: Senator McDonald, do you have some questions just for the ATO?

Senator McDONALD: I do. I want to ask you some questions on the draft guidance products impacting trusts that's been released. As you know, accountants are usually mild-mannered people who are not up for fisticuffs, but I'm receiving a huge amount of concern from them about the way the ATO is going about addressing section 100A. In particular, there are some elements I'd like to talk to you about.

The first is that this is a review of a longstanding tax treatment, and the ATO is proposing to go back and review returns as early as 2015, which would make it fundamentally retrospective, and we know how much Australians hate retrospective regulation and legislation, and I quite support that view. The final part is that they're telling tax agents who've provided tax advice on this structure that they can now be classified as a promoter of a scheme and lose their license. Why is it that the tax department now feel that they can take on a legislative role—something that hasn't passed parliament and I assume hasn't been directed—to move towards this position? Could you speak to that for me, please?

Mr Hirschhorn: By way of a little context: the taxation of trust distributions follows this concept of what is present entitlement. If you're entitled to a distribution, you should be taxed on that distribution. There is a lot of case law wrapped up in that concept, but, at its heart, if you receive an amount from a trust you should be taxed on that amount from the trust.

100A is a very longstanding provision which is aimed at what happens if the trust says it gives it to one person and then that person, under an arrangement, gives it to somebody else. Really, the money has gone to a third party, but in the paperwork it has gone to one beneficiary, but that beneficiary is under an agreement to give it to somebody else for tax purposes. It's often used where there is somebody who is in a tax advantaged position. That

might be somebody who earns no income from other sources. It might be another entity—a company or a trust—with losses. It is really aimed at what's called this concept of 'reimbursement agreement'. And I would say at the start, yes, absolutely, we are very aware that our guidance, which has been long requested by the tax adviser community, has unsettled some in that community because it does call into question some practices which have been relatively longstanding.

The first thing I would say is that the tax office does not make law. We have not changed section 100A; 100A remains as it always has been. We can, however, in our guidance, give our opinions on how the law applies, which of course can always be tested by the courts. So we have not changed the law at all; what we have done is publish what is at this stage draft guidance for consultation as to how we think the law applies. That is something that has been requested by the community for a long time. So, at that first level, it is not retrospective in that true sense of a different law applying to somebody in the past. The second—

Senator McDONALD: No, but it would if you were to go back and review tax returns based on a new guidance.

Mr Hirschhorn: If I could maybe come to the guidance point, 100A is a very interesting provision. It's one of the rare provisions in the tax act which says that there is no limitation on the period of review, which is a factor in this debate.

The second point comes up sometimes in what's called a U-turn, where the ATO changes its administrative practice and people guidance, and people say, 'But I relied on your old guidance. I am disadvantaged now because you have changed your guidance.' Again, all this is out there as a draft for consultation at the moment, and we are getting full and frank feedback. The last significant guidance that we finalised on 100A came out in 2014. What we are saying is that people who relied on that 2014 guidance can continue to rely on that up till now. For example, if we say to somebody, 'Under this current guidance, you did something in 2016 which we think triggers 100A, but which, under our guidance in 2014, would not have triggered 100A,' we will not be pursuing that matter. We are standing by our 2014 guidance for affairs in the intervening period. I think that's an important point which has sometimes been lost in some of the discussion, which is that we stand by our 2014 guidance for the interim period, till now, as we bring out this new guidance.

I might comment on one other point. I think our drafting in our taxpayer alert was perhaps indelicate and has, I suppose, upset people or caused a lot of people to worry—which is the comment that you made, Senator—about promoter penalties for advisers who advise people into transactions. We would say, yes, there is the possibility that some people who have marketed aggressive 100A-style schemes could potentially be within the promoter penalties, but that is going to be a very small subset because there are many safeguards before promoter penalties apply, including periods of review. But also—if you have only provided advice—advisory services are not subject to the promoter penalty provisions. It's really where you've been earning commissions and success fees that you're within the promoter penalties. To get into promoter penalties, you don't just have to be wrong; you have to be so wrong that your position is not reasonably arguable. I mention that because I think there is a fear in the tax adviser community, or some elements of the tax adviser community, that there is going to be some massive swathe of old, 100A assessments and also, potentially, a swathe of promoter penalties. That is not what we are anticipating.

Senator McDONALD: I can clarify, then, that you will make clear in your final draft that you won't pursue taxpayers who've relied on the 2014 guidance. This won't have a retrospective element.

Mr Hirschhorn: That is correct. We stand by our 2014 guidance for this interim period.

Senator McDONALD: To be clear: advisers who have provided ordinary advice in the course of their business are not considered to be promoters? Could you put that into words for me again so that we can provide some clarity?

Mr Hirschhorn: That is correct. Ordinary advice services for an advisory fee are not subject to the promoter penalty provisions.

Senator McDONALD: Finally, I'm getting concern broadly from the industry but also from regional people where family trusts that particularly operate in farming situations where we perhaps have all members of the family—perhaps it's a small-business issue more than it's a regional issue. Is that something that you are contemplating? It seems to me that the guidance proposes tighter rules for distributions along with the definition of what is considered an ordinary family or commercial dealing. Is there an element where you are looking at tax reduction but might start capturing just what are prudent tax planning arrangements?

Mr Hirschhorn: Certainly, our intention is not to capture prudent ordinary tax planning transactions. I think a touchstone of our position, around 100A, is that, if the beneficiary of the trust gets the benefit, 100A has no role to play. We're not concerned about ordinary family trusts where the family benefits from the distributions. We are

concerned about situations where the family trust is used and, let's say, paperwork is drafted, for example, such that parents keep all the money from the trust but benefit from the tax-free thresholds of their children. If the children actually get the money, we have no concerns under 100A. So I say that, if there's an absolute touchstone, it is that, if the beneficiary of the trust benefits, 100A has no role to play.

Senator McDONALD: And the guidance is open for consultation till 8 April?

Mr Hirschhorn: I think that has now been extended until 29 April.

Senator McDONALD: Terrific. Anybody who's listening to this who hasn't had an opportunity to provide feedback should certainly take that up.

Mr Hirschhorn: Absolutely. We consider absolutely seriously all feedback that we receive on all our guidance but on this guidance as well.

Senator McDONALD: I appreciate you clarifying that. I just remain concerned that the targets of your efforts will find another place to sit but genuine small businesses and family trusts are going to be captured in a way that is unreasonable.

Mr Hirschhorn: I absolutely understand and hear your concern. I also say that I think we are in a phase where there are a lot of people worried about the guidance who maybe do not understand exactly what's in the guidance in our proposed approach. Hopefully, over the next while and following the consultation period as we finalise the advice, we will be able to alleviate many unfounded fears.

CHAIR: Senator Patrick.

Senator PATRICK: Mr Hirschhorn, you've been made commissioner. I thought my compliments to you were detrimental to your career advancement!

Mr Hirschhorn: Acting commissioner!

Senator PATRICK: I'd like to go to question BET075. This is relating to tax enforcement or people who haven't lodged tax returns for a significant period of time.

Mr Hirschhorn: This is about—

Senator PATRICK: child support and generally about tax lodgement.

Mr Hirschhorn: You can direct the questions to me.

Senator PATRICK: Fantastic. You've provided a table to the committee of people who are up to date with tax lodgement and then separated it out to child support customers. Then you have a third column, 'Child support clients who are referred by Services Australia'. Does that imply that Services Australia pick out some of their child support clients and request the tax office to do something?

Mr Hirschhorn: Yes. I might give a short answer, but this topic will go mostly to my colleague Melinda Smith, who is the chief service delivery officer. Services Australia do give us a list of mutual clients, of people they would like us to follow up because it interacts with the child support system. I think in the past there was a specific funding for that and a service-level agreement. It has expired, but we continue that program on an unfunded basis.

Ms Smith: I don't really have anything further to add to Commissioner Hirschhorn's overview, unless there's a particular question regarding it.

Senator PATRICK: That was helpful in terms of the distinction as to what is on the table. But if I look here it says that for general people—'All individuals, excluding child support customers'—there are 11,201,000 people who are up to date with tax lodgement, and that represents 59 per cent of taxpayers. When you flick that around, 40 per cent of taxpayers are not lodging their tax returns on time. I get it; some people can't. But then I go to row 2 and, again, seven million people, or 40 per cent, are not lodging their tax returns on time. That seems to me to be a pretty significant problem. In some cases I guess there's money owed to the public, but there's potentially also money owed to the taxpayer. Why is it that you, on these numbers, don't seem to be enforcing the legal requirement to lodge a tax return?

Mr Hirschhorn: Unfortunately, I don't have that answer in front of me. I'm not sure if my colleague does. I suspect that includes a lot of people who are not actually required to lodge, but you're absolutely correct that, for most of the taxpayers who do not lodge, it's because they're probably due a small refund. We do have a very significant program under our chief service delivery officer to remind people to lodge. As we are a compliance agency, that probably does focus more on those who we suspect have tax bills, but we do prompt a lot of lodgements which do result in refunds. I might pass over again to Melinda Smith.

Ms Smith: That's correct. Not 100 per cent of taxpayers are required to lodge. I think that percentage is closer to 65 per cent, and that's why, when you look at those numbers, you have to take into account that not all of those entities have an outstanding lodgement that is actually due to be made.

Senator PATRICK: The name of the row is 'Number who are up to date with income tax lodgement'. I presume that would not include people who don't need to lodge a tax return.

Ms Smith: In fairness, I would like to take that question on notice to make sure that we're giving you exactly the detail on the table, but we would not know, until pursuing that with the client, whether or not they were or were not eligible to lodge. It would be unlikely for us to be able to identify exactly that population discretely.

Senator PATRICK: If I go to the row 'Six to 10 years without lodging a tax return', we've got 1.5 million people. That just seems extraordinary. Is there any reason why we have 1.5 million people who have not lodged a tax return for six to 10 years?

Mr Hirschhorn: We'll have to take some of that on notice and we'll do our best to get an answer rapidly. Again, we have a self-assessment system which includes self-assessing that you are not required to lodge. We do have that to—

Senator PATRICK: All those people out in the real world will be listening to this and going, 'That's okay, I'll just make the assessment that I'm not required to lodge and I'll join the 1.5 million people who for 10 years haven't lodged a tax return.'

Mr Hirschhorn: I would describe that as very unwise counsel and a very unwise path of action because—

Senator PATRICK: I was poking the bear.

Mr Hirschhorn: Yes. The important thing here is that we have the data from things like STP, which is pretty much all salary income in Australia from the banks and all interest and dividend income. We know when people have earned money. The unlogged returns are likely to be people for whom we have no record that they have earned money, but we know where money is earned in the system.

Senator PATRICK: Can we maybe go back and revisit this answer: STP has been running for how long?

Mr Hirschhorn: Three years.

Senator PATRICK: We should be able to at least understand out to the three-year mark. Can you provide the same statistics, of those who have and haven't lodged, in circumstances where you have access to STP?

Mr Hirschhorn: We'll take that on notice and do our best.

Senator PATRICK: In relation to the lodgement enforcement program, how much funding did you receive from child support to focus on child support clients who were not lodging tax returns?

Mr Hirschhorn: I might pass over to my colleague.

Ms Smith: I don't have the absolute number that was given to us prior, except to say that we have continued, even without that funding, to work with Services Australia on the populations that they advise us about and we have dedicated our special lodgement program specifically to that population. So, regardless of the funding, it has been something that we've continued to pursue. I can find out for you and take on notice when the funding ceased and how much it was, but it doesn't have any relevance to the work that we're doing in conjunction with Services Australia now.

Senator PATRICK: Does that fund a particular FTE and, if so, can you provide that information for me?

Ms Smith: Nothing's funded, as you highlighted—

Senator PATRICK: Sorry—previously?

Mr Hirschhorn: Senator, we can provide to you details of the previous funding, the size of the program and how many FTEs we continue to dedicate to this program.

Senator PATRICK: Why is it no longer being funded? Is it because you no longer have a requirement for the funding or because child support don't want to give you the money?

Mr Hirschhorn: We would appreciate the funding, but it's one of those within-government issues.

Senator PATRICK: Focusing on that, if I look to the numbers there, we've got about 45,807 members who are up to date with income tax lodgements and then you've got the number 20 per cent underneath that. That implies that there are about 160,000 people who have not lodged their tax returns in that group of child support payees, for one year. Am I reading that correctly?

Ms Smith: If I may take that question on notice—because I don't have the table sitting in front of me, I apologise—I can answer those questions specifically.

Senator PATRICK: Could someone get that, because it's not unreasonable for me to follow up on a question on notice and there is an obligation for officials to be cognisant of what questions might likely be asked. I don't mind if we go back to Labor or something and then come back to you when you get access to this question, so that we can answer questions properly.

Mr Hirschhorn: I now have the table in front of me thanks to my colleague. Your interpretation of that table is correct: of the 230-odd thousand referred to us in 2021, by the date of the QON, 22 June 2021, only 20 per cent were fully up to date at that point. Of course, we hope that more will become up to date over time.

Senator PATRICK: As you then move to two years of 80 per cent, it's still quite a big number of people: there are 40,000 people after two years who have not lodged their tax return and who have a child support obligation. Let me explain to you why I'm really concerned about this. In some sense, I don't mind the ebb and flow of the tax office not receiving or not refunding money, but in the case of child support the child support formula—that is, the amount of money a caring parent gets for caring for the child—is a function of a formula that includes the taxable income of both parents, care percentages and the number of kids. If do not want to pay the right amount of child support to the mother of my children, I simply don't lodge a tax return when I get a pay rise as I jump to a new job. I might get a 20 per cent pay rise by changing to a new job, or getting a promotion, and then I don't lodge a tax return. It shows me there are 53,000 parents—I can comfortably say 'father', because other statistics say that 90 per cent of the payees in child support are male—that are not paying the right amount of child support and that is harmful to the children.

Mr Hirschhorn: I can only say that we absolutely understand your concern. We share your concern in conjunction with our colleagues at Services Australia, and we do dedicate resources to it. We have a dedicated program for this and specifically for this. These are clients who would not ordinarily trigger our—as the most important risks to follow up. We do have a dedicated program for it because it is so important. I would say that when somebody simply refuses to lodge we cannot—we can do a formal return—

Senator PATRICK: Isn't there a penalty under law?

Mr Hirschhorn: We absolutely can prosecute and we do prosecute people for failure to lodge. So there are a range of consequences. It's fair to say that, like with all compliance programs, prosecution is a pretty important step and we save it for the worst—not for everybody who doesn't lodge. But I do share your concern and we do take it seriously.

Senator PATRICK: If I look at this table, I see six to 10 years of outstanding tax return information; 53,937 child support clients. That's 53,000—let's presume they have one child, maybe two. If they've got two children, that's 100,000 kids that are not getting the right amount of child support. It's my understanding—I'll confirm this, but I have it on pretty good authority that, if you ride this out until the child is 18, under current law, the child support Agency has no ability to go back and recover a debt outside of the child support arrangements. It's just a game that's being played by irresponsible parents, either fathers or mothers, and it seems to me that people are just sitting on their hands and allowing children to not receive the right amount of care because the caring parent is not given the right amount of child support.

Mr Hirschhorn: I can assure you that we are not sitting on our hands; we have a significant program of work here. But you are absolutely correct that we do not have 100 per cent coverage and take 100 per cent of these clients to prosecution action or further steps.

Senator PATRICK: Can that be done? By the time you get to a couple of years without lodging a tax return as a payee—particularly when you're getting to six to 10 years—if someone's had a break-up and the child is five, by the time you're getting to some of these numbers they're close to getting outside that window where that money will never go back to the parent. More importantly, the child along the way has suffered because of it. Can you provide on notice the policy guidelines you have in relation to dealing with child support clients, particularly towards those latter ends, and how that intersects with prosecution policies?

Mr Hirschhorn: Yes, on notice we will give you our current settings and coverage on this population.

Senator PATRICK: Thank you. I have a question to the minister, because the acting tax commissioner did say that it's an issue between the two departments: the tax office, which is Treasury; and child support, which I think is Senator Ruston.

Senator Birmingham: Social Services.

Senator PATRICK: Are you aware of this issue where child support want this dealt with but are not paying for the service within the tax office?

Senator Birmingham: I'm not personally aware of the views that the child support agency may have, but I'm very happy to commit to raising that with Senator Ruston and indeed with the Treasurer, or Assistant Treasurer as is relevant, to ensure that there is appropriate understanding of concerns—if they exist from one agency—in terms of how the ATO's important work and role can help to improve the outcomes, wherever possible, that the CSA would wish to see and that we would all wish to see.

Senator PATRICK: I have one question relating to what I call the 'Lendlease ruling', and you call it something else: can someone give me an update on where we're at with that?

Mr Hirschhorn: I will pass to Ms Fish to cover that.

Ms Fish: As I said last time, in February, we have recently received further legal advice. We are continuing to engage with our legal advisors on the issues: the subject of the draft determination. Last time we spoke I said that we were looking toward finalising resolution of issues by the middle of the year and we're still working towards that. Our advice on the development program reflects that mid-year date.

Senator PATRICK: I did have a commitment from the tax office—I think it was last year, maybe two or three estimates ago—that this was going to be dealt with. I do appreciate the hint you gave that you can pursue Lendlease separately to the ruling; I understand that. Nonetheless, you have a ruling that's outstanding. Have you been engaging external counsel in relation to this particular determination?

Ms Fish: We have, yes. We're getting advice on the—

Senator PATRICK: Can you provide me the cost, on notice, for the legal costs associated from start to finish—or start to almost finish—with this particular ruling?

Ms Fish: Yes, I can do that.

Senator PATRICK: Thank you.

Senator CHISHOLM: I've got a few questions across a range of issues. The first is around the Digital Games Tax Offset. On 21 March this year a joint release from the Treasurer, the minister for communications and the arts and the minister for the digital economy announced the release of the draft legislation to implement a new Digital Games Tax Offset. The consultation is now open and closes in a couple of weeks. Why did it take so long to release this package for consultation, when it was first announced in the budget last year?

Mr McCullough: Senator, I have trouble with the 'so long'. These things take a while. There was consultation—I've got a series of dates here about how the process was dealt with, but that's just normal course for a tax measure. Many tax measures, as you would well know, from inception to becoming legislation can take a year.

Senator CHISHOLM: So it was reasonably complex to put together, is that—

Mr McCullough: Yes, and there was consultation with not only the industry but also the other departments. Consultation processes have been fairly exhaustive internally, as well as the public consultation that you've referred to.

Senator CHISHOLM: On 12 May 2021, the Austrade investor update entitled 'Game on with new tax rebate for developers' states, 'The Digital Games Tax Offset will be available from 1 July 2022'. Will this legislation pass before 1 July 2022, in time for when the scheme was meant to be available?

Mr McCullough: I can't help with when the legislation will pass, but the measure is at present supposed to take effect from 1 July so if the legislation passed subsequently then it would effectively have a 1 July 2022 start date.

Senator CHISHOLM: What certainty does that provide for—let's be honest. It seems very unlikely that it will pass before 1 July 2022. That's a fair conclusion, isn't it?

Senator Birmingham: To shortcut—yes, there is a chance that the parliament will sit again before then, but the timing for passage of legislation will be tightened. If it does sit before then, there will be a limited number of bills and I can't predict what those bills would be. In terms of the certainty equation, as Mr McCullough said, the start date for the provisions applies in that sense regardless of when the legislation passes, so long as it does pass, and certainty for those relying on that legislation is best provided if there is bipartisan commitment around the legislation.

Mr McCullough: The mechanics of the way this one works is that it's a refundable tax offset at the end of the year. It's not one of these measures where you need to have it in place prior, because it operates on assessment. You'll still get the benefit if you do something during that year.

Senator CHISHOLM: But for the companies themselves—there would be an element of risk for those companies, knowing that the legislation hasn't passed and is unlikely to pass before 1 July.

Mr McCullough: Absolutely, Senator. Whenever announcements are made and the legislation is yet to pass through the parliament, a company would be taking a risk to act on even the draft legislation. That could always change as it goes through parliament.

Senator CHISHOLM: According to the draft explanatory memorandum, the amount of the offset is capped at \$20 million per company per income year, even if the company applied for multiple certificates in the income year. Why is there a \$20 million cap?

Mr McCullough: The cap itself has its origin in being an integrity measure. The setting of the cap, of course—the degree—is a matter that government takes into account when looking at costings and considering advice. As I understand it, a number of submissions have been received or are in the course of being received to question whether that cap is exactly the right amount or whether it should be altered. As typically happens with these sorts of consultation processes, when people come back with suggestions that the parameters be changed then that package of advice is put to government for further decisions.

Senator CHISHOLM: The cap doesn't exist for film and TV offsets, for example, and puts a ceiling on investment for games. What's the rationale for the cap in relation to games?

Mr McCullough: From memory—and I certainly can take a supplementary on notice—there was a concern in this circumstance that, unlike films, there was a much greater likelihood of potential connection with international companies. As soon as you do that, it's possible to have a much larger number in our jurisdiction created—I don't want to use the word 'artificially', but it is possible for a subsidiary of a very large company in a worldwide market to benefit from an Australian tax measure and find that benefit doesn't necessarily stay with the Australian subsidiary. It was an integrity measure that was considered, at the time it was designed, to be relevant and important in this measure but not necessarily in the other measures.

Senator CHISHOLM: Why is it mainly just direct labour that is eligible for expenditure?

Mr McCullough: I'll have to think about that one, Senator. The whole measure seems to be designed to promote that type of activity—that type of employment in Australia. It is definitely targeted at the wage component. I just don't have with me, or in my head, the question of why and if it does cover other things.

Senator CHISHOLM: Under the draft DGTO, related party expenditure is prohibited. Does this mean that indie studios whose owners also work on their own games won't be able to claim a minimum wage salary?

Mr McCullough: That's a matter that I understand has come forward in the consultation. You can understand why related party costs in tax measures are often excluded. There would be a question of, if I can characterise it, a small operation where a person might choose to take their interest in either salary or perhaps directors fees or profits, et cetera; and that's certainly an issue that would have to be looked at.

Senator CHISHOLM: My concern about it is: wouldn't this have a big impact on the number of Australian studios that could benefit from the offset? If that applies, wouldn't it rule out a lot of the Australian studios that could potentially benefit?

Mr McCullough: Yes, but there's also a minimum \$500,000 spend. This is targeted at a 'sweet spot', where you can't just be a tiny little operation. It's got to be something that is going to have some other benefit for the economy but not too large so as to enter the international market. If those questions come up in consultation—and, as I understand, they will—issues will be put back to government for further consideration.

Senator CHISHOLM: Live services studios are allowed to make annual claims, but new game studios are not—they can only make a claim upon completion of a project. Why is that so?

Mr McCullough: I'll take that on notice. I don't have that in my head.

Senator CHISHOLM: That obviously disadvantages studios making new games, though—that would be fair?

Mr McCullough: I am not trying to dodge your question, but all of these design issues are there for a reason. Sometimes the reason, on consultation, may not prove to hold absolutely true. That's the reason why we typically do consultation on tax measures in such detail. There would have been a reason; it's just that I cannot recall it at the moment.

Senator CHISHOLM: Is the DGTO one of the most generous tax concessions to the games industry in the world?

Mr McCullough: I'll have to take that on notice. It is certainly a very generous scheme, but whether it's one of the most generous in the world I'm not sure.

Senator CHISHOLM: Is the department aware of any comparative information that would back that up?

Mr McCullough: I will take that on notice.

Senator CHISHOLM: So not something you're aware of?

Mr McCullough: No.

Senator CHISHOLM: That you've done any work on?

Mr McCullough: No.

Senator CHISHOLM: Is it still one of the most generous with the \$20 million cap?

Mr McCullough: I'll have to take that on notice. There are many designs with these sorts of schemes around the world and to generalise about them—the other issue is that they apply to tax systems that are quite different to ours in some cases.

Senator CHISHOLM: Have any of those countries applied an annual cap to their games tax offsets, credits or rebates?

Mr McCullough: I'll have to take that on notice if we're talking about other countries.

Senator CHISHOLM: Particularly the UK, Canada, Finland or New Zealand—have they?

Mr McCullough: I will take that on notice.

Senator CHISHOLM: I've also got some questions on company tax, probably to the ATO and maybe Revenue as well. This is looking at the Tax Avoidance Taskforce. The \$0.6 billion in that bump on company tax receipts since MYEFO is due to the new measures—mostly the extension of the Tax Avoidance Taskforce—does that simply reflect the ongoing impact of the task force to establish activities or will that incorporate changes to policies or settings?

Mr Hirschhorn: As you rightly point out, the ATO has been funded to extend the Tax Avoidance Taskforce for another two years. From our perspective, this is a very successful program and it is good that it is extended. As I understand it, both the costings and the revenue are primarily due to the continued operation of the task force.

Senator CHISHOLM: What proportion of the other 1.5 billion comes from each of the other entities that the task force targets—large public and private groups, trusts and high-wealth individuals?

Mr Hirschhorn: I can give you a rough split. The task force has been going since 2016 and since then we have raised direct cash. I will talk about three concepts: liabilities, cash and wider revenue effects. Since then, we attribute to the task force \$15 billion of liabilities and \$8 billion of cash receipts over that period. Slightly more than half of that, about \$8 billion, was public and multinational businesses; and about \$7 billion was from private and wealthy groups, which includes trusts. It's a similar ratio—slightly more than half are public and multinational groups and slightly less than half is in relation to private and wealthy groups.

Senator CHISHOLM: Of the 0.6 billion that is coming from the task force avoidance activity around company tax payments, can you give a breakdown in rough proportions of what the behaviour is: thin capitalisation, royalty payments, related party transactions or other profit shifting activities?

Mr Hirschhorn: We don't necessarily cut it that way, but I would say that our significant challenge—which we've spoken about many times at estimates—in public and multinational businesses is primarily around transfer pricing or, as we would say, transfer pricing is completely fine; what we're worried about is transfer mispricing. Within that, the biggest element of transfer mispricing in an economy like Australia's was around related party debt. The second biggest element was around the exporting of Australian commodities and the mispricing of commodities to trading hubs. They are probably the two biggest components for public and multinational businesses. For private and wealthy groups the issues are much more spread—it's harder to call out specific themes to the same extent.

Senator CHISHOLM: On the Tax Avoidance Taskforce, will that extended funding involve new work programs, recruitment of new skills, new tools or policy settings—or just business as usual but for longer?

Mr Hirschhorn: The funding has been committed. Within that, we have scope—we continually refine the effectiveness of the task force. It will give us the ability to bring in new skills. We get to leverage from the hard work we've done to date on things like increasing our data analytics capability. We also get to leverage from the fact that we have done significant work around improving the tax governance of the largest companies, so that many companies are now fundamentally in a highly compliant state and require maintenance rather than the full

intensity of the task force. Even though the funding is relatively flat, we are absolutely expecting that we'll be able to do new things with that funding.

Senator CHISHOLM: Why two years? What happens after the two years? Will it be a case that you're set up well enough by then that you can 'set and forget' and it will operate or is it something that will have to be extended after two years?

Mr Hirschhorn: We have spoken before about the performance of large corporates, which is that at lodgement they are at about 92 per cent and after our compliance activity at about 96 per cent. We've spoken before about our ambition to move that to 96 per cent at lodgement and 98 per cent after compliance activity, so we think there is still more to do. I do not think that the job will be done in two years. How long we are funded for, and the rigour of us having to come back and demonstrate our case, is a matter for government and their decisions. I don't think the job will be done in two years time, but I would say to this committee that we have made extraordinary progress over the life of the task force to date and will continue to make further progress over the next two years.

Senator Birmingham: It's not, in my memory, the first extension in relation to the work of the task force. The nature of having a dedicated focus like this is on being able to monitor progress, learn from what is being achieved and then to ensure that's refined in the future. Any opportunity we can see to continue to invest in the ATO in ways like this that yield a fairer dividend for Australian taxpayers doing the right thing, by targeting those who might be seeking to unfairly minimise, is what we will do. It works ultimately in the medium to longer term, alongside some of the issues that were being explored in relation to international tax cooperation through the OECD measures that we are actively working to implement at the Australian end but, more importantly, working to ensure that other countries implement too.

Senator CHISHOLM: I was just about to ask the question: will the Tax Avoidance Taskforce have a role to play in the implementation and administration of the Pillar 1 and Pillar 2 approaches?

Senator Birmingham: At the moment, I think the Pillar 1 and Pillar 2 approaches are not in the budget forecasts. But, if I look back at history, the first phase of the task force was responsible for successful implementation of the multinational anti-avoidance law and the diverted profits tax. These were in an earlier wave of very pragmatic Australian implementation of the BEPS 1.0 workstreams. I would fully expect that the task force will be there to support the developments on Pillar 1 and Pillar 2 under the BEPS 2.0 workstream.

Senator CHISHOLM: In terms of the highest risk for profit shifting, is it typically out of one industry or is that mix changing?

Mr Hirschhorn: I would not describe it as industry based. Related party financing has been our biggest challenge around transfer mispricing and it is one that we've been very successful in addressing. I gave testimony, at the last appearance, that we denied approximately \$14 billion of interest deductions on related party debt over the life of the task force and predict that a further \$26 billion of interest deductions will never be claimed as a result of our forward agreements. That issue is spread against anywhere where there is significant capital investment in Australia, whether that's new investment or M&A activity. As you can imagine—for example, we have a case on the public record, Chevron, that was a very significant transfer mispricing case in relation to related party debt. It's not because it's oil and gas; it's because gas companies were investing a lot of money in Australia. In relation to the export of commodities, that is linked to our commodity industries. That is both hard and soft commodities and we look at transfer mispricing around those. I wouldn't say that it's specific industries that leap out. We're a very open economy: we have a lot of imports and a lot of exports and we're open to capital. This means that we look at the major flows in whatever industry they come from.

Senator CHISHOLM: What about the booming commodity prices: is that a factor that makes you look a bit more closely?

Mr Hirschhorn: We didn't need the booming commodity prices to look closely at that segment and we've had very significant and public changes to how some of our commodity exporters structure their tax affairs. The increased commodity prices mean that there's potentially more in play. What I would say is that our work to date, and continuing work, is—I'm very proud of the work that our teams have done there, because it means that those commodity prices are flowing through to the budget. They are flowing through to increased tax collections, and a non-trivial component of that is due to the great work of the task force.

Senator CHISHOLM: I also had some questions around the ATO resourcing review. MYEFO allocated 600,000 for an independent review of the ATO's ongoing resourcing requirements, with the funding ending in the middle of 2023. Alongside that review there was a funding allocation to income, taxation and shadow economy

compliance programs that are running while the review, I presume, looks at the compliance activities. That might change?

Mr Hirschhorn: I might give a little bit of context and then pass over to my colleagues at Treasury. The tax office is a mixture of baseline funding and also very specific funding around compliance programs. That includes the Tax Avoidance Taskforce, which is probably our biggest program. We are a significant member of what is called the Serious Financial Crime Taskforce. We do work around the shadow economy—we have a program around that. We have a range of programs which are funded for periods and often those programs renew in some form; they evolve. The background to the pricing review was that it was considered to be a good time to take stock as to whether some of these programs—in a sense, how they evolve into the future, but whether some of them are more base funding than NPP funding. Regardless, it is a good time to take stock of the funding of the office. With that, I will pass over to my colleague.

Ms Mrakovic: I don't know that I have too much to add to Mr Hirschhorn's comments, but I think the context that he provided is important. One of the challenges that the ATO has pointed out to us on a number of occasions is that balance between their baseline funding and the number of—you can have a number of specific programs targeting a particular type of activity, such as multinational tax avoidance, and they can be four-year programs which get extended for another year or two years. You have to balance the ability to make an assessment about the extent to which they remain real, are topical and are things that you want to provide funding for but then assess the continued need and effectiveness of those. This is versus other occasions when they're extended for such a period of time that they should perhaps be viewed as baseline funding and, in that context, can help the ATO in terms of providing more confidence over what their staffing situation can look like and be evolving over a longer period of time. We had a number of conversations with the ATO around the challenges of managing baseline versus the number of short-term programs. That was what led to the decision that was made in MYEFO to take stock of the funding situation of the ATO and look at that resourcing in a holistic way. The intention is to do that in the second half of this year and the funding was provided in MYEFO for that purpose. Just to draw all that together, if you go to the measure on the extension of the Australian Taxation Office Tax Avoidance Taskforce, you'll see in the third paragraph that it notes that the ATO's total resourcing requirement, including for the delivery of this, will be settled as part of the independent review of the ATO's ongoing resourcing requirement. That was done to ensure that there is a comprehensive or holistic examination of this issue.

Senator CHISHOLM: Some more detailed questions: what's the crossover of the kinds of behaviours that these two compliance programs are looking at and the Tax Avoidance Taskforce?

Mr Hirschhorn: I'm not sure if I fully understand the question. If I focus on the Tax Avoidance Taskforce, we have two groups within the organisation under acting second commissioner Deborah Jenkins: one is called Public Groups and International and another is called Private Wealth. They are bolstered by a third group called Integrated Compliance. They all do aspects which are adjacent to the task force. Do not think of it as a group of people wearing special uniforms or badges who are separate from the organisation. It is an integrated approach that we take, between the task force and our business as usual resources, to make sure that we are addressing the particular markets. But the task force is a very significant percentage of the staff and resources we can bring to bear to those markets.

Senator CHISHOLM: Alongside the independent review we've also got a new allocation in the budget to extend the Tax Avoidance Taskforce. That wasn't prefigured in MYEFO. Can you explain why it didn't seem necessary then but does now?

Senator Birmingham: On the timing of decisions, while decisions are taken in the context of MYEFO, we prefer to take decisions in a budget environment where possible. MYEFO is an update, not a mini budget.

Senator CHISHOLM: So it wasn't seen as a priority then, but then it was for the budget?

Senator Birmingham: You're talking about the measure extension that begins 1 July next year—is that right?

Senator CHISHOLM: The Tax Avoidance Taskforce.

Senator Birmingham: Yes, for which the additional funding for the ATO flows through from 1 July next year. It's not a pressing enough time line that we would ordinarily have taken that decision in MYEFO. It's a decision that's still been taken more than 12 months ahead of the operation of it. I assume you are asking 'why wasn't it taken in the last MYEFO' and not 'why wasn't deferred until this MYEFO'.

Senator CHISHOLM: Yes.

Senator Birmingham: There was no need to take it in the last MYEFO. We're extending the operation of the task force and we've given that indication more than a year out in this budget. There wasn't a need to give that indication more than 18 months out.

Senator CHISHOLM: With the independent review generating findings within the next year, how was the decision reached to fund the Tax Avoidance Taskforce out to the 2024-25 financial year?

Senator Birmingham: If the officials want to add anything, I am happy for them to. But the decision was taken, as you can see, on the basis of analysis that shows that by providing the additional funding to the task force we will successfully—or the ATO will successfully—ensure that multinationals, large corporates and high-wealth individuals will be contributing a further \$2.1 billion in tax payments that they should rightly be making. That analysis is what ultimately drives the value proposition for government in terms of supporting this continuation. If further information or advice helps to define any of the activities in future budgets or updates then, of course, we would act on it.

Senator CHISHOLM: Is there a risk that we've got \$327 million allocated to the wrong kinds of activity and that are being assessed as part of this review?

Senator Birmingham: I don't think they're being allocated to—

Senator CHISHOLM: Or could they be more effectively used? This review could potentially identify that they could be used more effectively.

Senator Birmingham: We've got both sides here, from Treasury and ATO, if they want to speak to how outcomes from such review work will potentially refine the activities that are undertaken.

Ms Mrakovic: I will start and then Mr Hirschhorn can add any comments. From my perspective, I would point out that, as Mr Hirschhorn has pointed out—and I think there has been awareness of this—this program has been highly effective. It has delivered revenues, and appropriate revenues, to the government. I reference back to the earlier conversation around the challenge for the ATO in terms of having some degree of confidence about which programs are extending, having a sense of what their staffing profile can look like and wanting to give that confidence and also recognising the effectiveness of the program and that, as we talked about last week, there is a broader set of BEPS 2.0 and Pillar 1 and Pillar 2 OECD negotiations going on. It was that combination of factors that led to a decision in this budget to provide some confidence about this program being extended. At the same time, it was important to be cognisant of the fact that a whole of ATO resourcing review had been scheduled for the second half of the year and we wanted to recognise that in terms of pointing out the link—at least the necessity of circling back, when the review is undertaken in the second half of the year, to the fact that programs like this have been extended. It's that balance between wanting to provide enough guidance up-front around the continuation of highly effective programs and what it may mean for ATO funding levels in the way that they plan their resources. At the same time, there is an existing commitment to have a look at the broader issue of the ATO resourcing. We will take that opportunity during the second half of the year, when that resourcing review is underway, to look at its interaction with this particular measure.

Mr Hirschhorn: If I can add or maybe drive themes from the ATO's perspective: the Tax Avoidance Taskforce, even if you looked at it in terms of dollars collected from audit activity, has been a very significantly successful program, but that is in some ways the smallest part of the program from our perspective. We think we have structurally improved performance of large corporates in Australia, particularly Australian-owned multinationals but also many of the brand name multinationals. We think there is more to be done and more improvement to be had. I would also say that some of the other benefits of the program have been greater assurance to the community that large corporates are being held to account in relation to their taxation affairs. This task force started in 2016, when there was significant community concern about the taxation performance of multinationals, and that has improved. There's also been a benefit to large corporates operating in Australia, in that it's allowed us to be much more active in setting guidelines and expectations and to also be able to provide certainty to taxpayers when they're doing the right thing—whereas in the past, before the task force, we only had the resources to look at those doing the wrong thing. This also allows us to provide assurance to companies that they're doing the right thing, which is itself a benefit to the community. The final point, from our perspective, is that it is advantageous to get confidence in funding even 15 months out from the end of the task force, because it gives a very powerful signal to ourselves in trying to retain the very high quality talent that we have in the task force. They are very attractive to those in the private sector because they're so good. So having an extension of the task force is important for us in retaining our high-performing staff.

Senator CHISHOLM: Thank you.

Senator BRAGG: I want to ask you about They Vote For You, which is an organisation that has DGR status. I wrote to you in October about this and you responded to me saying that—

CHAIR: Senator, when you say 'you'—

Senator BRAGG: Sorry—I wrote to the charities commission in October—

CHAIR: Right.

Senator BRAGG: setting out that They Vote For You is distorting the voting records of members of this parliament. It does that because it doesn't reflect the parliamentary voting record as on the website aph.gov.au. In my case, it says that I voted against a constitutionally enshrined First Nations voice in parliament and voted against increasing legal protections for LGBTI people. These are—

CHAIR: I don't remember that.

Senator BRAGG: These are complete falsehoods. Section 11 of the Charities Act sets out that DGR recipients should not be 'promoting or opposing a political party or candidate for political office' and that it would be a disqualifying offence if they were. Your response, from Mr Gary Johns—

CHAIR: He's not with us today.

Senator BRAGG: But he is the commissioner, right?

CHAIR: Correct.

Senator BRAGG: He said that the ACNC would be looking into—sorry, the organisation is actually called OpenAustralia.

Ms Longley: Yes.

Senator BRAGG: And they run the They Vote For You website. Dr Johns said that he had provided the letter to your compliance area for their review and consideration and also noted that—anyway, I just wondered if I could get an update on that from you.

Ms Longley: Thank you very much for the question. I should start by acknowledging that Dr Gary Johns sends his sincere apologies for not being in attendance today. He took the opportunity, for the first time in a long time, to go and meet in person with charity regulators in the UK. Unfortunately, he returned a positive COVID diagnosis prior to coming back and he's currently on his way back into the country right now. In relation to that particular question, yes, when we do get all concerns in, whether that be from members of the Senate or MPs or any other members of the community, we do pass them on and we do a risk assessment in relation to that particular concern. Whatever action comes about as a result of that review will depend on the concerns that are set out and any of the findings that we make in looking at that particular issue. We don't generally give updates specifically in relation to concerns that are raised, but we do take them all seriously and we do consider them all, as we will have in this case.

Senator BRAGG: Does this organisation still have DGR status?

Ms Longley: I understand that it is a registered charity. DGR status is something that is endorsed generally by the Australian Taxation Office, unless it is specifically listed. We don't look at DGR endorsement at all, but I do know that they are a registered charity.

Senator BRAGG: So who determines DGR status?

Ms Longley: That's determined by the Australian Taxation Office—they provide DGR endorsement.

Senator BRAGG: They're here now, so we can ask. I would like to come back to you, but can we check with the tax office now?

Mr Hirschhorn: It is part of our bailiwick. You can ask us now. I'm not sure that we're going to have great information in front of us as to how you get DGR status, but we'll do our best.

Senator BRAGG: Okay.

Mr Hirschhorn: We might have to take some answers on notice.

Senator BRAGG: When are the questions coming back on notice, Chair?

CHAIR: 27 May, I think.

Senator BRAGG: Given that this is an issue that is before the Australian people before 27 May, it would be good if you could provide some more information today.

Mr Hirschhorn: We will do our absolute best and there should also be significant guidance on our website as to DGR status grants that we'll be able to get to you.

Senator BRAGG: Can you provide some examples of organisations that have lost DGR status in the past?

Mr Hirschhorn: I'll have to take that on notice and see if we can get that information to you.

Senator BRAGG: Just so that I understand: DGR status is determined by the ATO?

Mr Hirschhorn: Yes.

Ms Longley: I can take that if you prefer, Mr Hirschhorn.

Mr Hirschhorn: Thank you very much.

Senator BRAGG: And then the ACNC administers the legislation?

Ms Longley: Charity status is a precondition to DGR endorsement in a lot of instances and there's currently a transition period requiring most DGR-endorsed entities to be registered as charities. The Charities Act states that a disqualifying purpose is one where a charity promotes or opposes a political party for office. That would be one of the things that we do look at in determining whether a charity is eligible for charity registration. After that, the ATO would look at DGR endorsement, but it's generally a precondition to DGR endorsement that it is a charity. It would generally be the ACNC that looks at that disqualifying purpose because that's a disqualifying purpose for charity status rather than for DGR endorsement. I hope that's clear.

Senator BRAGG: The nub of the issue is section 11 of the Charities Act, 'the promoting or opposing a political party or a candidate for political office'. That's the key clause here. Your answer is that the ACNC is the body that determines whether or not an organisation is conducting itself in accordance with that requirement?

Ms Longley: Yes.

Senator BRAGG: Can you provide any examples where an organisation has had its status revoked because it has not conducted itself in accordance with that provision?

Ms Longley: My understanding is that there have not been any instances of entities that have lost their charity registration status on the basis of section 11, relating to promoting or opposing a political party for office.

Senator BRAGG: If you could take all that on notice between the two organisations, including an update on where we are with this organisation called OpenAustralia, that would be much appreciated.

Ms Longley: I will.

CHAIR: Thank you.

Proceedings suspended from 12:29 to 13:30

CHAIR: We'll reconvene. Senator Chisholm has some questions for the ACNC.

Senator CHISHOLM: I wasn't aware that Mr Johns wasn't going to be here. I had some questions that were going to focus on some previous line of questioning that we put to him. I might persist with that. I presume there's probably a good chance you're across it anyway given your role in the organisation. Let me know if otherwise. We've asked some questions before about charities donating to political parties. We talked about a few New South Wales organisations that had supported former premier Berejiklian at fundraisers. Mr Johns had given some comments to Michael West's media outfit that this wasn't a problem, that it was considered legal for them because they were pursuing their charitable purpose. Are you aware of that?

Ms Longley: Yes, I am.

Senator CHISHOLM: I want to ask some questions about that to try to get a sense of how you adjudicate or form a view on those things. A charity working for a policy outcome in legal settings, say, could donate a significant amount to a federal election campaign if that campaign were promising a policy outcome that was most closely aligned with the charity's goals and purpose. Would that be correct?

Ms Longley: That's correct.

Senator CHISHOLM: We asked Mr Johns last time about the Smart Energy Council's 'Bin Him' sticker campaign. Mr Johns said it was probably not okay. We now know since that the ACNC has flagged that and the charity has subsequently stopped distributing those stickers. Is that correct?

Ms Longley: From the media reports I have seen, I understand that is what the charity has done, yes. I don't have any actual information, though, other than media reports.

Senator CHISHOLM: Did the ACNC actually contact the Smart Energy Council with regard to that issue, or are you suggesting that they may be observed the fine hearings here and made a decision themselves?

Ms Longley: The position of the ACNC is generally not to talk about the specific circumstances of charities unless there is a particular reason for doing so. That is in alignment with our secrecy provisions. I'm more than happy to make some general comments. I think they might also cover some of the grounds that Senator Bragg was asking about earlier as well.

Senator CHISHOLM: I'm always happy to help Senator Bragg out.

Ms Longley: When the ACNC finds instances where charities that may have a charitable purpose are promoting or opposing a political party or candidate for a political office, we may write to them. We may say to

them that we think there might be issues with those activities. That is a very different thing from actually undertaking an investigation and looking to revoke the registration of a charity under that section 11 disqualifying purpose. We will, as I said, talk to or write to charities if they look like they may be conducting activities that go along those lines. I should also note that there are parts of advocacy work that we consider to be okay in terms of political activity. They are things that might involve making submissions or giving evidence in relation to existing or proposed laws. It may also be about policies that parties generally have put out and making sure that charities are, essentially, making report cards. They are types of report cards, I suppose, that show that different policies would be okay in this space. So comparing party policy would be okay and publishing research on the history of our political party and what it has achieved in policies in the past would be something that would be okay.

Senator CHISHOLM: Just on that, I'll try to put this so I'm not talking specifically about the Smart Energy Council. Is the issue more because it asks people directly to oppose a particular candidate rather than advance a policy position?

Ms Longley: That's correct. If they're talking about policy positions and comparing them, that wouldn't fall within section 11 of the Charities Act definition.

Senator CHISHOLM: Yes. I suppose changing a leader could lead to a better opportunity to advance a policy position?

Ms Longley: I can't really comment on whether that would be the case or not.

Senator CHISHOLM: It's often the case; I can assure you of that. Previously when we talked about New South Wales charities donating to the New South Wales Liberal Party, Dr Johns made the point that for something to become a charity's purpose is a high bar. This is the quote:

So that's why you have to go after the facts of a particular case to see if particular actions constitute or amount to a purpose, and that's what I meant when I said that's quite a high bar.

In both these cases—the donations to the New South Wales Liberals and the Bin Him stickers—you're making an interpretation of the charities' intentions and priorities. Do you have a basis to do that? Do you conduct an investigation as part of making that assessment?

Ms Longley: There might be a few ways that we would look at that. Generally what we would do at the outset is conduct a risk assessment of types. So we would have a look at the governing documents, perhaps, of the charity and the activities that we're seeing them undertaking. That will help us to determine if there might be a risk there. We may well provide regulatory advice on that basis. Perhaps we might decide to open an investigation, which is a longer and more in-depth process that may lead to something like revocation.

Senator CHISHOLM: Don't those two examples—I think it was the New South Wales RSL that made a donation to the New South Wales Liberal Party and the Smart Energy Council campaign—sitting alongside each other show that the ACNC's approach to charities getting involved with political issues is confusing to the sector when there are two different approaches to those two charities?

Ms Longley: I think it's probably fair to say that this part of the legislation generally can be confusing. It is a matter of fact and degree, I suppose, as to whether an activity of a charity might be for its purpose of promoting or opposing a political party. That is really where we have to try to draw that line on the basis of all of the circumstances that are known to us at the time.

Senator CHISHOLM: Okay.

Ms Longley: I should also correct the record from earlier. I said that I understood that no entities had been revoked for promoting or opposing a political party. That is in fact incorrect. We revoked the registration of one charity on that basis in the 2017 year.

Senator CHISHOLM: Who was that?

Ms Longley: I don't have the name of that charity to hand. Generally, though, we don't publish reasons for revocation on our website. The charity would be listed there as revoked, but the reason would not be.

Senator CHISHOLM: On 16 February this year, the Smart Energy Council tweeted:

The Australian Charities and Not-for-profits Commission has advised the Smart Energy Council if we continue to tell people to Chuck Them Out or Put Him in the Bin (eg bin stickers) we could be in breach of the charity laws and lose our registration as a charity.

That is what they tweeted. I want to talk about an organisation's purpose. Does that rest in any part on the way they allocate their efforts and resources? A charity that spends one-thousandth of its revenue attending fundraising events is clearly not putting a significant emphasis on political influence. Do you consider that as part of your consideration of these issues?

Ms Longley: Yes. That may be one of the issues that we consider. What the charity's purpose is is determined by its governing documents as well as the activities that it undertakes. We do look at the expenditure it makes on various activities as well.

Senator CHISHOLM: Just going back to that high bar question for determining a charity's purpose, does the ACNC take a view on thresholds? Would you be more concerned by a registered charity that allocates 10 per cent of its funds to political purposes rather than one that allocates one per cent, for example?

Ms Longley: That's a bit of a difficult question. As I said, it is a holistic type of assessment. I would say generally I agree that it would be less likely to be a minor purpose the more money that a charity spends on political donations et cetera.

Senator CHISHOLM: So there's no distinct point at which you say, 'That's too much' regardless of whether the intended outcome advances the charity's purpose?

Ms Longley: I don't think I would make such a linear connection, no.

Senator CHISHOLM: I want to ask about the Howarth Foundation, which is a registered charity that donated \$100,000 to the federal Liberal Party in 2021. That's a pretty large donation by anyone's standards. Based on the foundation's 2020 grant allocations, that would be around nine per cent of its annual disbursements and one of their top five financial grants. Would that be just final in having a look at the Howarth Foundation?

Ms Longley: It would depend—again, I'm terribly sorry to keep repeating that—on the circumstances in which that donation was made and if it was actually a donation as opposed to spending on some other advocacy purpose.

Senator CHISHOLM: So potentially the foundation would have to convince you that it was advancing its charitable purpose by donating \$100,000 to the federal Liberal Party?

Ms Longley: If we looked at such a charity—I'm not talking about that one specifically—yes, potentially we would ask that question.

Senator CHISHOLM: What would prompt you to look at such a charity?

Ms Longley: Information becomes known to us through a number of means. One of them is the returns that various entities, including charities, make to the Australian Electoral Commission. They may well also be concerns that are provided to us by members of the community. That is probably the two main ways we might find out about electoral expenditure. It is potentially also through media reporting.

Senator CHISHOLM: Thanks, Chair. I have another set of questions that would take probably only about five minutes.

CHAIR: I might give the call to Senator Roberts so he can ask his questions and then I'll come back to you, Senator Chisholm.

Senator ROBERTS: Thank you for appearing here, Ms Longley. My questions are fairly simple. Are you familiar with the fact that I've previously raised in the Senate the large number of complaints about the improper behaviour of RSPCA staff when seizing animals and either selling them for profit or extorting money from their owners in order for the animals to be returned?

Ms Longley: I'm aware of that line of questioning, yes.

Senator ROBERTS: Thank you. You would be aware, then, probably, that many animal owners have been taken to court on trumped up charges based on the evidence of RSPCA staff, who may also be prosecutors?

Ms Longley: I don't have any knowledge of that specifically.

Senator ROBERTS: The questions are fairly short and simple. Do you remember the issues we raised with you at the earlier Senate estimates hearings about the large volume of complaints being made about the dealings with animals by the RSPCA inspectorate?

Ms Longley: I'm aware of those questions, yes.

Senator ROBERTS: Are you aware that there are allegations being made that RSPCA inspectors have lied to magistrates about the circumstances of animals being seized?

Ms Longley: I'm not aware of any of the specific circumstances.

Senator ROBERTS: Thank you. Are you aware that there are allegations that legal staff of the RSPCA inspectorate have deliberately misled the courts as to seizures of animals without following the legislative requirements?

Ms Longley: I'm not aware of that, no.

Senator ROBERTS: Thank you. Are you aware that the RSPCA has killed animals without legal requirements being followed and deliberate lies have been made to the court to justify their actions?

Ms Longley: I'm not aware of that either, no.

Senator ROBERTS: What is the commission prepared to do when these allegations are proven to be true?

Ms Longley: What we will do in relation to any charity against which we receive a complaint or a concern is that we will risk assess that charity and we will take such action as is necessary, particularly if we see there is a heightened risk of failure to comply with the governance standards, which are the six standards that all charities must follow.

Senator ROBERTS: So risk assessment will lead to an outcome that says, 'This charity is doing it systematically or it's prone to doing it or it's highly likely to repeat?'

Ms Longley: That is one of the considerations that we take into account. We have a range of enforcement powers available to us that involve such things as directions and warnings all the way up to revoking a charity's registration. If we conduct an investigation and find that the use of those powers or revocation is appropriate, we will take that action. One of the things that we do take into account is the significance and the persistent nature of any breaches of the governance standards.

Senator ROBERTS: The RSPCA has a wonderful name on the face of it. Behind the name there are some pretty heinous activities going on in some areas. Should the RSPCA, as a multimillion-dollar private business, be held accountable for theft and killing of animals that have come into their possession?

Ms Longley: I don't think that is really an appropriate question for me to answer in this role.

Senator ROBERTS: Thanks, Ms Longley.

CHAIR: Senator Roberts, do you have questions for the ATO as well?

Senator ROBERTS: Yes, I do.

CHAIR: Do you want to ask those questions now and then you can be excused?

Senator ROBERTS: Sure. Thank you. In 2021, the Australian Small Business and Family Enterprise Ombudsman issued a paper called 'A tax system that works for small business'. Minister, if big business has lawyers and lobbyists to get all of the tax loopholes and perks at the moment, when can small to medium business expect to get a fair go? What do you intend to do? When will this happen? Looking at tax reform in the same way as industrial relations reform, is there something for small business? Later on, I will ask you questions about comprehensive tax reform.

Senator Birmingham: Thanks, Senator Roberts. In relation to small business, we have as a government delivered lower company tax rates for small businesses, which are at their lowest level in more than 50 years in the 25 per cent now being paid. In this budget particularly, we made the pivot in terms of some of the economy-wide supports we've been providing previously to now target more of those supports at small businesses. An example is the tax deduction worth 120 per cent for investments that small businesses make in skilling their staff. There is a similar 120 per cent tax deduction for investments small businesses make in digitising their activities and businesses. We are absolutely committed to small businesses and to helping them pay lower rates of tax to reinvest into their business growth.

Senator ROBERTS: What I was getting at, Minister—I can see the way you've taken my question—is that the industrial relations legislation, the Fair Work Act, is about that thick. Small business hasn't got the time or the legal expertise to go through that. Employees haven't got the time either. The tax legislation is probably even thicker. It becomes a complex minefield. Is there any way it can be simplified? First of all, are you contemplating comprehensive tax reform for all of Australia? Secondly, is there an interim step you can take to look after small business? Small business is just getting smashed by these regulations.

Senator Birmingham: We are always looking for opportunities to lower the tax burden on Australian families and Australian small businesses wherever we can. We will continue to do that. Our tax reform agenda has particularly—I note your support on the way through—focused on reforms to income tax regimes that, when stage 3 is implemented in the next term, assuming we're re-elected, see the top marginal tax rate paid by around 90 per cent of Australians cap out at 30 cents in the dollar. That's run alongside the types of measures, particularly to small businesses, in company tax spheres and so on that I spoke about just before. We are always equally looking for ways to try to provide simpler arrangements in the tax system or, indeed, through the ATO to provide clear advice for business and other taxpayers in terms of their compliance with the tax system. I note there's also extensive work undertaken with the different business chambers around the different states and territories to help

ensure that they are in a position to be able to provide the type of advice to small and medium businesses that is perhaps sourced more on an in-house basis by some of those larger businesses.

Senator ROBERTS: I quote the small business ombudsman, who said in 2021:

The ATO... regularly lose sight of the individuals running the businesses. This is particularly evident in the operations of the enforcement and debt collection teams, exacerbated by the overwhelming complexity of our tax laws.

There it is again. What will the ATO do to understand and give small business a fair go, because it seems like the ATO is acting capriciously at times when it comes to small business?

Mr Hirschhorn: Thank you for that question, Senator. We do acknowledge those comments of the ASBFEO. I will pass over to my colleague, acting second commissioner Deb Jenkins, who, in her substantive role, is responsible for our relationship with small business. I would say, though, at the outset that we are striving absolutely to give a fair go to small business. With the odd unfortunate exception, I am confident that we mostly achieve that. I will pass over to my colleague Deborah Jenkins.

Ms Jenkins: As the acting commissioner said, in my day job I look after small businesses. One of the really amazing things about small businesses is that actually the vast majority of them are highly compliant. We have a tax performance program. Around 87 per cent of the tax we expect from small businesses actually comes in the door with little or no interference from us or support from us. But we want to make sure that it doesn't come at a cost to them and their businesses, so there's a lot of work that we do working with people, such as ASBFEO—I was actually with them yesterday, talking to them about where the pain points are. What are the things we can do to improve our advice and guidance and to improve our digital tools and services? What we know is that the easier we make it to comply and the more information we give those small businesses at the time they need it, the fewer mistakes they make. We know that most small businesses really want to do the right thing. As the acting commissioner said, it is advice and guidance. We also provide things such as the digital cashflow coaching kit. We have provided it to advisers and industry associations so that they can work with small businesses. One thing we do know about small businesses is that they actually like to work with their digital service providers and their trusted advisers, which are the accountants, bookkeepers and people like that. We work in partnership with a lot of their intermediaries, as we call them, to help support small businesses to help them understand their tax and super obligations.

Senator ROBERTS: Thank you. Following on from that, Minister, Ms Jenkins has raised complexity yet again. I've done it twice so far. The complexity leads to inadvertent mistakes and significant stress. It takes an enormous investment of time by small business owners who can't afford lawyers and accountants to deal with every issue that comes up. Small business owners and small business employees need to focus on building their business and services and focus on their customers and communities. We have a huge number of lawyers in this country and a huge number of accountants who spend their time working out ways to minimise tax. In competing countries, the lawyers and accountants are focused on how to compete with others overseas. So we're wasting an enormous resource in our country, I believe. Australia's taxation system has evolved, resulting in more than 98 per cent of all businesses being shoehorned into an environment designed to regulate the operations of large businesses. Can you, and preferably the ALP as well, commit to giving small to medium sized businesses a fair go? Will you commit to major tax reform in your election policies?

Senator Birmingham: We'll certainly work to continue to give small and medium sized businesses a fair go and to reduce the rates of tax that they pay wherever we possibly can.

Senator ROBERTS: Excuse me, Minister. Complexity is the problem.

Senator Birmingham: And to reduce the complexity wherever possible. It is the case, Senator Roberts, that when you target a measure or measures like we did in this budget that provide additional incentive and additional support for small businesses to invest in areas such as skills or their digital technologies, that is adding another point into the tax system that is of benefit to small businesses. It is another item that is then not for them to have to report necessarily separately on. Of course, it adds another point at which the calculations are different. It is a point that is beneficial to those small businesses in terms of those calculations being about providing greater tax deduction and more support back to small businesses, particularly for those who choose to invest in skills and digital technologies.

I certainly appreciate the point about the construct of the laws and looking for the red tape reduction opportunities that we routinely do. For example, in this budget there are some changes to the way excise payments are made for smaller excise payers. That is seeking to relieve some of the paperwork and regulatory burden on those smaller businesses that have to pay excise, just as we have previously, indeed, provided for those craft brewers and craft distillers a pretty much excise free environment in terms of what they pay on their

production thanks to the rebate arrangements. So we will continue to look for those opportunities, as you can see in this budget, to target and pursue avenues of red tape relief and reduction and to work, then, in terms of how the laws are administered with the ATO to ensure they are administered in a way that is as effective and simple for businesses and taxpayers to comply with as possible.

Senator ROBERTS: I don't want to engage in a discussion on taxation and government philosophy. Minister, with respect, I know what you are getting at. You just discussed some of the complexities that are being added to the system. From what I have seen with industrial relations laws in this country so far, the Senate spends a lot of time debating about fiddling with the Fair Work Act and making it even more complex because of the loopholes or the lack of protection. It is the same with the taxation system. Isn't it time for a comprehensive reform to make it simple and efficient and open and transparent?

Senator Birmingham: I don't accept quite the premise in terms of additional complexity for small business and the assistance and incentives that we've put into this budget. They are there firmly to help small businesses and encourage them to invest more in skilling their workforce, to invest more in increasing the digital capacity of their businesses and, in doing so, to pay less tax and to receive support from doing so. They additional measures in terms of tax law, as you talked about. In terms of the reporting arrangements that actually apply on the ground to small businesses, they will seek to be kept as simple as possible. It's simply providing another way of delivering a lower taxing environment for small businesses. As I said, it is certainly our intention to continue to pursue areas of relief as much as possible. I am looking for the excise reforms in the budget papers to point you to an example, but I can't quite put my finger on the right measure at this time. Apologies, Senator. If I find the page, I will shout it out shortly.

Senator ROBERTS: There's no need to apologise. You're giving me evidence for my point.

CHAIR: Well, we're going to have to give you more time now, Senator Roberts. You can take the rhetorical point.

Senator Birmingham: It was earlier in the book than I was looking, Senator Roberts.

CHAIR: There are so many good things in that book, Minister. It's hard to find them.

Senator Birmingham: Pages, 5, 6, 7 and 8 of Budget Paper No. 2 go through some of the measures in the deregulation agenda that are in this budget. The particular ones I referred to are around streamlining and aligning licensing requirements across the excise system and providing significant deregulation benefits to fuel and alcohol producers, importers and distributors through streamlining the administration of fuel and alcohol excise and excise equivalent customs goods. While they come at an estimated reduction to government revenue of \$127½ million over the forward estimates period, they are overwhelmingly being pursued as measures to simplify reporting requirements for smaller businesses operating in those spheres so that they, for example, only have to report and pay duty on a quarterly basis rather than a weekly or monthly basis, as is currently the case. There are a number of other measures across those pages that I won't seek to read out at present.

Senator ROBERTS: Thank you. We compliment the government for accepting our changes to various industrial relations laws put forward to make it simpler for small business. We accept that. We acknowledge it. To use your words, you're encouraging small business to make investments in people, technology, research and development. You are encouraging them to spend that money in a certain way. That is what happens with the taxation system. When it's so complex, it encourages all kinds of things. What I am suggesting to you—perhaps you can confirm whether or not you agree—is that it's the government's responsibility to create the environment for small business and large business to actually invest where they think it's right, not to steer small business around. I would argue that small business owners have a much better idea of where to invest their money than any one of us in this room.

Senator Birmingham: Senator Roberts, on the broader principle, yes, I agree. It's why we have sought to reduce headline tax rates where we can. The reduction in income tax rate for small businesses down to 25 per cent was, indeed, driven by a desire to create a lower tax environment and to enable businesses to make their deductions. However, there are equally areas of the economy where we know that the productivity uplift for individual businesses and the economy overall will be enhanced by seeing greater levels of activity by business. There is co-investment alongside government. Essentially, once you're talking about tax deductibility in excess of 100 per cent, it's a means of using the tax system to provide not only that deductibility but an element of additional support for certain activities in relation to skill and workforces and in relation to digital technology uptake. These areas that can help the productivity not just of individual businesses but the economy as a whole.

Senator ROBERTS: That is the end of my questions. I think I can see in the answer there that there is some recognition that the people in this room can't understand as well as a small business owner where to spend their money. I accept that it's complex and not a simple issue.

CHAIR: Thank you, Senator Roberts.

Senator CHISHOLM: I have some questions that may cross between the ATO and the charities commission and maybe even the department. Can you talk through how a limited foundation can gain DGR status?

Mr Hirschhorn: There were a couple of open-ended questions from Senator Bragg in the earlier session that went to the general DGR process. At this stage, I will pass over to my colleague Deborah Jenkins, acting second commissioner, who might give a broad overview of how the DGR process works once something is a registered charity and what the requirements to get into the DGR system are. That might be a good way of answering the questions from Senator Bragg on notice and be a good foundation for this response.

Ms Jenkins: There are two types of deductible gift recipients. There is one that the ATO actually endorses. It meets the requirements of the general categories. There are 50 categories. There are also those that are specifically listed by name in the tax law. Obviously, there's one category where the ATO has a role to play, and the other one that is listed in the tax law. Each category does have different requirements. If you click into the website—I'm happy to provide that—there's a lot of detail underneath it. Since 14 December last year, there is now the requirement that all DGRs must be either a registered charity or an Australian government agency. That is fundamental. All of them will be that. The status is actually on the ABN Look-up website; it goes through that process. You can apply either at the time you are applying for charitable status or you can complete a form subsequently. The ATO looks at what category you're applying for and matches it up with the information or the documentation that has been submitted at the time to confirm whether they you the category applied for. I will now move to Senator Bragg's question. Hopefully, it answers yours as well. If there is information that comes to our attention such that it looks like they do not meet the category they've listed, it is possible for us to revoke that DGR registration. All of them are listed publicly on the ABN. If you go to the ABN and look that up, you see that under the listing there is charitable status and DGR status as well.

Senator CHISHOLM: Can you confirm whether Australian Future Leaders Foundation Limited has been given DGR status?

Ms Jenkins: That will be publicly available. We can probably just double check that. It is the Australian leaders association?

Senator CHISHOLM: Australian Future Leaders Foundation Limited. I was looking for when that occurred as well.

Ms Jenkins: I will just have to check on the publicly available information.

Mr Hirschhorn: While my colleague is looking to see if it has already been processed on the register, let me say that it has to be registered as a charity, which is the responsibility of my colleague, who will no doubt have a contribution. There is also a separate application. That is necessary but not sufficient for it to be a DGR as well. We will search to see whether it has already been uploaded on the ABN. But there are a couple of steps before it reaches DGR status. I will pass over to Ms Longley.

Ms Mrakovcic: On 31 March 2022. Basically, the information I have is that the Treasury Laws Amendment Act 2022 was introduced and passed by both houses of parliament on 30 March 2022 and received royal assent on 31 March 2022. That was the vehicle that provided the Australian Future Leaders Foundation Limited with DGR status as of 1 July 2021.

Ms Jenkins: So it's not the ATO.

Mr Hirschhorn: I think that is an example of the first category, which is one that is named in the tax law.

Senator CHISHOLM: So it was specific legislation?

Ms Mrakovcic: It was a specific listing.

Senator CHISHOLM: Ms Longley, do you wish to add anything to that?

Ms Longley: I don't actually, Senator. I was going to provide the same information.

Senator CHISHOLM: Why was the Australian Future Leaders Foundation given DGR status under this specific listing process?

Ms Mrakovcic: The specific listing process is essentially one that is at the discretion of the government. So the government makes decisions on specific listings.

Senator CHISHOLM: But doesn't it say in exceptional circumstances?

Ms Mrakovic: As I think Ms Jenkins pointed out, there are essentially two ways in which it happens, either through falling within the 50 general categories or being specifically listed by name. I will say that it is not unusual. If you actually look over the budget documents both at MYEFO and in the budget process, you will generally find that there might be a few entities that are given specific listing. I'm trying to basically strike a balance between saying it is not extraordinarily rare in the sense that there can often be five or six, but it is still the exception rather than passing through the 50 general categories.

Senator CHISHOLM: But the Treasury website does say that specific listing is only available in exceptional circumstances. I'm trying to get a sense of what those exceptional circumstances were. I understand that you are saying it wasn't rare, but the exceptional circumstances part hasn't been addressed.

Senator Birmingham: Bringing forward an entity for specific listing is a decision of government. Of course, the actual distinct process is then a decision of parliament to endorse that. That is the legislation that was just spoken of. In terms of the case law merits, we can take on notice any particular information about the circumstances at the time around the listing of that foundation. As I think has been explored elsewhere, there was some work that they were developing around leadership programs with Government House. That has been part of, at least, its engagement through these processes.

Senator CHISHOLM: The Treasury website says that the application should include the latest annual report. Did the foundation include that?

Ms Mrakovic: I would have to take that on notice.

Senator CHISHOLM: Are there any exemptions to that requirement to include their latest annual report to gain this status?

Ms Mrakovic: Again, I would have to take that on notice. I have some information here that I can provide you. I don't know if it will answer all of your questions. Let me relay what I have got. As far as I know, the Australian Future Leaders Foundation Limited made an application for DGR specific listing on 27 April 2021. Treasury's consideration of that application was routine. We did seek further information from the applicant in May, including things such as a copy of the foundation's constitution and various things. It's pretty regular for us through the process to seek more information. Essentially, we received the information from them also in May. We undertook a costing. The process then basically went through the cabinet ERC process associated with MYEFO.

Senator CHISHOLM: Minister, are you aware what the exceptional circumstances were?

Senator Birmingham: No. We can provide any further advice on notice. There would have been justification for the listing provided in the explanatory memorandum for the legislation that went through the parliament, I would have expected, but I don't have that to hand.

Ms Mrakovic: I can give you some broad trace. As I said, it is ultimately a decision for the government. Certainly in terms of things that we look at, it is whether there is a broad public benefit; whether it fits into a DGR category but a technicality may preclude it; and whether it is unique. They are some of the broader considerations that might be brought to bear in this. As I said, it is ultimately a decision for government in that specific listing space and obviously, as the minister has indicated, for parliament.

Senator CHISHOLM: So it was a decision of government, but the minister is not aware of what the exceptional circumstances were?

Senator Birmingham: No. Senator Chisholm, I don't have to hand the records of that particular listing and what case was made at the time. As I say, it was ultimately a decision of parliament once the legislation was brought to the parliament. It is legislation you voted for, as did I, Senator. There would have been information provided in that explanatory memorandum at the time.

Senator CHISHOLM: You say this was routine, but there was no annual report provided, which isn't routine. They applied just days after registering the foundation. That isn't routine either, is it?

Ms Mrakovic: I can't comment on those issues. In fact, I don't know. I haven't said that they didn't provide an annual report. I've just indicated that I'm not able to answer that question. I'm happy to take this question and the previous one on notice and get back to you with information if we have anything I can add.

Senator CHISHOLM: But how could they provide an annual report when they were only established? It's pretty simple, isn't it?

Ms Mrakovic: I understand the question you are asking. All I can do is take the question on notice and see what else I can provide you.

Senator CHISHOLM: But it's just not possible that they could have provided an annual report. They had only just been set up.

Senator Birmingham: Ms Mrakovic has taken it on notice—

Senator CHISHOLM: It seems far from routine.

Senator Birmingham: in terms of what information may have been provided at that time. I think the point she was making in relation to specific listings is that it is routine. In most budgets I can recall seeing over a long period of time, there were some specific listings of entities. That is routine. It's a well-established process in terms of the way in which they are added to those lists through the parliamentary process. In the grand scheme of the number of entities that do get listed, it is more unusual to come through that stream than it is just the normal registration process. But it is not uncommon.

Senator CHISHOLM: Can you give me another example of someone who has gained status without providing their latest annual report?

Ms Mrakovic: I would have to take that on notice.

Senator CHISHOLM: This is a foundation that has one employee and received \$18 million of government funding to function. Surely, Minister, you would be aware of what the exceptional circumstances were that gave your government the impetus to include this in legislation?

Senator Birmingham: I think the engagements had with Government House around the program that this entity is anticipated to pursue and the desire to see that progress form the basis of these actions. As I said earlier, they are not unlike certain programs that operate in different states and territories in terms of leadership foundations run by different governors, or at least under the auspices of different governors, as the figurehead of them providing for leadership development opportunities across different states and territories. In this case, it's a not dissimilar proposal, from my memory, of what I saw that was worked through with Government House in terms of what was presented to government. I didn't quite catch estimates the other night with the official secretary to the Governor-General, but I gather at least that some of this was explored or explained there.

Senator CHISHOLM: I didn't catch it all either, Minister. Take it on notice if there are any exemptions to the requirement to include their latest report to gain DGR status. Is that correct?

Ms Mrakovic: That's correct.

Senator CHISHOLM: It's not something you are aware of as you sit here but something you'll take on notice?

Ms Mrakovic: That's correct.

Senator CHISHOLM: Thanks, Chair.

CHAIR: I want to do a final check, Senator Chisholm. Are we now done with revenue group, the Australian Taxation Office and the ACNC?

Senator CHISHOLM: Which minister would have signed off on the DGR status?

Senator Birmingham: Well, for that decision of government to be included in last year's budget or MYEFO—I forget—it essentially is a cabinet level decision through the budget making process. It's not a single ministerial decision in that regard.

Senator CHISHOLM: I assumed it would have rested with the Assistant Treasurer.

Senator Birmingham: The Assistant Treasurer has, I think, responsibility in terms of that area of administration. As I say, it's not a ministerial decision that is taken. It's a decision of government through the cabinet processes in the forming of the budget or MYEFO related decisions. It is only enacted by a decision of parliament actually agreeing to it.

Senator CHISHOLM: Thanks, Chair.

CHAIR: Mr Hirschhorn, you had something?

Mr Hirschhorn: Thank you, Chair. I promised Senator Bragg that we would come back with a response during the session, if we could, to one of his questions, which was about the status of the board of tax review of cryptocurrency and the ATO's role.

CHAIR: If you could.

Mr Hirschhorn: I will pass to my colleague, second commissioner Kirsten Fish.

Ms Fish: The ATO has been involved with the board of tax review on digital assets and digital currencies. The terms of reference were recently released by the government. We were consulted in relation to those. We are

engaged with the board of tax generally to identify a number of tax officers who will be a part of the board of tax working group alongside Treasury colleagues and other members of that working group. So we will be really involved in that review. In addition to that, we are also working to identify additional topics for public advice and guidance. That will be updating some of our existing guidance and identifying new topics for guidance. As we do that, we engage with many stakeholders who are relevant to both identify the topics as well as explore those topics for public advice and guidance.

CHAIR: Thank you very much, Ms Fish. That concludes our session with revenue group. Ms Mrakovcic, do you have something you want to add as well? I could sense that.

Ms Mrakovcic: I am trying to get some information. I haven't as yet got another example. I am reliably informed that it would not be unusual for there not to be an annual report provided. Many entities apply in their infancy. If they are applying early on in their infancy as an entity, they wouldn't necessarily have an annual report. So we are still trying to get you an example. We have taken that on notice. I want to clarify that it is not an unusual outcome.

CHAIR: Thank you very much. Mr Hirschhorn, I want to convey my compliments to the tax avoidance taskforce and all the work they are doing. The outcomes they are achieving are just extraordinary. If you can please pass on my compliments.

Mr Hirschhorn: Thank you very much, Chair. I'm sure that the officers involved in the taskforce will be very grateful for that feedback.

CHAIR: They are an inspiration.

Mr Hirschhorn: We are very proud of them.

Senator Birmingham: Except for the entities that they are extracting tax from that were seeking to avoid. It's important for every other taxpayer who is doing the right thing.

CHAIR: Absolutely, Minister. I couldn't have put it better myself. We will now move to market group. Welcome, Ms Quinn and your team.

Senator RENNICK: My question is to James Kelly, the first assistant secretary of the financial system division. I have a question about the regulation of physical gold and silver bullion. I note that bullion has been specifically excluded from note 2 of section 763B of the Corporations Act, which means that physical bullion is not defined as a financial investment. Can Treasury explain what the policy justification for this is? Why is physical bullion purposely not considered a financial investment and, therefore, a financial product?

Mr Kelly: I do not know the historical reason why bullion was considered in drafting the definition of financial product and how that happened. It's more a question. It's not my place to make a judgement as to whether it is a financial product or not. My understanding is that it generally hasn't been seen to be. I can't really say much more than that.

Senator RENNICK: With respect to section 763C of the Corporations Act, a financial product is defined if a person manages financial risk. Given that investors purchase physical gold and silver to manage the risk of inflation and financial instability, is it possible that physical bullion could be considered a financial product by virtue of meeting the definition outlined in 763C?

Mr Kelly: It's not my call to give advice on the legal position of gold bullion for the purpose of the definition. I think ASIC is appearing later. You could direct your question to them.

Senator RENNICK: I will put it to the minister. Basically, a lot of superannuation investors and investors in general now buy physical gold. They are concerned about inflation. As you know, notes depreciate very fast when there is a lot of inflation. How is it that physical bullion isn't being monitored as a financial product when a lot of money is invested in physical bullion? I might note that Australia has the largest gold holdings in the world. Historically, we've had big banks pay billions of dollars in fines for rigging the paper market in gold. In 2021, our exports of gold were worth \$28 billion. If gold wasn't manipulated by the private banks, along with the Bank of England, we could be getting \$56 billion, not \$28 billion, if gold were higher. So it's very important that we track physical gold, especially from the point of view of investors, who basically think they are buying gold but there is a risk that the gold may not actually be there.

Senator Birmingham: Thanks, Senator. In terms of the regulatory standards that different financial entities have to meet in the accuracy of their holdings and meeting those requirements, I would in the main defer to those regulators who will be far better placed to report on how they verify for themselves the credibility of different holdings where they are undertaken by financial institutions. Obviously, the government expects that where holdings, be it in gold or other asset classes, are held by different entities and different financial institutions that

are regulated institutions under our frameworks, there is accuracy to those holdings and credibility underpinning them. That is what different regulatory entities should be able to verify and have confidence in.

Senator RENNICK: Thank you. Who is responsible for the regulation of physical commodities in Australia? Are there any rules and regulations around physical commodities?

Senator Birmingham: When I am talking, I am thinking about the regulation of what a superannuation fund might hold or what a bank might hold or those regulated entities, not specifically who regulates a type of holding.

Senator RENNICK: Who regulates the custodians of the physical commodities? For example, there are a lot of bullion banks out there in Australia that claim to have physical holdings of gold. Indeed, with our own Bank of England, our own 80 tonnes of gold was actually found to have fake gold bars and duplicate serial numbers. Despite the fact that the deputy governor of the RBA, Guy Debelle, had said to us that no gold had moved in 20 years, it actually now turns out that nearly all of our gold has been refined since 2015. So there are serious concerns out there in the marketplace. I will note that gold has been one of our biggest export markets since 1850. It employs 70,000 to 100,000 people in Australia. It's often forgotten about with coal and iron ore. It is the third biggest mineral export. If it weren't manipulated downwards, it could quite possibly be the biggest mineral export. There is a gap in the market out there, in my view, for the regulation of the physical commodity.

Senator Birmingham: Thanks, Senator.

Senator RENNICK: And the custodian of it.

Senator Birmingham: Unless officials have something else to add there, I think the particularities of the question there in terms of actually drilling down to the different regulators looking at the holders of those commodities and then understanding the confidence that those regulators have in the accuracy of those reported holdings is, from my reckoning, the right approach. I don't think it is likely that government would seek to go after the commodity itself in terms of trying to regulate how it's held.

Senator RENNICK: Yes. I am referring to the custodians.

Senator Birmingham: But in terms of the role of APRA or others, I think that's probably where it's best explored as to what work they do with those they regulate.

Senator RENNICK: Thank you.

Senator WALSH: I have a few questions about the process around legislation for the compensation scheme of last resort. I understand that legislation for the compensation scheme of last resort was recommended by the Ramsey review in September 2017. It was then picked up by the royal commission, which recommended a scheme of last resort be created. Government indicated that it would do that in February 2019. That is what I have. There was a government road map on the recommendations of the royal commission. Treasury did a consultation paper in December 2019. Is that about right in the time line?

Mr Kelly: That's right for the discussion paper.

Senator WALSH: And then there were delays associated with the road map coming out of the royal commission.

Ms Quinn: That's right. In May 2020, the government deferred some work on the recommendations of the royal commission as a result of the COVID pandemic. That added a six-month delay to some measures.

Senator WALSH: And the exposure draft of the legislation was released in July 2021?

Ms Quinn: Correct.

Senator WALSH: Are you able to tell the committee when Treasury started drafting the legislation for the compensation scheme?

Mr Kelly: Not precisely. I would have to take that on notice. If I had to venture a guess, it would have been in the first half of 2021.

Senator WALSH: The first half of 2021? The road map had been delayed in May for six months. Is that broadly why that time frame?

Mr Kelly: The compensation scheme of last resort was recommended, as you said, by the royal commission. It picked up early work by Professor Ramsey and that process. In terms of the detail of the scheme, it was very underdeveloped. So a lot of the work Treasury has done is working out the details of what is a complex scheme. In some ways, we have to do that before we turn to the actual drafting of the legislation. The regulations are also important.

Senator WALSH: So you think you started working on it roughly without wanting it—

Mr Kelly: Sorry, I refer to the actual legislation itself in terms of going to the Office of Parliamentary Counsel and getting the legislation drafted. As you have already covered, there was a discussion paper released at the end of December 2019. In some ways, we've had people working on the compensation scheme of last resort from the time of the government commitment in February 2019 with the exception of particularly during the first part of the COVID period, when largely a lot of the work on the royal commission stopped across the board. We picked it up after about six months.

Senator WALSH: Treasury has been working on it since the government's response in around February 2019?

Mr Kelly: Subject to COVID and the interruption because of the first part of COVID.

Senator WALSH: So three years ago. It probably started working on the draft legislation around the start of—

Mr Kelly: I would have to take that on notice to give a definitive answer.

Senator WALSH: some time probably in 2021. Are you able to tell us when the draft legislation was first provided to the Treasurer's office? Is that something you are able to tell us on notice?

Mr Kelly: I would have to take that on notice. The exposure draft legislation was released on 16 July 2021. I expect it would have been a month or two or weeks ahead of that.

Senator WALSH: What was the thinking of Treasury around including managed investment schemes in the compensation scheme, as considered in your discussion paper?

Mr Kelly: I go back to Professor Ramsey. He actually recommended that the scheme, if it is set up, actually start with financial advice but be designed in a way that it could be extended to other services or products. The royal commission, from memory, didn't go into the detail of how wide or narrow the scheme should be. The discussion paper in December 2019, from memory, set out basically three models. There is a very broad model that picks up everything relating to licences—credit licensees and AFSL licensees—and brings them in. That is a very broad model. The narrow model is the financial advice world, as Professor Ramsey and his panel recommended. There is a mid-range model in between those two extremes, which is the kind of model that is in the bill and the government policy commitments to date.

Senator WALSH: In your discussion paper in December 2019, you canvassed those different options but didn't necessarily make a specific recommendation?

Mr Kelly: No. It was a discussion paper. It wasn't a proposals paper.

Senator WALSH: Were managed investment schemes ever included in any draft legislation that you produced?

Mr Kelly: I am hesitating because I am trying to recollect the legislative scheme and whether it is in the legislation or it is in the regulations. I think the answer, even if you broaden the question out that way, is no.

Senator WALSH: Okay.

Mr Kelly: The only qualification, with the gloss on that, again, is that it is a kind of scheme designed to be able to bring in other sectors as required. For certain purposes of the scheme, a sector can be caught up in the levy arrangements, even though the products themselves are not directly subject to the compensation arrangements. I will correct the record if needed, but I think the answer is no.

Senator WALSH: I'm sure the chair wants to welcome the minister.

CHAIR: Always. Welcome, Minister Hume.

Senator Hume: Sorry for the hold-up.

Senator WALSH: You forgot to thank Senator Birmingham as well. You might get in trouble for that later.

CHAIR: No. He is a very reasonable minister. He actually left when I didn't have eyesight. Never mind. I'll make it up to him this afternoon.

Senator WALSH: Mr Kelly, I think you were saying that the scheme that is in the legislation that went to the parliament in October last year was designed to be able to include further products or schemes such as managed investment schemes?

Mr Kelly: I haven't read the legislation for some time now, so I would really need to take that on notice to answer it properly.

Senator WALSH: Minister, I will bring you up to date on this line of inquiry. I went through the time line for the legislation for the compensation scheme of last resort starting back with the Ramsey review in September

2017. We've just confirmed the time line there. That is including it then going to the royal commission, the government responding to the royal commission, the road map, delays in the road map, the exposure draft being produced in July 2021 and going to parliament in October 2021. The parliament, of course, has risen, so Treasury has been working on this legislation, according to the time line and the evidence to date, for three years since the royal commission, roughly. The parliament has risen without that compensation scheme being listed by the government for consideration or being passed. Why is that? Why have we been working on something for three years that was first recommended by the Ramsey review in September 2017? Obviously, this is about supporting victims of failed investment schemes. Why is it that essentially the government didn't list this and set up this scheme for those victims?

Senator Hume: Can I correct you? It is actually about helping victims of bad financial advice which has then gone through to an AFCA determination. AFCA have then found that the financial adviser has disappeared, shut up shop and gone to Mallorca. It's not just bad investments that it specifically covers.

Senator WALSH: I will take your correction on victims of bad financial advice. But time periods have been the same and so on. Why didn't the government get it done?

Senator Hume: We did commit to introducing legislation for all of the measures recommended for government in the Hayne royal commission. This was one of those recommendations. There has been some considerable debate back and forth as to the scheme that the government put forward. I know that this committee had recommended that it pass unamended, but the dissenting report suggested numerous amendments. In fact, it would be amendments that would considerably change the nature of the compensation scheme of last resort. Because of that decision, further work needed to be done. It didn't get done before the parliament rose. As you know, we had a very jam packed legislative agenda. We passed 18 different pieces of legislation on the last day. This one couldn't be agreed upon to pass without amendment.

Senator WALSH: So you are not suggesting that the dissenting report of the Senate economics committee determined the time line of whether you were able to do this legislation?

Senator Hume: No. In fact, I think the good news, Senator Walsh, is that the government stands by its commitment to introduce legislation for a compensation scheme of last resort. I think the opposition does too. I imagine that it will be something that is high on the priority list of the next term of government.

Senator WALSH: If the timing of legislation was determined by dissenting reports, various people would be very encouraged to write many dissenting reports, wouldn't they?

Senator Hume: Well, I think this committee was very encouraged.

CHAIR: It didn't need encouragement.

Senator WALSH: Nonetheless, the legislation was introduced in October 2021. I don't know how many days we sat since October 2021.

Senator Hume: I don't know either.

Senator WALSH: It was quite a few. Was it just not a priority of the government to assist victims of failed advice?

Senator Hume: No. In fact, from my recollection, I think the committee looked at it over January, maybe February. So there would have been very few days of sitting after the committee reported.

CHAIR: Certainly over the summer period.

Senator Hume: On 15 February. The Senate reported on 15 February.

CHAIR: Sorry, Senator Walsh. I was chairing the hearing.

Senator WALSH: So three years since the government responded to the royal commission and three years of work. Essentially, as you said, the government committed to implement all the findings of the royal commission and just didn't get there? It didn't prioritise it? It didn't get it done?

Senator Hume: Well, I think we can safely say that the government's been working very hard over all of that period to protect consumers. There were unprecedented challenges faced, as we know, during the COVID-19 pandemic. Despite all of that, we ploughed ahead. In fact, I introduced a total of 58 distinct measures across nine bill packages. That consisted of 14 separate bills and 18 subordinate instruments. In the course of that work, the government held around 288 meetings with over 125 stakeholders. We received 542 submissions from stakeholders across formal consultations processes. We have seen close to 100 dedicated staff across Treasury working on the implementation of the royal commission. I don't think that you could possibly understate the

extent to which this is the largest and most important and comprehensive corporate and financial services law reform package in three decades, probably.

Senator WALSH: Yes.

Senator Hume: It's a very significant undertaking.

Senator WALSH: Yes. We had a discussion about whether a dissenting report was responsible for the delay.

Senator Hume: No. I cited the dissenting report. No.

Senator WALSH: You cited the dissenting report. Did you also in your answer cite Labor amendments as a reason why it didn't pass?

Senator Hume: No. I said we didn't feel that it was going to be able to pass unamended, which is one of the reasons why it wasn't listed on that last day when there had to be agreement between parties as to what bills were going to be on the agenda.

Senator WALSH: I am advised that Labor had committed to pass the bill unamended in writing to you.

Senator Hume: No. I know that Mr Jones, the member for Whitlam, and my opposite wrote to me and asked me to bring that bill on. He did not commit to not amending it. He said that he would like to see its swift passage, but that was the extent of his commitment. I wrote back to him thanking him for that commitment and said it would be subject to the decision-makers of the legislative agenda.

Senator WALSH: So what is the reason, I guess, that it didn't get done in the three years, in your mind?

Senator Hume: I think you're going to have to ask the ministers responsible for setting the legislative agenda.

Senator WALSH: So they thought that there were other things that were more important and that this wasn't a priority?

Senator Hume: Well, I think in the few sitting days that we had between 15 February, when the committee reported, and the time the Senate rose, there had to be decisions made. My understanding was that it was done largely with the consent and assistance of the Labor Party to pass as many bills as possible. This one was not one of those ones. Labor's position has been unclear on this bill for some period of time. You did say that you would support the bill.

Senator WALSH: Yes.

Senator Hume: You didn't say that it would go through unamended. To put this bill through with significant amendments would have a profound effect on the cost of financial products, particularly for mum and dad investors who have done the right thing. This was not a bill that one would take lightly and rush through.

Senator WALSH: Treasury has confirmed today that they started working on this three years ago, around February 2019, and it's Labor's fault that you didn't pass this legislation?

Senator Hume: No. That's not what I said. I did say that this is a very complicated bill. It's a complicated scheme. To get it wrong would have profound effects. It was not something that could be rushed through. Any amendment would have significant effects on the cost of financial products forever going forward. That was not something that this government would be willing to risk.

Senator WALSH: How many recommendations of the Hayne royal commission haven't been legislated or are outstanding? Is it just this one?

Senator Hume: That's a good question. I might have to get Ms Quinn to address that one.

Ms Quinn: There are two pieces of legislation in parliament. There is the compensation scheme of last resort and the financial accountability regime. There are two recommendations related to the quality of advice review, which is to be conducted in 2022. A recommendation to harmonise mortgage broker laws will be considered after the financial advice review in 2022. There is a recommendation to remove the exemption of retail dealers from the operation of the National Consumer Credit Protection Act, which will be considered after the parliament deals with the consumer credit reforms. There is a recommendation for a national scheme of debt mediation, which is being progressed by the minister for agriculture. They are the remaining outstanding recommendations. Of the 72 commitments the government made, which included 54 formal recommendations and 18 additional commitments, they are the only remaining ones outstanding. They are all on progress, either before parliament or in progress or waiting for appropriate scheduling.

Senator WALSH: Thank you. Two that have been introduced—this compensation scheme and the financial accountability regime—are not listed and dealt with?

Ms Quinn: Yes. Both were introduced in October and reported back from the Senate committee on 15 February.

Senator WALSH: Then you started to go through the other measures, which are kind of in a process.

Ms Quinn: They are less legislative. The quality advice review has two recommendations related to it. There are terms of reference and a review process in place. That was to be conducted in 2022. That is when it started.

Senator WALSH: Of the four or five that you just mentioned, none of them require legislation?

Ms Quinn: Possibly some. The exemption for retail dealers connected to the consumer credit protection act may require changes to regulations or legislation. But it's subject to other reforms being dealt with.

Senator WALSH: So none of the other measures on your list there—

Ms Quinn: Are substantial regulatory changes, no.

Senator WALSH: require legislation?

Mr Kelly: There is one related to treating mortgage brokers as financial advisers that Ms Quinn mentioned. Depending on what you thought that meant, that could require legislative change. Where it is in the timing is that it was always a government commitment to do it after the review of the advice base. In some ways, it's very hard to align the treatment of mortgage brokers with advisers until you know where you've landed with the advisers.

Senator WALSH: So potentially four things needed to get legislated in order for the government to fully respond as it said it would in its term to the royal commission. Four things didn't get legislated when the parliament rose?

Ms Quinn: Of the 72 commitments, yes; that's correct.

Senator WALSH: Thank you. I have some questions about the Aboriginal Community Benefit Fund, Youpla. I won't go through too much of the time line there. The fund was trading as a funeral insurer targeting Indigenous communities with a product that, in many cases, left members paying more for policies than they would have ever received in benefits. The fund recently went into administration. That is broadly the background. Does Treasury have an estimate of how many consumers, many of whom would be quite vulnerable, are likely to be affected by the collapse?

Ms Quinn: The information I have is around 1,700 members.

Senator WALSH: That is a different number, isn't it, from the number of policyholders at the time the fund went into administration, I think. Do you know how that 1,700 number is derived?

Ms Quinn: I don't have that information before me. We would have received this information most likely from our colleagues at ASIC, given they are looking at this matter and regulatory action.

Mr Kelly: I think you've dropped off a zero. I think the number we have is 17,000.

Ms Quinn: Sorry. What did I say? Yes, there's 17,000. I misread my number. Apologies.

Senator WALSH: That would be about the number of policyholders, I think. I was about to say that they would be unlikely to receive any coverage for their funeral expenses, but you might now tell me that is a matter for ASIC.

Ms Quinn: They've gone into liquidation, so it would be a matter of going through that process to see whether there are any funds available for distribution out to members.

Senator Hume: Which they are doing now.

Ms Quinn: Which is in progress.

Senator WALSH: So in terms of Treasury's role in relation to this, are you able to tell us how much those consumers have paid into that fund?

Ms Quinn: I don't have that information. In terms of Treasury's responsibility, we have no direct responsibility in the resolution of a fund of this nature. It goes through the legal framework that we look at. We do, of course, get information from the regulators about instances of what is happening in the financial system. We support the minister in terms of the provision of information on these matters, but we don't have any direct involvement in either the resolution or the monitoring or follow-up regulatory action. I note that some of this is related to ASIC's duties. Others are related to the New South Wales fair trading system, because they were regulating elements of this entity.

Senator WALSH: I understand what you are saying. I will see whether you have some of the information that I am seeking here. When did Treasury become aware that the fund would be going into administration? When did you provide a briefing to the Treasurer in relation to the fund entering administration?

Ms Quinn: I don't have that detail with me. I'm happy to take it on notice. We most likely would have been provided information from ASIC or AFCA, depending on where the claims came through the system and the awareness.

Mr Kelly: I would have to take the precise date on notice. One of the royal commission recommendations was implemented early in 2019. One of the very first recommendations went to issues associated with Youpla, which at that time traded under a different name. Even back then, in taking forward the recommendation and implementing it, some of the issues raised by consumer advocate bodies were around the future viability of these funds. That is something we were very conscious of in thinking about the timing and design of that measure.

Senator WALSH: There were many indicators that this fund was going to go into administration. In fact, they were dealt with in the royal commission in 2018.

Senator Hume: Actually, this fund has been around for 30 years. Successive state and federal governments have been trying to do something about this shonky business. In fact, I think something that we should be really proud of is that finally we put a stop to this organisation's predatory behaviour. This government instituted removing an exemption that allowed funeral expense policies to be sold by unlicensed financial product providers. That came into force on 1 April 2020. We legislated the design and distribution obligations. Now you have to identify target market for all your financial products. We've introduced the product intervention powers that allows ASIC to ban products when they identify risk of significant consumer detriment. We've introduced the antihawking rules to prevent that precious selling. Funeral expense policies are now subject to unfair contract terms. You have to get a licence to sell these funeral expense services. ACBF, or Youpla, were not granted a licence. I think this government has taken significant action on this organisation.

Senator WALSH: I guess as you say, Minister, there had been awareness of this sort of dodgy practice and this operation for a while. In December 2019, the shadow minister for Indigenous affairs, Linda Burney, wrote to the Treasurer and the Minister for Indigenous Australians seeking a clear commitment to protect the policyholders in the event of a collapse. Obviously, people were seeing that this operation was going to put lots of people at risk—around 17,000 people at risk.

Senator Hume: It's important to note, though—

Senator WALSH: I haven't asked my question yet. You just went through a number of measures that obviously didn't protect these 17,000 people from the collapse of this fund. Why didn't any of the measures that the government introduced successfully protect these policyholders when, as you've said, and as the correspondence from the shadow minister indicated, it was known that this was likely to occur?

Senator Hume: You make an important point there, Senator. ACBF promised to pay your funeral expenses so long as you made regular payments to this company until you died. Those policyholders obviously haven't died yet. It should be noted that people affected should be aware that nobody in this country is unable to bury their loved ones without a dignified funeral. The liquidators have secured the group's assets already. They are meeting with the regulators. That includes Fair Trading NSW and ASIC. They are currently working to assess the financial position to liquidate the company. We understand that one of the past directors of the business is no longer in the country. We would expect that, as the person responsible, he would be held accountable and other directors would be too. If it's found, as the liquidators have indicated, that potentially funds have been misappropriated or stolen, I would expect that the perpetrators would face the full extent of the law. In the meantime, there are organisations in every single state that can help with funeral and burial costs so everybody will be able to bury their loved ones with dignity. This is a terrible organisation. I am very glad to see the end of it. One of the reasons why we've seen the end of it is that this government has taken action to prevent that sort of shonky behaviour that we've seen in the last 30 years. This has gone on through successive governments, state and federal. When Labor were last in power, not a single change was made. Not a single reform was made to stop this behaviour, yet Labor were aware of this operation throughout their period of time in government.

CHAIR: Senator Walsh, are we getting near the end of your questions because we are behind in our program?

Senator WALSH: I have another several questions.

CHAIR: For market group?

Senator WALSH: For market group, yes. Perhaps I will finish this one and then keep going?

CHAIR: You will continue to have the call. We should note that ASIC was due to come on at 2.30 pm. We're 40 minutes behind.

Senator WALSH: I've just arrived.

CHAIR: That probably wasn't your best argument in response. You still have the call.

Senator WALSH: Minister, you talked about some measures that might help people in the future who are in this situation. It was known that these vulnerable policyholders faced this situation certainly some years ago. You've essentially referred these 17,000 people to state government agencies that help with—

Senator Hume: Well, they are the state regulators.

Senator WALSH: funeral costs. Is that what government has for these 17,000 people—to contact their state government agency and get a subsidised funeral?

Senator Hume: You can safely say that nobody in this country is buried without a funeral. If that's what policyholders or families of policyholders are concerned about, they shouldn't be. There are organisations that can help with funeral and burial costs. If you would like me to table a list of them, I'm quite happy to do that. However, I think what is most important is that the shonky behaviour that was demonstrated by this organisation has been stopped and will not happen again because of the reforms made by this government.

Senator WALSH: So what you now have for these 17,000 people is contact a state office and try and get a funeral of last resort. Is that right?

Senator Hume: This was never a savings plan that they bought. What they bought was having their expenses paid when they die at their funeral. I have some web pages from Youpla's own website, which literally says, 'This is not a savings account.' Your family hands them the receipts from the funeral director and all they do is pay them for you. That can still occur through state-run organisations.

Senator WALSH: I will run through some questions quickly about where we're at with the financial adviser register. How many financial advisers are listed on the register today? How does it compare with two years ago?

Mr Kelly: While my colleague is preparing for the answer, I will add to a question previously from the senator—

CHAIR: Yes, Mr Kelly.

Mr Kelly: on the first stage of the drafting of a bill. It related to the conversation on the scheme of last resort.

Senator WALSH: Yes.

Mr Kelly: Drafting instructions were provided to the OPC in May 2021. A first draft was received at that time, in May 2021. Ordinarily, there's then further discussions with OPC before it goes to government.

Senator WALSH: Thanks very much for providing that.

Ms Bray: ASIC's financial advisers register, which is available on the MoneySmart website, in February 2022 had 17,500 financial advisers listed.

Senator WALSH: What was that number?

Ms Bray: It is 17,500.

Senator WALSH: Do you have a number for two years ago?

Ms Bray: In January 2019, there were 28,600 advisers. It is at that point that the number of advisers peaked.

Senator WALSH: So 28,000 and now 17,500?

Ms Bray: Yes.

Senator WALSH: I have a figure of around 2,000 who haven't yet passed their exam who are currently on the register. Does that sound right? Can you give us a figure on that?

Ms Bray: I'm not sure if I have that in front of me at the moment. ASIC is appearing after us. They recently released the most recent exam results for the advisers who sat the exam in February. To date, 91 per cent of advisers who have sat the exam have passed that exam.

CHAIR: Was that figure 98 per cent?

Senator WALSH: It is 91 per cent.

Ms Bray: It's 91 per cent.

Senator WALSH: What happens to those people who are on the register, as I understand it, who haven't passed the exam and who don't pass it by September this year?

Ms Bray: ASIC has just recently released some information on that. There are some FAQs on their website. An existing provider has not passed the exam by 1 October. There's a series of cases. It depends whether they are also a relevant provider as to what the outcome is. I can work through them or we can get ASIC to talk to their own document.

Senator WALSH: Yes. That does sound reasonable. That's okay. Does Treasury know what the median fee charged by financial advisers for financial advice is?

Ms Bray: I don't have that information on me. The quality of advice review, which Mr Kelly referred to earlier, has an issues paper out at the moment. It will be considering issues including the affordability of advice. They are taking submissions at the moment. We have some information in terms of the costs of financial advice, but obviously that review will look into that in a whole lot more detail.

Senator WALSH: Is there some sort of quick snapshot you can give us from what you've got there?

Ms Bray: Yes. A range of different reports have been released recently that provide a broad range of estimates on the cost of financial advice. They vary from about \$5,000 that the FFC cited in its white paper on financial advice, which was released last year, and between \$2,600 and \$2,900 that ASIC cited in its consultation paper on promoting access to affordable advice in November 2020.

Senator WALSH: I'm happy for us to take up some of those questions with ASIC, if we have time with ASIC. I think that is all we have for Treasury. I'm grateful for your assistance.

CHAIR: Excellent. If there are no further questions for market group, Ms Quinn, thank you to you and your team. We will now call for ASIC to come forward.

Australian Securities and Investments Commission

[15:17]

CHAIR: Welcome, Mr Longo, and your team. I think some of your team are joining by video conference. They are not necessarily all on the screen yet.

Mr Longo: When the committee is ready, I'll quickly let you know where everybody is.

CHAIR: Do you have an opening statement that you want to read?

Mr Longo: What I was going to suggest to the committee is that I have provided to the secretariat an opening statement. In view of the fact that time is short for everyone, I was not planning to read the entire opening statement. I did table it with the secretariat. There are three aspects to the opening statement. One I would like to speak to. You will see why in a moment. The other two aspects are to do with climate change disclosure and ASIC's digital transformation.

CHAIR: I suspect that I will anticipate the one you want to speak to when I see the initials 'CA' appearing on our video screen.

Mr Longo: Those topics can be read at the committee's pleasure. I will quickly introduce who is here, speak to one thing in particular and then I'll open it up, Chair, if that's okay with you.

CHAIR: Sure. Thank you.

Mr Longo: Good afternoon and thank you for the opportunity of appearing before the committee today. Deputy chairs Sarah Court and Karen Chester are joining us from Adelaide and Melbourne respectively. We are joined in Sydney by Commissioner Cathie Armour and executive director Greg Kirk. Commissioners Danielle Press and Sean Hughes are also joining from Melbourne remotely. Appearing with me here in Canberra are ASIC's chief operations officer Warren Day on my right and our general counsel Chris Savundra at the end of the table on my left.

One thing I want to highlight today is that today is the last time Commissioner Cathie Armour will be appearing before Senate estimates or, indeed, any parliamentary hearing. This will be the 25th Senate estimates appearance since her appointment in 2013. I thought I should mark the occasion by recognising her service to ASIC and her dedication to making our financial system fair, strong and efficient. During her nine years at ASIC as a commissioner, Cathie has focused on ASIC's markets work. In particular, she has worked to address broader market integrity issues to support the continuation of well-functioning markets as well as encouraging a smooth, reliable transition in developing ASIC's approach to climate related risk. She has been a great colleague, mentor and friend to many at ASIC and she'll be truly missed. Cathie has a very high reputation in the market. She's well-recognised, as the chair knows, for her expertise with ASX related issues. I wouldn't be surprised if they were raised today. As I said earlier, I will not read the rest of the opening statement. I will leave that to your convenience.

CHAIR: Thank you, Chair. Before I give the call to Senator Bragg, I extend my thanks to you, Commissioner Armour. You've done an outstanding job. I knew you by reputation and significance when I was a company secretary of an ASX listed public company. The chair is absolutely correct in his interpretation of your reputation. Certainly in my time on this committee and the Parliamentary Joint Committee on Corporations and Financial

Services. I've found your contribution to be thoughtful, articulate and well-prepared. No doubt there's that underlying commitment to the public good which has driven all of your endeavours at ASIC. Please accept my personal best wishes and I'm sure everyone else's on the committee with respect to your future endeavours. Thank you for the contribution you've made.

Ms Armour: Thank you very much, Chair.

Senator BRAGG: I have one question for you, Chair Longo. I commend you with your plain speaking approach on this issue of cryptocurrency. I think it's important that people in your position speak in a way that is clear and open. I particularly like the way that you address the issue of the current state of affairs, which is that it's unregulated. I think that's really important. There is a bit of conjecture about this information sheet that ASIC released. It is info 269 discussing financial products and services online. This is the one that is designed to deal with the so-called finfluencers.

Mr Longo: I always have difficulty with that word.

Senator BRAGG: I find it very hard to keep a straight face at the best of times. It's just another difficult issue we have to deal with. Does this apply to crypto? I think some of the reporting here is wrong. In my sense, it really doesn't apply to crypto because it's not a financial product. Could you just tidy that up for us, please?

Mr Longo: I will make some remarks of a general nature. I will then hand over to Cathie Armour, who has done a lot of work in this area. Our concern is that it's generally not a financial product. There are a lot of people out there purporting to give advice on this topic. We're concerned that consumers and investors are not being misled by advice that, frankly, they are not qualified to provide. Your earlier observation was about the area not being regulated. I think we're all in agreement that this is an area that has to be regulated. I know that's where it's heading. ASIC will obviously work very closely with Treasury and government to assist in putting together a feasible regime that we can all work with. I will hand over to Cathie.

Senator BRAGG: Before you do that, can I be clear on this point, because it's important to get this right. Info sheet 269 is not directed at crypto because it's not a financial product. Right?

Mr Longo: Depending on what crypto or digital asset you're talking about. It might be a derivative; that could be a financial product. It might be an ETP, or exchange traded product. There are some financial products or services that could cover in some respect a digital asset or cryptocurrency. Generally speaking, no, it's not covered. The reason I am putting it that way is I am reminded by my own staff that there are some—

Senator BRAGG: There are two or three.

Mr Longo: Yes, exactly.

Senator BRAGG: There are two or three.

Mr Longo: Yes. As a general proposition, I have to agree with you; it is an unregulated space. Generally speaking, most of the time, it is not a financial product or service. I will hand over to Cathie, who actually presented today at the AFR crypto conference. She is very much on top of things.

Senator BRAGG: I'm about to go there now.

Ms Armour: I really do not have anything much to add. I just don't think it's quite as cut and dried as perhaps is being represented that crypto assets are not necessarily financial products. It depends on the way the assets are being delivered and sold. As you know, derivatives for crypto assets or contracts for difference over Bitcoin, for example, are financial products. I guess they are some of the technical issues that create a bit of complexity in this area.

Senator BRAGG: Thanks for tidying that up. Thanks, Chair.

CHAIR: Thank you. Good luck with the contribution at the conference, Senator Bragg. You've got fresh material.

Senator CHISHOLM: I have some questions on insolvency and the safe harbour provisions. I was hoping to get some data that hopefully you have. How many businesses entered administration respectively in each of the last three years?

Mr Longo: That particular data is not at my personal fingertips right now. I don't know whether my COO has it to hand.

Mr Day: We would have to take that on notice, I'm sorry.

Senator CHISHOLM: How many of those businesses have taken advantage of the new debt restructuring processes established by the government through the Corporations Amendment (Corporate Insolvency Reforms) Act? Would you have any data on that?

Mr Day: I'm not sure if we do. Again, I'm happy to take that on notice, if you like.

Senator CHISHOLM: So there's no-one who can give me any information about that?

Mr Day: It's a fairly specific data set you're talking about, Senator. I apologise. I don't think we're vested with that information at this time.

Senator CHISHOLM: What about whether ASIC has taken any enforcement against small business restructuring professionals since the implementation of that act?

Mr Day: Again, I don't know that I can answer that right now. For the sake of ensuring we give you a good answer, I need to be clear about what you mean by a small business restructuring professional. What do you mean by that? Do you mean a registered insolvency practitioner?

Senator CHISHOLM: Yes.

Mr Day: Thank you. Again, I'll have to take that on notice.

Senator CHISHOLM: How does ASIC intend to respond to the independent review of the safe harbour, particularly the recommendation to update regulatory guide 217?

Mr Day: I just don't think we're able to answer that question for you today. Again, we will take it on notice.

Senator CHISHOLM: I have some follow-up questions around quality of advice. That is an issue that I think Senator O'Neill had been pursuing. It regards question on notice 012 from the Parliamentary Joint Committee on Corporations and Financial Services inquiry into ASIC and takeovers panel and Corporations Legislation No. 1. Are you aware of that? It was lodged by Senator O'Neill on 25 July 2020.

Mr Longo: If you could you refresh us on what the question was and what the response was, we might be able

Senator CHISHOLM: It is in response to a question on notice to the Parliamentary Joint Committee on Corporations and Financial Services. ASIC said:

... ASIC is also engaging external experts to undertake several pieces of research to further understand key issues related to Access to Advice. This research work will focus on:

- (1) what financial decisions Australian consumers are required to make;
- (2) what factors contribute to the cost of personal advice; and
- (3) what types of information an adviser is required to gather and analyse when advising a consumer to switch from a financial product which the consumer holds to a new product

Has ASIC released this research publicly?

Mr Longo: I will ask Danielle Press to comment on that.

Ms Press: No. We haven't put that out publicly. It has been provided to Treasury and has now been taken over by the quality of advice review that is currently underway.

Senator CHISHOLM: So are you saying that it would be up to Treasury for that to be released publicly?

Ms Press: I expect that it would form part of the quality of advice review. The information that we added did shift a little from that time as time went on. But the cost of advice piece, which I think is probably what you are most interested in, was a piece that we really gathered to underpin our internal thinking around advice. It was never designed to be a public release.

Senator CHISHOLM: Has ASIC engaged any experts since this period to undertake further work in these areas?

Ms Press: So that I am completely accurate, I would need to take that on notice. Not to my knowledge. It may be something that the team have taken.

Senator CHISHOLM: I also have some questions on choice product dashboards. When did ASIC start work on the choice product dashboards?

Ms Press: The regulations for the choice product dashboards haven't been made yet. We haven't started work on the choice product dashboards.

Senator CHISHOLM: So nothing will happen until the regulations have been made. Is that effectively what you're saying?

Ms Press: That's correct.

Senator CHISHOLM: So the start date for the choice product dashboards has been deferred a few times now. Is that right?

Ms Press: Yes. That's correct.

Senator CHISHOLM: How many times has it been deferred?

Ms Press: I would need to go back and take it on notice on the number of times we've deferred it.

Senator CHISHOLM: Any idea when we can expect the regulations? Does that fall in your patch, Minister?

Senator Hume: It does. It's probably a question that would have been better directed to market group. We did discuss this, I think, last week. The trustee directed products are intended to fall under the Your Future, Your Super regulations on 1 July this year. That is still a priority of this government. I understand that it would be a priority of the opposition as well. That will continue to plough ahead. It's probably a question you could also direct to APRA when they appear this afternoon.

Senator CHISHOLM: Is ASIC aware of any stakeholders that have supported the deferral of the dashboards?

Ms Press: Not that I'm aware, Senator.

Senator CHISHOLM: Is ASIC aware of any stakeholders that have made representations to government, Treasury or yourselves about the dashboards?

Ms Press: We've had some consultation on the dashboards. I would need to take on notice exactly what has been said on the choice dashboards.

Senator CHISHOLM: Thanks for that.

Senator WALSH: I have a few questions about how ASIC may or may not work with the ATO on issues related to unpaid super. Is that for you, Mr Day? We know that billions of dollars a year in superannuation is not paid to employees and is owed to them. During a previous estimates round, the ATO commissioner said to the committee that not paying superannuation entitlements is 'a pragmatic business decision made by businesses to stay afloat'. There have been a couple of statements by the tax commissioner that it's broadly understandable that some businesses try to continue to trade when they don't have the cash flow and they draw on any reserve that they've kept for the payment of superannuation.

CHAIR: Senator Walsh, I want to clarify. I am aware that the federal Commissioner of Taxation isn't here. He also noted that he recognises the legalities of the situation. He made that point from a practical cash flow reality.

Senator Hume: He's not condoning the behaviour, and neither would the government.

CHAIR: I need to at least put that on the *Hansard*.

Senator WALSH: I think, Chair, you should have let senators put their questions. I have quoted the tax commissioner from supplementary budget estimates from October. He said that it's a pragmatic business decision for businesses to do that. My question is: what is ASIC's view on that statement? Obviously it can be taken as a comment by the commissioner that, as stated, it's a pragmatic business decision and that it's somewhat understandable that business does this. What is ASIC's view? Is it just a pragmatic business decision?

Mr Longo: I won't comment directly on what the commissioner thought. I will ask Commissioner Sean Hughes, who has done some work in this area, to comment on ASIC's role in connection with this problem.

Mr Hughes: We are aware of the comments made by Commissioner Jordan. We've also noted the report from the Senate published in March this year. The first thing I would say is that ASIC does have a very close relationship with not just the ATO but also the Fair Work Ombudsman and with a number of other agencies that are members both of the Phoenix Taskforce and the Serious Financial Crime Taskforce. We don't generally, as a matter of speaking, get direct referrals from other agencies about particular matters or companies where superannuation or other wage entitlements have not been paid. However, where we do receive information, it would be generally from a registered liquidator as part of that practitioner's report to ASIC in relation to a winding up. Where we do identify that there has been a failure by directors to comply with their obligations, that may well give us grounds for taking action to disqualify a director from managing a corporation. In fact, only recently, we relied on some work done by the Fair Work Ombudsman to take such action. The focus of those actions is around the jurisdiction ASIC has in relation to corporate governance and directors duties. It's not to secure the return of entitlements that employees might have. Through the Phoenix Taskforce and the Serious Financial Crime Taskforce, we certainly do collate that evidence together. Leaving that aside, I don't think it's appropriate for ASIC to be commenting on the evidence given by Commissioner Jordan.

Senator WALSH: Thank you. You have said that you are aware of the comments made by Mr Jordan. You've also said that you are aware of the Senate committee's report into unlawful underpayment. That is what you were referring to there, Mr Hughes?

Mr Hughes: Yes, Senator. That's correct.

Senator WALSH: Does ASIC think that it would be appropriate for entities that you regulate to continue to trade on the basis of money that is being held in reserve for superannuation but not being paid to employees as superannuation?

Mr Hughes: What I would say is that is information that we are reliant on others providing to us. The primary source of that information would be registered liquidators or other sources of information that would give us that information. The likelihood is that because superannuation guarantee payments are paid quarterly, that information may not come to us until some way down the track. The other point I would make is that in a winding up of a company, the employees' entitlements, such as wages and superannuation, will rank relatively highly—I think, second—in terms of order of priority. However, again, that is something that ASIC would receive information from the liquidators on. It would be rare for us to get that information from the ATO in relation to a specific case. However, as I mentioned before, we recently took action against Mr Enrico Pucci in the last month or so in relation to disqualifying him from managing a corporation. The Fair Work Ombudsman had found that there had been a succession of misconduct by him in relation to employee entitlements. Where we do get that information, we do have powers at our disposal to take action, but it is more in the nature of disciplinary action than compensation recovery.

Senator WALSH: Thank you. Essentially, you are saying that, in the vast majority of cases, information of this sort of practice of some businesses only comes to you at the point of liquidation. At the moment, when a worker notifies the ATO that there's an outstanding superannuation balance, the ATO investigates that and comes to some sort of resolution with the business to try to pay it back. Is there any communication between the ATO and ASIC with regard to businesses that have been found to owe superannuation before they might get to liquidation?

Mr Hughes: I'm not aware of any at this point. There are certainly mechanisms under information sharing arrangements between the two agencies for that information to be passed on. But we would have to take on notice whether there had been any specific instances of that taking place in the past.

Senator WALSH: You went to information sharing there. Is this the sort of information that could be shared between the ATO and ASIC, as far as you are aware?

Mr Hughes: I certainly believe it would be within the realm of information that could be shared between the two agencies. As I say, for the most part, the information shared is of a generic nature or industry or sector specific rather than entity specific.

Senator WALSH: The ATO has said that they believe that some employers trade while effectively insolvent using their superannuation reserves as a pragmatic decision to try to stay afloat for a period. Does the ATO ever flag to ASIC those businesses that may potentially be trading while otherwise insolvent?

Mr Hughes: I want to correct this, to be very clear for the record. A failure to pay superannuation entitlements may not of itself be an indicator of insolvency. It may be or it may not be. There may be other reserves which the company can draw on to make those payments. So it's very difficult to generalise in relation to the point you're making to specific instances. We would have to take on notice whether there had been any specific matters drawn to our attention. As I say, the primary actor in relation to an event of insolvency will be the liquidator. ASIC has to rely on the report of the liquidator as to whether that person, the registered liquidator, believes that there has been trading while insolvent. We would take those referrals very seriously.

Senator WALSH: I think you might have lost me a little there, Mr Hughes. The ATO is saying that, in their experience, people try to use the super reserves that they've set aside to keep trading while they might be otherwise insolvent. You've said there might be other things at play there. I am trying to understand all of this, really. They effectively say that they think they see this. Their own investigations reveal that there are companies that are not paying superannuation. The ATO says it looks like they are in trouble. As far as we know, they don't refer them to you?

Mr Hughes: Well, I don't believe I've said that. What I said is that we would need to take on notice whether there have been any specific referrals of entities or directors who have not paid superannuation entitlements to their employees which would have otherwise avoided insolvency. The point I was making was that a failure to pay superannuation guarantee entitlements may not of itself be an indication of insolvency. That is something that would have to be on the specific case.

Senator WALSH: Sure.

Mr Hughes: What ASIC does rely on is whether the registered liquidator of a company which is wound up then reports to ASIC and says that there has been a failure to pay those entitlements which avoided the act of insolvency and, therefore, there is a reasonable suspicion of trading while insolvent. Again, I can't generalise in

relation to the matters you are talking about whether there have been specific instances where the ATO is aware. We would need to take that on notice.

Mr Day: Might I add, Senator, that in a lot of those cases, in fact, there will be a tax debt. As Australia's biggest creditor, the ATO is more likely to seek winding up of that company through its role as, effectively, a creditor of the company, which it does regularly and often. On that basis, it would move the company into the hands of a registered liquidator or an external administrator much more quickly that way. They are some of the things that we previously discussed with the ATO. They tend to do that more often than not. In that circumstance, as Commissioner Hughes has said, we would then wait for the report from the external administrator which gives us the evidence base, then, to effectively prosecute the directors for insolvent trading.

Senator WALSH: I suppose if I put it in layperson's terms, it is all too late at that point, isn't it?

Mr Day: I think that's probably one of the things that Commissioner Jordan may have been getting out. By then, the amount of debts that are racking up for that company are quite huge, obviously not just in relation to unpaid super but for other creditors, tax debts owed to the Commonwealth via the ATO et cetera. At that point then, they are, to borrow a phrase, clutching at straws. The ATO sees that the quickest route, I would expect, is to actually have them wound up under their own hand, as the creditor of the company for unpaid taxes.

CHAIR: Senator Walsh, I need to share the call. Do you have one more question on this topic?

Senator WALSH: Has ASIC publicised any actions that have been taken against ASIC regulated entities that have been found to be improperly using employees' superannuation entitlements to continue to trade while effectively insolvent?

Mr Hughes: We would need to take that specific one on notice. I remind you of the case I referred to before of Mr Pucci, whom we disqualified from managing corporations. We relied in part on work that had been done by the Fair Work Ombudsman in relation to employee entitlements and breaches in relation to its administered regime. That was an outcome only in the last week or so.

CHAIR: Thank you, Senator Walsh.

Senator RENNICK: I refer you to page 210 of the 2021 ASIC annual report. In 2021, you received 10,711 complaints of misconduct and only approved 110 formal section 13 investigations. Sixty-five per cent of complaints of misconduct resulted in no further action. Can ASIC please explain why so many complaints are resulting in no further action, as 65 per cent seems quite high?

Mr Day: I don't have that in front of me. I would hazard a guess, in fact, that there are more than that number of section 13 file notes actually issued in a given year. The other thing I would say is that probably relates to the number of investigations that have ended up in an outcome that has come from those complaints.

Senator RENNICK: Sure.

Mr Day: Obviously, ASIC takes a large number of investigations of its own volition without the basis of a complaint being the initiator of that. In terms of those 10,000 complaints, there's a wide range of matters, given ASIC's wide remit that will be included in there. They are just that. They are effectively allegations of misconduct that often don't have the evidence or may be out of jurisdiction or may actually be for another regulator or may be out of time. There's a whole range of things at play there. I think it's a hard and difficult comparison to look at the number of investigations we've taken and the number we've completed against the number of reports of misconduct we will get from the general public. On top of that, we've obviously got the number of breach reports that we get from industry. On top of that again, we'll get a number of reports from insolvency practitioners as well. With ASIC's resources we've got to decide which of those is the higher priority, because we can't get to everything.

Senator RENNICK: I realise.

Mr Day: We have a dedicated team that goes through those complaints.

Senator RENNICK: How many are in that team?

Mr Day: Approximately somewhere between 70 and 80 people nation wide. They are acting effectively as a triage clearing house and first level of analysis on those matters. Again, within that are complaints such as two people getting into business together, forming a company, becoming directors with a bright idea and then five years later hating each other. Each of them separately writes to us and says the other person is awful. Using that as an example—it is a very simple one—I don't think the public would expect us to use our finite resources on a matter such as that. We say to them, 'Go and get some legal advice and sort it out between yourselves.'

Senator RENNICK: There have been numerous reviews of ASIC's performance in the past decade, including the 2014 Senate inquiry into ASIC, the banking royal commission and the 2021 Senate inquiry into the Sterling

Income Trust. All of these reviews point to ASIC having a reactive culture and not taking timely and adequate action in response to corporate misconduct. Doesn't the 2021 ASIC annual report suggest that ASIC hasn't learned any lessons in the past decade?

Mr Longo: I think that's a misreading of that annual report. I don't think the content of the annual report supports that proposition. Even before I started, ASIC was an active litigator. A lot of our matters are actually litigated or prompted by our own action, as Mr Day pointed out. I have been asked in the last 10 months or so about our approach to enforcement. I think it's active, targeted and credible. We're probably one of the most active regulatory litigators in the country. There isn't a day that passes when ASIC isn't in either a civil court or a criminal court—I'm not talking about a magistrate's court; I'm talking about superior courts—all around the country.

Senator RENNICK: What about the Sterling Income Trust? That was a pretty bad example, I thought.

Mr Longo: Well, the Sterling Income Trust has been the subject, as we're all aware, of a Senate inquiry. I don't see that as a good example of the problem or suggestion you are referring to. It is a big report. It represents several days of evidence. Is there something specific about that report that I can help you with? As we know from the report, there are aspects where I think ASIC could have, for example, published its stop order more widely in September 2017. But it's well to remember that was a very unusual structured product and the state regulatory authorities were aware of it before we were. It came to our attention and we took some action. It's a big subject. I don't think it's a good example.

Senator RENNICK: Okay.

Mr Day: To answer your question, you can pick out one or two examples. I'm not in any way denigrating or belittling the example you've given. It's a very serious and very tragic circumstance. But there's a whole range of efforts and activities that ASIC has across the organisation that are aimed at being proactive. In fact, picking out enforcement of itself is actually a difficult example because it is always by its nature reactive in that the circumstance has already occurred. But if you look at the work that we've done in a range of areas—

Senator RENNICK: I disagree with that, because a lot of regulated products in the past have ended up in tears. Anyway, go on.

Mr Day: I'm sure they have. Again, there's a certain amount of choice that is available there. The laws that the parliament has passed allow a certain number of products that you or others might say are highly risky and shouldn't be offered to the general public. But that's what the laws provide. There's a certain level of vetting that the parliament requires that ASIC ensures is done through the legislation. But there's a lot of work that we do that prevents loss and harm ahead of time. That ranges from our surveillance activities to the regulatory guides we issue and the ways that the offerers of these products and services effectively change their behaviour to ensure that we get that. A lot of those you will never see, certainly in terms of the work that our regulatory guides do in cleaning up the offering of those products. Of course, there are no complaints about them and there is no loss involved with them. Again, there's a whole range of activities that are based on our data activities, or our institutional supervision. A whole range of things actually are proactive and, in fact, have identified enforcement activity that needs to be taken often before the public will know it. We see that also in our market surveillance efforts in that area of regulating the stock market. We often will see harm likely to occur before we get a complaint about it.

Senator RENNICK: Sure.

Mr Day: I think this committee and the PJC have presentations about it.

Senator RENNICK: Thanks. This is my last question. It concerns regulated products or, more to the point, an unregulated product with respect to 763C of the Corporations Act. A financial product is defined if a person manages financial risk. Given that investors purchase physical gold and silver to manage the risk of inflation and financial instability, is it possible that physical bullion could be considered a financial product by virtue of meeting the definition outlined in 763C?

Mr Longo: Are you asking whether gold is a financial product?

Senator RENNICK: Yes.

Mr Longo: It isn't.

Senator RENNICK: That's right. But given that it's basically used to manage financial risk via this section, could it be deemed to be a financial product?

Mr Longo: Historically, there's been some value placed on gold for that purpose. I don't think I could take it any further today.

Senator RENNICK: I would argue that gold is the oldest financial product going around. Given that there's a lot of money invested in gold in Australia—

Mr Longo: I'm not sure it's a financial product. It's a commodity that over time culturally—

Senator RENNICK: Well, that's true. It's a commodity, but it's also a financial instrument as well.

Mr Longo: It's a big subject. Gold has been around for thousands of years.

Senator RENNICK: That's what I mean.

Mr Longo: People have been besotted by it as a way of dealing with inflation. I think historians would say that the role of gold for that purpose is overstated.

Senator RENNICK: Well, that's right. So it's dealt with inflation. When countries fall and their currency suddenly becomes worthless, people don't escape with big suitcases of dollar bills. They escape with gold because they know that is what will be accepted in another country. It's when you leave the island rather than you're on the island. That's the whole point of gold. It stays beyond—

Mr Longo: I've got views about where gold is in the way things work in our economy. We don't regulate gold. We have a fiat currency. We don't have the gold standard any more. That has been the case for many years. There are various ways that people try to protect themselves from inflation. Some people think gold is a good thing, but that is a matter for them.

Senator RENNICK: But you don't think it should be regulated as a financial product?

Mr Longo: No.

Senator RENNICK: Even though a lot of people invest in it?

Mr Longo: It's a matter for government. I personally don't see a strong need to regulate gold.

CHAIR: Thank you, Senator Rennick. Commissioner Armour, I have a few questions for you before you leave your last estimates. I can't resist the opportunity. I will keep it very short because we are running a bit behind time. Are you aware of the announcement that the ASX provided on 28 March 2022 with respect to the progress of the CHES replacement project?

Ms Armour: Yes. I am aware.

CHAIR: Are you comfortable, from your perspective, that ASIC has all of the procedures and mechanisms in place to maintain its supervision of the ongoing rolling out of the CHES replacement project, given how important that financial market's infrastructure is to the functioning of our markets?

Ms Armour: Yes. I believe we do. As you're aware, we incorporated additional licence conditions into the licences of the clearing and settlement entities that are involved in the CHES replacement program to bolster our supervision of that program. We are in constant dialogue with the ASX on the program and its progress.

CHAIR: I was going to ask you about the dialogue with the ASX, but you've answered that question. One of the questions that has been raised in a previous forum—I can't remember if it was in this estimates forum or in the PJS forum in relation to Corporations Law—relates to ASIC's line of dialogue or communication lines with other material stakeholders, including other market participants with respect to the CHES replacement project. Can you provide an update as to the forums you have in place to make sure you are getting the information from the market participants directly regarding their views about the rolling out of the CHES replacement project?

Ms Armour: It was a really constructive suggestion that came, I think, at a PJC meeting that we more independently, if you like, have discussions with the various stakeholders in the equities market. As a result of that, we have been embarking on a process of direct engagement. For example, we've been meeting with some of the major software providers—the major technology providers—to market participants. Those technology providers will need to be able to operate on the new CHES platform. We have separately begun a program of very determinedly talking to market participants and other parties in the ecosystem that will be impacted by the CHES program.

CHAIR: Excellent. Thank you very much for that. You handled those questions as well as you always handle questions in this Senate estimates forum and every other forum I've encountered you. You certainly do go with our best wishes, Ms Armour. That is all we have for ASIC. Thank you, representatives of ASIC, for joining us. We might break for five minutes while the ACCC joins us.

Proceedings suspended from 16:02 to 16:06

Australian Competition and Consumer Commission

CHAIR: I welcome the new chair of the ACCC. It's very good to see you at your first appearance at estimates. I hope you enjoy the process. Ms Cass-Gottlieb, do you have an opening statement that you would like make?

Ms Cass-Gottlieb: I don't have a formal opening statement that I want to tender. If I can make a very brief set of opening remarks, I would be grateful.

CHAIR: Absolutely.

Ms Cass-Gottlieb: Thank you very much, Chair. I am deeply honoured to be appointed and to commence the position as the chair of the ACCC. This is my third week. It has been a compelling and exciting two and a half weeks in introducing me to the wide span of critical work of the ACCC across the promotion of competition and the protection of consumers and small business in multiple industries. I am very pleased to be able to be here to be accountable to the committee and to be able to answer questions together with the senior executives and my colleagues. We're keen and interested to hear your questions.

CHAIR: Excellent.

Senator CHISHOLM: I want to start with some of the public statements you made in some of the media interviews you did when you started. One was around vowing to target petrol and food retailers who exploit anxiety from recent flood disasters, the pandemic and the Russian invasion. The gouging of prices is obviously a big focus at the moment. Could you provide us with a bit more of an assessment of how you plan to do that and what resources you think you have at your disposal to be able to assist Australians in doing that service?

Ms Cass-Gottlieb: We are very conscious of the difficult cost-of-living pressures that the community is facing. We have a manifest role and direction from the minister in respect of monitoring petrol. In relation to grocery and other sectors that have been impacted by the supply chain pressures of COVID and as a result of the invasion of the Ukraine, we're also conscious of those increasing costs. We are monitoring the reports that we get from consumers. We are actively watching their referring to comments in relation to exploiting the anxiety and position of consumers where there are misleading, fraudulent statements and unconscionable conduct that targets particularly vulnerable consumers. We have enforcement teams that regularly take action in relation to those forms of conduct that are in breach of the clear provisions in the Australian consumer law. So the teams are the teams that are already standing and very active. The committee will have seen multiple actions taken relating to conduct that misleads consumers. We have taken action when they are put in situations where they are making decisions on the basis of misleading and fraudulent information. Suppliers do have the capacity to set prices. If suppliers do so in an anticompetitive fashion, the commission has its powers under the anticompetitive conduct prohibitions in the act to also act. So we're watching closely, and we're watching for any activity that appears to be coordinated or collusive. We're doing that with international regulators as well in the supply chain. We're also, through our scanning and monitoring activities, watching for misleading and deceptive conduct in relation to this pricing situation.

Senator CHISHOLM: I am thinking about the floods in South-East Queensland and Northern New South Wales and building products. Even before the floods, there were issues with supply and cost. There is obviously a risk that was accentuated in the first few months of this year. Is there anything in particular that you are looking at with regard to that action?

Ms Cass-Gottlieb: We have a construction unit. I should check. Team has experience and watches this sector in terms of construction materials.

Mr Gregson: I will further the chair's responses. Our focus can be quite broad, but we really hone in on whether there are misrepresentations and whether there might be anticompetitive conduct. It's not unusual for us to show elevated interest at times of disruption. We have a convergence of a few disruptions, as the chair mentioned. We would pick up concerns that come through our industry engagement and through our reports to the ACCC. Where we do see any instances there where there might be misrepresentations, conduct that could be considered elevated and closer to unconscionable or any sense of anticompetitive conduct, that's when we would have our investigation teams. As the chair mentioned, we have a particular focus on construction, with teams actively involved in that sector. That is a further avenue in which we get material in and deploy our resources where needed. In many respects, this isn't uncommon. We step up and show elevated interest at any moments of disruption in the marketplace.

Senator CHISHOLM: Is there any update you can give us on the action that you are taking against Meta in terms of their advertising? Is it before the courts right now?

Ms Cass-Gottlieb: Yes. We filed the proceedings. We will commence going through the usual court process. Because it's before the courts, we're not able to go into detail in relation to the matters and the evidence that we will be filing there.

Senator CHISHOLM: Just on the tech sector more generally, the ACCC has been very active in the tech sector over recent years. Do you expect that will continue under your leadership? We had a bit of a chat earlier with ASIC about crypto. Is there a particular focus that you will have in this area, or is it a relatively broad remit?

Ms Cass-Gottlieb: There are two aspects there. I will be continuing the same focus that the commission has had and has led in respect of digital platforms. They are significant providers across our economy to Australian businesses large and small in terms of facilitating their business activities and critical in terms of the supply of services to consumers. We are continuing our process of inquiries in that regard. We have a very significant one currently underway. It is our fifth one, having given our fourth report to the Treasurer in relation to online marketplaces. Our fifth one is in relation to the regulatory framework. It is currently underway, including with surveys that we are putting out to consumers and to small business and to businesses in order to get the input. In relation to cryptocurrency, that also spans into our financial services involvement. In relation to financial services and payment services, the ACCC is strongly active. It is doing so where we see anticompetitive conduct or scams, for instance. In relation to Scamwatch, we see a number of scams relating to investment schemes. We are seeing that the payments for them are now more often by way of cryptocurrency than by way of bank transfer. So there are intersections with work we are doing. We also working closely in ASIC on how to disrupt scams that have cryptocurrency and other types of payment means. We have seen a 110 per cent increase in financial losses in the first three months of this year compared to the same three months last year in relation to scams and investment schemes. You can be assured under my leadership that the ACCC is very focused on these two areas of potential risk and harm.

Senator CHISHOLM: A 110 per cent increase over the first three months of this year. Is that correct?

Ms Cass-Gottlieb: I will go to the exact data and tell you the exact figures. It is a 90 per cent increase in losses. Let me give you some comparisons. In 2021, Scamwatch received 288,622 reports with more than \$323 million in reported losses, which was up 84.3 per cent from 2020. They are financial losses from scams. Between 1 January and 20 March 2022, Scamwatch received 49,548 reports with \$103 million in reported losses, which represents a 90 per cent increase in losses in the comparable three months.

Senator CHISHOLM: Wow. Are you able to provide any sort of detail as to what you think is causing that? Has the growth been in technology based frauds?

Ms Cass-Gottlieb: Let me give you one more fact which helps give some insight. I will ask Rami Greiss, who is here with us, to give some more detail as to what we can discern on this uptick, which we've only just been observing. So financial losses to investment scams have increased by 180 per cent to \$72 million, with cryptocurrency overtaking bank transfer as the most common payment method. The best we can say is that while there is an increased capacity for greater financial savings, in effect, to be at risk because of the manner of the scam, at the same time we are seeing reports about phone based scams decreasing by 50 per cent. We believe that's in part because of disruption by the telecommunications companies alerted by information that Scamwatch is providing them. In part, some of it has diverted from one method into another method that has a higher propensity for financial risk. I will get Rami to answer.

Mr Greiss: I will start by talking about the statistics. As sobering as they are, our data shows that only 12 per cent of scams are actually reported. So those figures need to be seen through that lens. In relation to your question about cryptocurrency, we can discern that the reasons for the increase in those sort of investment scams tracks the popularity of the product. Moreover, it's also the fact that it's an unregulated product. There are no controls. There are no institutions that can be roped in to assist. It is the fact that it is the wild west.

Senator CHISHOLM: Is this people being cold called or is it online ads that get people? Have you got any way of discerning that?

Mr Greiss: I think it's multichannel. You referenced our recently filed action against Facebook. The heart of that factually is about scammers posting cryptocurrency advertisements and capturing people. It is also just the fact that people are drawn into these scams through other means. People might meet someone through a dating or friendship site and then be drawn into a cryptoscam that way. It's really multichannel. I don't think there's one particular area that you can target. It's across the board.

Senator CHISHOLM: Minister, Mr Greiss sitting beside you just described this as the wild west. It would be your remit to have some regulations in this space, wouldn't it?

Senator Hume: That's exactly what we've announced, Senator Chisholm, which I think is really important.

Senator CHISHOLM: It sounds like it's too late for a lot of people.

Senator Hume: While cryptocurrency is permissionless and trustless, what we have said is we're going to regulate the intermediaries, the third party providers—if you like, the brokers and the custodians and the exchanges—so that there's an equivalent of a heart tick of approval on these third parties through which cryptocurrencies are traded, held or exchanged. In that way, Australian investors can have a certain level of confidence that what they are investing in is real. For that licencing regime, there are consultation papers out right now. It will include things like a fit and proper person test. It might include things like antihawking measures so you don't get called up. You know if you get called up by somebody who is not a licensed provider. We think that this is possibly the best way forward to make sure that we can encourage innovation in the cryptocurrency space. Blockchain technology really is an enormous opportunity in so many ways. We wouldn't want to stifle technology. At the same time, we want to make sure that people can invest in cryptocurrency in as safe a framework as possible.

Senator CHISHOLM: It seems like it has been going on now and growing. This isn't going to be in place for months now because the election is obviously imminent. There are going to be a lot more Australians ripped off as a result of government inaction.

Senator Hume: Well, I think it's safe to say that some of these scams that you are referring to aren't necessarily or purely cryptocurrency scams. They are traditional scams. It's just that cryptocurrency happens to be part of the title or involved. I heard of one where people were calling up asking unsuspecting victims to invest in traditional assets but, in fact, investing them in cryptocurrency where they then couldn't access them. For instance, there are plenty of scams on dating sites that don't necessarily involve cryptocurrency but aren't cryptocurrency scams. We see that this is a growing area. That's why we've progressed the idea of regulating these frameworks. I think some really good work has been done particularly around this committee and around Senator Bragg's committee as to how we could best go about that, navigating a way forward to ensure that people who want to invest in cryptocurrencies in Australia can do so in a safe environment. At the same time, let's be honest: it's not government's role to ban investments in cryptocurrency. We don't think that is a good idea. I do know that my counterpart, Mr Jones, at one stage was talking about banning investments in cryptocurrencies above \$10,000 along with some cash bans that were considered some time ago. We don't think that is the right way to go. We want to see a thriving technology sector and to encourage innovation in this space. At the same time, we want to make sure that consumers are protected from the harms of fraudsters.

CHAIR: Senator Chisholm, I need to share the call. Do you have one last question on this topic?

Senator CHISHOLM: I do. It is a different topic, but it's one last question.

CHAIR: That passes the test.

Senator CHISHOLM: You also made public comment around targeting greenwashing as well.

Ms Cass-Gottlieb: Yes.

Senator CHISHOLM: I want to try to get a sense of why you think that's important and how you would actually go about tackling some of those claims.

Ms Cass-Gottlieb: Thank you, Senator. We think it's important for two key reasons. Increasingly, consumers are concerned about the environmental impacts of their purchases. They treat as important the claims made as to sustainability and environmentally friendly products. Where consumers are taking this into account in their purchases and it is a misrepresentation, we want action taken. The second reason is that we are conscious of the unfair competition that occurs when businesses do invest in making their production processes sustainable and with less environmental impact. If they are competing with a rival that is misrepresenting that they are doing so, we are not giving the right incentives and return to the businesses that actually genuinely invest in this. They are the two reasons we are doing so. As for the way in which we are going about this, it is in many ways using the tried and true skills of our investigative teams that sit in Rami Greiss's team in respect of misleading and deceptive conduct. We are watching where there are comparative advertising and points, such as this, with the key emphasis on environmental credentials. We are also receiving at times complaints either from consumers who are worried about it or from competitors, who are concerned that they are facing unfair competition from a party that is claiming green credentials when they can't substantiate that they have green credentials.

CHAIR: I have a few general questions. Chair, welcome to the position. My first question is in relation to your approach. One of the issues that I have pondered—I don't necessarily have the answer, so I'm seeking your view—is the role you should take as chair in terms of either (a) strongly prosecuting a case for particular law reform in an area or (b) considering arguments made by others who are prosecuting a case for reform in a particular area and then having the benefit of taking a more objective stance in collating evidence and considering

the role of stakeholders and then providing a view, which is perhaps seen in that context as more objective than if you adopted the first approach. I'm interested in your response to that question about approach. As I say, I don't necessarily have a particular view. I'm interested in the thought that you have given to how you want to prosecute or weigh up your role in terms of potential law reform.

Ms Cass-Gottlieb: It's an interesting question. I think, Chair, that it will come from both sources. I think that the commission has many well-established and very important stakeholder engagement and consultative processes with parties across the economy. It works closely with consumers both individually through their calls to our info centre and with consumer associations and with a whole range of small business associations and larger businesses. So we are consulting. That consultation feeds into our enforcement and compliance priorities. It also feeds into where parties are giving us submissions that the law is not currently able to meet the need.

Where the commission, the ACCC, take its own initiative in this regard is actually through, on my observation, its experience either running cases and being concerned about the outcomes or facing issues that might come through reports to us where we feel there is too much doubt about the powers we have. I think that it comes from a body of experience and concern knowing what our statutory mandate is and what the community looks to us to do. I think it's deeply informed by that experience, and that's the way I think it should be. I think both processes are objective, actually, and should be grounded in objective experience where we consider the current law and our current powers are insufficient to protect what we are charged to protect in the public interest.

CHAIR: That's the thoughtful answer I expected. I can see the sense in that. I can see how both limbs, if you like, of approach can be objective. The only query I put to you as a follow-up question is: if the commission adopts the first approach of strongly proposing a reform in what is a contested policy area, it may well be objective. But there is the issue of the commission then being seen to be on a subjective basis prosecuting a particular reform agenda. Do you note that tension?

Ms Cass-Gottlieb: I do know that tension, Chair. The ACCC is aware and I am aware that the decision ultimately in terms of reform in policy will be a government decision. While we may, where we think it appropriate, prosecute with our evidence what we think is worth consideration, it will be a government decision. We will implement it in accordance with the government decision.

CHAIR: I want to move on to another topic. I'm alive to the fact there might be issues where you might prefer one of your officers to respond to this question. I did ask questions at the last estimates in relation to the ANZ bank criminal cartel case prosecution. In particular, I asked questions about what processes the ACCC would be putting in place to review the conduct of that case and decisions made by the ACCC along that journey to obtain learnings from that case. I'm interested in obtaining an update with respect to whether or not any processes have actually been put in place. Considering how that long case progressed, will it potentially impact on the approach of the ACCC to major pieces of litigation, to be frank?

Ms Cass-Gottlieb: Thank you, Chair. As previously answered to the committee, the ACCC has commenced a review of the lessons to be learned. That is reporting to our CEO, Mr Gregson. We do recognise how important this process is. If we start by looking narrowly—you have commented more broadly about major litigation—at cartel conduct, we see that it is conduct which in its absolute nature, where there is evidence of it, is anticompetitive. Where it's serious cartel conduct, it's important that we prepare ourselves and are ready to refer it to the CDPP. So we recognise that it's important to learn the lessons. Mr Gregson can give more detail on the progress of that review.

Mr Gregson: I won't add much, Chair. I note things that might interest you. In this capturing of lessons, we'll have the capacity to look at a broader portfolio of activity that we've undertaken. These things don't happen in a silo. We're often looking at other matters, so we'll try and be thoughtful about the way we capture further information. I should say that my assessment is that our teams are highly professional and dedicated. They are actually used to reviewing how matters go and participating. They are really looking to capture the lessons, including things that we did for the first time and lessons of things we can do in the next matter. So that process is well and truly underway.

CHAIR: Excellent. I will not completely change topic. To some extent, it's related to both my first and second questions. It relates to Australia's criminal cartel statutory provisions. I suspect you are well familiar with some of the remarks made by a number of people, including a member of the judiciary, with respect to Australia's criminal cartel laws. A number of experts in the field have also posited that perhaps there needs to be some review of our criminal cartel laws to make them simpler and easier to enforce. Chair, do you have any views on that matter? Is it something you may consider in future months?

Ms Cass-Gottlieb: It is a topic that not only I will consider. I will consider it with the enforcement team and more broadly with our investigative and legal teams. We do have currently a number of cartel prosecutions occurring signalling—

CHAIR: Sure.

Ms Cass-Gottlieb: that we are aware that the provisions are highly codified and very specific. That does produce quite a number of key elements that need to be proved in order to sustain a contravention. We do consider that they are capable of being proved and that we can put the cases to the courts. We have a few already commenced that are currently before the courts. We recognise the burden of those elements, but we consider we have both the legal experience and the investigative experience to be able to discharge that. We will watch it carefully.

CHAIR: Thank you. My last question relates to monitoring petrol prices. Obviously, there was an announcement in the budget to halve the fuel excise amount over the next six months, which is of material importance to families across Australia in terms of their cost of living. What processes does the ACCC have in place to monitor petrol prices to make sure consumers are getting the full benefit of that fuel excise cut?

Ms Cass-Gottlieb: Immediately upon the announcement in the budget we wrote to each of the major wholesalers and retailers. We informed them that our expectation is that the cut will be passed through in full and that we will be monitoring their prices. We also asked them to respond to us to inform us—we have just received their responses—of their policies as to how they were going to pass it through so that we would be able to monitor and assure ourselves to determine that was occurring. We now, one week on, can see in the five major capital cities that the prices have fallen from 25c to 35c between Sydney, Melbourne, Brisbane, Adelaide and Perth. We can see in some of the smaller capital cities—this is, for regular unleaded petrol—that it's somewhat lower but not much lower. In Canberra, Hobart and Darwin, it's between 19c and 24c per litre so far. So we can see, and we have concluded, that substantially the cut in excise has passed through in the capital cities.

CHAIR: My understanding, Chair, is that there's a bit of a lag in terms of the full cut coming through because the fuel excise is levied at the time of delivery of, say, fuel stock for a petrol station. So it's only once a petrol station goes through that fuel stock that it then has fuel that is subject to the levy which has been halved. Is that correct?

Ms Cass-Gottlieb: It is correct, Chair, because it has already been levied and paid. What we have seen over this past week is the turnover, in effect, of the prior stocks. Therefore, in petrol stations that have a higher turnover, this has come through more quickly than in others.

CHAIR: Given that the policy is working as the government intended in terms of the saving being passed through to consumers, what role does the ACCC have on an ongoing basis to monitor prices?

Ms Cass-Gottlieb: We are conscious that this is in place for six months. We expect it to be passed through in full for the full period. We are gathering data and we are reporting on it in our weekly update on our website each week so that retailers and wholesalers know we are going to continue to monitor and to report if there is any diminution in the way this is being passed through.

CHAIR: Excellent. Any more questions for the ACCC?

Senator McDONALD: I want to keep going with this fuel price issue. I have a fuel supplier in North Queensland, a freight operator, who has emailed all his customers advising that, as of 4 April, which was Monday, he was increasing his fuel levy from 18 per cent to 21 per cent based on BP advising that the barrel price had increased 8.463c. So how are you managing consumers who aren't necessarily tracking the Singapore barrel price each week? There is an expectation that all prices will fall.

Ms Cass-Gottlieb: One aspect that would be useful to understand there is whether it's diesel to commercial customers or diesel or unleaded petrol to personal motorists. In terms of personal motorists, we are reporting on both regular unleaded petrol and diesel. We're giving alerts about prices in the usual cycling of prices, if it is in a location that has price cycling, on whether to deter purchases or to engage in the purchases promptly. We are also encouraging our consumers to use their state based free petrol price apps. We can see that a range of retailers have a range of competitive responses. Some are passing through more quickly than others, quite possibly because they have a higher volume.

Senator McDONALD: This was a commercial supply.

Ms Cass-Gottlieb: In the commercial situation, we are aware that there can be some differences relating to the contracts in place for commercial supply as distinct to the immediate competitive pricing that is occurring at the bowser for personal consumption. We are seeking to become better informed. I think we have been informed

about that situation in North Queensland. We are seeking to become better informed about it to make sure we understand the situation. Matthew Schroder, who is actually on the screen, is from our fuel team. We have a team. He may be in a position to respond more on that.

Mr Schroder: Sure. Diesel is a slightly different situation to petrol. Most diesel is sold through contracts. They are commercial arrangements. There isn't as much transparency around those commercial arrangements as there is around the sales to consumers. As the ACCC chair has said, we have been seeing diesel prices come down with the excise. That is including in regional areas. In Cairns and Townsville, for example, prices have come down between 15c and 20c per litre on diesel, reflecting the reduction in excise. With those commercial contracts—

CHAIR: You're just breaking up a little. I am wondering if you could try—

Mr Schroder: I'll turn my camera off. Hopefully this will help.

CHAIR: It has. Thank you.

Mr Schroder: Good. One of the issues with this is that the normal way in which we get pricing information both from commercial providers and our own analysis doesn't have transparency around those commercial contracts. We are aware of this issue from discussions with some of the trucking associations. We're looking further into it. We expect that those commercial contracts would also reflect the reduction in excise. Competitive factors should bring those prices down. We are still trying to determine what the specific issues are and whether it is the wholesalers that are not passing on the reductions because they haven't yet used up the fuel that is in their depots. So those wholesalers will have their own fuel or stock that may well have had the higher excise paid on it. It will take a while to pass on in commercial arrangements.

Senator McDONALD: Thank you. There used to be much greater alignment between diesel and ULP. I'm always intrigued to see. The ACCC did a body of work on tracking that. I notice the differential is growing again. That is something I would like to follow up at another time when we've got more time. Thank you.

Ms Cass-Gottlieb: Thank you.

CHAIR: Thank you, Senator McDonald, and thank you to our witnesses from the ACCC. Thank you, Chair, on your first appearance at estimates.

Ms Cass-Gottlieb: Pleasure. Thank you for having me. I look forward to more occasions.

CHAIR: Absolutely. We'll now call the witnesses from the Reserve Bank of Australia.

Senator Hume: Chair, obviously I won't be sitting in with the Reserve Bank. They will be unaccompanied.

CHAIR: Obviously. Thank you, Minister. You will be coming back and joining us—

Senator Hume: For APRA.

CHAIR: In terms of APRA?

Senator Hume: Yes.

Reserve Bank of Australia

[16:50]

CHAIR: The committee welcomes the Reserve Bank of Australia and its representatives. In welcoming the RBA, the committee recognises the central bank's independence under the Reserve Bank Act 1959, particularly in regard to its setting of monetary policy. The committee is cognisant that while the RBA does not receive annual appropriations, it does provide the parliament with opportunities to discuss its insight and performance, which the committee greatly welcomes. As such, no government minister will be in attendance with the committee while representatives of the RBA are present. Welcome, Dr Kent. We're just waiting for Ms Bullock to join us. Dr Kent, do you know if the RBA is looking to make an opening statement, or are we moving direct to questions?

Dr Kent: I believe we're moving directly to questions. I notice Michele has messaged me saying that somehow she is having trouble coming in. She is working with the secretariat, I believe. She says she is being blocked by an administrator. I am in your hands if you want to start a line of questioning.

CHAIR: We might open the call for questions. In the event that there are matters which Ms Bullock should properly be taking, we can hold those questions over but seek to progress things as quickly as we can. Who is seeking the call?

Senator WALSH: Thank you very much, Dr Kent, for being there. In his statement yesterday, the governor talked about the factors impacting inflation. He referenced higher prices for petrol and other commodities over

coming quarters. Can you just expand on what the RBA's assessment is of the main factors domestically affecting inflation over the coming quarters?

Dr Kent: Yes. I guess the high level point is that we have already seen in the data for inflation a pick-up in inflation. It's reasonably broad based but driven by quite a few of the supply side pressures that were present in advance of the invasion of the Ukraine by Russia. Some of those are higher commodity prices. A lot of them are related to supply problems through the global supply chain that are affecting manufactured goods and a range of other goods. We have also seen a bit of a pick-up in wages growth, but that wasn't particularly substantive inasmuch as wages growth has now returned where it was pre-pandemic. That is the latest data that we have available. So what we are seeing with the invasion of Ukraine is another step higher in commodity prices, particularly oil prices, which is obvious, but also quite a few food related prices. In addition, the other feature we are seeing is the potential, at least in China, for further disruption to supply chains there as they struggle to manage their COVID outbreaks. We had forecast a further pick up in inflation prior to the invasion. We put out our forecasts in February. I think the essence of the statement yesterday of the governor, following the board meeting, was to say, 'Well, there are some other forces continuing to work in this general direction, and that's likely to push inflation a bit higher still.' He was just providing acknowledgement of that. Of course, there are some cross currents there. The petrol price is affected by the recent budget announcement. You were discussing that minutes ago. That is a temporary reduction in petrol prices. They are at high levels. So what we are looking for is a bit more clarity on how these supply chain problems, both in our own economy and globally, are going to resolve themselves and the extent to which the increasingly lower unemployment rate will lead to a further pick-up in wages. Maybe I'll stop there and see if there are further questions along those lines.

Senator WALSH: Thanks, Dr Kent. The government has committed an additional \$39 billion of spending in their budget. Does the RBA expect that will have any material impact on inflation?

Dr Kent: We're yet to update our full suite of forecasts to take account of not just the budget but all the other things that have happened since we put our forecasts out in February. We will be doing that in May as part of our regular scheduled update of our forecasts. It would be one factor, but it is one amongst many. I have pointed to many others just recently, particularly related to the invasion of Ukraine. One imagines that having a higher and first order impact. So it will be relevant, but we have to weigh it up with all the other things that are moving. Of course, I should make mention—it was remiss of me really to not make some mention—of the floods. They've obviously been quite devastating for quite a few communities. They will be having some effect on food prices in that part of the world. They'll also have probably quite a long tail effect on construction activity. Prices in the construction sector are pushing higher and are a source of some inflationary pressure. This at the margin will add to that.

Senator WALSH: Thank you. I want to move to interest rates. Do you consider that the level of spending announced by the government in the budget—the \$39 billion in additional spending that I referenced—would have any impact on interest rate rises?

Dr Kent: I note that my colleague Michele Bullock has just joined us. I will address it and leave Michele to add what she thinks I've missed. It's a factor that we'll consider. As I said, there are some different moving parts moving in different directions, including the reduction in the fuel excise. I think the other important point to note is that, as tragic as the invasions and as terrible as the invasion is, and while it's pushing up commodity prices, of course, they are key exports for us. That is a positive for our economy, for incomes in the resources sector and for government revenues in time. So there are quite a lot of moving pieces here we'll have to account for when adding up that forecast. Michele, do you want to add something?

Ms Bullock: I guess I would make the same point. The lift in the terms of trade to the budget has been very important. The other thing I would highlight is that some of the expenditure in the budget was about easing cost-of-living pressures for people, which were decreasing their real incomes and potentially impacting their consumption. As Chris said, there are lots of moving parts. You have to take it all holistically.

Senator WALSH: Thanks, Ms Bullock. Congratulations on your appointment to the deputy governor position.

Ms Bullock: Thank you. Sorry for the mix-up with the video.

Senator WALSH: No problems. Thanks for being here. The governor has previously commented that wages are lagging, as we all know. One of the factors is that there are public sector pay rise caps and enterprise agreements that lock in low wage increases for a number of years. What interaction do those sorts of government decisions have on slow wages growth?

Ms Bullock: I think the government has obviously put these things in for various reasons. That is for the government to decide. I think the issue going forward, though, is that we have a very tight labour market, evidenced by the low unemployment rate and very high vacancy rates. You are starting to see wages outside of enterprise bargains and the public sector rise a bit more quickly. I think the challenge is going to be that, as that gathers momentum, it's going to put pressure on the public sector and wages there. I think it remains to be seen how in the end the wages caps work in an environment that is seeing wage rises outside those boundaries.

Senator WALSH: We've had a number of discussions with you in this committee about why the historic relationship between lowering unemployment and rising wages is not appearing as usual in our economy. What are your reflections on that going forward? It clearly hasn't been enough in the past to say that the labour market is tightening and, therefore, wages will automatically rise. How are you seeing wages moving over the next period? What sorts of measures could assist wage growth now that inflation is in your target range?

Ms Bullock: What we have observed is that historical inflation rates of around five per cent—I think the governor has made this point before—haven't been enough to get a lift in wages growth. Now that we're down to about four per cent unemployment, and we haven't been here for a long time—14-odd years—underemployment is coming down. We are in a bit of uncertainty about how wages are going to react. As I said earlier, I think we are seeing some responsive wages. You're seeing that particularly in individual agreements. You are observing that people are getting wage rises when they move jobs. They can move jobs for larger wage rises. That is happening. I think we are just feeling our way a bit because we haven't seen unemployment rates down this low. All we can do really is observe what the evidence is telling us here.

Dr Kent: I will add briefly. Another thing to note is that we talk extensively right across the country with a whole range of businesses in our liaison program. Each of the major regions of the country are telling us that these pressures are starting to increasingly build. So we're hearing that on the ground, as I'm sure you are, talking to businesses about these pressures. That's just a much more timely indicator than you would get from the official ABS statistics, which is partly why the statement talks about a further pick-up in aggregate wages growth and that broader measures of labour costs is in prospect.

Senator WALSH: Thank you very much. I'm happy to share the call.

Senator RENNICK: Good afternoon, guys. In November, the RBA was signalling that rates would be on hold until early 2024 and rate rises this year were very unlikely. In light of yesterday's comments, how did the RBA get that so wrong?

Ms Bullock: Senator Rennick, I think we were in absolutely unusual times. I don't think anyone at the beginning of the pandemic would have predicted that we would be in a position now around the world where inflation was picking up so dramatically. We're not the only country where this is occurring. In fact, it's occurring around the world to a larger extent than it is here. I think the best thing to do in those circumstances is to look at the evidence. If the evidence is telling you that something else is happening, you change your view. That's what we've done.

Senator RENNICK: Except I would argue that if you are going to print \$300 billion, you are going to run the risk of creating inflation. As you said, no-one could predict anything. The people who did predict anything was the RBA when they said they would hold interest rates steady until 2024. Lots of people have made decisions based on that. They've gone and taken out multidecade mortgages based on that decision that the first few years would be quite low interest rates. Now you are threatening to raise interest rates in the next month or so, or at least this year, which is well in advance of what you said originally. Wouldn't it have been more prudent for the RBA not to make a forecast so far out? Commentators at the time said that it was extremely strange for the governor to come out and make a comment that fixed rates would remain so low for so long.

Ms Bullock: Again, I guess I would take you back to the beginning of the pandemic, when we were staring down an absolute disaster in terms of the economy. One of the best ways to address that was to try to anchor some expectations for people that we would do whatever it takes. The government and the Reserve Bank did so along with financial institutions, if you cast your mind back to the Team Australia moments. I think really what happened was that the response in the pandemic with all of the demand that arose from the fiscal stimulus, the extremely accommodative monetary policies, did what they were supposed to do. They have, in fact, been more effective than we thought. We are now in a position where demand is strong, unemployment is very low and inflation is rising, yes, but it's not rising as much as it is overseas. We have been trying to get back into target for some time.

Senator RENNICK: Thank you. With regard to trying to control inflation, rather than limiting demand, which is one way to do it through tightening interest rates, the other way is to increase supply, which we could do

via an expansive quantitative easing program. I know you have just spent \$300 billion on shutting down the economy for the last few years or helping to fund that shutdown. What if the government directed you to create money through a quantitative easing program to build infrastructure such as dams, power stations and roads that would increase the supply of essential services and, therefore, push down the price of essential services?

Ms Bullock: Infrastructure building is a matter—I think we've discussed this before—for the government.

Senator RENNICK: I accept that. I am talking about the funding of it. Rather than borrowing money from offshore, we could put in more dollars as we swap foreign currency out for Aussie dollars. Shouldn't we expand our own volume of money in the system so that we also keep our dollar low? I notice Chris was talking before about manufacturing. If we raise interest rates and that dollar goes up above 80 cents, or even in the high 70s, that makes us less competitive for manufacturing. So we need to be very careful that when we raise interest rates, the dollar doesn't go with it and that reduces our capacity to compete in terms of manufacturing. If there's one thing we've learned out of COVID, it's that we need to bring manufacturing back onshore. If we don't expand our own volume of money in the system, our dollar is going to increase.

Ms Bullock: The challenge here, Senator, is that what matters is the real exchange rate. If you have permanently accommodative monetary policy and rising inflation, as you referred to earlier, you don't increase your competitiveness either. So it's not as simple as either/or.

Senator RENNICK: Are you saying you won't?

Ms Bullock: No. If inflation rises, you do increase your competitiveness just as if your exchange rate had risen. It's not an either/or. You don't have a low exchange rate and a very accommodative monetary policy and low interest rates. If that ends up with higher inflation, ultimately your competitiveness is compromised as well. Chris, I don't know if you want to add anything.

Senator RENNICK: I dispute that. It depends on how you spend your money. If you build more productive assets that supply more essential services, you will increase the supply. That is one way to control inflation. And it will increase our competitiveness against foreign competition. For the life of me, I can't understand why we can spend \$300 billion to shut the economy down but we can't use quantitative easing to fund the building of infrastructure in this country.

Dr Kent: I can add, if you like. As Michele already said, building infrastructure is a matter for governments rather than the central bank. I note that there are pretty extensive plans to be doing that. Finance and interest rates—

Senator RENNICK: You are going off. My original question was: what if you were directed to fund it via a quantitative easing program? We're not disputing whether or not we should build infrastructure. It's how it gets funded. If we borrow \$1 billion offshore to build a dam, the first billion dollars we create in wealth goes back offshore. If we fund it here, domestically, the first billion dollars we create we keep here. We shouldn't be paying other countries billions of dollars a year to use their printing press when we've got our own here. That's my point.

Ms Bullock: Ultimately, Senator, that's a matter for the government. It's not typically the way that we work here. Most central banks around the world do not work in this way. We do not directly fund governments. There are some countries where that happens, but it's not typical in any advanced economy. There is a typical divide between fiscal policy and monetary policy. That is typically the way it has happened. The pandemic was, in fact, a very different situation. If the government directed us to do that, that is a conversation that would have to be had.

Senator RENNICK: I have to dispute that again. The Federal Reserve has been buying bonds, as has the ECB and the Japanese central bank for at least a decade. The US started it over the GFC. ECB has been buying bonds and using monetary policy to be funding government spending. So it's not unusual. Indeed, it was done back here in 1810 with Lachlan Macquarie when he rocked up. So it's not an unusual thing. It's a question of whether you want to use another country's printing press and use their currency and pay them for their paper or we use our own paper and keep the interest and the wealth created from paper if we invested it productively on our own shore.

Ms Bullock: Again, I stress that the examples you gave from overseas stem from the global financial crisis, a massive recession in the United States and Europe. What they were doing was easing monetary policy for the purposes of trying to get inflation up and unemployment down. It wasn't directly to fund government investment in those countries. We might have to agree to disagree on that.

CHAIR: Just one more question, Senator Rennick.

Senator RENNICK: This is my last question. It regards your predecessor. I have been contacted by a lot of constituents who are very angry at his remarks when I asked him about the missing gold bars and the gold bars

that Australia holds at the Bank of England. He mentioned that the gold bars flake off. I have been told by a number of people that is categorically false. Gold bars do not flake. Our predecessor didn't seem to take our gold holdings in London seriously, despite the fact that the Bank of England has admitted to the Reserve Bank that there are fake gold bars and duplicate serial numbers there. I ask that the RBA investigate our gold holdings at the Bank of England.

Ms Bullock: Chris, would you like to comment?

Dr Kent: I can't comment on this question of the gold bars flaking. I can emphasise the importance we place on a proper audit of our gold holdings. Indeed, speaking very recently, we have been working closely with our audit team. One of our senior auditors is about to hop on a plane to head to London to do a very thorough audit. She will be accompanied by the most senior person we have, who manages and oversees our office in London. That will take place in the coming weeks. It will be a very thorough audit process.

Senator RENNICK: Will that be counting all the gold or just 10 per cent of it?

Dr Kent: Something in that order, which is similar to what we've done in the past and at the upper end of what others who also audit their gold holdings at the Bank of England do. It's quite an intensive process. It's quite well considered in terms of selecting the gold bars. We are the ones who choose the gold bars, including once we arrive on site telling the Bank of England which gold bars we want to look at very closely, including going into look at some of the gold bars in their vaults directly without telling them details ahead of time.

Senator RENNICK: Will the findings be completely transparent? I note that a freedom of information release on the 2013 audit withheld information because it would damage relations with the Bank of England.

Dr Kent: I note the comments of the former deputy governor Guy Debelle. I think he said that we would endeavour to provide transparency here along the dimensions we can, recognising that there are certain aspects of that we can't reveal so as to not threaten the security of those gold bars and the Bank of England's arrangements. We will attempt to do that with this audit in the fullness of time.

CHAIR: Excellent. Thank you, Senator Rennick. I wish those auditors well.

Senator ROBERTS: Thank you both for attending today. Congratulations, Ms Bullock.

Ms Bullock: Thank you.

Senator ROBERTS: Can I start by getting an update of your quantitative easing, specifically what Mr Debelle called electronic journal entries or what are confirmed as electronic journal entries? How much money have you printed over this parliament from 1 July 2019 through to now?

Ms Bullock: Chris, do you have the number with you?

Dr Kent: On the QE, let me have a quick look.

Ms Bullock: In the order of \$500 billion and something.

Dr Kent: It depends exactly what you are referring to. If it is the QE—

Ms Bullock: If it is the QE itself, it's—

Dr Kent: Total bonds purchased was in the order of \$390 billion since the beginning of the pandemic, but the bond purchase program was in the order of about \$300 billion. Other purchases related to the yield target and early purchases to help restore market function.

Senator ROBERTS: Thank you. What is the total for the amount of money printed since 1 July 2019 through to now?

Dr Kent: From 1 July 2019 to now, I best take that on notice to get you an accurate figure. The key items are the term funding facility—that is \$188 billion—and the total bonds purchased in the order of \$390 billion. But that's not since 1 July 2019. That is from the beginning of the pandemic, so I would have to go back and get the exact figures for you. But it's that order of magnitude.

Senator ROBERTS: So about \$600 billion?

Dr Kent: That order of magnitude, yes.

Senator ROBERTS: Thank you. At the Banking 2022 conference in Sydney on 11 March, the Reserve Bank governor Phillip Lowe spoke about the inflation rate in the following terms: the headline inflation rate is 3.5 per cent and the underlying inflation rate is 2.6 per cent. Our current inflation environment was described as 'modest'. He said that unless inflation psychology gets in the way with people expecting price rises, this inflation spike will wash through the economy. Is that a fair representation of his words?

Ms Bullock: Well, I haven't read specifically his words. I would have to check that. I'm not sure when exactly he said those words. Maybe you could provide us with the actual time when he said them and we can check that.

Dr Kent: The numbers, though, I think were broadly of the right order from the last CPI.

Ms Bullock: The numbers are. I'm just not sure about the words that surrounded them.

Senator ROBERTS: I have a transcript of his speech and the Q&A session which followed. It states:

Headline inflation is 3.5 per cent so that's higher than it has been for some time, but underlying inflation is just 2.6 per cent... So we still have modest inflation—

And then he went on in the Q&A with Ticky Fullerton to say:

It will depend upon what happens to the inflation psychology because during the period in which this shift in the level of prices is occurring, we record higher inflation. But if the levels don't keep rising, then that will wash through the numbers and inflation will come back down.

Ms Bullock: I know what you are referring to now. The point he was making, I believe, was the difference between a rise in the level of prices and a rise in ongoing inflation. So if it's just a level shift, inflation rises temporarily and then everything returns to a more even keel. That was the point, I believe, he was making on that occasion.

Senator ROBERTS: Thank you. The next question: page 5 of budget overview statement 1 puts inflation at 4.25 per cent in 2021-22, three per cent in 2022-23 and 2.75 per cent in 2023-24. When the budget lists an inflation rate, is the figure the Treasury uses the headline rate or the underlying rate?

Ms Bullock: I'm assuming the headline rate, but I'm not 100 per cent sure about that. Chris, do you know?

Dr Kent: No. I am not. I would also assume it's the headline rate.

Senator ROBERTS: Thank you.

Ms Bullock: You could ask Treasury that. They would know.

Senator ROBERTS: So the Reserve Bank, then, has a different view of inflation to the government at 3.5 per cent compared with 4.25 per cent in the budget. That is a large difference between figures given a fortnight apart. Can you tell me what Australia's inflation rate is right now and what your projection is for 2022 and 2023?

Ms Bullock: Senator, they were two weeks apart. Probably what the governor was referring to was our February forecasts. We're due to update our forecasts in May. There's more information available then. We don't have a current forecast for you. The most recent ones are still in February. But we will be updating our forecasts in May. I expect that there will be some revision upwards in those forecasts.

Senator ROBERTS: Some revision upwards. So closing the gap between the Reserve Bank and the government?

Ms Bullock: So the Treasury's forecasts for the budget were based on more recent information than our most recent forecasts.

Dr Kent: The numbers you referred to, Senator, that the governor picked up on in his speech were for the December quarter, so the year ending December 2021. So they are referring to different time periods as well. The 4.25 per cent is for 2021-22, which is not the same as the December quarter year ended number that the governor cited in his remarks.

Ms Bullock: He cited an actual rather than a forecast.

Senator ROBERTS: Thank you for that. On what basis is the Reserve Bank projecting inflation to max out at 4.25 per cent when inflation in Germany is currently 7.5 per cent, which is up two per cent in just one month, and food inflation is expected to be between 20 per cent and 50 per cent this year, as per Zero Hedge, or Reuters, news report over the weekend? The United States, in 12 months to March, is 7.9 per cent. I think that means it's actual. The UK rate to the end of February, again in 12 months, is 6.2 per cent. These are some of our major trading partners. How can we max our inflation out at 4.25 per cent when these major trading partners are experiencing runaway inflation right now with no end in sight?

Ms Bullock: I think there are a few things in there. The first thing is that energy prices are impacting in Europe much more extensively than they are here. The second thing that in some countries, such as the United States and the UK, they are seeing more extensive wage rises than we are here, where we're still not seeing them. As Chris said earlier, we are starting to see some increase in wage pressures, but they are still relatively confined, unlike overseas. Another thing that is happening here is that our exchange rate is appreciating a bit as well, which is also keeping a bit of pressure on prices. So there's a number of things going on here that are a bit different for us. They are not quite the same. It is also true that our—

Senator ROBERTS: I'm sorry, Ms Bullock. What was the last point about appreciating?

Ms Bullock: The exchange rate commodity prices are rising and the exchange rate is appreciating. The other point to note is that one of our other really big trading partners is China and it is not experiencing a lot of inflation. Its inflation is remaining relatively low. Yes, we're watching what is going on overseas. That's very important. But there are some other factors, which mean that we're a bit different. We've still got to keep an eye on it, but we're a bit different.

Senator ROBERTS: Thank you very much. Today, independent research firm Morningstar revealed that prices in Coles and Woolies have risen four per cent in the last three months. On what basis do you project inflation to wash through? Petrol, electricity, gas, iron ore, coal and food are all experiencing significant underlying inflation that started with the change in government in the USA in 2020. I don't understand how the Reserve Bank could be saying, 'Nothing to see here; it will just wash through.' On what basis are you making that statement? What elements of inflation will actually fall over the next two to three years?

Ms Bullock: I think on your point about the wash through, I want to go back to my earlier point. The question outstanding was whether it's a price level shift or an underlying inflation shift in the psychology around that both for businesses and for consumers. If it is a level shift, it's one thing. If it's underlying psychology and so on, it's another thing. I think you will see from our media release yesterday that we are now thinking that there are some underlying inflationary pressures. There are underlying cost pressures for businesses which look to be passing through. As Chris said earlier, there are signs from liaison that consumers are starting to think a bit about their wages. They are looking for increasing wage rises. Businesses are recognising that might be happening. So these are the sorts of things that would suggest that there is some underlying inflation pressure in the economy and it isn't just purely a level shift in prices.

Senator ROBERTS: Thank you. How much of this inflation spike, then, has resulted from the Reserve Bank's money printing—as Mr DeBelle said, electronic journal entries? Does the Reserve Bank take any responsibility at all for the inflation spike?

Ms Bullock: Well, one of the points about our policy over the pandemic was to try to support the economy through what was going to be a very devastating economic outcome. The government did the same. You might recall that prior to the pandemic we had trouble getting the inflation rate into its target band of two to three per cent. We now have a very good opportunity to get ourselves sustainably in that band with a low unemployment rate. Do we take responsibility for trying to get inflation into the band? Yes, we do take responsibility, because that is what we were trying to do—get inflation to the two to three per cent band on a sustainable basis.

Senator ROBERTS: Well, I'm no expert economist by a long way. We know that money printing causes inflation, as Senator Rennick confirmed. The Reserve Bank printed about \$600 billion. Now we have inflation. Do the fundamental laws of economics that I learned at the University of Chicago graduate school of business while completing my master's in business no longer apply?

Ms Bullock: No. I think I am agreeing with you that monetary policy can be used to basically influence inflation. I think I am agreeing with you, Senator.

Dr Kent: I will add that some of the other factors, though, pushing up inflation, at least in the short term, are well beyond the control of central banks. There are still supply chain problems around the world associated with COVID. Of course, the invasion of Ukraine recently is adding pressures there.

Senator ROBERTS: Thank you. It's quite complex, isn't it?

Ms Bullock: Indeed.

Senator ROBERTS: This is my last question.

CHAIR: Perfect timing.

Senator ROBERTS: Over the term of the next government—that is 1 July 2022 to 30 June 2025—what reduction in real wages will result from the gap between wage growth and inflation across that period? I'm assuming you model these indicators. How far backward are everyday Australians going to go in next three years?

Ms Bullock: I would have to say that we don't have forecasts out to 2025. I would have to take that question on notice in terms of our task for inflation and wages. I won't hazard a guess on that.

Senator ROBERTS: I appreciate your desire for accuracy so I'm happy for it to be taken on notice. Thank you, Ms Bullock, Dr Kent and Chair.

CHAIR: Thank you, Senator Roberts. On behalf of the committee, as has already been stated by a number of members, Ms Bullock, congratulations on your recent promotion. All the best. Thank you, Dr Kent. We'll now

move to our next witness, which are the final witnesses, from APRA. We will have a short suspension before we move to APRA to give an opportunity for the minister to return.

Australian Prudential Regulation Authority

[17:31]

CHAIR: We'll now continue and welcome our witnesses from APRA to the hearing. It's good to see you. Welcome back, Minister.

Senator WALSH: Thank you all for being here. I have a few questions on some of the data issues relating to the choice heatmaps. I note that I have a big superannuation data project on.

Mr Byres: We do.

Senator WALSH: My questions are a bit more about what your thinking is at the moment about the data sitting behind the choice heatmaps. Have stakeholders raised concerns? Where are you at with data quality in relation to the heatmaps?

Mr Byres: I will ask my colleague Margaret Cole to respond to that.

Ms Cole: I will say a few words and then hand to my colleague, who is closer to the detail. Yes, we did not have the data this year from the firms, as I think you know, or from the entities. We decided we should go ahead—it was important to do that—with the data that the independent agency had collected on our behalf. That is the basis on which we ran the first iteration of the choice heatmap. We are aware, of course, that some entities have raised questions about that data. I will pass you to Suzanne Smith to deal with that. I want to make the point that we thought it was very important with the information data we had to get going with the choice heatmap to get trustees to really focus on that area. We will be hopefully running the performance test fairly soon for the first time in relation to choice products. With that, I will ask my colleague Suzanne Smith to talk a bit about the feedback we've had.

Senator WALSH: Great. Thank you.

Mrs Smith: Thank you, Senator Walsh. The trustees of poorly performing funds have responded to us post the choice heatmap. Most of those trustees haven't raised issues so much in relation to the accuracy or the quality of the data we used for the choice heatmap, which was the super ratings data. Nor have they raised questions about whether it was appropriate for us to use it. What they've raised some questions about is the methodology for mapping the data.

Senator WALSH: Okay.

Mrs Smith: The super ratings data isn't at a level of granularity that it would be if we had our own data. So the collections that we will do in the super data transformation program will take that data to another level of granularity, which should improve some of those elements. What we've seen is the majority of trustees, though, acknowledge that their performance has been poor. Those poorly performing funds that were recorded in the choice heatmap have acknowledged that their performance was poor and that they have started to look at what actions they can take to improve that performance which will ultimately be of benefit to members. So we're looking forward to having a more complete data transformation program.

Senator WALSH: I will check my understanding of that. You said that there were some holes in the data provided by the funds?

Mrs Smith: I think differences in the level of granularity. It provided data on the choice products but perhaps not down to the level of granularity in terms of the subclasses where it would sit. So it was more methodology differences than questions.

Senator WALSH: I am trying to get a bit of a picture of this. You sent out some sort of template for funds to fill in? They filled it in at different levels?

Mrs Smith: With our collections for the super data transformation, we've designed those collections where we have templates. They will submit data on that basis. For the choice heatmap we did, we used super ratings data, where super ratings will have collected that information from the trustees. That is the basis of the choice heatmap. They will have collected data to a certain level. Our data collections will take it further and collect at more levels of granularity.

Senator WALSH: What are the representations that have been made to APRA about the methodology?

Mrs Smith: Well, it's just the mapping of the asset classes, where the level of granularity may have been rolled to an asset class that doesn't take it down to other levels. As I said, whilst the trustees have disputed whether the mapping could have been different, what they haven't disputed is that their funds were

underperforming or poor performers and that they needed to do something about that to result in better outcomes for members.

Senator WALSH: I am still trying to understand this data and methodology issue. Are there examples where the data collection method that you used this time might have led to some funds not being accurately represented?

Mrs Smith: What we've done in the super data transformation program is we've had significant consultation with industry. We've had a lot of workshops. We've had webinars. We've had a huge opportunity for industry to have input into the way that we will collect data. So we're confident that moving forward the strength of our data will be improved. I hope on that basis that the quality in the way products are represented will increase.

Senator WALSH: I appreciate the general comments that you are making and the importance of the heatmaps and the importance of the funds identified as underperforming. I acknowledge that. I am still trying to understand what is at stake with the way the data was collected and whether you think that, for example, there might be some funds who were not captured as underperforming who will be when you do the data in the more sophisticated way that you are talking about?

Mrs Smith: That could be a fair assumption. As we get improved data and different levels of granularity, it's likely that there may be some movements. The choice part of the industry, as I think we spoke about last time, is huge. There are thousands of products and options in there. Starting to bring transparency to that sector is really important. We think this was a really good starting point. The super ratings data was available. It allowed us to get this information out into the public a year ahead of what we had been able to do had we waited for all our collections to be complete. So I think we may see some movements. What we have seen is that for those trustees that were poorly performing, we haven't seen dispute. If some perhaps missed the cut for any reason, we expect that they will get captured next time as we get the more granular data.

Senator WALSH: So there are tweaks being made to the methodology to get that more granular data for the performance tests later this year for the trustee directed products?

Mrs Smith: The performance test is a matter for government as we wait for the regulations to be finalised. As with anything we do, we take feedback once it has been published. We listen to industry as they provide information based on what we have published. To the extent that we think that something needs to change, we would look at how we build that in and provide information to the right parties accordingly.

Senator WALSH: Thank you. Can APRA confirm that the regulations implementing the choice heatmaps will be prepared by an entity to enter into force on 1 July?

Mrs Smith: The timing of the regulations are a matter for government.

Senator WALSH: Is that the deadline that you are working towards?

Mrs Smith: At this stage, we're doing all that we can to be ready to implement the trustee directed performance test as per the 1 July start date. We are doing everything in our power. As I said, we are waiting for the government. It is a matter for the government in terms of the regulations.

Senator WALSH: I understand that APRA is investigating for-profit funds about the dividend payments they make to their parent entities and how and whether that complies with the best financial interests duty. What is the status of that? Is that an investigation or is it an exploration? What has it found?

Ms Cole: I wouldn't quite agree with that terminology. We certainly have made inquiries to understand from those funds that pay dividends to the parent companies what the basis of their dividend policy is to actually understand the landscape in that area. I wouldn't characterise it as an investigation.

Senator WALSH: Yes. I accept that the term 'investigation' would have a specific meaning to you. What has prompted those inquiries? What can you share with us about those inquiries?

Ms Cole: I think what prompted them was wanting to understand from supervisors of those entities the basis on which they pay dividends and the policy around that. We are asking them whether they consider that policy is impacted by the change to the best financial interests duty. It is an exploratory set of requests.

Senator WALSH: Thank you. At this stage, you're asking funds that fall into that category what they think about whether paying—

Ms Cole: Yes. We are asking them what their policies are and whether they made any changes to those policies or consider that the change in the nature of the duty means that they should make changes to those policies. If not, what is their understanding of how that duty applies in those circumstances?

Senator WALSH: So you haven't provided any guidance to funds as to whether paying those sorts of dividend payments is or is not in the best financial—

Ms Cole: No. We haven't. At the moment, we're understanding the nature of the policies.

Senator WALSH: So you are inquiring. You haven't given any guidance? You haven't expressed any expectation to trustees about how they might handle things like dividend payments or executive bonuses in relation to the best financial interests test?

Ms Cole: No. We have not.

Senator WALSH: Are you going to be providing some sort of report about themes emerging in the discussions that you are having with the trustees at this level?

Ms Cole: I don't believe that we are. We were gathering information for our own understanding of it. In fact, it is the touch point of our ability to regulate in relation to this situation. Basically, these are assets where, when the dividend comes to be paid, it is not being paid out of members' assets; it's being paid out of assets that have already essentially moved up to the level of the trustee. So they are not caught within our ability to regulate them. Nonetheless, we wanted to understand the basis on which entities were dealing with dividend policy and to see what their understanding of it was.

Senator WALSH: Right.

Ms Cole: Clearly, there's nothing to stop the fact that a trustee can operate in that kind of structure in the retail side of the industry. So we're not looking to regulate that where it's not within our remit to do so. But we felt it appropriate to ask those questions and understand how it was being approached and whether the best financial interests duty made a difference to the approach to dividend policy.

Senator WALSH: You are making fairly informal inquiries and you are not going to form a formal view because if you did, it wouldn't be something you could do something about anyway?

Ms Cole: I think that's a fair point. I wouldn't say we made informal inquiries. We inquired in order to know and understand the landscape of that and the way that retail entities were dealing with the question. In our supervisory role, we want to understand how that works. But we don't think it is something that is within our remit to regulate for. So you are correct. We don't plan to put out any statements of guidance or anything further about it.

Senator WALSH: I want to close off on this issue. Thank you. A fund could be underperforming and identified on a heatmap and continuing to pay, say, executive bonuses or dividends to parent entities?

Ms Cole: Yes. We haven't gone into executive bonuses at all. In relation to dividends, that is a correct assessment, yes.

Senator WALSH: They could do that?

Ms Cole: It is not within our remit to be able to address, yes.

Senator WALSH: Okay.

CHAIR: Have you come to the end of that set of questions?

Senator WALSH: On that one, yes. I have another couple of questions.

CHAIR: I will share the call, Senator Walsh. Before I do that, Mr Byres, I offer you an apology. I should not have been so presumptuous as to note that you did provide an opening statement, which has been tabled. Did you want to make any comments in relation to that?

Mr Byres: As long as it has been tabled and you're happy with that and it has been circulated, I'm very happy, in the interests of time—

CHAIR: It has been tabled and it has been circulated.

Mr Byres: In the interests of time, we'll move on.

CHAIR: I am sorry that I didn't clarify that at the outset.

Senator BRAGG: Good evening. I want to ask you some questions about the best financial interests duty, which started on 1 July last year. How many issues have you raised in relation to the best financial interests duty with trustees?

Ms Cole: I don't think I could give you an exact number, Senator Bragg. We have raised the issue in a variety of contexts with trustees.

Senator BRAGG: How many times have you found issues with, or breaches of, the best financial interests duty?

Ms Cole: Again, I can't give you an exact number. We have found issues that we have followed up on and where we've had conversations in relation to how matters were being addressed in the context of the new duty.

Senator BRAGG: How many enforcement actions have been raised as a result of the new power you have?

Ms Cole: I don't think at this stage that we have raised any formal enforcement actions yet. But we have certainly had numerous conversations.

Senator BRAGG: How many ongoing investigations are there?

Ms Cole: If by investigation you mean an investigation in the context of formal enforcement, to my recollection, unless I'm corrected, I don't think we have any active formal investigations at the moment.

Senator BRAGG: At the moment, you've got super funds transferring millions and millions into trade unions. You've got a massive amount of wasted expenditure on advertising which has nothing to do with the objective of the system. There's a lot of waste that is occurring. Your answer is that you are not raising any enforcement actions under the new powers that parliament has given you?

Ms Cole: My answer is as yet. I am actually glad that you have raised this question about payments to unions. I obviously, Senator Bragg, have seen your letters to us on that subject. I also realise that you have a number of tweets. I think it's an important point that you have raised there. We certainly would like to understand that better. We have done some preliminary investigations into that, particularly as you refer, in your tweets, to use terminology such as donations to unions and election payments and election campaigning. Of course we're interested in that. I and my colleagues would like to understand that better, because we're finding it difficult to reconcile some of the information that you have in your tweets with the information that we have so far been able to unearth from the Australian Electoral Commission and from more general inquiries. In fact, our analysis suggests that these amounts that are recorded in the register at the AEC are not categorised as political donations as categorised by the AEC. I would say to you that we would like to understand more about this. This may not be the correct forum tonight to do so. If we were able to reconcile more of what you are saying and the numbers that you are producing with your information, that would be enormously helpful to us. I don't know if that's something I am entitled to ask you to suggest that we could have a conversation about.

Senator BRAGG: You are entitled to answer the questions in the way that you would like to. The next point I would make to you is that information is information from the Electoral Commission. It is manually put together because the funds themselves don't disclose these payments. They are all based on the annual returns that are provided by ALP affiliated unions, which they have to make under their governing legislation. That is the information that is provided and lodged with the Electoral Commission, because they are registered organisations.

Ms Cole: Yes. It's important for me to say, Senator, as you mentioned before, that our understanding is that those payments are payments made to unions as director fees, largely.

Senator BRAGG: Some of them would be, I'm sure, but others are not.

Ms Cole: Well, in relation to director fees, it would be helpful for me to understand if they are. If what is happening here is to provide members to the boards of super funds in what is a fairly typical way, and if that's not a concern, I can put that one aside and look into some of your other concerns. It is my understanding that largely what you are talking about and the numbers you are talking about comprise director fees. There may be other things, such as affiliations to educational providers or that sort of thing. I think of the numbers of the size that you are putting out in your tweets. As far as I can see, it's mostly to do with the provision of directors.

Senator BRAGG: Well, they are very expensive directors if you cost them at \$8 million and \$9 million from tiny little funds.

Ms Cole: In aggregate, it may not be. I know I am not meant to be the one asking the questions here.

Senator BRAGG: You're doing a good job.

Ms Cole: If I could put—

Senator BRAGG: It's a very important conversation.

Ms Cole: It is an important conversation. If I could take it that insofar as these are director fees paid to—

Senator BRAGG: Who knows? We don't know.

Ms Cole: unions from their members—

Senator BRAGG: We don't know.

Ms Cole: But I am saying: could I put that aside and get to the heart of what is troubling you here? We would also be troubled and would like to understand it better.

Senator BRAGG: I'm trying to find one of these, because it's a good point you raise. There is a fund called First Super. I think it's quite a small fund. They have paid \$8.1 million in three years to a union. It's a lot of directors fees, isn't it?

Ms Cole: On the face of it, \$8.1 million for directors fees over three years sounds like a lot of money.

Senator BRAGG: It's a lot of money for a small fund.

Ms Cole: A lot of money; I agree with you. It sounds that way. My colleagues might understand the analysis better than I do.

Mrs Smith: We have really started to dig into this and to look at the analysis. We've asked some questions of funds directly to try to help us reconcile those as well as the directors fees. As Ms Cole said, it is a component. We know that there are other payments, such as partnership arrangements and other fees, which will go to things such as member education or some types of health and wellbeing. They are probably the items that you are referring to, Senator Bragg, which aren't specifically for the provision of directors. We're wanting to reconcile and look at what some of those amounts are. There are some amounts in there that are curious to us when we go in and say that does look to be an amount that is more significant than we might expect for funds of a particular size. We're digging into them. We are as interested as you are in making sure that every dollar of a member that is spent is going to deliver value for them and is going to deliver better outcomes.

Senator BRAGG: I'm very pleased to hear that, Ms Smith. I would say just for the record, given this is a public hearing, that all the information that I have collated—information taken directly from the AEC's returns—is aggregated. It would be much better if this information were disclosed by the funds in annual reports or on their websites. That is something that I will argue internally. Perhaps it's not an issue for you. I will look forward. What is the status of this? Is it a review you are doing or an inquiry?

Mrs Smith: It's a review. We received your letter. As I said, it was helpful to us. It draws our attention to things that we may not be digging into at that point of time given the breadth of number of people that we have working on issues in superannuation. So we're trying to reconcile. You have published some numbers. We're doing our analysis to try to match back. We can't always match back, hence Ms Cole's suggested that it would be good for us to perhaps understand what you are looking at that gives you a number that might be different to ours.

Senator BRAGG: I will provide you with that.

Mrs Smith: If we could get that information, it would be helpful so that we can make sure that we are talking about the same thing.

Senator BRAGG: Good.

Mrs Smith: There are a lot of payments that will be valid payments. Just because they are going to a union doesn't mean it's a bad payment or an inappropriate payment. What we know is that all payments need to deliver value. To the extent that a trustee can't explain how the value is being delivered, that's where—

Senator BRAGG: We would all agree with that. I am looking at this again. So \$3.8 million in directors fees from one small fund in one year is a lot of money.

Mrs Smith: It's a lot of money.

Senator BRAGG: We look forward to it. I don't want to take too much more of the time. I want to ask about two other things quickly. I wrote them down so I wouldn't forget them. There are these conferences that the super funds have up at the Gold Coast. They sting the workers, I guess, of the super funds and then the funds pay \$3 ½ thousand to go to the Sheraton Mirage, which is described as a five-star paradise oceanfront resort. That sounds pretty good, if you can get that. There's another one in April that looks pretty flash. It's \$5 ½ thousand. Will the super funds be paying for that?

Mrs Smith: I expect that the super funds would be paying for that for trustees to attend.

Senator BRAGG: Off to the Mirage?

Mrs Smith: Off to the Mirage. That is where the conference is being held.

Ms Cole: I'm certainly not going to the Mirage.

Senator BRAGG: Skase is not there anymore, so you won't have the benefit of his company.

Mrs Smith: Trustees are required to complete certain levels of education in their role of updating that. A lot of those conferences are focused on the issues of the moment. They will be bringing topical issues, be that of the external environment or particular issues relating to superannuation. It's for the trustee to determine whether that level of expenditure is appropriate for the nature of their organisation.

Senator BRAGG: I don't want to be too churlish about it. You are running a government scheme here which is a publicly mandated scheme that has a lot of tax concessions around it. We would expect the government, and I think all members of parliament, expects it to be run really carefully. I share the sentiment that Senator Walsh made before. Finally, on this issue, we have discussed before these 27 super funds that have invested into the

Industry Super Holdings vehicle. We've exchanged paperwork on this before. The super funds treat this as an investment. Is that right?

Mrs Smith: Yes. In Industry Super Holdings, yes.

Senator BRAGG: Industry Super Holdings does a whole lot of things. It does lobbying. It runs a newspaper, which is full of junk, and a whole lot of propaganda outfits and stuff. Explain to me how that passes the best financial interests duty again.

Mrs Smith: Ms Cole, would you like me to take that one?

Ms Cole: I would, yes.

Senator BRAGG: This is important for the record. These are important. These are just case studies, but it's important to understand how you are administering the laws that we've made here in Canberra.

Mrs Smith: We wrote to all of the shareholders in Industry Super Holdings. We did that back at the start of the year. We received responses back from all of them. ISH has returned, on average, 17 per cent over the last 10 years. That has been a key driver of trustees to satisfy themselves that it is in the best financial interests of their members. They have investment governance frameworks under which that is considered. It's often held under their unlisted assets. They have frameworks that guides the way that they look at that investment. We've talked about the *New Daily* for many meetings now.

Senator BRAGG: Don't believe everything you read.

Mrs Smith: Many commented on the small size of ISH as an investment in their portfolio and the de minimus amount that the *New Daily* represents of that amount. We've also—

Senator BRAGG: Yes, but there's no materiality clause in the best financial interests duty. There's no materiality.

Mrs Smith: I understand that, Senator Bragg. We've also spoken to ISH about the historic performance of the *New Daily*. We've said that for many years it hasn't made a profit. My understanding from those discussions is that the business model of the *New Daily* has been changed and that the expectation is that there will be no need for further capital injections into that asset. We have also asked trustees to consider how that investment remains appropriate in light of the best financial interests duty, to the extent that we are satisfied they are considering that asset as such. We are also hearing that trustees are considering and reviewing payments to entities in light of the best financial interests duty for services. That is where it's different. We've explained that there are shareholders at the ISH level. There are those that make payments for services to entities such as ISA. We understand that trustees are considering whether the level of those payments remains appropriate given the best financial interests duty.

Senator BRAGG: Can you provide on notice as much information as you can about this engagement on the ISH and the *New Daily* issue? I will make this point in closing. It may well be the case that this asset or this investment has been successful to date. But that doesn't mean that you can build things into that framework which are not consistent with the law. I could have something which is 75 per cent successful and 25 per cent unsuccessful and that could be investing in some sort of unethical or illegal asset or venture. That is the point I would make to you again.

Mrs Smith: There is the investment governance framework and the fact that those investment teams are required to review those assets, which includes looking at what might be held beneath that.

Senator BRAGG: We look forward to seeing what comes back on that. We will obviously have a conversation about these other issues.

Senator ROBERTS: Thank you all for attending today. The National Australia Bank is making a number of branches cashless and has confirmed by email that they now have nine small format cashless branches across New South Wales, Queensland and Victoria. The Senate rejected the Liberal and Nationals cash ban bill and sent a very clear message that cash should remain available. Cash is legal tender. On what basis is APRA allowing a situation where the Queen's currency is not legal tender inside a bank branch?

Mr Byres: I don't think we are allowing or not allowing any such thing. We don't have any role or responsibility in that area. The banks increasingly are responding to the way in which the majority of their customers are choosing to transact. For the majority of their customers, it's digital. So we are seeing a shift away from the traditional bank branch, as you say, to various forms of servicing their customers. I forget what you called them; I think cashless branch was the term.

Senator ROBERTS: Small format cashless branch.

Mr Byres: Is just another way in which they can hopefully continue to cost effectively service their customers. As you say, it's a small number, but it doesn't imply anything about APRA allowing people not to accept legal tender. That's not a correct characterisation of it.

Senator ROBERTS: That wasn't quite the question, but that's fine. APRA's definition of a bank branch includes the requirement to take and issue cash and change. Will you be advising NAB to stop describing cashless offices as bank branches? It's a clear misrepresentation of the services on offer, isn't it?

Mr Byres: That definition applies to a reporting standard that we use to collect annual data on the points of presence. I have no reason to think that for the purpose of that reporting standard the National Australia Bank is in any way misreporting. That definition doesn't apply more broadly to the way in which banks talk about their services. It's purely focused on a reporting standard for APRA.

Senator ROBERTS: I have a glossary here from APRA's website. It says that branches are face-to-face points of presence that meet the following minimum criteria. First of all, a branch 'accepts cash and other deposits (including business deposits) and provides change'. And then it lists another four.

Mr Byres: Yes. For the purposes of the reporting to us and for the purposes of reporting in our points of presence collection, that is the way in which branches are to be reported.

Senator ROBERTS: I also have here from APRA the authorised deposit taking institutions' points of presence statistics.

Mr Byres: Yes.

Senator ROBERTS: It states:

APRA have maintained a database of authorised deposit taking institutions points of presence.

In shorthand, that is the database. It continues:

This database makes a clear differentiation between bank branches and bank offices, the latter being described as other face-to-face.

So we've got a column here for branch. We've got a list and location and branch, whether it is a branch, other face-to-face or an ATM. So this database makes a clear differentiation between bank branches and bank offices, the latter being described as other face-to-face, as I just said. Will you ensure all branches that do not accept and issue cash are downgraded to other rather than continue to show as a bank branch?

Mr Byres: I think that's where they should be reported already. If they are not, we would need to make sure that they were.

Senator ROBERTS: Thank you. The Quill awards for excellence in Victorian journalism at the Melbourne Press Club recently awarded journalist Dale Webster a regional Quill award for her investigation of the true extent of bank branch closures in Australia. The article awarded:

...busted layer upon layer of myths being perpetuated by the banking sector. It also blew the whistle on errors in official data that have been published by the government unchecked for decades.

So that's your database that they are talking about, Mr Byres, isn't it? How good is your database?

Mr Byres: I think the database is fine. The database is the facts that have been reported. I have no reason to think that there are problems with the underlying data.

Senator ROBERTS: We have just discussed that a branch is labelled as a branch even if it doesn't have face-to-face operation?

Mr Byres: Well, as I said before, our definition says a branch should have—and you had the definition there—cash and then there was other face-to-face. That is the definition. That should be the way in which that is—

Senator ROBERTS: The database is wrong.

Mr Byres: Well, I'm not sure it is, but we can go away and have another look at that issue for you.

Senator ROBERTS: Could you get back to us, please?

Mr Byres: I'm happy to do so.

Senator ROBERTS: Thank you. I would like to ask about an issue raised in Dale Webster's article. It says that 92 country towns across 38 federal electorates have lost all their banks and agencies—that is, Australia Post, newsagents, nothing that doubles as a banking service provider. And now those towns have no banking services. The number of branches in rural and regional areas has fallen over the last 20 years from a high of 2,802 branches in 1,126 towns down to the current 1,075 branches in 387 towns. That is a 62 per cent cut.

Mr Byres: Yes. I agree with you on that.

Senator ROBERTS: Has APRA made any effort to stem the carnage in rural banking? If not, why not?

Mr Byres: I absolutely agree with the concern that you have, Senator. It's a trend that has been going for some time. I will see if my colleague Mr Lonsdale, who is on the line, wants to jump in with anything. We don't have a role to play in saying where banks have branches and where they don't have branches. But we understand entirely the problem that is existing. As I said, it's a trend within society that finance is going digital and bank branches are not profitable. So we have been working with the other arms of government on thinking about solutions to this debanking problem. It's not something that we will be able to solve on our own.

Senator ROBERTS: So it's not part of APRA's charter. Who else could it be?

Mr Byres: Well, it's a government problem. I don't know whether John wants to add anything to that.

Mr Lonsdale: Thanks, Senator, for your question. The thing that I would add is, yes, branches have declined in number. That's not just the case in regional areas but in other areas in the country as well. What our data is not picking up that I think is interesting is that there have been other ways, particularly in recent years, that customers have been accessing the financial system more electronically. I take your point that for some people in regional areas having a branch there is very important, so it doesn't undermine that. But there are other avenues as well. That is something to think through.

Senator ROBERTS: Minister, what do you think about the 62 per cent reduction in bank branches?

Senator Hume: Senator Roberts, it is something that we receive correspondence about on a regular basis. I know it's something that has come up with some of my regional and rural colleagues as well. The government hasn't got a specific policy that would compel banks to open up in regional and rural areas. We understand that they are very much the private sector or that they do operate under a social contract. It's something that I think in the next term of parliament I would be happy to talk to you further about and discuss what solutions you might consider appropriate.

Senator ROBERTS: Thank you. This comes from the NAB's correspondence we have here. In this description of these new cashless offices, they say about these branches:

Customers will benefit from more meeting spaces with video conferencing facilities and a digital bar—

I don't know what a digital bar is. It continues—

so we can provide more guidance on the ways to do everyday banking.

Does the definition of a bank branch include the need to have on hand suitably qualified staff able to exercise their duty as a responsible banker?

Mr Byres: Again, the only definition of a branch that we have is the one for reporting purposes. The definition is the one that you quoted before, Senator. I am sure you have that definition right. So the definition doesn't have that level of specificity in it.

Senator ROBERTS: It has another four criteria in addition to the ability to accept cash and other deposits. It states:

- (b) facilitates the keeping of accounts for customer access, including the provision of account balances;
- (c) opens and closes accounts;
- (d) can facilitate or arrange the assessment of the credit risk of existing and potential customers; and
- (e) offers additional services in the one establishment such as financial services, business banking and specialist lending—

So we're skirting with the banking code of practice. This is a serious question. Does a concierge directing customers to a computer screen to talk to a bank employee in a remote or international location satisfy your definition of diligence? Just how dumbed down are we going to let the bank branches get?

Mr Byres: I'm not sure that fits with our definition or it fits with the intent of our definition. The intent of the definition is to describe locations where you can at a branch do those things you talked about—transact cash, open and close accounts et cetera. So the fact that there are other types of operations in addition to branches that are there, I don't see why we would need to have a problem or issue with them.

Senator ROBERTS: This goes to the customer service of the banks.

Mr Byres: Yes.

Senator ROBERTS: And servicing rural Australia.

Mr Byres: Absolutely. And there are challenges there. Banks are always trying to work out how to do that in a way that is cost effective and in a way they can service the community that is cost effective.

Senator ROBERTS: Are you saying—it sounds like it to me, but I will just check with you—that a bank office, having no suitably qualified banking staff, is able to exercise their duty as a responsible banker in person and is still a branch nonetheless? This is a requirement of the banking code of practice. Is that document just a complete joke?

Mr Byres: No. I am wary of commenting on a code of practice that we don't administer or enforce.

Senator ROBERTS: What is your view on it?

Mr Byres: Could you repeat that question, then? What is my view on what, sorry?

Senator ROBERTS: It sounds like you are saying that a bank office, having no suitably qualified banking staff able to exercise their duty as a responsible banker in person, is still a branch nonetheless?

Mr Byres: For the purposes of the definition, it's still defined as a branch. Clearly not having qualified staff in your operations is not diligent operations. That is a simple business practice.

Senator ROBERTS: Is APRA too close to the banks? Do you need to get further away from them?

Mr Byres: As you pointed out, these things are part of the banking code of practice. The banking code of practice is overseen by ASIC.

CHAIR: Senator Roberts—

Senator ROBERTS: That's it. Thank you very much. Thank you, Mr Byres.

Senator WALSH: I have a couple of questions about the government calling for super funds to divest from Russian assets. On 3 March, APRA released a statement entitled 'APRA will not be taking action against trustees regarding divestment of Russian assets'. APRA did that on the same day as the government released their statement expressing an expectation that super trustees would divest their holdings. What is the basis for APRA to be able to make that decision in your enabling legislation or the legislation that guides you in relation to superannuation funds?

Ms Cole: So the issue here was if super funds wished to take steps promptly to divest themselves of Russian assets when they could—I say promptly, but to move in the direction of divesting Russian assets— whether APRA as a regulator would chill their desire to do so because of an analysis with each of them on whether that complied with their duties under the best financial interests duty. We took the view that where trustees made their own decision to divest Russian assets, and did so consistent with their duties, that was not inconsistent with the best financial interests duty. So that was the analysis.

Senator WALSH: So your role in this was to say, 'If you choose to follow the government's statement of expectation and you can do so in a way that is'—

Ms Cole: Consistent with your duties.

Senator WALSH: Your duties.

Ms Cole: Yes. We will not be taking any action.

Senator WALSH: You won't take any action?

Ms Cole: Correct.

Senator WALSH: Your press release was, I think, half an hour or an hour after the government's statement of expectation. Was that coordinated?

Ms Cole: Well, there was a discussion earlier in the day between ourselves and Treasury, but it wasn't coordinated in the sense that there wasn't an indication that this will happen now and yours will happen then.

Senator WALSH: Yes. We'll say this and then you say this, kind of thing?

Ms Cole: Yes.

Senator WALSH: But you obviously knew about the government's intention to make this statement earlier in the day, because it would have been an amazing feat to pivot in 30 minutes or 60 minutes.

Ms Cole: We knew from contact from the Treasury that the government was considering making such a statement. I think that's fair, yes.

Senator WALSH: You became aware of that on the morning of the statement, to your recollection?

Ms Cole: Correct. Consideration was being given to it through our normal contacts with Treasury.

Senator WALSH: Sure. It was consistent with your normal contacts, as in Treasury regularly says to you about something, 'We've got something to say'?

Ms Cole: We've got an issue that is under consideration, yes.

Senator WALSH: Would it be fair to say, then, given that timing, that APRA had to work fairly quickly or, in layperson's terms, scramble to consider a response?

Ms Cole: It would be appropriate to say that it was an important issue that was under consideration. A group of people under me considered the issue. I discussed it also with the chairman, as you would expect.

Senator WALSH: So you were working fairly quickly to be able to give some direction to the funds on how APRA would view this?

Ms Cole: We were working—if the government decided to publish this as its position—to be clear as to what our position was on that.

Senator WALSH: Were you working fairly quickly? Was it a fairly intense situation, or is it something that happens regularly?

Ms Cole: Well, we had a contact from the Treasury to say that the government was considering putting out a statement on this issue or considering the position that super funds, if they were to take a decision to proceed with trying to divest or divest when they could, were concerned what APRA's view was regarding whether they were complying with their duties, in particular, with the best financial interests duty. We felt it would be appropriate to say something making clear what APRA's position was on that. It did not seem unreasonable or inappropriate that trustees considering that point could arrive at the conclusion that it was appropriate to divest, where possible and when possible.

Senator WALSH: Did you get quite a lot of incoming calls from trustees seeking advice about how to proceed?

Ms Cole: I believe there were some conversations with supervisors about how that would be perceived, yes. There had been press commentary, I think, the day before which had drawn it. The Future Fund had made an announcement. So it was a matter that was in public discourse at the time.

Senator WALSH: Yes.

Mrs Smith: Perhaps to be fair, many of the trustees were already considering it anyway. It wasn't necessarily just that statement. Many trustees were also considering that as part of their investment frameworks and strategies.

Senator WALSH: It's extraordinary times. There is a lot of support for that statement by government and by various entities to take similar sorts of action. Is government giving that sort of indication to super funds about what they should invest in or not invest in?

Ms Cole: No. This is a completely separate set of circumstances. I'm not aware of any such thing.

Senator WALSH: This is quite unique. Are there other examples of this that anyone could point to?

Ms Cole: Not that I can think of, no.

Senator Hume: In fact, I think we've been on the record as saying—I certainly have been on the record as saying—that government should never direct superannuation funds as to how to invest. In fact, the statement that we issued was that there was a strong expectation that super funds would review their investment portfolios and then take steps to divest any holdings in Russian assets. Of course, that's aligned with our national interests. We would have thought that it would be members' expectations that their super funds would do the same.

Senator WALSH: Minister, was the expectation that super trustees would divest their Russian assets in a way that was consistent with best financial interests? That was the statement?

Senator Hume: That will always be the understanding. We will never direct a superannuation fund as to how to invest or divest its assets. We would never direct a superannuation fund to invest in infrastructure, for instance, be it for nation building purposes or whatever it might be. That would be entirely inappropriate. There is a reason why superannuation is separate from government.

Senator WALSH: Indeed, yes, and that APRA is as well.

Senator Hume: I think the Future Fund really led the charge on that and demonstrated that it was not just possible but sensible to divest of any impaired assets.

Senator WALSH: Mr Byres, APRA is broadly comfortable with this unique set of circumstances? Your job is an independent statutory authority in ensuring the safety and soundness of our financial system and so on. You

are comfortable about this? I say again that it is obviously extraordinary circumstances. We also don't want to be in a situation where funds are getting advice via press release.

Mr Byres: The short answer to your question is yes, I am comfortable. As you say, it's very unique circumstances and circumstances that we hope are not regularly repeated. Margaret and I talked about on the day the precise words, just to make sure we were comfortable with them. As Margaret said, we were still saying to trustees, consistent with our responsibility, that we had to make sure they were still being mindful of their responsibilities and their obligations as they were reviewing their Russian exposures. We came to the view that we were comfortable saying what we said.

Senator WALSH: Finally from me on this, did you put something in place to monitor what then occurred in relation to funds divesting at appropriate times in the context of best financial interests? Can you tell us anything about what has actually occurred?

Ms Cole: There are certain things happening. Some of the peak bodies are putting out their own guidance. We've been in consultation with some of them about putting out guidance to super funds on sensible ways to go about this. That is one point. The other point is we would expect such issues to come up in the course of our normal supervisory relationship with funds. Obviously, it wasn't possible for them to take immediate steps. So it's a declaration of intent. We're not following up and saying, 'Have you done it?', in that sense. We need to leave it to the trustees and their investment managers to approach the divestment in a sensible way that pays attention to their duties. We recognise how difficult that might be.

Senator WALSH: Thank you. In follow up to that, how would the parliament know what has happened as a result of the government stating its expectation? How could we find out—

Ms Cole: What had happened?

Senator WALSH: What happened as a result of that?

Ms Cole: There's no direct mechanism. We would expect to understand, in due course, how some of that came about through our supervision relationship.

Senator WALSH: There's no enforcement. It's not a law. It's a statement of expectation. There's no enforcement mechanism or follow-up about compliance with this expectation. That's correct?

Ms Cole: Correct as far as I am concerned, yes.

Mr Byres: There is only one thing I would add. The disclosures are very detailed these days. The government has introduced a requirement for portfolio disclosures. I looked at one the other day, which was a very long set of disclosures. You could see that one of the super funds had some very small exposures in Russian roubles. You will be able to see what has happened to those over time. It won't be real-time information. It will take a little bit for that to work through. For anyone interested in their particular super fund and what has happened, that information will over time come to light.

Senator WALSH: Thanks very much.

CHAIR: Thank you, Senator Walsh. Did you have any questions, Senator McDonald?

Senator McDONALD: No, thank you.

CHAIR: That's good. The committee will conclude its hearing for today. The committee's consideration of the 2022-23 budget estimates will resume tomorrow at 9 am with examination of the Industry, Science, Energy and Resources portfolio. I thank Minister Hume and officers from the Treasury portfolio who have given evidence to the committee today and all the representatives of APRA. I also thank Hansard, broadcasting and the committee secretariat.

Committee adjourned at 18:30