



COMMONWEALTH OF AUSTRALIA

# Proof Committee Hansard

## SENATE

ECONOMICS LEGISLATION COMMITTEE

**Estimates**

(Public)

WEDNESDAY, 9 NOVEMBER 2022

CANBERRA

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## **ECONOMICS LEGISLATION COMMITTEE**

**Wednesday, 9 November 2022**

**Members in attendance:** Senators Bilyk, Bragg, Brockman, Canavan, Colbeck, Green, Hughes, Hume, McDonald, McGrath, McKim, McLachlan, Nampijinpa Price, O'Neill, David Pocock, Rennick, Ruston, Scarr, Shoebridge, Dean Smith, Tyrrell and Walsh

## TREASURY PORTFOLIO

### In Attendance

Senator Gallagher, Minister for Finance, Minister for Women and Minister for the Public Service

### Treasury

#### Revenue, Small Business and Housing Group

Ms Diane Brown, Deputy Secretary, Revenue, Small Business and Housing Group  
Mr Peter Cully, First Assistant Secretary, Small and Family Business Division  
Ms Katrina Di Marco, First Assistant Secretary, Tax Analysis Division  
Ms Laura Berger-Thomson, First Assistant Secretary, Personal, Indirect Tax, Charities and Housing Division  
Mr Martin (Marty) Robinson, First Assistant Secretary, Corporate and International Tax Division  
Ms Susan Bultitude, Acting Assistant Secretary, Corporate and International Tax Division  
Mr Yi Yong Cai, Assistant Secretary, Tax Analysis Division  
Ms Kathryn Davy, Assistant Secretary, Corporate and International Tax Division  
Mr Nicholas Dowie, Assistant Secretary, Corporate and International Tax Division  
Mr Geoff Francis, Assistant Secretary, Personal, Indirect Tax, Charities and Housing Division  
Mr Bede Fraser, Assistant Secretary, Personal, Indirect Tax, Charities and Housing Division  
Mr Gino Grassia, Assistant Secretary, Small and Family Business Division  
Ms Vera Holenstein, Assistant Secretary, Personal, Indirect Tax, Charities and Housing Division  
Ms Mary Jeffries, Assistant Secretary, Small and Family Business Division  
Mr Darren Kennedy, Assistant Secretary, Tax Analysis Division  
Mr Richard Maher, Acting Assistant Secretary, Tax Analysis Division  
Ms Jacky Rowbotham, Assistant Secretary, Personal, Indirect Tax, Charities and Housing Division

#### Markets Group

Mr Robert Jeremenko, Acting Deputy Secretary, Markets Group  
Ms Mohita Zaheed, Acting First Assistant Secretary, Financial System Division  
Mr Warren Tease, Chief Adviser, Financial System Division  
Ms Nghi Luu, Assistant Secretary Capital Markets, Payments and Financial Innovation Branch  
Ms Katherine (Kate) O'Rourke, First Assistant Secretary, Consumer Data and Digital Division  
Ms Emily Martin, Assistant Secretary, Consumer Data Right Policy and Engagement Branch  
Ms Kate Penney, Acting Assistant Secretary, Data Economy and Consumer Data Right Governance Branch  
Mr Bart Hoyle, Acting Assistant Secretary, Regulatory Frameworks Branch  
Mr David Pearl, Acting First Assistant Secretary, Market Conduct Division  
Mr Tom Dickson, Assistant Secretary, Corporations Branch  
Mr Toby Robinson, Acting Assistant Secretary, Competition and Consumer Branch  
Ms Lynn Kelly, First Assistant Secretary, Retirement Advice and Investment Division  
Ms Anna Schneider-Rumble, Acting Assistant Secretary, Advice and Investments Branch  
Mr Luke Spear, Assistant Secretary, Member Outcomes and Governance Branch  
Mr James Thomson, Acting Assistant Secretary, Tax and Transfer Branch

#### Portfolio Agencies

##### Australian Financial Complaints Authority

Mr David Locke, Chief Ombudsman and Chief Executive Officer  
Mr Justin Untersteiner, Chief Operating Office

##### Australian Securities and Investments Commission

Mr Joe Longo, Chair  
Ms Sarah Court, Deputy Chair

Ms Karen Chester, Deputy Chair  
Mr Sean Hughes, Commissioner  
Ms Danielle Press, Commissioner  
Mr Warren Day, Chief Operating Officer  
Mr Chris Savundra, General Counsel  
Mr Greg Kirk, Executive Director, Strategy Group

**Australian Prudential Regulation Authority**

Mr John Lonsdale, Chair  
Ms Margaret Cole, Deputy Chair  
Mrs Helen Rowell, Deputy Chair  
Ms Therese McCarthy-Hockey, Executive Board Member  
Mrs Suzanne Smith, Executive Board Member  
Mr Bruce Young, General Manager, Operational Resilience

**Australian Reinsurance Pool Corporation**

Dr Christopher Wallace, Chief Executive

**Australian Office of Financial Management**

Mr Michael Bath, Acting Chief Executive Officer  
Mr Pat Raccosta, Chief Operating and Finance Officer  
Ms Erin Martin, Chief Risk and Compliance Officer  
Mr Brad Parry, Head of Portfolio Strategy and Research  
Ms Megan Hardy, Head of Business Data and Systems  
Mr Simeon Jasper, Acting Head of Funding and Liquidity  
Mr Peter Fogarty, Acting Head of Global Markets and Business Strategy

**Australian Taxation Office**

Mr Chris Jordan, Commissioner of Taxation  
Ms Jacqui Curtis, Chief Operating Officer, Enterprise Strategy and Corporate Operations  
Ms Kirsten Fish, Second Commissioner, Law Design and Practice  
Mr Jeremy Hirschhorn, Second Commissioner, Client Engagement Group  
Mr Ramez Katf, Chief Information Officer and Second, Commissioner, Enterprise Solutions and Technology  
Ms Melinda Smith, Chief Service Delivery Officer, Service Delivery  
Ms Janine Bristow, Chief Finance Officer, ATO Finance  
Mr Bradley Chapman, Deputy Commissioner, ATO People  
Ms Clare Gunning, Deputy Commissioner, ATO Corporate  
Ms Emma Rosenzweig, Deputy Commissioner, Superannuation and Employer Obligations  
Ms Rebecca Saint, Deputy Commissioner, Public Groups  
Mr Nicholas Shizas, Assistant Commissioner, ATO General Counsel

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

Ms Deborah Jenkins, Acting Commissioner  
Ms Anna Longley, Assistant Commissioner, General Counsel

**Inspector General of Taxation**

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

**National Housing Finance and Investment Corporation**

Mr Nathan Dal Bon, Chief Executive Officer

Mr Stuart Neilson, Chief Financial Officer and Chief Operating Officer

Mr Rod Saville, Chief Risk Officer and Board Secretary

### **Productivity Commission**

Mr Michael Brennan, Chair

Mr Alexander Robson, Deputy Chair

Mr Ralph Lattimore, Executive Manager

Ms Rosalyn Bell, Acting Head of Office

### **Royal Australian Mint**

Air Vice-Marshal Leigh Gordon, Chief Executive Officer

### **Commonwealth Grants Commission**

Mr Jonathan Rollings, Secretary

Ms Therese Maher, Assistant Secretary

### **Australian Small Business and Family Enterprise Ombudsman**

Mr Bruce Billson, Ombudsman

Dr Craig Latham, General Counsel

### **Committee met at 09:00**

**CHAIR (Senator Walsh):** 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 and the Industry, Science and Resources portfolio. The committee may also examine the annual reports of the departments and agencies appearing before it. The committee has set 18 November 2022 as the date by which senators are to submit written questions on notice and 16 December 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 a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. The Senate has resolved also 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 and which I now incorporate in *Hansard*:

*The extract read as follows—*

#### **Public interest immunity claims**

That the Senate—

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

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

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

(1) If:

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

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

the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.

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

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

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

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

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

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

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

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

*(13 May 2009 J.1941)*

(Extract, Senate Standing Orders)

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

I ask members of the media to follow the established media guidelines and the instructions of the committee secretariat as set out in the guidelines. Senators' and witnesses' laptops, mobile phones, other devices and personal papers are not to be filmed or photographed. I remind everyone in the gallery that they are not 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. The committee's proceedings today will commence with the Treasury portfolio, beginning with Treasury's Revenue, Small Business and Housing Group. The hearing will then follow the order as set out in the adopted program.

### **Department of the Treasury**

[09:04]

**CHAIR:** I now welcome Senator the Hon. Katy Gallagher, Minister for Finance, and officers from the Treasury. Would the minister or officers like to make an opening statement?

**Ms Brown:** We're happy for the committee to go straight to questions.

**Senator BRAGG:** I just want to pick up on some of the discussion we had yesterday on stage 3. Am I right from yesterday's evidence that this stage 3 tax cut modelling wasn't the only modelling done for the government on tax policy?

**Senator Gallagher:** What do you mean modelling? We had a talk yesterday about costing—updated costings.

**Senator BRAGG:** Other costings the department has done.

**Senator Gallagher:** We're being as helpful as we can. I think I said yesterday that, in putting the budget together, the Treasurer sought a whole range of information for us to consider as we put the budget together that looked at all aspects of the budget. I said this yesterday.

**Senator BRAGG:** So what other options were looked at from a tax point of view?

**Senator Gallagher:** What other options?

**Senator BRAGG:** Personal income tax.

**Senator Gallagher:** It was briefings on the state of the budget. That obviously looks at matters of tax, payments, measures, and issues like terminating measures. A new incoming government has to do its job properly to do that. We have to look at all—a whole range of information has to be provided in terms of advice, and I can assure you we did our job thoroughly and properly.

**Senator BRAGG:** I'm sure. I'm just trying to get a sense of what were the costings done on various tax options.

**Senator Gallagher:** I'm not sure I can be any more helpful. The Treasurer has spoken about the costing update that was provided on stage 3. There are some other tax compliance and tax integrity measures that feature in the budget. We sought a whole range of information, as you would expect us to do in making those decisions.

**Senator BRAGG:** But there was a public debate that you and the Treasurer engaged in in the lead-up to the budget. Do you accept that?

**Senator Gallagher:** Yes, the Treasurer and I did a lot of media interviews in the lead-up to the budget, as you would expect.

**Senator BRAGG:** Of course.

**Senator Gallagher:** We were asked a lot of questions about the budget, as you would expect.

**Senator BRAGG:** Of course. I listened to a number of them.

**Senator Gallagher:** I'm thrilled.

**Senator BRAGG:** I'm just trying to get to the bottom of whether there were options generated for the executive on the various tax possibilities, including whether or not the stage 3 tax cuts were requested as part of that process.

**Senator Gallagher:** Well, I think we've confirmed they were re-costed as part of that process.

**Senator BRAGG:** Okay. And what was the result of that?

**Senator Gallagher:** The re-costing was that it was \$254 billion over the medium term.

**Ms Brown:** Sorry, it was \$254 billion over the decade.

**Senator BRAGG:** Can I ask you, as a departmental official, what is the basis on which a department would request a measure that's already been developed by the Treasury and then legislated?

**Ms Brown:** As the minister said, it's important that the government understands any pressures in the budget. The cost of elements may change due to, for example, changes in workforce participation or changes in the compensation of employees. So the cost of measures may change over time. You just want to understand the pressures in the budget and do a similar exercise on the spend side—for example, in relation to the National Disability Insurance Scheme, which was reassessed by actuaries. It gives the government a complete understanding of what are the pressures in the budget.

**Senator BRAGG:** But is it an unusual exercise to undertake that a policy which is baked into the budget and that was designed by your department would be re-costed?

**Senator Gallagher:** I don't think it's unusual that an incoming government handing down a budget within its first few months would seek a whole range of information, Senator Bragg, in order to inform decision-making.

**Senator BRAGG:** I understand that. I guess I'm trying to understand—

**Senator Gallagher:** We're just doing our job.

**Senator BRAGG:** I'm trying to understand what precedents have been drawn upon here from the department's perspective.

**Senator Gallagher:** So the question you're asking is whether Treasury had done costings for the former government on their tax measures as they were updated and flowed through? I don't know how you can answer—I don't know how useful that would be. But also it would reflect on decisions that your government had taken, which I'm not aware of.

**Senator BRAGG:** Just to be clear, the question is: what is the precedent that's been used here to re-cost or remodel—

**Senator Gallagher:** The precedent is good budgeting.

**Senator BRAGG:** a policy which has been devised by the Treasury department. Do you go back and do this for every single tax setting in the budget? That's the question.

**Senator Gallagher:** As I said, the government—without going into exactly the goings on in the ERC and some of the discussions the ERC had, I can tell you that the government sought a whole range of information about the state of the budget on the revenue side and on the spending side. We got advice on parameter variations. There was a whole range of things that a new government, quite rightly doing its job properly, would seek information on.

**Senator BRAGG:** Maybe this is the best—maybe I'm not very good at asking questions. It's possible. Was every tax setting in the purview of the Commonwealth remodelled or re-costed as part of the budget process? I'm just trying to get a sense of—the department obviously wants to answer the question. I understand that they're here to give the executive government's position. But I'm trying to ask the department what precedent they've been using here and how orthodox this is.

**Senator Gallagher:** The department will work with the government on providing the information we need. That's the reality. That's how it works. I don't know about precedents because this is our first budget.

**Senator BRAGG:** That's why I'm asking the department.

**Senator Gallagher:** Well, you're asking the department about matters that would have happened under your administration.

**Senator BRAGG:** What administration?

**Senator Gallagher:** Under the former government's administration. You were in government for nine years. I can tell you what happened for the October budget, which is that we sought a whole range of advice from Finance and Treasury about all aspects of the budget, as people would expect us to do. Some of that was about updating information. Some of that was about new challenges that were coming down the path. Some of that was about holes in the budget that needed attending to. It was a very comprehensive process that we undertook.

**Senator BRAGG:** Can I ask Ms Brown the question? The question is: was every tax setting under the purview of the Commonwealth remodelled as part of the budget process.

**Ms Brown:** I might ask Ms Di Marco to answer that.

**Ms Di Marco:** Senator, the answer to that is no. I might also add that it's not really a matter of precedent here. We cost policies on request of government. If the government seeks advice, we will cost them. So I wouldn't regard it as a question of precedent in this case.

**Senator COLBECK:** So they asked for a re-costing?

**Ms Di Marco:** They asked for advice.

**Senator COLBECK:** On the stage 3 tax advice?

**Ms Di Marco:** They asked for advice.

**Senator Gallagher:** I think that's public—that's on the public record. The Treasurer was clear about that in interviews in the lead-up to the budget.

**Senator BRAGG:** It's just that it's a peculiar thing to re-cost or remodel when you're not re-costing and remodelling everything, as the evidence we just heard underlines, unless you're wanting to look at it closely. Now, when you've just gone to the election saying you're not going to change something, it just seems like a strange thing to do.

**Senator Gallagher:** That's your view. I see it as a responsible approach to budgeting, which is what we've decided and how we've approached the task in October, and it's how we will continue. We will get updated costings on a whole range of matters as we work through. We did it on childcare and we did it on aged care. There was a whole range of things that updated costings were provided on for us to make decisions about. Many of them had changed.

**Senator BRAGG:** Okay, that's good. So we've established that the personal income tax arrangements were costed for the purposes of the budget.

**Senator Gallagher:** We didn't—you didn't establish that. That was a known thing before today, just on the record.



**Senator BRAGG:** Sure. And do you know what the date of that request was?

**Ms Brown:** The re-costing of stage 3? We received that request in July.

**Senator BRAGG:** And when was that work completed?

**Ms Brown:** That question was asked yesterday. We have to do a little bit of investigating this week. We think the answer was provided in early August.

**Senator BRAGG:** And was that considered by cabinet ERC?

**Senator Gallagher:** I'm not going to go into what ERC considered or deliberated on. You can have your own considerations about that. But I have been clear that all aspects—it was a comprehensive assessment of the budget, and information was provided to the ERC to assist in decision making.

**Senator BRAGG:** So it was considered by cabinet?

**Senator Gallagher:** I've answered the question.

**Senator BRAGG:** Would you be able to provide the advice you provided on stage 3?

**Senator Gallagher:** I'll take that on notice. The costing is public and we've already answered it this morning, but I'll take it on notice.

**Senator BRAGG:** What other the tax policy ideas did you commission costings on?

**Senator Gallagher:** Well, there are some that are reflected in the budget, so you can start with those.

**Senator BRAGG:** There's not much in the budget.

**Senator Gallagher:** Not much? Well, it's enough. Did you want us to do more?

**Senator BRAGG:** Were there other ideas that were—I'm just trying to get a summary of what were the tax policy issues that were costed. Are they all in the budget or were some cut?

**Senator Gallagher:** I don't know if there's further information that I can add other than that we've got some in the budget. We've dealt with stage 3. The government sought a range of information about tax, tax measures, tax integrity and tax compliance in the lead-up to the budget, as you would expect us to do.

**Senator BRAGG:** So do you have the list?

**Senator Gallagher:** I'll see if there's anything we can help with on notice within the confines of normal cabinet in confidence processes.

**Senator BRAGG:** Can you please make sure that list includes taxes and tax concessions?

**Senator Gallagher:** I'll see what we can assist the committee within the normal—as I said, a lot of this will be covered by cabinet in confidence because that's essentially how it operates. If there's anything further I can provide to the committee, we will take that on notice.

**Senator BRAGG:** Can I just confirm that there was a request to cost a removal of the stage 3?

**Ms Brown:** I wouldn't characterise it as a request for the removal of stage 3. It was a request for a costing in order to understand pressures in the budget, as the minister has explained, and to understand the spending and revenue profile of the budget.

**Senator Gallagher:** For example, that costing had increased to \$254 billion over 10 years. Also, because of the increasing interest rates, I think it's \$40 billion a year extra in interest payments on that. So that information is, as you could understand, useful when you're putting together a budget. So it was a costings update. Yesterday there were attempts to say it was about removal and I dealt with those then. The evidence remains the same.

**Senator SHOEBRIDGE:** Thanks, Minister and everybody, for coming.

**Senator Gallagher:** We have to be here.

**Senator SHOEBRIDGE:** I know.

**Senator Gallagher:** We are enjoying it.

**Senator SHOEBRIDGE:** We could go through the charade. Wasn't it lovely you all voluntarily turned up to share a day together.

**Senator Gallagher:** Thank you for having us.

**Senator SHOEBRIDGE:** It's a pleasure. I hope you enjoy the water and the coffee. The Treasury website states that the specific listing process for DGR status usually takes around two years. That's right, isn't it, what's on the website?

**Ms Berger-Thomson:** The time that it takes to consider a direct application kind of varies depending on the application, but we're—

**Senator SHOEBRIDGE:** I'm talking about specific listings, where you need to change the law.

**Ms Berger-Thomson:** Yes, specific listings.

**Senator SHOEBRIDGE:** The website says that it generally takes around two years to process an application, amend the tax law, et cetera.

**Ms Berger-Thomson:** That's correct, yes.

**Senator SHOEBRIDGE:** And that depends on the priorities of the government's legislative program too, doesn't it? It's hard to get slot.

**Ms Berger-Thomson:** It does require legislation, so it does depend on the legislative program. But it's typically the case that there is a spot for specific listings.

**Senator SHOEBRIDGE:** But you're not trying to suggest that the website's in error when it says it generally takes around two years?

**Ms Berger-Thomson:** No, I'm not.

**Senator SHOEBRIDGE:** The Australian Future Leaders Foundation Ltd applied for specific listing. They made that application on 27 April 2021 and they received it on 1 July 2021—radically less than two years. Do you know how that happened?

**Ms Berger-Thomson:** So 27 April is correct—

**Senator SHOEBRIDGE:** They got it just in time for the—

**Ms Berger-Thomson:** and the announcement was made on 1 July. That is also correct. Legislation came into force on 1 April 2022 for that application.

**Senator SHOEBRIDGE:** Do you know how they received approval in that rapid turnaround? What happened between 27 April 2021 and 1 July 2021 to get them ready for the new financial year?

**Ms Berger-Thomson:** Typically what happens with these applications is that an organisation will apply to Treasury and to the government for consideration. There's a process that we go through to provide advice to government. But, ultimately, any decision for that application is a matter for government. That can have a variable length of time. I'm not privy to the decisions of government in relation to this matter.

**Senator SHOEBRIDGE:** But to get specific listing you have to show exceptional circumstances, don't you?

**Ms Berger-Thomson:** In the legislation there are actually no legislative criteria for specific listings, but it is typically the established practice of government to give specific listings only where there is—those organisations are unique or exceptional, yes.

**Senator SHOEBRIDGE:** Just going back to your website, it says the entity's application needs to include 'a strong case showing the exceptional circumstances that should be considered, including the broad public benefit your entity provides to the community'. That's right, isn't it?

**Ms Berger-Thomson:** That's correct, yes.

**Senator SHOEBRIDGE:** So you have to show exceptional circumstances?

**Ms Berger-Thomson:** We ask, for the purposes of government consideration, for organisations to provide that information. But, as I indicated earlier, there are no legislative criteria. So it is a decision of government.

**Senator SHOEBRIDGE:** How was the decision made on 1 July to grant the specific listing when the organisation had no physical office, no phone number, no website and no staff, and in fact they'd only been registered a few short weeks earlier? How did they pass the test?

**Ms Berger-Thomson:** As I indicated, there is no legislative test here. It is a decision for government.

**Senator SHOEBRIDGE:** Did Treasury recommend that they get DGR status and specific listing?

**Ms Berger-Thomson:** That goes to our advice to government.

**Senator SHOEBRIDGE:** Did you recommend that they get listing? Was that the recommendation that came from Treasury?

**Ms Berger-Thomson:** I wasn't around at the time, but we routinely provide advice to government on whether we think organisations should be considered. But, as I said, it is ultimately a matter for government.

**Senator SHOEBRIDGE:** Yes, it's ultimately a matter for government, but I'm asking what Treasury's advice was. You've got some detailed notes. Did Treasury recommend the listing of the Australian Future Leaders Foundation?

**Senator Gallagher:** I think, to be fair, and this was under the previous government, it is difficult for officials to disclose advice to government, Senator Shoebridge. I don't know the answer myself, but it is a difficult position to put officials in.

**Senator SHOEBRIDGE:** Minister, will you take it on notice?

**Senator Gallagher:** I'm happy to take it on notice.

**Senator SHOEBRIDGE:** It's been mentioned in broad commentary that the Prime Minister's department was involved in that. Did anyone from the Prime Minister's office or the Prime Minister's department contact Treasury in relation to this application?

**Ms Berger-Thomson:** Not to my knowledge, but I wasn't in my position at that time. What I would say is that it is—given the nature of these processes, where it's a decision of cabinet, we do provide advice, including, I guess, discussions with other central agencies on particular organisations for the purposes of those agencies briefing their minister. So we would typically have discussions with, say, Prime Minister and Cabinet.

**Senator SHOEBRIDGE:** All right. Can you take on notice what, if any, engagement there was with Prime Minister and Cabinet or the Prime Minister's office.

**Ms Berger-Thomson:** Yes.

**Senator SHOEBRIDGE:** When was the brief provided to cabinet? I presume there was a brief provided. Was it a cabinet brief that came from your office?

**Ms Berger-Thomson:** I don't have those details. I have that we provided advice on the application to the minister on 14 September 2021.

**Senator SHOEBRIDGE:** But the decision was announced on 1 July. So you provided advice months after the decision was made. How was that?

**Ms Berger-Thomson:** No, 1 July, sorry. I correct myself here: 1 July is the date that the effect of the specific listing came into—the date of effect of organisations being able to accept donations that then the donor could deduct from their taxation. So effectively 1 July 2021 was not the announcement date. I correct myself. The announcement date was 16 December 2021.

**Ms Brown:** And, just to correct that, Ms Berger-Thomson, it's 1 July 2022 that it came into effect. You answered 2021.

**Ms Berger-Thomson:** So the legislation was 1 April 2022.

**Senator SHOEBRIDGE:** But it was backdated on—

**Ms Berger-Thomson:** I think it was backdated to 1 July 2021.

**Ms Brown:** Apologies.

**Senator SHOEBRIDGE:** Is it usual that it's backdated?

**Ms Berger-Thomson:** It is, yes.

**Senator SHOEBRIDGE:** Can you identify who in the department dealt with the application? Did it go to the Treasurer's office, do you know?

**Ms Berger-Thomson:** Sorry, the application itself?

**Senator SHOEBRIDGE:** Yes.

**Ms Berger-Thomson:** It typically comes to Treasury.

**Senator SHOEBRIDGE:** All right. Did it go up to the minister's office?

**Ms Berger-Thomson:** We would always provide advice to the minister's office on all applications, yes.

**Senator SHOEBRIDGE:** And is it approved by the minister—is it required to be approved by the minister before it goes through to cabinet?

**Ms Berger-Thomson:** Typically, that's the process, yes.

**Senator SHOEBRIDGE:** Can you provide the date when it was approved by the minister?

**Ms Berger-Thomson:** I don't have that, but I can take it on notice.

**Senator SHOEBRIDGE:** Can you shed any light on what was considered in determining whether or not this organisation got specific listing?

**Ms Berger-Thomson:** From the department's perspective or from the government's perspective?

**Senator SHOEBRIDGE:** From the department's perspective. I'm really talking about what informed your advice I think on 14 September. I know you weren't involved in it, so I assume you'll take that on notice.

**Ms Berger-Thomson:** I can talk generally about what considerations we think about when we assess all applications for specific listing.

**Senator SHOEBRIDGE:** That would be helpful.

**Ms Berger-Thomson:** That includes whether an organisation has—there are 52 approved categories of DGR categories. To get DGR status, we think about whether they could have satisfied one of those 52 categories except for maybe some specific circumstances or where there's some reason that, if it wasn't for that reason, otherwise they would have been eligible for one of those 52 categories. We look at whether the organisation is unique and exceptional, so you wouldn't have a category for that particular type of organisation. We also look at whether there's a significant benefit to individuals from their activities. It is criteria of that nature.

**Senator SHOEBRIDGE:** Can you think of any instances where you've been satisfied of that where an organisation had no office, no phone number, no website, no staff and no history?

**Ms Berger-Thomson:** I'm happy to take that on notice.

**Senator SHOEBRIDGE:** Then if you could provide on notice a list of all the other organisations that have applied for specific listing in the last two financial years and the time that it took for the department to process them and the outcomes of the recommendations from the department.

**Ms Berger-Thomson:** I'm happy to take that on notice.

**Senator SHOEBRIDGE:** Thank you.

**Senator McKIM:** I want to ask some questions about the Housing Accord. It sets an aspirational target of one million new, well-located homes over five years from mid-2024. I just wanted to start by asking what is the baseline projection for the number of private homes that the market would build anyway over that period if the accord weren't in place.

**Ms Brown:** I'll start answering this question and Ms Berger-Thomson might want to add some further information. We're forecasting there'll be around about 180,000 completions on average across financial years 2022, 2023 and 2024. That's not dissimilar to what the industry is currently forecasting.

**Senator RUSTON:** Can I just follow on from that question from Senator McKim. My understanding is that the accord doesn't come into effect until 2024-25 and for the five years subsequent to that. So the baseline that Senator McKim provides is completely irrelevant to the period of time that the accord is in place. I was just wondering whether you might have what the baseline is expected to be between when these dwellings are—the time period these dwellings are supposed to be completed in.

**Ms Brown:** It's always hard to do forecasts from 2024 outward. So I think that the numbers that I gave—

**Senator RUSTON:** You're forecasting a million houses, so you must—

**Senator Gallagher:** It is an aspirational target.

**CHAIR:** Senator Ruston, we are proceeding as best we can in 15-minute blocks, so Senator McKim has the call.

**Senator McKIM:** The private market built 985,000 homes over the last five years, did it not?

**Ms Brown:** That's right.

**Senator McKIM:** And the accord starts from mid-2024. So the question remains: if you're forecasting a million new homes from mid-2024, which is when the accord commences, how many of those million homes would you expect the private sector to build anyway if the accord weren't in place?

**Ms Brown:** So I think you're correct—the million target includes both private housing and housing that's supported by government in social and affordable housing. The great bulk would be built by the private sector, which is the current case. But the accord will help to address what is a very pressing issue in the housing market by also addressing issues around land supply and zoning, such that the challenges that are coming up can be better addressed to ensure that there is sufficient housing for what we expect to be needed in that next period.

**Senator O'NEILL:** Sorry, Ms Brown, you said land supply and one other item.

**Ms Brown:** Zoning. It is a collaborative effort between the Commonwealth and the states and every level of government.

**Senator McKIM:** Understood. But, if you're forecasting a million new homes, you must have a breakdown of that million new homes—or have you just pulled the figure out of thin air?

**Ms Brown:** It is an aspirational target.

**Senator McKIM:** I don't think it's an unreasonable question. I know it's an aspirational target. But it is a target of a million new homes. It's a pretty simple question. Of that million new homes, how many do you expect the private sector to deliver anyway? Minister, can you help us here?

**Senator Gallagher:** I think Ms Brown has answered that. The vast majority. When you look at the previous five years and, as you said, 985,000 dwellings were built over the five years to March 2022, I think in announcements about the Housing Accord, which, as Ms Brown says, is broader than just delivering some additional affordable homes, the figure on that is 20,000 affordable homes by the Commonwealth and the states and territories. So that gives you an idea. But it's also, importantly—and I think this is what has been missing during the past decade—again, the Commonwealth states and territories are working together and pulling in the same direction to deal with the challenges that all governments and the community are experiencing. Don't underestimate that. The planning, land supply and zoning changes are a significant challenge.

**Senator McKIM:** So do you have any reason to think that the private sector will build any more or less than 985,000 homes over the five years from mid-2024?

**Ms Brown:** I think way we are looking at it is that we looked at the population growth and we looked at declining household numbers in houses, so less people are living in houses. We considered it in the context of that there will be an increased demand for housing. We already know that there are issues with affordable renting.

**Senator McKIM:** So you think the private sector will build more than 985,000 homes over those five years?

**Ms Brown:** Well—

**Senator McKIM:** You don't know, do you.

**Ms Brown:** It will depend on a range of things.

**Senator McKIM:** Do you know? Have you got any modelling?

**Senator Gallagher:** It's very difficult, I think, to forecast out another five years about what will be happening in the housing market.

**Senator McKIM:** You've forecast a million homes.

**Senator Gallagher:** We based—well, it's an aspirational target based on and informed by the delivery of what's happened over the past five years and extra effort going in by the Commonwealth, the states and the territories.

**Senator McKIM:** It's a meaningless figure, the million, isn't it?

**Senator Gallagher:** No, it's not a meaningless figure.

**Senator McKIM:** Would you accept—

**Senator Gallagher:** You want us to do more on housing. We're trying to do more on housing.

**Senator McKIM:** I'm asking about the figure. Would you accept that 985,000 homes is a reasonable baseline for what you would expect the private sector to deliver over the five years from mid-2024—in other words, 98.5 per cent of the million? Would you accept that's reasonable?

**Ms Berger-Thomson:** I think one of the things, and this goes to Senator Ruston's question as well, is that, although we have the 180,000 completions over the next three years, given the rises in interest rates, we would expect that there'd be a decrease in home-building activity subsequent to that as the effects of those interest rate rises flow through to the construction sector, which we know is sensitive to interest rates. So I think our best guess would actually be, given the economic situation, if there weren't any policies in place, there would actually be substantially less than the one million built. I think that's the difference between—the aspirational part of this is that there is a kind of a target for construction over and above what we think will otherwise occur.

**Senator McKIM:** Yes, but you don't know what would otherwise occur. I mean, it's very clear. I've asked repeatedly about it and there's been no number provided today. So am I right to say you actually have done no modelling or work at all in trying to understand how many homes the private sector will build in the five years from mid-2024.

**Ms Berger-Thomson:** No, that's not right.

**Senator McKIM:** Okay, so how many will they build?

**Ms Berger-Thomson:** I think here is the difference between what we would forecast. There is an established practice that we forecast components of GDP only for a couple of years, typically, in any budget or MYEFO update. Then there is kind of a model that takes over after that, but it's less clear about the forecasts. We did do some modelling or some analysis, however, of the one million. So that's the distinction. We did think about that one million. As Ms Brown indicated, we thought about forecasts of population growth. We looked at household size and how we would expect that to evolve over time. That obviously has implications for the number of houses that need to be built. So some of that analysis—noting the endogeneity between construction and household size and preferences, which is always very difficult, we are confident that the one million homes is a target which actually does genuinely increase the supply of dwellings.

**Senator McKIM:** By how much? I'm just after a number here. You said you've done some assessment or some modelling on it. What did that modelling say the private sector would deliver anyway over the five years from mid-2024?

**Ms Berger-Thomson:** Again that's the one million aspirational target—

**Senator McKIM:** Yes, the one million is an aspirational target.

**Ms Berger-Thomson:** I've already explained what would have otherwise happened. We know the 180. Then we expect that, due to the flow-through of the interest rate rises, there'll be kind of lower dwelling investment in the subsequent years.

**Senator McKIM:** But what are the numbers?

**CHAIR:** Senator McKim, you are asking the same question, and—

**Senator Gallagher:** I think if there's anything further we can provide—

**Senator McKIM:** I'm not getting an answer.

**CHAIR:** I was just going to say: is there one final question you have in this block?

**Senator McKIM:** I'll come back to the housing when I get a chance. But you've got what the market's going to build anyway—which it appears there's no number for, but correct me if I'm wrong—plus the additional 10,000 affordable dwellings from both the Commonwealth and the state that is set out in the budget. That is another 20,000. So how do you arrive at the figure of a million new homes? I guess the crux of that question is: are you counting homes built under the Housing Australia Future Fund? Are you counting those homes as part of the one million?

**Ms Brown:** All homes will be counted, so it does include the 30,000 under the Housing Australia Future Fund. So it is the 10,000 in additional affordable, 20,000 in social. The accord will also deal with trying to encourage institutional investment in housing, and that could generate more housing as well. One of the first tasks of this council will be looking at what are the barriers to that as an investment class for institutional investors to get more superannuation funds and other institutional investors also investing in housing, which would support further growth.

**Senator Gallagher:** Can I just add that, in terms of the investment in housing in this budget, the Housing Accord shouldn't be seen in isolation of other measures like the Housing Australia Future Fund, the expansion of the national housing infrastructure fund, the National Housing Supply and Affordability Council, housing Australia, Help to Buy Scheme, Regional First Home Buyer Support Scheme, National Housing and Homelessness Plan, and Closing the Gap homeless housing policy partnership. These are all important elements of the Commonwealth re-engaging on housing as opposed to what we've seen over the past decade. It's important work, but it shouldn't—each measure needs to be seen alongside the other effort that's going in in this space.

**Senator RUSTON:** Just following on from the line of questioning from Senator McKim, has the department done—does the department have any idea about what kind of additional housing will be generated by this particular accord, notwithstanding the other initiatives that have just been outlined by Senator Gallagher? What is the additional housing supply that is expected to be generated by this initiative?

**Ms Brown:** It will be a mix of housing—private housing, social—

**Senator RUSTON:** The number.

**Ms Brown:** It's a target of one million homes or dwellings.

**Senator RUSTON:** No, sorry. Am I not asking my question properly? We know you've got an aspirational target of one million. You've said that. What I'm trying to understand is—you have an initiative here that's costed in the budget at \$70 million for the two out years of 2024-25 and 2025-26 and, I can only imagine, the remaining

\$70 million for the three years into the next forwards. So you've got a budget amount here. You've said that will go towards 10,000 additional affordable homes. Is this initiative that you've got here—the accord—only going to deliver on behalf of the federal government an additional 10,000 homes or have you modelled this initiative to actually generate more houses or more dwellings than the 10,000 that you have got written in your budget papers?

**Ms Brown:** The measure you're referring to is the 10,000, or 350 million over five years to support the development of an additional 10,000 in affordable housing.

**Senator RUSTON:** But is this initiative going to generate more houses or more dwelling construction than the 10,000 you have here and the 10,000 you're predicating on the contribution from the states and territories? You can say a million this or 10 million that or 50 million this, but unless there's actually some demonstrable mechanism by which it's going to be achieved—I mean, somebody can't live in an aspirational target, can they? So I'm just trying to understand what this particular initiative is intending to deliver. Is it 10,000 houses?

**Ms Brown:** No, the accord is a collaborative exercise across all levels of government, plus institutional investors, plus the construction sector, to work together to address the housing need and demand, to fund some social and affordable housing, to look at planning reforms and land supply, and to release land in well-located areas that would support increased housing.

**Senator RUSTON:** I'm just trying to understand what is the increased housing that this is going to support. So in the absence of the accord—

**Senator Gallagher:** Senator, can we—

**Senator RUSTON:** Can I just ask the question? In the absence of this accord, what is the anticipated number of houses or dwellings that will be constructed in that five-year period?

**Senator Gallagher:** In the absence of the accord?

**Senator RUSTON:** Yes.

**Senator Gallagher:** Well, I think we've just traversed that previous evidence and gone through some of the issues about predicting that from 2024 to 2028-29. The commitment in this budget is the implementation of the Housing Accord, which was an agreement reached by the Treasurer and his colleagues. It is an important agreement which, from the Commonwealth's point of view in this budget, is 10,000 affordable homes supported by the commitment of 350 million over five years with ongoing funding support as that rolls through, in addition to the Housing Australia Future Fund commitments that we have made.

**Senator RUSTON:** Okay, so the appropriations in the budget start on 2024-25 and are in the two out-years of the forward estimates. What is actually being undertaken in the next two years in terms of the Housing Accord? There doesn't appear to be any allocation of funding for the next two years.

**Senator Gallagher:** Can I just start by saying that it is calibrated to deal with basically the economic circumstances of the times that we are experiencing right now, mindful of our overarching view of not adding issues in terms of inflation and also the fact that there are some of those supply issue constraints. This has been calibrated to align with some of those pressures easing. But there will be work done by the Commonwealth, states and territories. Obviously, coming from a jurisdiction where these matters were also before me, planning, zoning and land supply issues are not necessarily things you can deal with in a week or six months. So that work will continue. The work before the treasurers in terms of the Housing Accord will continue. Discussions with investors, super and all the rest of it will continue. So there will be a lot of work done.

**Senator RUSTON:** So when are we expecting the construction of the first of the Commonwealth's houses to commence?

**Ms Berger-Thomson:** So of the 10,000? That's from 1 July 2024.

**Senator RUSTON:** So construction will commence on 1 July or thereabouts?

**Ms Berger-Thomson:** In that financial year.

**Senator RUSTON:** The amount of \$350 million over the five years, or \$70 million a year, is only \$35,000 per dwelling. I'm interested to understand what the mechanism is around the construction. What is the expectation of Treasury about how they will be built? Obviously, this is a supplement to encourage the construction. So I'm just interested. We're not talking about the private sector. In your budget papers it says, 'will provide 350 million to support funding of an additional 10,000 affordable homes'. So I'm just sort of interested to understand how that is planned to work.

**Ms Berger-Thomson:** The intention is that will be done through availability payments, which are, effectively, regular annual payments to the owners of those dwellings. The idea here is that, for any kind of affordable

housing, to make that commercially viable there needs to be some form of government support for that. This is a mechanism by which the government will encourage and make those projects commercially viable by this regular payment.

**Senator RUSTON:** It's sort of like an NRAS mark 2?

**Ms Berger-Thomson:** It's a bit different to NRAS in that it's designed in a way that each individual project will be assessed based on a range of factors, including what other support through state governments, the funding model, and looking at the need and the location of those dwellings. So it'll be assessed—funding will be assessed on a case-by-case basis. The way that it works is that the federal government will provide funding to make sure that the funding is only provided up until a point that each individual project is commercially viable.

**Senator RUSTON:** Okay. So are there guidelines as to how that process is going to occur? I think we all shudder when we hear the word NRAS. So I'm just wondering whether we—

**Senator Gallagher:** I don't think the people that program helped shuddered.

**Senator RUSTON:** I'm sorry?

**Senator Gallagher:** That program injected a lot of affordable housing supply into this country and assisted a lot of people who are marginalised into housing. So I don't think that's a fair assessment. But, anyway, I don't want to rehash arguments of a decade ago.

**Senator RUSTON:** No, indeed. And for that reason I'd be keen if you could take it on notice just to understand what the mechanism is in relation to what the stimulation of these 10,000 houses is going to be to the private sector in order for them to do it.

**Senator Gallagher:** It's an availability payment.

**Ms Berger-Thomson:** Just to answer that last question very quickly, the intent is that this will be delivered through housing Australia and there'll be an investment mandate which will be set by the government which will outline all of the criteria.

**Senator BRAGG:** Can I just clarify on the housing, just because you referred to the role of the institutional investors a few times this morning—

**Senator Gallagher:** Once, I think.

**Senator BRAGG:** I think maybe the officials have also mentioned it a couple of times.

**Senator Gallagher:** They are an important part of the accord.

**Senator BRAGG:** I haven't got the exact account, but the Treasurer said I think it was last week that there would be an idea around the Commonwealth government seeking to subsidise the difference between the market rents and subsidised rents that will make it worth their while, 'their' being the investors. What would it be? Would it be a payment from the Commonwealth government to the institutional investor? What is it? Is it an offset? How would it work? It's a pretty sort of woolly concept.

**Ms Brown:** It's an availability payment to the construction project providers—the housing providers. It's not a rent subsidy. It is an availability payment to support the difference between the returns from the housing project to that required to make it commercially viable.

**Senator BRAGG:** So it'd be a payment from the government to the super funds?

**Ms Brown:** It could be the community housing providers. It could be a consortium of the project.

**Senator BRAGG:** But it could be a payment from the government to the super funds?

**Ms Brown:** If the institutional investors are providing that asset class, it could be.

**Senator COLBECK:** So is there a requirement for guaranteed period of rental support? Does it have an end date or are you just saying, 'We're subsidising the construction cost of a project', whatever scale that might be, and that then provides or needs to provide an affordable rental assessed against the local market?

**Ms Berger-Thomson:** We think the typical model is going to be through community housing providers, who will own the asset and will act to provide that asset as affordable housing in the long term.

**Senator COLBECK:** But they still have to manage and over the long term have a maintenance cycle and all of those things.

**Senator Gallagher:** Which they do already with the assets they manage now.

**Senator COLBECK:** Yes, they do. But we've seen in previous programs that you get to the end of a cycle where the support provided at the outset effectively peters out and the replacement cost then becomes the issue. I'm asking whether there is a cycle to this. I don't want to get into the NRAS argument, but that had I think a 10-



year cycle on it, for example. Is there proposed to be a cycle or is it just going to be—is there some form of guarantee of a period of supported rent as part of the program?

**Ms Berger-Thomson:** I think those availability payments will depend on the particular project, but we think that they could last for up to 25 years.

**Senator COLBECK:** I just wanted to ask about the planning stuff. I know that Tassie, for example, has just been through a significant process across all of local government with the statewide planning scheme that took a decade or so to put in place. What's the requirement for states and territories to engage in a further process there? I would have thought that, having been through all of what they've just been through, they wouldn't be overly excited about starting again. Just saying.

**Senator Gallagher:** Having lived through a few planning reform processes myself, I can understand that. I imagine states and territories are at different points in that work. It sounds like Tasmania has finalised the work it has done with local government, but I think it's again putting these matters on the table and working through a process of making sure we're doing everything we can to increase the supply at the affordable end. Part of that—the levers are with the states, territories and local government. If you look at planning reform, I imagine urban infill will come into it, and land supply. All of those issues are part of this. I think one of the challenges in addressing housing and housing affordability is that there are levers at three levels of government. This is about trying to coordinate that and pulling in the same direction. I think it's probably useful.

**Senator COLBECK:** I'm having flashbacks to the 2008 Senate Select Committee on Housing Affordability, I have to say. There are a lot of similar themes. Thank you.

**Senator RUSTON:** Just on another initiative—the Safer and More Affordable Housing initiative—it's a \$10 billion Future Fund. So obviously it's off balance sheet. I want to suggest that it has to have a return on investment. What are the expected returns for that Housing Australia Future Fund, let's say in the first year of its operation, to fund these houses?

**Ms Brown:** You have budget paper 2. If you turn to page 191, which refers to the Safer and More Affordable Housing measure that you referenced, there are two lines there. The first line is a payment and the second line shows the related receipts. That would be the receipts from the fund.

**Senator RUSTON:** Okay. What does that actually equate to in terms of return on investment?

**Ms Berger-Thomson:** Those receipts are just the income component. It doesn't include things like capital gains. But it's around five per cent.

**Senator Gallagher:** I think it's going to be in line with the other funds that are managed by the Future Fund.

**Senator RUSTON:** So are these returns net of the Commonwealth borrowing costs?

**Senator Gallagher:** Borrowing costs would be dealt with just through our debt management program. So these are not related.

**Senator RUSTON:** Are they reflected in these figures before us or are they accounted for elsewhere?

**Senator Gallagher:** What do you mean—the cost of borrowing? The interest cost on borrowing is not included in that table. They would be dealt with as part of the Commonwealth debt program.

**Senator RUSTON:** Okay. So, if it's off balance sheet, isn't it required to meet all of its costs? I'm just interested about how it's been accounted for here.

**Senator Gallagher:** Well, it's accounted for in that table. It's in line with all of the other funds in the way they are established, managed and dealt with in the budget. We haven't changed anything from the previous administration and the funds that you established.

**Senator RUSTON:** We didn't establish this fund.

**Senator Gallagher:** No, but you did establish other funds and it's dealt with in the same way. That's the point I'm making.

**Senator RUSTON:** Okay. It's standard operating procedure for the time when it was established. But clearly this is something that's going forward and so when will we expect to see the construction begin on these 30,000 homes?

**Senator Gallagher:** As soon as possible. That's work that Minister Collins is working on. There is a sense of urgency. That's why you see it in these budget papers. The amount of work and investment we're putting into housing in our first budget in October I think gives you the indication of the priority that the government places on it.

**CHAIR:** Senator Ruston, is there one final question in this block from you? Then I'll go to Senator Pocock and come back to the opposition.

**Senator RUSTON:** I've got a lot more questions. We don't seem to be getting any answers, so I will come back.

**Senator DAVID POCOCK:** Can we pick up on the Housing Australia Future Fund. Just to clarify: it's expected to return five per cent. So that whole five per cent will then be invested in the commitment to social and affordable houses?

**Senator Gallagher:** That's right.

**Senator DAVID POCOCK:** Do you have the projected amount for the forward estimates for each year?

**Ms Berger-Thomson:** In terms of disbursements, in these numbers there is \$500 million each year from 2023-24.

**Senator DAVID POCOCK:** Thank you. Then, if I can change gears and go to state and territory housing debt, what is the total owed to the Commonwealth by the states and territories?

**Ms Brown:** Unfortunately, we might have to take those questions on notice. State housing debt is actually managed by Fiscal Group because it relates to Commonwealth-state relations and balance sheet.

**Senator Gallagher:** The last figure I had was \$1.6 billion across all jurisdictions. But if that's wrong, I'm sure someone will message me and say that. I think it's in the budget paper.

**Senator DAVID POCOCK:** The interest rate for those loans?

**Senator Gallagher:** I think it can vary depending on what were the terms of the arrangements. I just don't have the budget paper that does federal financial relations, but it's usually outlined in a table in that budget paper. It can depend; can be arranged.

**Senator DAVID POCOCK:** Has refinancing been discussed or considered? I know interest rates are rising now, but it seemed like a lot of them were locked in pretty high relative to—

**Senator Gallagher:** This is a matter for the Treasurer and his colleagues. But there's obviously a lot of discussion about housing. I know some leaders have mentioned housing debt as part of the discussions about how we work together in this space. I'm advised \$1.6 billion is correct. Sorry—they're trying to provide information to me at the same time. I know that under the previous government there had been discussions around the potential for refinancing. I know the matters are actively being discussed, but I can't be specific about whether refinancing is part of that.

**Senator DAVID POCOCK:** And so to get figures about interest repayments—put them on notice?

**Ms Brown:** We can take that question on notice.

**Senator Gallagher:** I'm just checking the budget paper. I'm sure, it is in the budget paper table outlined. It goes through the amount of money in different—it's not just housing debt; there are all the loans basically. Let me just see if there's anything else I can provide.

**Ms Brown:** I have got a number, but I would like to confirm it with the Fiscal Group colleagues: the total interest payments for 2022-23 of around \$73 million. For the ACT it was around \$4 million.

**Senator DAVID POCOCK:** I'll leave it there and put the rest on notice.

**Ms Brown:** We'll try and get that as quickly as we can.

**Senator DEAN SMITH:** Deputy Secretary, yesterday we had a very illuminating discussion about the preparation and development of the incoming government brief that your colleague the acting secretary and Ms Kelly contributed to. Are you familiar with that discussion we had yesterday?

**Ms Brown:** I was watching yesterday, Senator, yes.

**Senator Gallagher:** It was scintillating.

**Senator DEAN SMITH:** Let's hope we live up to expectation today. Were members of the revenue group co-opted to any of the internal committees or task forces established to prepare and develop the incoming government brief?

**Ms Brown:** Unfortunately, I returned to the department only in late July, but Ms Di Marco might be able to answer whether there was anyone from revenue group on one of the IGB drafting committees. I imagine there probably was.

**Ms Di Marco:** That's correct. Members of Revenue, Small Business and Housing Group were part of the development of the incoming government brief, consistent with usual practice.

**Senator DEAN SMITH:** And what was the mechanism? Was it a committee, a task force? What was its name?

**Ms Di Marco:** Senator, in terms of the processes, I'm terribly sorry—I know this is probably not very satisfactory—but that is in fact a question for corporate group.

**Senator DEAN SMITH:** Which is coming back. Thank you very much for that. Did revenue officials propose any specific ideas for inclusion in the incoming brief that were not election commitments?

**Ms Di Marco:** Senator, that goes to advice to government, but I think the nature of the advice we provide in those briefs was covered off in sort of sufficient general terms yesterday.

**Senator Gallagher:** General briefing from all areas of the department would have been incorporated into the incoming government brief.

**Senator DEAN SMITH:** Were officials from the revenue group aware of the public commitments that the then shadow Treasurer and the then opposition leader had given around the franking credits regime?

**Ms Di Marco:** As a matter a matter course, the department seeks to seek to ensure that we're across the election commitments of both the government and the opposition.

**Senator DEAN SMITH:** How does it do that?

**Ms Di Marco:** Again, Senator, unfortunately these are questions that go to corporate group, but I think Ms Kelly covered this somewhat yesterday.

**Senator DEAN SMITH:** Normally, Ms Di Marco, I'd accept that. But you are in the revenue group and you've earlier confirmed that revenue group officials participated on the internal committee or taskforce. So these questions go specifically to what revenue officials did and didn't know. So my question is whether revenue officials were aware of the then shadow Treasurer's and the then opposition leader's commitments to not dismantling the franking credits regime.

**Ms Brown:** I can answer generally around the IGB process. It does vary from department to department. So, again, corporate would need to confirm this as being applicable to Treasury. But as part of the IGB process, there usually is a process by which election commitments are tracked by each department. They're also tracked by PM&C to make sure that all election commitments are known and addressed as relevant in incoming briefs to government. And that's for both Labor and Liberal governments and commitments.

**Senator DEAN SMITH:** So, when we use the term 'election commitments', does that also include clear statements not to include certain things in a new government's agenda?

**Ms Brown:** That will vary from department to department and it will depend on the specificity. It may or may not.

**Senator DEAN SMITH:** Why would it vary from department to department? I thought incoming briefs to a new government would have a form of consistency about them.

**Senator Gallagher:** There is a form of consistency. But it's the department's information to the incoming minister. It's not controlled by the minister, because the minister's just arrived. For example, if we had a commitment that said, 'This is our policy and we do not want to be briefed about anything else in the incoming government brief as part of that election commitment', then I would imagine that would be followed in the incoming government brief—highly unusual, but that would probably ensure it isn't mentioned or whatever. But other than that, it is the department saying to you, 'This is everything you need to know: your election commitments and other matters that you might be asked about tomorrow' when you turn up on day one. That's essentially what it is.

**Senator DEAN SMITH:** So was the revenue group conscious, alert to the fact that the new government might be asked about its commitment not to dismantle the franking credits regime?

**Senator Gallagher:** I don't know that we can be particularly helpful further than what we've said about the incoming government brief. I don't know what we're trying to get to here. The government had some commitments around tax that we took to the election. They would have been covered off in the incoming government brief. But there are other matters before revenue group that would also have been briefed as part of that comprehensive briefing to the Treasurer.

**Senator DEAN SMITH:** Correct, Minister. The government did have a variety of commitments in regard to tax. One of those, which was reiterated on no less than three occasions, was to not dismantle or undermine the franking credits regime. So I'm keen to understand: did Treasury provide any advice through the incoming government brief process on the commitments that both the shadow Treasurer, now Treasurer, and the opposition

leader, now Prime Minister, gave on no less than three separate occasions not to undermine or dismantle the franking credits regime?

**Senator Gallagher:** The government brief would have covered off election commitments and other matters that the government needed to be informed of. We're not going to get much further than that.

**Senator DEAN SMITH:** That's fantastic. And thank you for the concession, Minister, because the first 91 pages of the incoming brief have been redacted. So if you're able to share with the committee what is the subject heading for chapter 1, what is the subject heading for chapter 2—

**Senator Gallagher:** I don't get involved in FOI—

**Senator DEAN SMITH:** and what are the subheadings of the first and second chapters, that would be very, very illuminating. Deputy Secretary, are you able to provide—

**Senator Gallagher:** I have no doubt that Treasury has processed the FOI in accordance with the law. I do not get involved in that but I have no doubt all processes were followed.

**Senator DEAN SMITH:** It's particularly secretive and particularly lacking in transparency, which I note is the Prime Minister's core election commitment, not to even have chapter headings.

**Senator Gallagher:** It's been handled in accordance with the FOI law. So if you don't agree with it, appeal it or pursue it. But I have no doubt—

**Senator DEAN SMITH:** I'm taking the second option: I'm pursuing it here this morning. Deputy Secretary, are you able to provide me with any information about whether chapter 1 and chapter 2 included information on election commitments?

**Ms Brown:** As I said, I wasn't in the department when the IGB was being drafted, so I'm—

**Senator Gallagher:** But it would have. I'm telling you, it would have included information on election commitments, as you would expect.

**Senator DEAN SMITH:** Would it have included information where then opposition, now government, had given clear commitments not to pursue a particular tax measure?

**Senator Gallagher:** The incoming government brief, as I've said, would have included advice on implementing the government's election commitments as outlined in our plan for a better future and the commitments we made in the campaign. It would also have advised the minister of other issues pertinent to his performance as Treasurer. That is what is contained in the brief.

**Senator DEAN SMITH:** So when Mr Chalmers, the now Treasurer, said on the 4BC drive program on 17 January, 'We won't be doing franking credits; I couldn't be clearer than that', would matters around that election commitment have been included in the incoming government brief by the revenue group?

**Senator Gallagher:** You've got as far as you're going to get in this. I've answered your question. I'm not going into the specifics of what was in the incoming government's brief. It is for the incoming government. It's information for that purpose. I have told you that election commitments and other issues relating to the department would have been covered in that brief.

**Senator DEAN SMITH:** So why was it necessary for Treasury to advise the government to break its election commitment on franking credits? The election commitment was there would be no changes, no dismantling, no undermining of the franking credit regime. That was the government's election commitment. And now at page 13 of Budget Paper No. 2—

**Senator Gallagher:** We're not changing the policy.

**Senator DEAN SMITH:** headed 'Improving the integrity of off-market share buybacks'—a clear break of that election commitment.

**Senator Gallagher:** No, it's not. We are not changing the operation of franking credits attached to regular dividends, which was the policy that we took to the 2019 election and we are not pursuing. So let's be clear about that. I know it's in your political interest to try and conflate the two, but let's be clear. The position we took, the policy we took, in 2019 is not part of this budget. That was the commitment we made. On tax compliance and tax integrity there are some changes in this budget and we're happy to go through those. But I'm not going to sit here and accept that we are not delivering on a previous commitment. The 2019 policy does not feature in this budget. Let's be very, very clear about that.

**Senator DEAN SMITH:** With headlines like 'Attempt to dismantle the franking system', opening paragraphs about the Albanese government gradually chipping away at the distribution of franking credits, I think this does look—

**Senator Gallagher:** We can't control what newspapers write or comments people provide to newspapers.

**Senator DEAN SMITH:** I think for many taxpayers this does look like the dismantling and the chipping away of the franking credits regime.

**Senator Gallagher:** Well, it's not. Shall we go to the measure itself?

**Senator DEAN SMITH:** No—

**Senator Gallagher:** So you don't want to do that?

**Senator DEAN SMITH:** I've got a line of questioning first.

**Senator Gallagher:** You don't want to go to the measure itself.

**Senator DEAN SMITH:** I'm happy to swap places with you, Senator Gallagher. But I have a line of questioning.

**Senator Gallagher:** I've been very clear that the commitment we took about not taking the 2019 policy is our position and it's reflected in the budget.

**Senator DEAN SMITH:** Deputy Secretary or Ms Di Marco, can you provide me with some information about what are the characteristics of those taxpayers who are likely to be caught up in the measure identified at page 13 of Budget Paper No. 2, which is headed 'Improving the integrity of off-market share buybacks'?

**Ms Brown:** This measure is directed at listed companies and it is in relation to when they buy back shares. It's aligning the tax treatment for the buying back of shares by listed companies on market and aligning that—when it's bought off market, aligning it to on market so that it's treated in exactly the same way.

**Senator DEAN SMITH:** I think that's what it says in the actual measure. I've read that. But I'm interested to know what the expected impact is. What are the characteristics of those taxpayers that will feel the consequence of this broken promise?

**Senator Gallagher:** It's not a broken promise. The position we took to the election was not to pursue the policy we took in 2019, and that has not changed.

**Senator HUGHES:** That's not what Mr Chalmers said on radio.

**Senator Gallagher:** That has not changed. So you can try and dress it up and conflate it all if you like. But we have a job to do in terms of budget repair because of the budget we inherited in structural deficit, \$1 trillion of debt that we're managing. We are going to have to look at sensible, responsible changes, where we can, on tax integrity, on closing loopholes, on applying consistency in the tax regime. That is what this measure does.

**Senator DEAN SMITH:** On 17 January, 4 March and 30 March, Mr Chalmers and Mr Albanese respectively made commitments in regard to the dismantling of the franking credits regime. It's clear to many, even if you don't want to admit it, that budget measure identified at page 13 is a broken commitment.

**Senator Gallagher:** It's not a broken commitment. You can keep saying that, and I will keep saying it's not. So we're not going to get very far.

**Senator DEAN SMITH:** I don't think the transcripts lie.

**Senator Gallagher:** We're all here till 11, so we can keep going for another 12 hours.

**Senator DEAN SMITH:** How many drafts of 'Improving the integrity of off-market share buybacks' were prepared for consideration through the budget process?

**Senator Gallagher:** How many drafts of what?

**Senator DEAN SMITH:** Of the measure that is identified, included at page 13.

**Senator Gallagher:** I'll see what we can provide, if it's reasonable. But I think that would be—

**Ms Brown:** My recollection is it wasn't exceptional compared to other measures.

**Senator DEAN SMITH:** Sorry, Secretary, I thought you weren't in the department at the time?

**Ms Brown:** I was with the department when the budget was done.

**Senator Gallagher:** But not with the incoming government brief.

**Senator DEAN SMITH:** I'm assuming it's an iterative process backwards and forwards with various officials and the government.

**Ms Brown:** All measures go through an iterative process. Each measure might have various drafts. I can't recall the drafting on this measure being exceptional and having any more drafts or less drafts than most other measures.

**Senator DEAN SMITH:** I think the degree of exceptionality is probably subjective. Can you please provide details of how many drafts were prepared—

**Senator Gallagher:** I'll see what we can provide. I don't want it to be onerous. There's a lot of work that goes in to putting a budget together. We'll see if there is a reasonable way to answer that question on notice.

**Senator DEAN SMITH:** And just one more, if I may. In addition to that, can you advise whether the words 'dividends', 'franking credits' or 'dividend imputations' were removed from any of the drafts?

**Senator Gallagher:** Again, I'm happy to do what we can to assist but I think that would be pretty onerous, frankly, for the Treasury to go and do Word searches on draft information that may have been provided through the drafting processes.

**Senator DEAN SMITH:** I'm sure the Treasury processes are very efficient, well recorded and well minuted.

**Senator Gallagher:** And I've said we will look at what is reasonable, but I don't—

**Senator DEAN SMITH:** I think that will be a relatively easy task for officials in the revenue group to undertake.

**CHAIR:** Thank you, Minister. Thank you, Senator.

**Senator HUME:** Can we just do a clarification question?

**CHAIR:** No, I'm going to move the call. We'll come back to you of course but we're getting into a bit of a debate rather than the usual sort of thing where someone asks a question and then people at the table answer it and then someone else asks a question. So I'm going to go to Senator O'Neill.

**Senator O'NEILL:** I'm particularly interested in housing, like so many Australians. I'd like to get on the record where we are with regard to what the government's picked up at this point in time. The HomeBuilder program of the former government—these questions go to that. What was the original estimate of the HomeBuilder program? What would that cost?

**Ms Berger-Thomson:** The original costing of the HomeBuilder program was \$680 million. The current estimate is around \$2.7 billion.

**Senator O'NEILL:** So based on the government's numbers, proposed to cost \$680 million, then you would call it a cost blow-out to \$2.7 billion. Is that correct?

**Ms Berger-Thomson:** There were policy changes that contributed to the increase in the cost, but it remains that demand was higher than was expected, yes.

**Senator O'NEILL:** This morning we were talking about how the government's going to work with the market and work in an accord to deliver good outcomes in the housing sector. But when governments engage, things change. I'd like to understand what's the impact of the HomeBuilder program on construction costs.

**Ms Berger-Thomson:** We don't have a precise estimate of that. I guess we would characterise that the HomeBuilder program has contributed to capacity constraints in the construction sector, but it has not been the only factor to do that. There were also state government programs to support the construction sector and also throughout the pandemic an increase in demand for higher quality dwellings. There were also supply factors that have contributed to construction costs. So obviously supply chain disruptions globally from the pandemic, closed borders which impacted on the availability of labour, and the other factor is—I've just had a mental blank. But the broader point is there's absolutely a range of factors that have that have contributed to heighten pressures in the construction sector. It's very difficult to work out the precise contribution of each of those. The other point I would make is that with any COVID support measure, of which HomeBuilder was one, there was a kind of supporting demand aspect of that measure. But also all of these programs were designed not only to support demand but also to support confidence and reduce uncertainty in the overall economic environment. So it's very hard to estimate what the counterfactual would have been without any particular program.

**Senator O'NEILL:** Thank you for that comprehensive answer. But I guess the reality is the government has the capacity at any point of time to turn on and to turn off these sorts of things as they gather information from Treasury and your assessment of what's going on in the economy. I'm particularly interested in the construction costs, because it would seem that there was quite a bit of overheating. Is it fair to say—you called it 'construction costs rose'. Is that what normal people would call overheating in the market?

**Ms Berger-Thomson:** I think overheating is probably subjective. You have to take a subjective perspective on that. I would say that it contributed to cost pressures.

**Senator O'NEILL:** And those cost pressures affect everybody who is building a home. What has the actual increase in construction costs been over the last 10 years?

**Ms Berger-Thomson:** I'll check to see whether I have that information but I'm not sure that I do. The only figure I do have is that material costs for the house construction industry—this is based on the ABS producer price index—rose 17.3 per cent over the year to June 2022. But I'm happy to take the 10-year increase on notice.

**Senator O'NEILL:** What about the price of timber, board and joinery? Certainly I've been hearing a lot about that.

**Ms Berger-Thomson:** The annual increase in that component was 24.2 per cent, which is a huge increase.

**Senator O'NEILL:** What about metal products and other materials?

**Ms Berger-Thomson:** 18.4 per cent for metal products, and other materials was 12 per cent.

**Senator O'NEILL:** So significant increases. If you haven't got 10-year figures, have you got figures for a period of more recency?

**Ms Berger-Thomson:** I don't; I'm sorry.

**Senator O'NEILL:** If you could take that on notice, Ms Berger-Thomson, I'd like to get the shape of what's gone on in that period of time. I understand a review of the HomeBuilder national partnership agreement was released earlier this month. Is that correct?

**Ms Berger-Thomson:** There was a review released very recently on the national partnership agreement; that's correct.

**Senator O'NEILL:** Are you familiar with that review?

**Ms Berger-Thomson:** I am.

**Senator O'NEILL:** So, Ms Berger-Thomson, could you provide us with an understanding of what that review found in its assessment of the HomeBuilder program?

**Ms Berger-Thomson:** There were a number of findings. The first was that the program was successful in boosting demand for the construction sector, as it was intended.

**Senator O'NEILL:** It boosted it all right—drove it through the roof.

**Ms Berger-Thomson:** Another finding was around the operation. It's important to clarify that this review is about the operation of the agreement rather than a review of the effectiveness of the program itself, although it did make some comments about the effectiveness of the program. It had some lessons for the Commonwealth in terms of the operation of that program, noting that it would have been smoother and more efficient to establish and easier for the public to navigate if earlier consultation had taken place between the Commonwealth and the states and treasuries. And there were some findings around data collection as well.

**Senator O'NEILL:** Okay, so two critical findings: data collection and a lack of coordination—is it fair to characterise it as that—between the state and federal governments?

**Ms Berger-Thomson:** The context of this is obviously that we were in the middle of a pandemic and very early in that pandemic. There were certainly lessons to be learned that the Treasury will take away. A key part of actually doing these reviews is to learn lessons from the process. But given the environment in which we were operating, things had to happen at speeds that were unusual and probably far from best practice in terms of some of those processes just to deliver money to people. So there are some extenuating circumstances around the circumstances at the time.

**Senator O'NEILL:** But to be clear, the plan was to deliver \$680 million worth of investment, and that expanded to \$2.7 billion. And that was a feature of the design of the HomeBuilder program, wasn't it?

**Ms Berger-Thomson:** It was always a demand-driven program. One of the features—

**Senator O'NEILL:** With an uncapped budget.

**Ms Berger-Thomson:** Yes, that's right. One of the features of all of these COVID programs is that—and this is a feature of how we do costings for the economic effect of programs in general, and particularly with COVID programs. There are obviously general equilibrium effects, which means that what the program is designed to do is actually to increase economic activity overall. And so your estimate of what would have happened in the absence of the program is actually an environment that we were trying to prevent from a Treasury standpoint. That's an environment where people don't have a lot of money, there's a higher degree of uncertainty, all of those factors which would mean that demand for construction would have been low. So that is the counterfactual that the program was costed off. The fact that you actually had much more demand than was expected at the time is actually just a feature of the success of some of those programs.

**Senator O'NEILL:** So the demand that was generated by this uncapped program, which didn't have a budget allocation that matched what ended up being spent, is now a historical fact, but it drove demand quite significantly in a very short period of time in a way that the government didn't expect, and the budget of \$680 million blew out to \$2.7 billion over the period of time that this was being managed.

**Ms Berger-Thomson:** It is true that the original costing was \$680 million.

**Senator O'NEILL:** And the final cost?

**Ms Berger-Thomson:** And the final cost was \$2.7 billion.

**Senator O'NEILL:** I note that under the HomeBuilder program, subject to meeting all other eligibility requirements, homeowners could apply for a grant that would help not just with the building of a property but also with the cost of renovating a property. Is that correct?

**Ms Berger-Thomson:** That's correct.

**Senator O'NEILL:** I note that more than 24,000 applications for HomeBuilder were grants to assist with renovations. Is this correct?

**Ms Berger-Thomson:** I don't have that number on me. I do have that the total number of grants was 105,247, and that 18 per cent of those were for renovations.

**Senator O'NEILL:** So 24,000 is not too far off.

**Ms Berger-Thomson:** It's not too far off but I don't know the exact number.

**Senator O'NEILL:** Can you explain what sorts of renovations were paid for? Eighteen per cent of this \$2.7 billion that was unbudgeted by the government that went out went to these renovations. What sorts of renovations were being paid for in this multi-billion-dollar government program?

**Ms Berger-Thomson:** I don't have that information on me but the renovations needed to be substantial.

**Senator O'NEILL:** I'm just trying to figure out what substantial could mean. Could, the renovation of the kind that you're talking about be a new bathroom or the upgrade of a bathroom?

**Ms Berger-Thomson:** I imagine so. But I will just see if my colleague has any further information on the types of renovations.

**Ms Holenstein:** It had to be at least a certain amount for the renovation. I haven't got it with me right now either. I believe it was \$250,000 for a renovation in order to qualify—

**Senator O'NEILL:** \$250,000 for a renovation? I've done a few renovations in my time, but \$250,000 is a very significant amount. There would be very few Australians that I mingle with who'd be able to just pop on a \$250,000 renovation.

**Ms Holenstein:** Similarly to the new builds, one of the goals of the HomeBuilder program during COVID was to stimulate the construction industry. The important part of it was that it would stimulate that sector. So it was considered that being a substantial renovation or a new build would be an important part of the eligibility criteria.

**Senator O'NEILL:** So if I had sufficient money to be able to afford a \$250,000 renovation on my home, were there any restrictions on what I could spend it on? Could I spend it on gold taps in the bathroom, bidets in multiple bathrooms, a home cinema, an indoor swimming pool, any of the above? Were there any restrictions or could I build whatever I liked with my \$250,000?

**Ms Holenstein:** There were no restrictions on the types of renovations. There were also income caps that applied for the HomeBuilder program.

**Senator O'NEILL:** Income caps?

**Senator HUME:** Is there any evidence of people using it for gold taps—

**Senator O'NEILL:** Could I just continue my line of questioning first? Income caps—could you explain that?

**Ms Holenstein:** In order to qualify for a grant under HomeBuilder, an applicant had to have income under a certain amount. I don't have those amounts with me but I can take that on notice and provide that.

**Senator O'NEILL:** Senator Hume is interested to see if you have evidence of people who built an indoor swimming pool.

**Senator HUME:** Gold taps, bidets, all the things that you have recommended.

**Senator O'NEILL:** All of the things that I fear the government might have ended up paying for people who already had a lot of money.

**Senator HUME:** Little boxes of social housing would be so much better.



**Ms Holenstein:** I can take it on notice.

**Senator O'NEILL:** Point of order. Sorry, Ms Holenstein. I think Senator Hume needs to withdraw that comment. 'Little boxes of people living in social housing'—

**Senator HUME:** That's what I said you want.

**Senator O'NEILL:** is an inappropriate way to characterise social housing and all the Australians who grow up in it and rely on it and need that roof over their head. This is why you funded this instead of what people really need. You funded people who could already afford their own extension with the gold taps and—

**CHAIR:** Order everyone! Senator O'Neill, you've got the call for a couple of minutes.

**Senator O'NEILL:** Do you have any of the details of the sorts of personal expansions of houses, up to \$250,000 by your evidence today, that Australians were able to go ahead and build when this project of the government's blew out from \$680 million to \$2.7 billion?

**Ms Holenstein:** Senator, I will need to confirm the \$250,000. We do not have any detailed information on the types of renovations that participants in HomeBuilder undertook. The program was administered by the state and territories. But as far as I'm aware, the type of renovations is not part of the data that states and territories would have collected. My mistake—can I please state for the record that the renovations had to be above \$150,000, not \$250,000. Also swimming pools, granny flats et cetera were actually explicitly excluded.

**Senator O'NEILL:** Well, I'm happy about the swimming pools. So granny flats were excluded and swimming pools were excluded. But other than that, indoor cinemas, anything that you wanted in your home, you could—outdoor kitchens, any of those sorts of items that people might see on the home reno shows. All of that, if it was between \$150,000 and \$250,00—

**Ms Holenstein:** Between \$150,000 but not exceeding \$750,000.

**Senator O'NEILL:** So up to 750,000?

**Ms Holenstein:** Yes. And the value of the existing property—that is, the house and land before renovation—was not to exceed \$1.5 million.

**CHAIR:** Senator O'Neill, you've really just got one question left.

**Senator O'NEILL:** I might come back after the break, Chair. I'm still sort of getting over the shock of how much money went into these renovations and how distressed Senator Hume was that should have gone not to social health—

**CHAIR:** All right. Who would like the call from the opposition senators?

**Senator DEAN SMITH:** Just a point of clarification: my question that requested the number of drafts of the budget measure that is identified at the top of page 13 of Budget Paper No. 2 has been taken on notice?

**Senator Gallagher:** Yes, I said we'd see what we could provide the committee.

**Senator DEAN SMITH:** The looseness of that makes me a bit nervous, hence my clarification. But I understand that you'll take that on notice.

**Senator Gallagher:** I understand what information you're trying to get. If we can provide that, we will.

**Senator DEAN SMITH:** Thank you. And secondly—

**Senator HUME:** Are you taking it on notice?

**Senator Gallagher:** Yes, we've taken that on notice.

**Senator DEAN SMITH:** And secondly, you'll take on notice whether the words 'dividends', 'franking credits' or 'dividend imputations' were removed from any of the drafts—just to confirm that has been taken on notice as well.

**Senator Gallagher:** Again, I will see what can be provided in terms of a reasonable deployment of resources.

**Senator HUME:** If you cannot, though, you need to provide a PII.

**Senator Gallagher:** I'm happy to go through the process and we will come back.

**Senator HUME:** See what can be taken on notice, or PII.

**Senator Gallagher:** I understand how the process works, Senator Hume. I don't need a lecture on it. I have, in goodwill and peace and harmony, said we will look at what we can provide. I am not necessarily—and this is a matter for the Treasurer—agreeing to people sitting there doing Word searches through draft documents that may or may not have ended up as part of something the government considered. I don't know that is a really—considering the economic challenges the country faces, to be honest, I'm not sure that's a really useful use of

Treasury resources. We will be as helpful to the Senate as we can, because I respect the Senate and I respect the accountability processes of Senate estimates. But I am flagging that an unreasonable deployment of resources to this is not really the first priority for the Treasury at the moment.

**Senator DEAN SMITH:** We're not suggesting that the secretary undertake this task. But I'm sure there are other officials in the Treasury that are suitably qualified to do these sorts of tasks very efficiently.

**Senator Gallagher:** That may be the case, but we will see. I am flagging that now with you in the interests of everybody being aware of that. But a Word search—

**Senator DEAN SMITH:** Is not onerous.

**Senator Gallagher:** Potentially it can be.

**Senator DEAN SMITH:** Three words: dividends, franking credits, and dividend imputations.

**Senator Gallagher:** I am not a political research organisation for the opposition. We will answer the questions as best we can but, and I would expect that the opposition would understand this, considering the economic challenges facing the country, I personally don't believe that this is a top priority.

**Senator DEAN SMITH:** Minister, considering the break of faith—

**Senator Gallagher:** It's not a break of faith. You can keep putting that and I will keep rejecting it very clearly and the facts are on my side, not yours.

**CHAIR:** Senator Smith, this question has been asked several times. I just note you're within a 15-minute block.

**Senator HUME:** To follow up—I expect you to take this on notice—Minister, can you please identify where either you or any of your colleagues said that you wouldn't change imputation or franking credits for regular dividends? They were your words. Anywhere that qualification was made prior to the election when you said—

**Senator Gallagher:** Bring the policy that we took to 2019 here and then you tell me what part of that features in this budget.

**Senator HUME:** Can I then ask if the measure that is in this budget stops the streaming of franked dividends to shareholders?

**Senator Gallagher:** I'm happy for officials to take us through the policy.

**Senator HUME:** I'm sorry. Do you not understand it?

**Senator Gallagher:** I do understand it but we have officials here to explain things. They are the experts and I'm happy—

**Senator HUME:** It's a yes or a no. Does the measure stop the streaming of franked dividends to shareholders? Officials, yes or no?

**Ms Brown:** This measure is aimed at the tax treatment.

**Senator HUME:** Ms Brown, it's yes or no. Does it stop—

**Senator Gallagher:** Point of order. You can't tell a witness how to answer a question. So, with respect—

**Senator HUME:** Am I correct if I say that the measure stops streaming of franked dividends to shareholders?

**Senator Gallagher:** can we allow public servants to answer the question you have asked.

**CHAIR:** A question has been asked and Ms Brown is now answering the question.

**Senator HUME:** I don't need the full podcast.

**CHAIR:** No, Ms Brown is now answering the question.

**Senator HUME:** Point of order, Chair—

**CHAIR:** No. Ms Brown is now answering the question.

**Ms Brown:** The streaming of dividends is inconsistent with the principle of dividend imputation. Dividend imputation has dividends being paid to shareholders in proportion to their economic interest in the company. If a company is engaging in dividend streaming, it is probably going to attract the attention of the tax office under the anti-avoidance provisions in relation to the obtaining of imputation benefits. So this was a measure designed to address potential revenue leak that was greater than when this legislation was first introduced in 1993. It was, when introduced in 1993, concerned with stopping capital stripping, because it came in at around the same time as changes to the CGT laws. Over time and with changes in other tax laws, it had led to companies being able to buy back shares off market at a lower price than the prevailing market price, and that led to a cost to the government revenue.

**Senator HUME:** So is this not regular dividends? Is that what you're saying?

**Ms Brown:** This is paying proceeds for a share buyback.

**Senator HUME:** So are shareholders affected by this? Will they not get franked dividends because of this measure?

**Ms Brown:** Shareholders will receive franked dividends when a company makes a dividend declaration and that is an alternative way to returning excess cash. If a company does pay a franked dividend in those circumstances and a shareholder is entitled to franking credits or a refund, that will still be the policy. To that extent, this is perfectly consistent with the existing franking credit regime.

**Senator HUME:** So am I right then to say that what this measure does is changing the rules on franking credits that have been in place for decades?

**Ms Brown:** It's changing the rules on the treatment of proceeds from share buybacks.

**Senator HUME:** Okay. I feel like we're going in circles here. I'm going to ask a very different line of questioning. Could we please all turn to our budget papers, pages 88, 89, 90 and 91. Can the department confirm, please, that policy decisions over the forward estimates add \$22.9 billion in payments over the forward estimates but just \$13.1 billion in receipts. That is pages 89 and 91. Is that right? Just below the graphic on page 91, is \$22.9 billion and just below the graph on page 89 is the \$13.1 billion.

**Ms Di Marco:** Senator, I can confirm that the policy decisions on receipts over the forward estimates are \$13 billion, of which \$9.5 billion are with respect to tax receipts.

**Senator HUME:** And that the policy decisions over the forward estimates add \$22.9 billion in payments? That's at page 91 just below the graph. 'Payment policy decisions over the forward estimates'—first sentence.

**Senator Gallagher:** Yes.

**Senator HUME:** So does that mean that more than 40 per cent of that spending has no structural offset? Is that right?

**Senator Gallagher:** I think these are probably questions for Fiscal Group but—

**Ms Di Marco:** I'm happy to speak to the receipts aspect of it, Senator. But in terms of the impact on the aggregate, in terms of the impact on payments, the underlying cash balance—they are unfortunately questions for Fiscal Group, but I'm happy to speak to the receipts aspects.

**Senator HUME:** I ask these questions of revenue because of the implications there. Yesterday Minister Gallagher went to great lengths to suggest that the government's fiscal strategy is to balance the budget, despite the objective of a balanced budget being explicitly taken out of the medium term fiscal strategy for the first time, dare I say, in 30 years. As part of that, you pointed to \$50 billion in deficits. So I want to set aside that in this budget alone, this government's policy decisions—not parameter variations; I want to be very clear on that—add \$22.9 billion of new spending over the forwards with less than \$13 billion of receipts. So that's adding to this pressure. So if it actually is the government's plan to return the budget to balance, as you suggested yesterday, Minister Gallagher, which is not in the fiscal strategy, can you confirm then that the government's plan is to close those deficits through increasing taxes?

**Senator Gallagher:** The government will continue to work through how we repair the budget that we've inherited from you. It's not going to be fixed in one budget. I think it's going to be challenging over the next few years. But we've embarked on a conversation around, I think, alerting people to the structural deficit that exists. And then there's going to have to be a discussion about what people value, how much they're prepared to pay for it and how we meet those costs. And I think the Treasurer and I have been pretty up-front about that. We're not going to pretend that this is easy or that we can just wish this deficit away.

**Senator HUME:** So which taxes did you commit to raising prior to the election?

**Senator Gallagher:** There was a range of tax measures, largely tax compliance measures, through the multinational tax reform and tax compliance programs with the ATO, which is extending the tax avoidance taskforce, shadow economy and personal income tax compliance programs. They were outlined in Labor's plan for a better future.

**Senator HUME:** Were there any other taxes that you intended to raise or that you are looking at raising now that you committed to not raising prior to the election? Super taxes, for instance?

**Senator Gallagher:** Let me work that through. Your question is: are we considering—

**Senator HUME:** Did you promise prior to the election to not raise taxes—to not take higher taxes?

**Senator Gallagher:** We were clear about the measures that we took through the election. We costed those and we published those in the plan for a better future. We've come into government. We've looked at the budget. You've got an honest assessment of that before you. I think we're being clear about the challenges. It's not a magic pudding, this budget. We're going to have to make some tough decisions and we're being up-front about that.

**Senator HUME:** So there were no promises or no mention of taxes on superannuation, for instance. And yet it's all over the front pages of newspapers today that there are going to be changes to the tax treatment of superannuation contributions or balances.

**Senator Gallagher:** I think the Assistant Treasurer is highlighting issues that exist in the super system that he has been made aware of.

**Senator HUME:** They existed before the budget. They existed prior to the election.

**Senator Gallagher:** He is doing his job. If we go back and have a look at tax compliance, tax integrity, tax changes that you did, there were hundreds of them that were never taken to an election but that you had to do in government for various reasons. And I think anyone who's been in government accepts that there were hundreds of them over nine years. We can have a discussion about all of those if you like. But—

**Senator HUME:** I'm just interested in the broken promise.

**Senator Gallagher:** There are things that happen in government that require action from government.

**Senator HUME:** That's a good segue. So how much more does the government plan to tax Australians?

**Senator Gallagher:** The decisions that the government has taken are reflected in this budget. It's about investing and supporting Australian people. You can see that through our investments in child care, in PPL, in aged care. You can see we're trying to do the right thing by the Australian people by savings, by the work that they're doing—

**Senator HUME:** I want to ask about the revenue side, not the payment side. The payment side has been clear. Tell me about the revenue side.

**Senator Gallagher:** I'm telling you the approach that we're taking—

**Senator HUME:** Where is the money coming from?

**CHAIR:** It's really difficult for Hansard to record this.

**Senator Gallagher:** The government has, and the Australian people through us—there is a structural problem with the budget that we need to work through. You are sitting here saying, 'What are you going to do to bring the budget back to balance', and at the same time getting ready to run a scare campaign around tax. You can't have it both ways.

**Senator HUME:** No, you can.

**Senator Gallagher:** When I say to you there is a \$50 billion structural—

**Senator HUME:** You manage the economy and you manage payments.

**Senator Gallagher:** Okay, so your assessment is there is no issue in terms of structural deficit of the budget.

**Senator HUME:** I just want to know what the government's intentions are, because you went to the election saying that there were going to be no new taxes—

**Senator Gallagher:** Our intention is to manage the budget responsibly.

**Senator HUME:** And now you're making it clear that there will be new taxes. In fact they're all over the front page of the newspapers today. So how much more—

**Senator Gallagher:** The decisions that the government have taken are reflected in the budget, but we do intend to manage the budget responsibly.

**Senator HUME:** So you do intend to tax more?

**Senator Gallagher:** We do intend to repair the budget after the economic vandalism of the previous administration. We are going to deal with the structural deficit.

**Senator HUME:** But are you going to raise taxes and, if so, by how much?

**Senator Gallagher:** And we are going to do it in an honest and upfront way with the Australian community.

**Senator HUME:** Is this why you removed the tax to GDP measure, that guardrail. Is this why? Because you knew that this was coming?

**Senator Gallagher:** I've answered the question.

**Senator HUME:** Can I ask, then, about removing the tax to GDP ratio? This was part of every single budget's economic and fiscal strategy from 1996, so a fair time ago, through to March of this year. Can you explain what the benefits of the tax to GDP cap were and why you have removed it?

**Senator Gallagher:** Perhaps you're best to explain why your government chose that figure of 23.9. I'm not entirely sure of the reasons why 23.9 specifically was picked. Our fiscal strategy is outlined in the papers. It seeks to constrain spending, make investments in the productive side of the economy, and work to pay down debt over time. That's clear. That's the approach we will take. The tax cap in isolation, in our view, and the Treasury's view, is not particularly useful. There was no spending cap, for example. So under the arrangement you had, you could have kept spending going like this, which we'd seen, and constrained any revenue to that. Perhaps that's what's led to the structural deficit we're in. Perhaps, but that's your record. We're taking a more honest—

**Senator HUME:** No, that's your structural deficit and it's in black and white—

**Senator Gallagher:** We've inherited this—

**Senator HUME:** and it doesn't get any better, because you haven't provided any solutions.

**Senator Gallagher:** We could go back through the reasons why there's a structural deficit: neglect, delay, dysfunction of 10 years of energy policy—

**Senator HUME:** And what are you doing about it?

**Senator Gallagher:** in aged care, in NDIS, interest rates going up—

**CHAIR:** Order! Senator Hume, you've got one minute for a question and an answer.

**Senator HUME:** Minister, given the government has already broken promises on \$275 reductions in energy bills, given it has already broken promises to not tax superannuation more—and that's all over the front pages today—and given that the government has already broken promises not to tinker with franking credits and the dividend imputation system, is this really just the Treasurer's plan to implement the 2019 tax agenda from this government?

**Senator Gallagher:** I don't agree with any part of that question, so it's impossible to answer. I reject almost every assertion.

**Senator HUME:** Almost.

**Senator Gallagher:** All of the assertions are wrong. There is some other language around which—that's your choice. But the assertions being put are wrong and I won't accept them.

**CHAIR:** Thank you. Anyone consulting the program will see that we're still in revenue group and we haven't made our way to Markets Group yet. The committee would like to proceed with both revenue and markets group after the break.

#### **Proceedings suspended from 11:00 to 11:17**

**CHAIR:** We now resume this meeting of the Senate Economics Legislation Committee with the Treasury portfolio.

**Senator McKIM:** I want to go back and tie up a couple of remaining questions about the Housing Accord. Under the accord, what definition of affordable housing will be used?

**Ms Berger-Thomson:** Currently, there are a few different definitions of affordable housing. That will be part of the process going forward—to agree a common definition for all parties.

**Senator McKIM:** That obviously hasn't happened yet. What will the process be? Have you got any indicative time frames in terms of how that will be done and when?

**Ms Berger-Thomson:** We are working through that at the moment. I would expect that will be part of the CFAH process.

**Senator McKIM:** How many of the one million homes will be affordable homes? Has that been determined?

**Ms Berger-Thomson:** Of the one million, we've already spoken about the different components of the government's support for social and affordable. Of the 30,000 from the HAF, 10,000 of them are affordable. The government committed through the accord to an additional 10,000 affordable homes. The states and territories have agreed to support up to a further 10,000 additional affordable homes.

**Senator McKIM:** So those agreements have been made and those commitments have been made without a definition of what an affordable home actually is?

**Ms Berger-Thomson:** I think there is general consensus around what is affordable in a broad sense. I think it's the real specifics of, for example, whether we will include just rental stock or whether affordable homes to purchase will also be included. Different states have different policies around those things.

**Senator McKIM:** Sure. What is the general agreement or the consensus that has emerged around how you would define an affordable home?

**Ms Berger-Thomson:** Typically, it's about having a rent of around 80 per cent of market rent.

**Senator McKIM:** Thanks. How is it intended to ensure the commitments that the homes will actually be affordable?

**Ms Berger-Thomson:** So the way that at least the Commonwealth component of that money is going to be allocated is in the model that we were talking about before with the availability payments. Housing Australia will look at the income and the costs of providing those homes and provide those payments to make those projects commercially viable. It will be part of that contract that those homes are affordable homes.

**Senator McKIM:** How many of the one million homes will be social housing?

**Ms Berger-Thomson:** The commitment from the Commonwealth through the HAF is 20,000 of them. Obviously, the state governments have their own commitments around social housing.

**Senator McKIM:** Does that 20,000 commitment from the Commonwealth on social housing include the affordable housing?

**Ms Berger-Thomson:** No. They are separate.

**Senator McKIM:** What is the definition of 'well located'?

**Ms Berger-Thomson:** Again, that is something that we will work through in terms of the details of the processes for the accord. I think everyone kind of commonly understands that as being close to schools, places of work and amenities and those types of things.

**Senator McKIM:** But that definition is yet to be settled and it will be worked through in the future. Is that right?

**Ms Berger-Thomson:** That's right.

**Senator McKIM:** Do we know what proportion of the aspirational target of a million homes will meet the definition of well located?

**Ms Berger-Thomson:** The intent is that one million target is for well located homes.

**Senator McKIM:** So all of them?

**Ms Berger-Thomson:** Yes.

**Senator McKIM:** But if the private sector is building the overwhelming majority—we've heard evidence to that effect this morning—how do you intend to make sure that the private sector builds homes in particular locations?

**Ms Berger-Thomson:** The other component of that is the land release commitments by all levels of government. The intent is that those policies and the availability of land will be in well located areas, which will mean that is where the opportunities for the private sector to build those houses are.

**Senator McKIM:** The one million homes that is the aspirational target, the overwhelming majority of which will be delivered by the private sector, won't all be built on land released under the land release proposals, will they? The private sector will build a lot of those homes wherever it chooses, won't it?

**Ms Berger-Thomson:** Yes, they will. I think the private sector will also want to provide those homes to people in places where they live. That's how the market tends to work. Well located will differ for different people, obviously.

**Senator McKIM:** Will any of the \$350 million in funding from the accord or the estimated \$500 million in returns from the Housing Australia Future Fund go to private developers or investors? Will it all be allocated to community housing providers or to state, territory or local governments?

**Ms Berger-Thomson:** That will be a matter for Housing Australia, which will manage the program.

**Senator McKIM:** So some of that money could go to private developers and property investors?

**Senator Gallagher:** The expectation is that the community housing sector would play the major role. But I think at the early stages of the delivery of this, it's probably best not to lock out other alternatives to deliver the policy outcome. The preference of the minister for housing and the Treasurer would be to work with existing

providers. Obviously, there have been discussions with institutional investors as well. The government can't do this on its own, so we are looking to partner. That is the nature of the accord.

**Senator McKIM:** Minister, you wouldn't rule out some of that funding—the \$350 million from the accord or the approximately \$500 million in returns from the Housing Australia Future Fund—being allocated to private developers or investors?

**Senator Gallagher:** Well, I hate playing the rule in, rule out game.

**Senator McKIM:** You've just left it open, haven't you?

**Senator Gallagher:** I have said what our preference is. You don't see a lot of private developers in the social housing sector, I have to say from experience. But this is the early stages of rolling out this commitment. We are working with investors. I don't want to, through evidence, lock down options to deliver the policy outcome. I think it would be unlikely. I haven't seen anything that would say private developers would be involved in this. We are working with the industry groups—the MBA, Housing Industry Australia and the Property Council—because they are key stakeholders, obviously, in the housing sector. They have members. I would say our preference is to work with community housing providers, super funds and the industry groups to look at how we can best roll out this program.

**Senator McKIM:** Thanks. This is my last question. Has Treasury done any modelling about the additional rate of return which must be provided to private investors or super funds in order to make investing in social or affordable housing financially viable?

**Ms Berger-Thomson:** We have not done any ourselves, but we have consulted with the National Housing Finance and Investment Corporation, NHFIC, which has done some work in that space.

**Senator McKIM:** Could you provide to the committee on notice the work that has been done?

**Ms Berger-Thomson:** Yes. They are also appearing later today.

**Senator McKIM:** Thank you. I want to ask some questions about fuel tax credits and the tax expenditure statement. Historically, tax expenditure statements have covered the main areas of housing, super and capital gains tax breaks. Is there anything stopping Treasury, including other tax expenditures, that traditionally haven't been included?

**Ms Di Marco:** The tax expenditure statement origins are in a fairly technical document. The way it works is that you establish a benchmark—that is, the appropriate taxation for a particular activity—and then cost deviations from that benchmark. As to the history with fuel tax credits, I would have to take it on notice. I'm not sure whether Mr Francis knows, but my suspicion is that is because it is an actual expenditure as opposed to a concession. The fuel tax credits themselves are a line item in the ATO's budget.

**Senator McKIM:** You are not restricted by legislation from, for example, including fuel tax credits in the tax expenditure statement, are you? Is there anything preventing Treasury from doing it, or is it just like an internal decision of Treasury?

**Ms Di Marco:** There are some standard international practices that one would follow. We certainly have a look at what tax expenditure statements across the world produce. But you are not wrong about that, Senator. There's nothing in the charter that says what we can and cannot do. The only thing I would say is that the cost of those is already very transparently disclosed.

**Senator McKIM:** That's great, thanks. I want to read out two definitions from previous tax expenditure statements and ask whether Treasury still agrees with the definitions. Firstly, a tax expenditure is a tax concession that provides a benefit to a specified activity or class of taxpayer. Would Treasury still agree with that definition of a tax expenditure?

**Ms Di Marco:** I think so.

**Senator McKIM:** And tax expenditures also redistribute the tax burden between taxpayers. This is because most tax expenditures result in less tax being collected from particular taxpayers. Do you still think that is an accurate statement?

**Ms Brown:** I imagine that both statements are correct. It will come down to how you define each word in that statement. In your first definition, you refer to the benefits. We've looked at benefits as being a difference relative to a benchmark.

**Senator McKIM:** Sure.

**Ms Brown:** Where you might then get differences is what the benchmark should be.

**Senator McKIM:** If someone claims back a fuel tax credit, that is a benefit to them. They literally get cash. That is a benefit to them, isn't it?

**Ms Brown:** Yes.

**Senator McKIM:** If someone burns a litre of fuel, such as a miner or a primary producer, they pay the tax on it and then the government gives them some money back in cash. That is a benefit, isn't it? Is that not a benefit to them?

**Ms Di Marco:** As I said, I think the difference there is that the expenditure actually is an expenditure. There's nothing provided through the tax system with respect to the fuel tax credit. It's actually provided as an expenditure and reported in every MYEFO and budget as a separate line item.

**Senator McKIM:** So a mining company burns diesel and then gets reimbursed for the excise paid on that diesel, but a pizza delivery driver burns diesel and they are not given a reimbursement for the excise they paid on that diesel. With regard to the mining company getting that reimbursement, that meets the definitions of a tax expenditure that I just read out, doesn't it?

**Ms Di Marco:** I think Mr Francis is coming to the table. He is probably better placed to talk about fuel tax credits themselves.

**Mr Francis:** The purpose of the fuel tax credit system is basically to remove a tax impost on business inputs. Generally, we don't try to tax business inputs because it can lead to a cascading of tax, which economists generally regard as inefficient. You can end up with very high tax rates on certain things due to that cascading. Basically, with the fuel tax credit, the way we collect excise in the system is that it is levied at the refinery gate typically or the import terminal. That then is embedded as it flows through to users. Where there are business users, which is typically heavy vehicles, offroad use et cetera, the fuel tax credit essentially just rebates that embedded fuel excise in the system so as to remove the effective taxation on the business input.

**Senator McKIM:** Thanks, Mr Francis. However, it is ultimately a tax avoided, isn't it? The tax that people pay is actually reimbursed by the ATO. So the effect financially is the same as a super or a tax offset withheld by an employer, isn't it?

**Mr Francis:** No. I would regard it as different. Probably the analogy is in the GST system, where you have input tax credits. They are essentially there also to remove the embedded GST for each business so that you are not actually taxing the business inputs and the final tax impost is ultimately the end consumer's or household's.

**Senator McKIM:** The upcoming paper is going to show us who wins from, for example, superannuation tax breaks and capital gains tax discounts. Why wouldn't Treasury decide to include the winners—in other words, the people who have their fuel excise costs reimbursed—given that it is going to cost a pretty staggering nearly \$40 billion over the forward estimates? Why wouldn't Treasury just want to put that data in there?

**Senator Gallagher:** I think it's for the reasons that Mr Francis has just outlined to you, to be honest. You obviously disagree with the way it is assessed or dealt with, but I think there's a pretty long-held view in Treasury and in governments about not taxing inputs to production.

**Senator McKIM:** Companies like Glencore—

**Senator Gallagher:** It is available to all the industry sectors.

**Senator McKIM:** get it but the local pizza delivery company or courier company doesn't get it.

**Mr Francis:** It is correct that vehicles under four tonnes don't get access to the fuel tax credit system. That is ultimately an integrity measure in the tax system because it would be too difficult to distinguish between, I suppose, light vehicles for personal use versus light vehicles that are used in business.

**Senator McKIM:** This is the last question from me. I presume Treasury consistently looks at how to improve its processes and how to refresh things such as the tax expenditure statement. Could I ask for an undertaking that Treasury go away and look, while you are refreshing that statement, at including fuel tax credits in future versions of that document? Would you at least give a commitment that you are prepared to have a look at that?

**Ms Brown:** We can consider that, but the challenge is that it is a tax expenditure statement. Fuel tax credits actually are a government expenditure. The fuel tax scheme is on table 6.12.1 in the budget papers. It's not a tax expenditure. It's a government expenditure. It's putting it—

**Senator McKIM:** I understand that. I think I've tried to address that concern in some of my previous questions.

**Senator Gallagher:** The tax expenditure statement is a useful document. I don't think for the evidence given today that your wish will be granted, but we will take it on notice.



**Senator BRAGG:** I want to follow up on a couple of points that Senator McKim made about the accord. Is the total cost \$350 million in the budget?

**Senator Gallagher:** I think in the budget there are two years of funding, but it is funded to \$350 million over five, I think from memory. So there would be a year that falls out of the forwards.

**Senator BRAGG:** It is \$250 million in the forwards, yes?

**Ms Brown:** That's right.

**Ms Berger-Thomson:** Yes. It is \$350 million over five years from 2024-25.

**Senator BRAGG:** I want to pick up on the question that I asked Ms Brown before and then what Senator McKim was pursuing. Will the portion of that \$350 million go to investors and super funds?

**Senator Gallagher:** I think we answered that earlier.

**Senator BRAGG:** I'm just trying to dig into it.

**Senator Gallagher:** It's an availability payment.

**Senator BRAGG:** Is it the whole amount? I accept that perhaps it may not be fully developed—

**Senator Gallagher:** That is the money the government is making available on the basis of delivering 10,000 affordable housing options. The detail of how that will be expended is to be resolved through the work that is being led by the Treasurer with his colleagues. It's impossible for us to answer that question at this point in time because it will depend on the projects that ultimately are successful.

**Senator BRAGG:** But we do know that at least a portion of that money will be made as availability payments?

**Senator Gallagher:** Yes.

**Senator BRAGG:** Do you have a sense of proportion?

**Ms Berger-Thomson:** I think the commitment is that it will all be through availability payments.

**Senator Gallagher:** It is to bridge the gap, essentially, to making a project viable and to attract external investment.

**Senator BRAGG:** So the \$350 million goes into availability payments. Does that go through NHFIC?

**Ms Brown:** NHFIC will administer the program, yes.

**Senator BRAGG:** NHFIC will then engage with the consortia, as you described before, Ms Brown. What sort of consultation will NHFIC do to determine the best way to do that? Will Treasury lead that? Who will lead that?

**Ms Brown:** There will be an investment mandate developed that will give direction to NHFIC as to eligibility criteria and other parameters in making choices or decisions on various projects.

**Senator BRAGG:** I don't want to take any more time. Basically, the \$350 million is in the budget. NHFIC will be expending that \$350 million at some point in the future. There will be availability payments. You are yet to determine exactly what the mandate will be—

**Senator Gallagher:** The investment mandate will be determined.

**Senator BRAGG:** and what the detail will be for how the various interested parties can engage. That is yet to be announced; right?

**Senator Gallagher:** Yes. That's to be resolved. Because of the way we've profiled that in 2024-25, there is time to resolve those matters.

**Senator BRAGG:** What is the timetable on that for the next announcement?

**Senator Gallagher:** I'm not sure there is a timetable on announcements. There is work to commence now that the accord has been signed up to, which was just prior to the budget. It will be implemented by the Treasurer and his colleagues.

**Senator BRAGG:** No timetable?

**Senator Gallagher:** And really through CFAH, I imagine.

**Ms Brown:** We're currently working on legislation that will be required to set up the fund. That is always subject to parliamentary times. I am always hesitant to give times because parliament has committees.

**Senator Gallagher:** Wise, yes.

**Ms Brown:** But work is underway and work is progressing as quickly as possible.

**Senator Gallagher:** There is a lot more work to be done, in short.

**Senator DEAN SMITH:** I notice that some officials have the title 'charity' in their job description. Is this an opportunity to ask questions with regard to the government's commitments around supporting Australia's charities and not-for-profit sector?

**Ms Brown:** This is the right group.

**Senator DEAN SMITH:** It's not what I'm going to talk about, but at least I am aware.

**Senator Gallagher:** And then we have the charities commission later today.

**Senator DEAN SMITH:** Page 193 of Budget Paper No. 2 talks about support for small business owners. I have a number of queries. The first paragraph of the measure description states:

The Government will provide \$15.1 million over two calendar years from 1 January 2023 until 31 December 2024 to extend the Small Business Debt Helpline and the NewAccess for Small Business Owners programs to support the financial and mental wellbeing of small business owners.

How is that \$15.1 million distributed over those two calendar years for those two identified elements?

**Ms Brown:** I might start and then let either Mr Cully or Mr Grassia expand.

**Senator BRAGG:** Don't hesitate to yell, Deputy Secretary. It does feel like a very long way away.

**Ms Brown:** There is \$4 million that has been appropriated in relation to the Small Business Debt Helpline and there is \$10.9 million that has been attributed to the NewAccess for Small Business Owners program. For the profile across the years, I will need to seek information from Mr Cully.

**Mr Cully:** Unfortunately, I don't have the breakdown over the individual years in my material. I'm not sure if Mr Grassia has it in his. I have the same figures that Ms Brown has.

**Senator Gallagher:** We can come back to you with that, Senator Smith.

**Senator DEAN SMITH:** There is a genuine curiosity. Why do we do it over calendar years in this measure and not over financial years?

**Mr Cully:** I think it reflects that the way the services have previously been funded, they were both due to expire at the end of this calendar year. The extension was to maintain it on a calendar year basis.

**Senator DEAN SMITH:** I will move to the second paragraph. It states:

This measure will redirect partial funding from the Australian Small Business and Family Enterprise Ombudsman component of the 2022-23 March Budget measure titled Small Business Support Package—

What was the total funding of that small business support package that was detailed in the 2022-23 March budget?

**Mr Cully:** That was a one-off payment of \$8 million.

**Senator DEAN SMITH:** This measure will redirect partial funding. Can you explain to me what that particular form of words means in dollar figures?

**Mr Cully:** I think it means that the overall expenditure on those two programs is \$15.1 million in the budget. That is partially offset by the \$8 million redirected from what was announced in the March budget.

**Senator DEAN SMITH:** And the remaining \$7.1 million comes from where?

**Ms Brown:** It came from general revenue.

**Senator DEAN SMITH:** Is it fair to say that the ombudsman has less financial resources available to it now?

**Mr Cully:** The \$8 million that was proposed to be allocated to the ombudsman in the March budget was not money allocated to them for their own operational expenses. It was money to be allocated to them for them to distribute to various service providers to provide services to small business.

**Senator DEAN SMITH:** What services supported by the \$8 million are no longer being supported?

**Mr Cully:** It was proposed, but the money had obviously never flown through. It was announced in the March budget but wasn't enacted. It was to provide small business with advice around areas such as financial capability, which obviously are picked up in part by the Small Business Debt Helpline and by other service offerings out there in both the Commonwealth and state spheres.

**Senator Gallagher:** This was part of the spending audit work essentially that we've spoken about. We looked at all the budget measures. We looked at terminating measures. We looked at government priorities and tried to align spending where we could and redirect spending where we could. This obviously is a measure that was incorporated into that work.

**Senator DEAN SMITH:** Mr Cully, could you be a bit more specific for me in terms of that \$8 million? What services was it going to support that are not now being supported?

**Mr Cully:** Unfortunately, I can't be too much more specific. What was outlined in the March budget was around paying service providers to provide services in areas such as financial capability. That was as much detail as there was. I cannot speak to what work the small business ombudsman may have done in terms of considering what that might have looked like to implement if that money had flowed through.

**Senator Gallagher:** I don't know, because it is the former government. It may have been that the government's decision had been to fund the small business ombudsman in preference to the debt helpline. But that was terminating. What we've done is keep that program going and use some of the new measure, which hadn't started, to support the extension of that. This was part of the challenge coming in. We had a range of terminating programs that were going to be a problem if those programs just ended on 1 January. It would have been an issue for small business. So we've responsibly looked at where we could provide additional support to that without just being another call on the budget.

**Senator DEAN SMITH:** Mr Cully, it has been put to me that the Business Energy Advice Program has not been extended. Is that correct?

**Mr Cully:** I'm not aware of that program.

**Senator DEAN SMITH:** Can you take that on notice?

**Senator Gallagher:** There is also in this budget \$62.6 million in energy efficiency grants to small and medium businesses to help address rising energy costs. So that is a new program to support small business.

**Senator DEAN SMITH:** It has also been put to me, Mr Cully, that there has been a cut to the Entrepreneurs' Program.

**Senator Gallagher:** That is an industry program. You can ask that of Industry when they come back. Yes, in some sense. I think from memory it was unallocated funding attached to the entrepreneurs funding returned to the budget. I think it was outlined in our plan for a better future.

**Senator DEAN SMITH:** What level of consultation took place between your section, Mr Cully, and the Small Business and Family Enterprise Ombudsman's team around this \$8 million cut?

**Senator O'NEILL:** Can I ask a clarifying question?

**Senator DEAN SMITH:** No.

**Senator O'NEILL:** You are referring to the \$8 million as a cut.

**Senator DEAN SMITH:** No.

**Senator O'NEILL:** But you've already had evidence that it was \$15 million allocated, which is an increase of \$7 million.

**Senator DEAN SMITH:** Senator O'Neill, there are seven people in front of me and two Labor senators beside me. I'm happy to defer to the seven officials in front of me to respond to—

**Senator O'NEILL:** Yes. But you need to report what they've told you accurately, Senator.

**Senator DEAN SMITH:** To respond to my line of questioning. Thank you very much.

**CHAIR:** I will let Senator Smith ask the question. Could you repeat the question?

**Senator DEAN SMITH:** My query went to the level of consultation that took place between Treasury and the Australian Small Business and Family Enterprise Ombudsman's team with regard to the \$8 million cut.

**Senator O'NEILL:** It's not a cut.

**Mr Cully:** There is regular engagement between my division and the staff of the ombudsman as well as regular engagement between myself and Mr Billson and with Ms Brown. As Minister Gallagher mentioned, this was part of the process of looking at all of the measures that were in the March budget that had not been enacted and what may happen with them. There was engagement with Mr Billson and with the ombudsman's staff through that process, but I can't recall the exact detail of how many there may have been. There would have been a range of discussions.

**Senator DEAN SMITH:** In terms of looking for various savings and other opportunities with the ombudsman's team, what opportunity did they have to bring forward their own ideas about how resources could be used differently?

**Ms Brown:** As Mr Cully said, there have been regular conversations and there continues to be a good regular engagement with the ombudsman. In fact, they identified savings themselves in relation to the tax concierge

service they provided. They realised that there was less demand for it. They were able to identify some savings that could go back to be redirected to other initiatives to support small business.

**Senator DEAN SMITH:** Which ones did they identify?

**Ms Brown:** My recollection is that they identified the tax concierge themselves directly.

**Senator DEAN SMITH:** What is the value of that?

**Mr Cully:** It is a saving of \$0.8 million.

**Ms Brown:** So it delivered a saving of \$3 million over the forwards.

**Senator DEAN SMITH:** And what other initiatives did they offer up?

**Mr Cully:** I'm not sure that they offered up any other initiatives other than that one.

**CHAIR:** Senator Smith, I want to do a time check. We are pretty much at the end of this 15-minute block. I know that Senator Hume is after a 15-minute block, as is Senator O'Neill. Do you want another question?

**Senator DEAN SMITH:** I missed that. I was thinking elsewhere.

**CHAIR:** I think it would be good if you finish up so that we can go to Senator Hume for a 15-minute block.

**Senator DEAN SMITH:** Yes. Of course. Am I right to assume that tax concierge initiative has now ceased?

**Ms Brown:** No. It has continued. The ombudsman identified that he is actually providing that service more efficiently and didn't need as much money as had been appropriated to him.

**Senator DEAN SMITH:** I will return to some small business questions after Senator Hume or when it next comes to the coalition.

**CHAIR:** Thank you, Senator Smith.

**Senator HUME:** I have some questions on small business too. What officially is Treasury's definition of small business?

**Mr Cully:** The question of a definition of small business is a vexed one. There are numerous definitions across government. There isn't a single definition. The two used most frequently is fewer than 20 employees or a turnover of less than \$10 million. There are a range of others.

**Senator HUME:** The ATO's is different, though?

**Mr Cully:** Sorry?

**Senator HUME:** The ATO's definition?

**Mr Cully:** Yes, it is. It is turnover of less than \$10 million.

**Senator HUME:** It is \$10 million?

**Ms Di Marco:** There is a range of tax support provided to small businesses, some of which applies to businesses under \$10 million and some of which applies to businesses under \$50 million.

**Senator HUME:** That is the company tax rate? That's the company tax definition.

**Ms Di Marco:** That's exactly right. There are other things around streamlining from the administration standpoint that only apply to businesses with a turnover of less than \$10 million.

**Senator HUME:** How does the ABS define small business?

**Mr Cully:** Fewer than 20 employees.

**Senator HUME:** Twenty employees?

**Mr Cully:** Fewer than 20 employees.

**Senator HUME:** Did your division get consulted, then, on the government's secure jobs, secure pay bill that was developed by the Department of Employment?

**Mr Cully:** We have been consulted. Treasury has been consulted. We formed part of that consultation within Treasury.

**Senator HUME:** Is it fair to say that bill as it has originally been introduced has used a much lower threshold than what a small business is? It is a whole new threshold.

**Mr Cully:** It's not a new threshold. As I said, there are a range of definitions of small business across various areas. There has been a longstanding definition in industrial relations of a small business as being fewer than 15 employees. That originated because it came from an International Labour Organisation convention, which is a definition they use for a small business; it has fewer than 15 employees. That has been a consistent definition of small business in the industrial relations context since at least the early 1990s.

**Senator HUME:** Have you had any feedback from any small businesses about that definition being used in the secure jobs, secure pay bill?

**Mr Cully:** We have not, no.

**Senator HUME:** Have you fed in any advice into the department of employment that suggests that yet another definition of small business would not be helpful?

**Mr Cully:** As I say, this is not a new definition of small business. This is one that has been in the industrial relations system for quite some time. There are already provisions in that system that provide special conditions or elements for small business. That has always used the definition of fewer than 15 employees.

**Senator HUME:** Did the department express any concerns at all about the definition of the bill being out of date with the Treasury definitions, be it the ATO's, the ABS's or any of those?

**Senator Gallagher:** It's not out of date.

**Senator HUME:** Out of step.

**Senator Gallagher:** Or out of step.

**Mr Cully:** As I said, there are multiple definitions of small business across government for various purposes. The 15 employees or fewer in the industrial relations context is a very longstanding one. It underpins things such as the small business fair dismissal code, the length of probationary period or notice before someone can bring an unfair dismissal case in a small business, for instance. They both tie to that definition and they have for a very long time.

**Senator HUME:** Does the Treasury use 15 employees or less in any of its work?

**Senator Gallagher:** It's for a different purpose. It is a different role. These are probably questions that are best placed to the department of employment.

**Senator HUME:** Does the Treasury use the definition of 15 employees or less? It is pretty specific.

**Senator Gallagher:** Well, they've already gone through the thresholds.

**Senator HUME:** Does Treasury use the definition of 15 employees or less?

**Ms Brown:** We use a range of definitions depending on the purpose.

**Senator HUME:** Can you name a purpose where Treasury has used the definition of 15 employees or less?

**Mr Cully:** Not for any of the programs.

**Senator Gallagher:** Treasury doesn't run industrial relations.

**Senator HUME:** I am just wondering whether Treasury fed into this bill.

**Senator Gallagher:** In this instance, support for small business and other engagement with small business on tax and things like that. It's not Treasury's job to administer the small business side of the industrial relations system.

**Senator HUME:** Can you then answer the question, Minister? Does Treasury use the definition in any of its measures that a small business is defined by the number of employees being 15 or less?

**Senator Gallagher:** Treasury does not use the definition that is reflected in the industrial relations framework.

**Senator HUME:** In any of its policies?

**Senator Gallagher:** Well, it's for a different purpose. It's to govern industrial relations. Treasury has thresholds. I know in state jurisdictions they sometimes have numbers of employees. It depends what the purpose is.

**Senator HUME:** I refer you to box number 5.2 in the revenue section of Budget Paper No. 1, which is about the impact of recent depreciation measures on tax receipts. Can somebody walk me through the origins of this box? Where did this come from? Was it suggested by Treasury for inclusion in the budget papers? Was it suggested by the minister's office? Where did it come from?

**Ms Di Marco:** This was a box that we as Treasury thought would be useful to incorporate into the budget. Obviously, the temporary full expensing program had been running for some time and we had started to see some early data out of the program. We thought it worth providing some information to the public as part of the budget process about what we had seen in very early signs from that program.

**Senator HUME:** There were some media reports just before the budget came out confirming that essentially the scheme is going to revert to its original legislated form in 2023. Is that correct?

**Ms Di Marco:** Putting it differently, I suppose, temporary full expensing was a temporary program as part of the COVID-19 support. It was legislated to end in 2023. I think that is an unsurprising outcome.

**Senator HUME:** If it's so unsurprising, why isn't it mentioned anywhere?

**Ms Di Marco:** I think table 5.5 outlines the dates that those programs have run for.

**Senator HUME:** This is probably a question best directed to the minister. Do you think it's transparent not to spell that out in the budget that this measure is ending at the end of 2023?

**Senator Gallagher:** Well, that was as it was originally intended.

**Senator HUME:** But it's not mentioned anywhere.

**Senator Gallagher:** On temporary full expensing? Is that what you are talking about?

**Senator HUME:** Accelerated depreciation, instant asset write-off. We are just going back. Can you confirm that the dollar level of investment that can be instantly written off from the end of June 2023, when the measures referred to in the box terminate, is going to be back to \$1,000? Is that right?

**Ms Brown:** That is what is currently legislated in the legislation.

**Senator Gallagher:** I think this reflects your policy position. We haven't changed it.

**Senator HUME:** It's not at all explicit anywhere. I want to know. Can Treasury confirm how many small and medium businesses since 2017 and 2018 have utilised the extended instant asset write-off?

**Ms Di Marco:** I think we would have to take that on notice.

**Senator HUME:** Can you answer how much that measure has returned to small and medium business taxpayers?

**Ms Di Marco:** Again, I don't have that in front of me, but we can take that on notice.

**Senator HUME:** Can I confirm that the budget estimates for tax receipts are predated on small businesses only being able to write off assets up to the value of \$1,000?

**Ms Di Marco:** The budget estimates are always prepared on the basis of current policy.

**Senator HUME:** So that is the case?

**Ms Di Marco:** As it has been for some time, yes.

**Senator HUME:** What level of consultation has been conducted by the Minister for Small Business in relation to reverting to what is now a decade-old threshold? Has the Minister for Small Business done any consultations on that?

**Ms Brown:** The program still has eight months to run, so there's sufficient time for considering what is required. Any decision on these matters needs to reflect the economic conditions persisting at that time. You want to make a timely decision.

**Senator HUME:** So there hasn't been any consultation. Is that what you are saying?

**Senator Gallagher:** The Minister for Small Business is constantly engaging with small business, so I don't accept that at all. In this budget, you will see a range of measures that the government has put in to investing in small business on some of the priority areas that they have discussed with us. In fact, I think COSBOA rated the budget seven out of 10, which is pretty good.

**Senator HUME:** Was COSBOA consulted on this change?

**Senator Gallagher:** On what change? There hasn't been a change.

**Senator HUME:** On the reversion back to a decade-old threshold.

**Senator Gallagher:** There hasn't been a change. Temporary full expensing is going to end on 30 June 2023. So they've got time to access the measure. It expires as outlined under your government. We have not changed the position on that.

**Senator HUME:** I will ask it again. Has COSBOA been specifically consulted on the end of this measure?

**Senator Gallagher:** I will take that on notice. But it's not a surprise because it's something that has been known for a period of time. If there are issues that arise that COSBOA wants to make the minister aware of, there are processes for which that can happen. I know the minister engages actively with all small business organisations on issues they are facing, which is why you can see that reflected in a lot of the decisions we've taken to support small business in this budget.

**Senator HUME:** I'm interested to know that small business is clearly finding out that a major tax concession has been renewed over and over again—

**Senator Gallagher:** Renewed over and over again?

**Senator HUME:** through the newspapers, not through the budget papers, and that support for them is going to end.

**Senator Gallagher:** It says there temporary full expensing from 6 October to 30 June 2023. So it has existed for a particular purpose during the pandemic. It's due to expire on 30 June 2023.

**Senator HUME:** And it has been renewed over and over again in the past.

**Senator Gallagher:** It hasn't been renewed over and over again. You've extended it twice, I think, through the pandemic for particular reasons. It is due to expire. We have not changed the position on that. This is not a new decision.

**Senator HUME:** I will clarify that in the forward estimates you have budgeted to take this measure back to the original threshold of a decade ago?

**Senator Gallagher:** It expires as originally agreed by your government in 2023.

**Senator HUME:** That is not the question I asked.

**Senator Gallagher:** On 30 June. We have not changed that position.

**Senator HUME:** So the forward estimates assume that the thresholds for this measure will go back to the decade-old—

**Senator Gallagher:** Yes. As your forward estimates did as well, I might point out. It remains unchanged.

**Senator HUME:** Has the Australian Small Business and Family Enterprise Ombudsman been consulted on this?

**Senator Gallagher:** On what? On the fact that we are doing what you said you would do?

**Senator HUME:** On the end of this measure.

**Senator Gallagher:** I can't—

**Senator HUME:** The Australian Industry Group, the Chamber of Commerce and Industry, the BCA?

**CHAIR:** The ombudsman is coming later.

**Senator Gallagher:** Well, it's a decision of your government.

**Senator O'NEILL:** Did you consult?

**Senator Gallagher:** Did you? I don't know. You can answer that question. I don't have advice on what happened in terms of the discussion.

**Senator HUME:** I want to be very clear. There is absolutely no intention from this government to renew the recent depreciation measures on tax receipts for small and medium enterprise?

**Senator Gallagher:** The policy as it has existed since it was announced by your government remains. I can say that I have not had one issue raised with me about this.

**Senator HUME:** Can I ask you to please—

**Senator Gallagher:** I'm happy to deal with any.

**Senator HUME:** This is on notice, because I realise it is a big ask now. Can you list for me, since coming to government, how many small businesses you have met with? Not industry bodies but small businesses.

**Senator Gallagher:** I am happy to.

**CHAIR:** Senator Hume, that seems like a good end to that block. I am going to go to Senator O'Neill, who has some questions for revenue. I wonder whether we might be able to get an indication of whether another 15-minute block might be sufficient for you for revenue, in which case markets might get themselves ready. I will go to Senator O'Neill. We'll come back to you for perhaps some final questions on revenue, which would indicate that markets should start to get ready.

**Senator BRAGG:** We're almost done.

**Senator O'NEILL:** Thank you very much, Chair. I will go back to the line of questioning that I was on a little earlier with regard to the HomeBuilder program, where we confirmed that the government had allocated \$680 million to the project. It was an uncapped measure and ended up costing \$2.7 billion. I was asking a series of questions about what people could do with that money, including making significant renovations to their homes. Some of the figures there were quite shocking to me. We certainly heard earlier in the room from senators some disparaging words about social and affordable housing.

**Senator HUME:** The disparaging words weren't directed at you.

**Senator O'NEILL:** And the senator continues to protest. Notwithstanding, how many social or affordable houses could \$2.7 billion worth of government investment have built?

**Ms Brown:** I don't think we can work that out on the spot. We would have to come back to you with a number like that.

**Senator O'NEILL:** It has to be a lot, though.

**Ms Brown:** Well, it depends. Is the government building them? Are available payments proposed? There are a lot of assumptions or parameters we would need to develop a number like that.

**Senator O'NEILL:** But it is a lot of money?

**Ms Brown:** It's a lot of money.

**Senator O'NEILL:** It's a lot of money. It has built a lot of extensions and renovations. It has created a pressure in the market that has led to overheating. The impact of that is felt on everybody who has tried to build a house at the moment or do a renovation. Given the accord is an investment of \$350 million and it's building 10,000 houses, if we make a comparison between that costing that you are familiar with and the \$2.7 billion, we start to get some sense of the scale of what might have been achieved if the government had a different set of priorities against what they actually invested in. Is that fair to say, Ms Brown?

**Ms Berger-Thomson:** That costing is a costing over five years. But as we discussed earlier, those availability payments could go for up to 25 years. So that costing is just the first five years of those payments for those dwellings.

**Senator O'NEILL:** So it could be a lot more. Did this \$2.7 billion HomeBuilder program build any social or affordable housing?

**Senator HUME:** That wasn't the aim of the HomeBuilder program.

**Ms Berger-Thomson:** I don't know exactly the answer to that except that I would guess that the answer was no, given that it was targeted at private individuals building or renovating their own home.

**Senator O'NEILL:** Senator Hume made it clear that wasn't the aim of the program.

**Senator HUME:** No. That is what NHFIC was—different.

**Senator O'NEILL:** So \$2.7 billion for private home development and extensions but none of that went to social or affordable housing. Is that correct?

**Senator HUME:** Because that's not what that policy was about.

**Ms Berger-Thomson:** That is correct.

**Senator O'NEILL:** So, to be clear, with the government's \$2.7 billion spend, you couldn't buy a granny flat—we clarified that this morning—but you could build a home cinema or an indoor sauna. Is that correct, Ms Berger-Thomson?

**Ms Berger-Thomson:** My colleague earlier talked through some of the eligibility criteria. Certain things were excluded, yes.

**Senator O'NEILL:** A home cinema wasn't excluded, was it, Ms Berger-Thomson?

**Ms Berger-Thomson:** Not that I'm aware of, no.

**Senator O'NEILL:** And an indoor sauna wasn't excluded either, was it?

**Ms Berger-Thomson:** Not that I'm aware of.

**Senator O'NEILL:** So there were no restrictions on how you built it. In fact, taxpayers dollars were spent on importing Grecian tiles from the other side of the world or exotic timber frames or fit-outs that were exotic or gold-plated fittings and outdoor kitchens. All of those things were eligible and the government has spent \$2.7 billion on programs that enabled that. Is that correct?

**Senator McGRATH:** You have unusual taste in interior decoration.

**Senator HUME:** How do you hate people with good taste?

**Senator McGRATH:** It's terrible taste.

**CHAIR:** I note that there was relative silence from the government side when you were asking your questions.

**Senator McGRATH:** I don't know about that. Really?



**CHAIR:** I couldn't go with complete silence, but there has been significant silence. Senator O'Neill has asked a question and we are awaiting the answer.

**Ms Berger-Thomson:** So all fixtures and fittings that would normally be included in a building contract would be eligible for the payment, yes.

**Senator O'NEILL:** Given the significant number of Australians at risk of or experiencing homelessness, did the former government ever consider supporting confidence in the construction industry by instead investing in more social and affordable housing?

**Ms Berger-Thomson:** I am relatively new to this role. I wasn't in this role at the time that HomeBuilder was developed, so I would have to take that on notice.

**Ms Brown:** You would also need to direct that to the Department of Social Services, which deals with homelessness. They might be aware of other government programs that were there to support homelessness during the COVID period.

**Senator O'NEILL:** I would love to think that there was a \$2.7 billion investment in social housing and affordable housing and that people who are homeless actually might have been housed with that \$2.7 billion that was invested. But that does not at all appear to be the case. I will go to a few questions on small business.

**Senator DEAN SMITH:** Are you giving up your questions on home ownership, Senator O'Neill?

**Senator O'NEILL:** On the government's small business agenda overall, there are quite a few elements identified in the budget. For the benefit of the committee, can you take us through Treasury's announcements from the budget for small business?

**Senator Gallagher:** I can start. We've had the ones, Senator O'Neill, that we've talked about in terms of the \$15.1 million for the mental health and financial counselling support and the \$62.6 million in energy efficiency grants to eligible small and medium businesses to help address rising costs. Obviously that one is not administered by Treasury but is a direct measure for assistance for small business. That funding will build on measures already put in place, including the \$18.6 million to help support small business adapt and build resilience through digital technology. The technology investment boost and skills and training boost is worth more than \$1.5 billion and will be backdated to 29 March, so small business owners can receive the full benefits of that. We've also under my portfolio updated the Commonwealth procurement rules so small businesses can get a better slice of the \$70 billion in contracts that the Australian government spends each year by putting in place a minimum 20 per cent target. We have had the legislation on unfair contract terms pass the Senate, I think, in the last sitting week. Again, that has been welcomed by small business. The fee free TAFE places will help deliver more skilled workers, which obviously will benefit small business. It is one of the issues that is regularly raised with us—access to labour. Obviously, there are big investments in child care and paid parental leave, making it easy for families to manage some of those challenges, including increasing workforce participation, which, again, would have a benefit for small business. So for our first budget, which was a modest budget, I think that gives you a taste of how important the Minister for Small Business and the government sees making appropriate investments and supporting small business where we can, given the very important role they play in our economy.

**Senator O'NEILL:** Senator Gallagher, as I often say, I live in a regional part of Australia. Small businesses are critical right across this country. To have such a carefully calibrated suite of responses in a range of areas speaks to the sophistication of those businesses and how important they are in creating jobs where people live right across the country. I am very pleased to hear about them. I know that there is a program called the NewAccess for Small Business Owners and the debt helpline. Does the department have any insight into roughly how many businesses those programs have helped?

**Ms Brown:** I think I do have those numbers. Mr Cully might have them as well.

**Mr Cully:** I do have them. I'm just not as quick.

**Ms Brown:** So under the small business debt helpline, since its establishment, it has assisted 3,552 cases.

**Senator O'NEILL:** Thank you.

**Ms Brown:** Under the NewAccess for Small Business Owners, since its establishment, it has assisted 2,775 small business owners, or they've booked an assessment through the program. And the extensions?

**Senator O'NEILL:** Yes. Those programs were set to end, weren't they?

**Ms Brown:** Yes, they were.

**Senator O'NEILL:** What date?

**Ms Brown:** They were set to end at the end of this year. They are being extended from 1 January 2023 to 31 December 2024. Under the new funding for the small business debt helpline, that will support 11 small business financial counsellors and legal and insolvency professionals. It will enable them to provide support to around 4,500 additional cases. Under the NewAccess for Small Business Owners program, the new funding will support approximately 18 mental health coaches. We expect that they will be able to assist up to 7,800 small business owners.

**Senator O'NEILL:** So that's critical help for people when they really find they need it most?

**Ms Brown:** That's right.

**Senator O'NEILL:** I will briefly go to unfair contract terms. I know that the policy broadly sits with another group. Could you explain a bit more how the proposed legislation is going to work for small business and any practical examples of how this will actually operate in practice?

**Mr Cully:** As you foreshadowed, the detail and responsibility for this does sit with markets group. The key element is that currently unfair contract terms are unavoidable. This actually makes unfair contract terms unlawful. Therefore, it is a distinctly greater remedy for small businesses that are subject to unfair contracts.

**Senator O'NEILL:** Do you want to add anything there, Ms Brown?

**Ms Brown:** No.

**Senator O'NEILL:** In practice, can you give me an example of an unfair contract term that now could not be used, Mr Cully? Often this is in a power relationship where there is a large entity with power purchasing a service or a good from another entity that is smaller. When power operates, people sign up to contracts with unconscionable terms. What does it mean on the ground?

**Mr Cully:** I'm racking my memory to think of any particular examples. I'm not sure whether Mr Grassia has any. As you say, it is in relation to contracts where there is an unconscionable element to it because of the imbalance of power, be it the contract charging far greater than what would be a reasonable market price for the provision of the service. For instance, it could be an element of that.

**Senator O'NEILL:** Thank you. Mr Grassia, do you want to add anything?

**Mr Grassia:** Again, if a larger entity were using small businesses in supplying services or contracts and the larger business wanted to terminate those arrangements or make changes to the nature of the contract, in some cases, small businesses have very little recourse in pushing back against some of those elements.

**Senator O'NEILL:** So there wouldn't be a clause in there now that would singly and arbitrarily just dissolve the contract at the behest of the more powerful entity?

**Mr Grassia:** That's correct.

**Senator O'NEILL:** So that's going to be pretty important for small businesses. The minister mentioned procurement. I'm sure that many Australians in small businesses are so busy looking after their small businesses and making sure that they are doing the right thing by their staff and growing the businesses that they may not be aware of the scale of the government's investment through procurement. I think the minister articulated that it is \$70 billion. What is the 20 per cent procurement going to do in terms of stimulating the economy and access for small business?

**Mr Cully:** I think there has been a perennial issue for small business. Obviously the Commonwealth procurement, as you mentioned, is a very significant amount. Small business often finds it hard to access some of that procurement money through challenges in dealing with the procurement processes and otherwise. Having that requirement that 20 per cent be sourced from SMEs will guarantee that more money flows through to SMEs as part of overall government procurement.

**Senator O'NEILL:** So 20 per cent of \$70 billion—

**Mr Cully:** Is \$14 billion.

**Senator O'NEILL:** It is \$14 billion. This has never been undertaken before. This is a very significant change in terms of access to the security of payments that come from engaging as a small to medium enterprise with your own government. There is no parallel previously. There has been no action in this space by any previous government. Is that correct?

**Mr Cully:** There have been some other measures that have been aimed at small business procurement. There was a previous target of 10 per cent, but not on this scale.

**Senator O'NEILL:** What is it you are going to change to make this more accessible for small business?

**Mr Cully:** That is more a question for the Department of Finance, which is responsible for the procurement rules about how some of that will be implemented in practical terms.

**CHAIR:** I think we have another 15-minute block on revenue. That might see us to the end of revenue.

**Senator McDONALD:** Last night, we heard evidence from the Department of Industry that they are involved in consultation with Treasury on potential changes to the PRRT. Has the department conducted or been asked to conduct or consulted on any analysis with regard to altering the current tax regime for gas?

**Mr M Robinson:** In terms of the PRRT, the former government and the former Treasurer commissioned a review, conducted by Mike Callaghan, which made a number of recommendations into potential changes for the PRRT. The former government made a number of changes in 2019. One of the recommendations from the Callaghan review was to look into the gas transfer pricing arrangements between vertically integrated projects, particularly as part of that review. The then government commissioned Treasury to undertake further work in reviewing the gas transfer pricing arrangements. That work commenced in 2019. I think we've said on the public record at previous estimates hearings that with the onset of COVID in 2020, that review was suspended. As the Treasurer has announced recently, we have been undertaking preparatory work and are in the process of recommencing that review into the gas transfer pricing arrangements, which would obviously have implications for the PRRT more generally.

**Senator McDONALD:** So it's specifically just on the transfer pricing element?

**Mr M Robinson:** Yes. In terms of the follow-through on the gas transfer pricing review, that review had a focus on the gas transfer pricing arrangements. In addition to that—and this was partly at the request of business in the oil and gas sector—we looked at the tolling arrangements. They are related to the pricing arrangements for the gas between the upstream gas extraction and the downstream processing.

**Senator McDONALD:** But your current inquiry is limited to those two elements?

**Mr M Robinson:** I think more generally the government has been on the public record, and the Treasurer has made some public statements, in the context of broader energy prices that a number of different options are being looked at. I think the government has clearly indicated that no options are being taken off the table.

**Senator McDONALD:** Specifically, on the PRRT regime they've looked at two elements. There are no other additional elements that you are looking at—depreciation or any of the other elements of the PRRT?

**Mr M Robinson:** Not specifically.

**Senator McDONALD:** Thank you. I wanted to make sure I closed off on that. Has Treasury conducted or been asked to conduct or consulted on any analysis in regard to introducing a super profits or windfall tax for the resources sector?

**Mr M Robinson:** As I mentioned, the government has been tasking us with looking at a range of options around responding to the energy price issue. As I mentioned before, the Treasurer has made it pretty clear that no options are being ruled out.

**Senator Gallagher:** We discussed all this yesterday.

**Senator McDONALD:** Has the Treasury sought any advice from the department of industry or the Department of Climate Change, Energy, the Environment and Water on a change to the tax regime for the gas industry?

**Senator Gallagher:** Well, the working group is working across them. There is a secretaries group, where options are being considered and provided to government. The government expects that work is collaborative and is informed by each portfolio area's area of expertise.

**Senator McDONALD:** Last night, I asked questions about the intergovernmental working group. We could never get to the bottom of it. So it remains just the secretaries group that is doing this work on additional tax measures across—

**Senator Gallagher:** The secretaries group is doing work on options to put to government to consider. It is not just about tax options. It is about other options available to the government to deal with these very significant increases in energy prices that are affecting businesses and households. So comprehensive advice across the board about all options available to government are going to be provided. The ministerial group, supported by the secretaries group, will go through a process of considering that and obviously providing advice to the Prime Minister and, ultimately, cabinet on that.

**Senator McDONALD:** I want to clarify that we did have questions on this, but yesterday you directed me to ask questions of this group, which is why I am back asking the same questions again today.

**Senator Gallagher:** Yes.

**Senator McDONALD:** How much revenue does Treasury believe it would collect from a new tax or a levy on the resources industry under those various options that you are looking at?

**Senator Gallagher:** That depends.

**Mr M Robinson:** That very much depends on the design of any hypothetical tax, yes.

**Senator McDONALD:** Is there a range? Is there any work at all that could point to an understanding of what the impact would be on revenue for the measures that you are looking at?

**Senator Gallagher:** Part of what Treasury brings is to look at and provide advice under those options, ultimately. At the end of the day, it will be a government decision about how to proceed informed by Treasury advice and, in this case, advice from resources, industry, climate change and energy and, indeed, finance.

**Senator McDONALD:** Thank you. I appreciate that. I was just trying to ask specifically about what amount Treasury believes it would collect under these different measures. Have you got work on that?

**Senator Gallagher:** That's ongoing work. It depends. It just depends on the options that are ultimately agreed to.

**Senator McDONALD:** That seems a broad discussion to be having with industry. Is this how the industry discussion is going—that it depends? Are you giving them anything specifically to contemplate, to understand what the impacts on supply would be on that industry?

**Senator Gallagher:** That's why the Minister for Resources is there. That is why the minister for energy is there. That is why the Treasurer is there. All of the ministers bring a particular area to represent and understand the implications of any intervention by the government. This is highly unusual. I don't think it's work that even 18 months ago or a year ago or even when we formed government you would be thinking that you would have to do, but it is. That is why everyone brings their portfolio expertise to the table.

**Senator McDONALD:** Thank you. That is why I am specifically asking Treasury about their portfolio expertise. Have you done any analysis on how much revenue Treasury believes it would collect under transfer pricing and tolling arrangements under the PRRT?

**Ms Brown:** I think we're still at the stage of looking at options and working out the parameters of what might be effective to achieve the objective being sought, which is lower electricity prices. That work, as the minister said, is ongoing. It is being developed collaboratively across the departments that the minister mentioned. When there is more definitiveness around the parameters of the model, that is when you would do costings.

**Senator McDONALD:** Do you think that increases or changes to the PRRT will reduce electricity prices?

**Ms Brown:** I don't think I said that.

**Senator McDONALD:** I think you did say that.

**Senator Gallagher:** No. She didn't.

**Senator McDONALD:** I'm sorry. I'm not having a go. I'm just trying to clarify what she did say, Minister. Would you mind saying that again for me, please, Ms Brown, so that I can understand better what you said?

**Ms Brown:** I was talking in a very general sense.

**Senator Gallagher:** About the purpose of the work.

**Ms Brown:** About the purpose of the work. As the Treasurer has said, all the options are on the table, so there is a range of both regulatory and tax options being considered. That is what is being worked through.

**Senator McDONALD:** What I am trying to understand is not specifically electricity price reductions there in the changes to the PRRT. We've talked about a broad range. I can't get any handle on what the options are that are being considered. I am being given very broad responses: 'it depends', 'in the fullness of time' and 'we're not sure what we're discussing'. So specifically on PRRT—

**Senator Gallagher:** We are sure what we're discussing.

**Senator McDONALD:** Well, for the purposes of the information that you are giving the Senate committee, it is a very broad range of options that are not being specifically identified. I'm trying to drill down on just one that has been identified, which is the PRRT, and understand what the revenue measures changes would be for the introduction of that particular measure.

**Senator Gallagher:** I think officials have tried to assist here. No decisions have been taken. It is an impossible question to answer. The working group at ministerial level and at secretary level have asked for advice on particular responses to the energy crisis that we inherited. We are trying to deal with it. We are considering all

options. We don't want options ruled in and ruled out at this stage because it is a highly unusual environment. We want to make good decisions. We want to make sure that we are easing those electricity prices where we can. You are not going to get a dollar figure because those decisions have not been taken. When they are taken, they will become public and that information will be clear.

**CHAIR:** Senator McDonald, we're almost at the end of the 15-minute block that has broadly been agreed. I understand that Senator Smith has a few questions.

**Senator McDONALD:** So how will we address the fact that I've not finished my line of questioning?

**CHAIR:** I will just give a general indication that the committee is hopeful that we can end this group of questions within the time block that is assigned here. I understand that is agreed.

**Senator McDONALD:** I probably have another five minutes. It depends on how quickly we can get to an answer.

**CHAIR:** It would be greatly appreciated if you could limit it to five minutes.

**Senator McDONALD:** Thank you. I think what you said, Ms Brown, is that you are still at the stage of looking at options and working out the parameters of what might be effective to achieve the objective being sought, which is lower electricity prices. Do you believe that the changes to the PRRT will have an effect on lowering electricity prices?

**Ms Brown:** I think as the minister has said, no options are being ruled out at this stage. The resource rent tax, the PRRT, hasn't usually been used in that way, but we're not ruling out anything at this stage.

**Senator McDONALD:** I will then draw from that answer that it is possible that the introduction of the PRRT or changes to the PRRT would be used as a measure to reduce electricity prices.

**Senator Gallagher:** No. I don't think you can draw anything from it.

**Senator McDONALD:** Would you clarify whether you believe that changes to the PRRT would be a measure to reduce electricity prices?

**Senator Gallagher:** There are no changes to the PRRT at this point in time. We are taking advice on options available to government to deal with the energy crisis that we inherited from the former government. That is where we are at.

**Senator McDONALD:** I think you are merging two issues into one. I am trying to very specifically talk about the two issues of transfer pricing and tolling arrangements that are being considered for the PRRT.

**Senator Gallagher:** So continuing the work that started under the former government? That review?

**Senator McDONALD:** Yes. That review, Minister.

**Senator Gallagher:** Okay. I thought you were asking—

**Senator McDONALD:** It's terrific that we're all on the same page.

**Senator Gallagher:** I thought you were asking about options being considered by the working group. So there is that review. It is continuing.

**Senator McDONALD:** So that work is not being considered by the working group as an option to reduce electricity prices?

**Senator Gallagher:** No. We are considering options in this policy space.

**Senator McDONALD:** Is one of the options you are considering, Mr Robinson, possible changes to the depreciation schedule of the PRRT?

**Senator Gallagher:** The government is considering options.

**Senator McDONALD:** Have you discussed with stakeholders and canvassed possible changes with stakeholders on changes to the depreciation schedule of the PRRT?

**Mr M Robinson:** I can't recall any conversations that I have been involved in where stakeholders would have talked about making changes to depreciation arrangements for the PRRT.

**Senator McDONALD:** Has the department consulted with industry about what a change to their tax arrangements would look like for future investment in the industry?

**Mr M Robinson:** We have a range of conversations with industry. Clearly, being part of the revenue, small business and housing group, talking about tax implications and how they affect investment decisions is inevitable in those sorts of conversations.

**Senator McDONALD:** So with the resources industry, though, not housing?

**Mr M Robinson:** Correct.

**Senator McDONALD:** You have had consultations about what changes to tax arrangements would look like for investment in their industry?

**Mr M Robinson:** As I mentioned, I meet with various industry groups from time to time. We talk about a range of issues. In the course of those general conversations, we will talk about the relationship between tax and investment.

**Senator McDONALD:** On 22 May 2022, the Prime Minister stated in relation to a super profits tax or a change to the PRRT that we won't be going down that track. Minister, I assume that you don't support those statements?

**Senator Gallagher:** Why do you assume?

**Senator McDONALD:** You are telling me that things have changed? Do you support that statement by the Prime Minister?

**Senator Gallagher:** Yes.

**Senator McDONALD:** That we won't be going down that track of a change to the PRRT or a super profits tax?

**Senator Gallagher:** Well, I don't know the context in which that question was asked. I am being very honest with you about the work that is underway. In the last month in particular, this has emerged as an urgent priority. We are looking at options to assist households and businesses who are concerned about the increasing price of electricity on their operations. We are having to consider options that perhaps even a few months ago we wouldn't have expected to consider. Yes, we are doing that work.

**Senator McDONALD:** Thank you, Minister. Mr Robinson, what is industry saying to you when you are consulting with them and they are raising what changes to their tax arrangements would look like for future investment in the industry?

**Mr M Robinson:** Probably some of the recent discussions we've had with industry around tax and investment decisions have been in the context of our consultation around the government's multinational tax package. One of the elements of that package included changes to the thin capitalisation rules, which goes to the deductibility of interest payments associated with business investment. So we had quite extensive consultation and discussion with industry around how the government's proposed changes and various options to implement those changes might impact on investment decisions. There were some concerns raised during the course of the consultation around, for example, the impact of changes to the proposed rules and how they might impact on greenfield start-ups and potential investment. There were issues raised in the real estate sector, for example, around implications for the changes on commercial real estate investment.

**Senator McDONALD:** I'm trying to be quite narrow here in looking at resource projects. Has any advice been sought from your department around sensitivity analyses of future investments into resources projects as a result of any of these various proposals that are being considered as measures to reduce electricity prices?

**Senator Gallagher:** I will jump in here and say that the options being considered fall into different areas, including regulatory areas. I think people have nominated caps and how they might work. It seems that you think we are only looking at one area.

**Senator McDONALD:** No. I do understand that.

**Senator Gallagher:** I just want to be clear that we are looking at all options about possible intervention or steps the government could take. In terms of any decisions, those decisions haven't been made. You are wanting to understand what discussions we have had or what impact decisions that we haven't made might have on future decisions that business hasn't made yet. It is a very difficult—impossible at this point—question to answer.

**Senator McDONALD:** Minister, resources companies are telling me that they are putting on hold decisions for future investment in Australia until these decisions are made. They are being very clear that they are making choices around investing in projects here or overseas.

**Senator Gallagher:** Well—

**Senator McDONALD:** Please let me finish the question. So I would have thought—

**Senator Gallagher:** It's not really a question.

**Senator McDONALD:** It is a question, Minister. For ministers to make a good and proper decision, I would have thought it important that they would consider the impacts of their decisions on future investment and subsequent revenue to this nation. I am asking if Treasury has been asked to do sensitivity analyses on what some

of those decisions might be. In consultations with stakeholders, Mr Robinson, I am asking you if you have had clear communications from stakeholders around what their future investment decisions might be. Are you providing that advice to the secretaries group around the consequences of various decisions?

**Senator Gallagher:** Treasury can answer for themselves. I would say that the Minister for Resources engages actively with stakeholders. That is a very important reason why she is part of the discussion. So I can say that the impact of those decisions will be analysed absolutely before government makes any decisions. Advice will be provided. It will inform government decision-making. I think the government's preference is that we don't have to intervene. That would be the best situation. But we are faced with the fact that the energy market is disrupted. It is having really significant impacts on manufacturers, big business and small business. They are saying to us that they won't be able to keep operating. Can you see the challenge here? This is the reality. This is the real world. So, yes, it's unsurprising—

**Senator McDONALD:** Yes, I have run a business that understands the real world and the cost of electricity.

**Senator Gallagher:** So it's unsurprising that companies would prefer that the government doesn't get involved. I think that is unsurprising. But we are living in pretty extraordinary times and the government has to make decisions across the economy. At the moment, the market is not working and it's causing distorted outcomes that are affecting households and businesses. It is absolutely appropriate that the government is at the table trying to work out with states and territories, who also have a lot of the levers, what to do about this to make sure that business and manufacturers can keep operating in an affordable way whilst we work through this temporary situation.

**Senator McDONALD:** Thank you, Minister. I will go back to the department. I am trying to gauge the amount of analysis that you are being asked to do, perhaps from advice from the resources minister as she consults with stakeholders, around the impact of future investment as a result of various measures that are being considered. Is that something that the department has been asked to commence looking at?

**Ms Brown:** I don't think it should be surprising that the government would like comprehensive advice that obviously would go to the impact on future investment.

**CHAIR:** Senator McDonald.

**Senator McDONALD:** Thank you.

**Senator DEAN SMITH:** I would like to get an update with regard to the government's commitments to certain processes around strengthening Australia's charity and not-for-profit sector. Is someone able to assist in that?

**Ms Brown:** Certainly.

**Senator DEAN SMITH:** Would you like to start with a general overview, or would you prefer if I start with questions?

**Ms Berger-Thomson:** I'm happy for you to provide questions.

**Senator DEAN SMITH:** And I'm happy for you to start with a general overview.

**Ms Berger-Thomson:** The government has made a number of different election commitments in this space. I would note that I'm responsible for the charity side of those commitments and the not-for-profits in terms of the tax space. Markets group, for example, has some responsibilities in this space as well. I can talk to the ones that I am familiar with.

**Senator DEAN SMITH:** Of course.

**Ms Berger-Thomson:** As well as parts of other departments—DSS, for example.

**Senator DEAN SMITH:** My preferred style is that if you give me an overview, I will keep my questions in reserve. If we run out of time, we'll put them on notice.

**Ms Berger-Thomson:** No worries.

**Senator DEAN SMITH:** The first question, of course, is: what is the demarcation between your roles and responsibilities with regard to the suite of commitments and the roles and responsibilities of other parts of the government in the broad? Just do that on notice because of time.

**Ms Berger-Thomson:** Sure. A key part of the government's election commitment is to double philanthropic giving. The government has committed to a review of philanthropy. I think that will be considered in the context of that review.

**Senator DEAN SMITH:** We might do this another way. I will ask the questions. Can you provide me with an update of the government's commitment to set up a non-profit sector expert reference panel?

**Ms Berger-Thomson:** Questions related to the panel are for DSS.

**Senator DEAN SMITH:** And the non-profit sector expert reference panel's responsibility to create a blueprint would also fall within the responsibilities of DSS?

**Ms Berger-Thomson:** I might have to take that on notice. There has been some joint work done in that space.

**Senator DEAN SMITH:** So the joint work is between DSS and Treasury?

**Ms Berger-Thomson:** That's correct.

**Senator DEAN SMITH:** What is that joint work in?

**Ms Berger-Thomson:** There has been work done to think about how, I guess, those roles and responsibilities across the sector work in terms of the review of philanthropy and the expert reference panel. I don't have the information in front of me, but I'm very happy to take it on notice.

**Senator DEAN SMITH:** Is there an official there who can support you? I'm doing this with a genuine interest in understanding how the government is fulfilling, after six months in government, its various commitments around the charities and not-for-profit sector. We've recently had a report from the Australian Charities and Not-for-profit Commission, which is appearing later today on certain matters. I'm particularly interested in understanding the work.

**Ms Brown:** I could refer you to page 184 of BP2, Budget Paper 2, where we've described some of this work. The Productivity Commission will review the current framework to incentivise philanthropy. We're working on the terms of reference for that review. The Department of Social Services will work with the not-for-profit sector to develop a sector-led not-for-profit blueprint.

**Senator DEAN SMITH:** That is the non-profit sector expert reference panel?

**Ms Brown:** That is a question for DSS.

**Senator DEAN SMITH:** We just heard from the official that there was some joint work happening between DSS and Treasury, which I'm keen to explore or understand more.

**Ms Berger-Thomson:** That was around the architecture of how these bodies would interact.

**Senator DEAN SMITH:** Can you share with me that architecture?

**Ms Rowbotham:** We have been working with DSS quite closely. Essentially we are looking at the incentives for philanthropists to donate whereas DSS is looking at the other side of the equation, which is about boosting the capacity of the not-for-profit sector.

**Senator DEAN SMITH:** Feel free to elaborate on the work that you are doing.

**Ms Rowbotham:** As you know, the government announced the proposal only two weeks ago. We are very much at the early stages of working out who is doing what. There are some terms of reference being developed for the PC review. DSS is doing their own work on what the community services advisory group will do in this capacity area.

**Senator DEAN SMITH:** So the community advisory group is news to me. I don't think it was included in the government's election commitment. Can you provide me with some information about the community—

**Ms Rowbotham:** I can. It sits within the DSS portfolio, but I am familiar with it. The community services advisory group is a current body made up of about 25 different not-for-profit entities that basically engage with DSS and provide the sectoral background about various initiatives the government is progressing. So on the sort of sector-led work with respect to capacity constraints in the sector, they would be able to provide a wealth of information to the government on those type of issues.

**Senator DEAN SMITH:** I think a better way to proceed might be, on notice, if you can provide me with detail or granularity about the work that the Treasury is doing to give effect to the government's Building Capacity, Building Community policy for strengthening Australia's charity and not-for-profit sector. Provide for me all of the various working groups, taskforces and IDCs that might be involved in supporting that work. Identify for me the various senior officials who are responsible and the timeframes for the completion of certain work streams involved in delivering on this particular commitment. Am I correct in saying that the non-profit sector expert reference panel has yet to be established?

**Ms Rowbotham:** That's correct.

**Senator DEAN SMITH:** After six months?

**Ms Rowbotham:** The announcement was only two weeks ago.



**Senator DEAN SMITH:** The government was elected in May. The blueprint that is to be a product of that non-profit sector expert reference panel is yet to be developed?

**Ms Rowbotham:** That's correct.

**Senator DEAN SMITH:** Let's talk, then, about the various work that is being done to meet the government's commitment to double philanthropic giving by 2030.

**CHAIR:** Senator Smith, I note that you have been very patient in waiting for the call. If we have any hope of getting back the few hours that we are behind, it would be helpful to put some questions on notice, if you would.

**Senator DEAN SMITH:** In all sincerity, would there be an opportunity for me outside this estimates process to have a private briefing with the Treasury?

**Senator Gallagher:** I'm sure that can be facilitated.

**Senator DEAN SMITH:** That would be great. Thanks very much. I'll leave it at that point, then.

**CHAIR:** Thank you very much, Senator Smith. I believe that concludes the questions that the committee has for Revenue, Small Business and Housing Group. I note, however, that we do still have Markets Group. We are implementing a change to the program whereby our next witness will be the Australian Financial Complaints Authority. We will then return to the Markets Group and continue from there.

**Senator Gallagher:** Are we going to AFCA now?

**CHAIR:** Yes.

**Senator Gallagher:** So that's me out for that?

**CHAIR:** Yes. We are about to welcome the Australian Financial Complaints Authority representatives to the table. We will have Treasury markets back—

**Senator Gallagher:** Once you've completed that, yes.

#### Australian Financial Complaints Authority

[12:59]

**CHAIR:** Welcome, Mr Locke and Mr Untersteiner. No Dr Smith?

**Mr Locke:** I'm afraid Dr Smith had an accident on Sunday and is unable to attend today.

**CHAIR:** That's not good to hear. Thank you for clarifying. In welcoming AFCA, the committee recognises AFCA's independence under the Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Regulations 2018. The committee is cognisant that while AFCA does not receive annual appropriations, it does provide the parliament with opportunities to discuss its operations and performance, which the committee greatly appreciates. As such, no government minister will be in attendance with the committee while representatives of AFCA are present. Mr Locke or Mr Untersteiner, would you like to make an opening statement?

**Mr Locke:** In light of the tight timings, I won't make an opening statement to maximise the time for questions.

**CHAIR:** Thank you. Do you have a statement that you wish to table for the committee?

**Mr Locke:** I do. I will happily table that.

**CHAIR:** Thank you.

**Senator BRAGG:** Thanks very much for coming. Can you run me through your board composition?

**Mr Locke:** Certainly. The way that we are constructed, there is an independent chair. That is an individual who has to be independent of the financial services industry and independent of consumer bodies. So there is a test that the board has to apply in assessing somebody's independence to fulfil that role. There are then eight directors, four of whom come from industry or, rather, they have expertise in the financial services industry. Four come from consumer backgrounds, often a consumer advocacy background. That is the way in which we are constructed. Our constitution requires equal numbers of directors with consumer experience and directors with industry experience and then an independent chair. When we were established in 2018, as part of the establishment, the government had the ability to appoint the inaugural chair and a minority of the board members. The other board members transferred over from the financial ombudsman's service. Helen Coonan was appointed as the first independent chair. When her term came to an end, the AFCA board had to appoint an independent chair.

**Senator BRAGG:** When will you do that?

**Mr Locke:** Professor Pollaers's appointment was made in May 2021. I believe that is for a three-year term.

**Senator BRAGG:** Will you have common directors between the AFCA and the CSLR?

**Mr Locke:** The way in which the legislation is constructed, there is to be three directors of CSLR Co, one of whom will be the chair appointed by government, one of whom has to be an experienced actuary who will be appointed by government. The third director will be an AFCA board member, who will be appointed by the AFCA board or selected by the AFCA board. We understand—

**Senator BRAGG:** Just to be concise, the AFCA board will put one of the directors on to the board of the CSLR?

**Mr Locke:** That's correct. The aim of the AFCA board, as I understand, is to identify the director who has most relevant expertise for the functions of the CSLR Co.

**Senator BRAGG:** What powers does ASIC have over AFCA?

**Mr Locke:** They do have strong supervisory powers over AFCA. I will go through that. Under the Corporations Act, they can issue regulatory requirements, including by legislative instrument, relating to compliance with mandatory requirements or any general considerations. They can issue directions to AFCA if ASIC considers that AFCA has not done things reasonably practicable to ensure compliance with the legislative requirements. They can issue directions to AFCA with regard to the value of claims, remedies to be determined—

**Senator BRAGG:** Are those binding?

**Mr Locke:** They are.

**Senator BRAGG:** So they are binding?

**Mr Locke:** Yes, they are. We have to report. ASIC oversees AFCA. The basis on which they do that is set out in regulatory guide 267. We have quarterly reporting through to ASIC.

**Senator BRAGG:** The point of these questions is not to waste your time but to try to establish how we will ensure that with the creation of this new and novel scheme there won't be the covering up of tracks, where there is a failure to enforce the law on ASIC's side of the ledger and they are able to, in effect, use the AFCA and the CSLR to, as I say, cover its regulatory enforcement failures. As you have just said in your testimony, ASIC has huge power over your organisation and will have huge power over CSLR through common directors and the like. What internal processes will you have to ensure that there isn't a regulatory moral hazard risk that is greater than it needs to be? Does that make sense?

**Mr Locke:** Certainly it does. CSLR Co is a separate legal entity. Obviously, the design and oversight of that really is a matter for you to put to Treasury. The markets group will be on after us.

**Senator BRAGG:** Sorry to interrupt you. They will only be able to do something if there has been an AFCA determination.

**Mr Locke:** The way the CSLR, as we understand it, will work is if there is a determination that AFCA has made and the consumer accepts that determination, it is then contractually binding upon the member financial firm. If they fail to pay, ordinarily, that would be as a result of insolvency. But there could be other reasons. In that situation, if the nature of the complaint was within the scope of coverage of the CSLR, yes, that would then be a matter for the CSLR to consider. So you are absolutely right with regard to that. The way in which our scheme has been established is very much that our role is to resolve the matters wherever possible. We do that 70 per cent of the time. We're able to resolve the matters by agreement between the financial firm and the consumer. Only seven—

**Senator O'NEILL:** Did you say 17 or 70 per cent?

**Mr Locke:** Seventy per cent. Matters only go through to a determination if it is impossible to reach any agreement or settlement between the parties. That would be the case in about seven per cent of matters. If we look over the last four years that we've been in existence, we have made probably 20,000 determinations during that period of time. There have been 306 determinations which have been unpaid. We are looking then at—

**Senator BRAGG:** Sorry, 20,000 and 306?

**Mr Locke:** So 306 have been unpaid, but only a small proportion of those would be covered by the CSLR. Obviously, AFCA can consider matters right across the whole services sector, as you are aware.

**Senator BRAGG:** I don't want to take too much more time. I have two questions for you. The first one is: what are your internal processes going to be to reduce the risk that in the case there are unpaid determinations which are linked to, in some way, a regulatory enforcement failure, AFCA and the CSLR are not going to be making a regulatory failure to help cover it up, effectively? It's a huge change.

**Senator O'NEILL:** Can I clarify the question, because I think it's really important? I don't understand exactly what you're asking.

**Senator BRAGG:** I will ask again. The risk I think we face with this scheme is that you could have a situation where the regulator doesn't enforce the law. There is then an opportunity for compensation to be sought, which emerges through the AFCA and the CSLR schemes. I think we all accept that there are moral hazards here. I'm not asking you to comment on that. That's a matter for the parliament. We'll work through that process. What I am trying to establish, given you perform statutory functions, is the internal processes you will establish to ensure that risk does not come to fruition.

**Mr Locke:** Within 15 days of becoming aware of a definite systemic issue, we have legal obligations to report that through to the regulators. In the case of an unpaid determination, that is ASIC as soon as we have determined that there is a definite systemic issue. A failure to comply with an AFCA determination within the 28 days that they are required to comply would always be a definite systemic issue. We have to report that through to the regulators within 15 days. So we do that and would notify the regulator immediately with regard to that. We would certainly provide the regulator with all information about the matter, particularly if we have any information about the solvency or otherwise or the reasons for non-compliance. If, for example, the party has been participating all the way through and we have no evidence of insolvency, that would be the sort of information we would pass on. If there was a question over insolvency, we would also pass that information on, obviously, at that point.

**Mr Untersteiner:** Obviously, ASIC and AFCA do play a different role here. ASIC's role is around enforcement. Our role is about compensation to individual consumers based on individual complaints. They have two different roles. Our role is really not to assess the role that ASIC has played. Our role is to assess the individual complaint on its own merit. That would be ensuring that it is within our jurisdiction and that there aren't reasons to exclude it and then looking at the merits of that particular case. That is how we would do that. In terms of that, we ensure maximum transparency. For instance, we publish every single determination that we make on our website. We publish extensive amounts of data on our website six-monthly as well. Of course, we've just released our annual review that, again, has extensive amounts of information too. I want to draw that distinction.

**Senator BRAGG:** My only other question—and you can provide it on notice—is this: can you please provide how you operationalise your reporting obligations to the regulator so that we can see them? That is really all we need to see. We need to make sure that we have clear transparency around the mechanics here. I accept that you are a transparent organisation. You handle a lot of complaints. This may seem to be a far-fetched possibility, but we've never had a scheme like this before. The parliament needs to make sure that we are satisfied that we're not going to create a perverse incentive or a problem which could be managed. If you can provide us, for clarity, on notice how you operationalise your reporting obligations and who you report to and how that works, that would be very helpful.

**Mr Locke:** Yes. We are very happy to do so.

**Senator BRAGG:** I don't mean public reporting. I mean reporting to regulators.

**Mr Locke:** Yes. We understand. We're very happy to do that.

**Senator O'NEILL:** Since we brought you here, I might take the opportunity to clarify a few things. You've referred in your response to Senator Bragg to 20,000 determinations. I didn't quite catch what period that was over.

**Mr Locke:** We've been going four years now.

**Senator O'NEILL:** Since 1 July 2018?

**Mr Locke:** We were established on 1 November 2018. We've resolved 300,000 determinations in that four-year period. The 20,000 that I referenced were the matters that didn't get resolved by negotiation, through conciliation or through investigation between the parties. It's the seven per cent of matters that have then gone through to an ombudsman or an adjudicator, who has given a view based upon the legal tests that we have as to what we consider to be fair in the circumstances of the matter or, if it's a superannuation matter, whether the decision of the superannuation trustees is a fair and reasonable one.

**Senator O'NEILL:** In the last financial year, just to get a scale, has it been increasing over time as people become more aware of the capacity to get their matter resolved in a low-cost way through AFCA?

**Mr Locke:** There is some increase. It's not dramatic. We received over 72,000 complaints in the last financial year, which was an increase of three per cent on the previous year. Obviously, the nature of the complaints has

changed over time. As you would be aware, we have a major problem with scams and scamming of consumers. We have seen over the last few years a doubling of complaints with regard to unauthorised transactions that are related to scamming activity. We've also seen a reduction in the number of complaints about financial hardship. A lot of that is because of the really great work that the banks have done during the COVID period to support consumers and small business. Actually, even since the intensity of COVID moving forward, we've still seen some of the lessons learned during that COVID period continue to play out.

The challenge we have at the moment is really around the number of complaints that are coming in with regard to general insurance. Much of that, of course, is related to the floods and natural disasters that we've had, where general insurers are pretty overwhelmed at the moment about the volumes of matters that are coming through. The nature has changed, but the numbers have been not dramatically different.

**Mr Untersteiner:** The numbers in the current financial year are higher, though, than what we've seen for some time. Mr Locke has alluded to it. Complaints lodged against general insurers last year rose about 10 per cent. In the first four months, we've seen a 75 per cent increase in complaints, which is quite significant. That is relating to things such as delays in processing claims as well as disputes about the claim amounts and denial of claims. That is creating significant numbers at the moment. As Mr Locke also mentioned, we continue to see rises in complaints about scam activity as well.

**Senator McDONALD:** Senator O'Neill, may I ask a follow-up to that, please? I'm interested in northern Australia. We introduced the northern Australia reinsurance pool. Would you be able to provide on notice some analysis of the insurance referrals to you by geographic area?

**Mr Locke:** Certainly. We can do that statewide. We could do it by postcode. We could do it by whatever would be of interest, really.

**Senator McDONALD:** I'm looking for the northern Australia line, which is roughly Gladstone north across the Northern Territory and the top half of WA.

**Mr Locke:** We would be very happy to take that on notice and provide that data over the four-year period that we've got.

**Senator O'NEILL:** And perhaps state by state would be helpful more broadly as well.

**Mr Locke:** We're very happy to do that.

**Senator O'NEILL:** Thank you very much. It is good to know. In a way, you're the canary in the coalmine. That is not to wish your demise as we might have the canary. You are an indicator of what is actually going on in the marketplace.

**Mr Locke:** Certainly. We really see our role as not just resolving disputes when they've arisen but working with the financial services industry to improve practice and to train and support. Our aim is really to see fewer complaints come over time, not more complaints. If financial firms invest in internal dispute resolution processes and they respond fairly to consumers and small business owners in dispute, we may see over time a reduction in matters having to be escalated to us. As long as the outcomes that are being provided are fair and just, we think that is advantageous to everybody in the industry. It enables them to retain their customers and keep ongoing goodwill. For consumers, the sooner the matter is resolved fairly and satisfactorily, the better, really, because these things can be very stressful. If you are dealing with a flood and then you're dealing with the insurance dispute, the longer these things go on, they take a heavy toll on people's lives. It can very often feel like a David and Goliath battle as well. So our role is really to provide access to justice, to provide an equal level playing field, to fairly investigate and to try to find resolutions, which we do the vast majority of the time. Where we can't, we make a determination. In the four years we've been operating, we've already awarded consumers over \$900 million in compensation. So you can see that there's a lot of matters that probably wouldn't have progressed to court where people wouldn't have had the wherewithal or the financial funds or the risk appetite to do so but we've been able to secure a satisfactory resolution for them.

**Mr Untersteiner:** Just on those statistics, it's important to note that over 50 per cent of the matters that come to us are resolved at the very early stage, so quickly.

**Senator O'NEILL:** Just because somebody is watching, it can change things quite quickly, can't it?

**Mr Locke:** It can. But our conversations with the firms are: 'You've had a chance to resolve this. You haven't. Why are you resolving it as soon as it comes to AFCA?' That's really where we want to see progress made.

**Senator O'NEILL:** Cultural change. I have a few questions that probably need some pretty quick answers. It is 72,000 in the last financial year. How many of those complaints were resolved?

**Mr Locke:** Seventy per cent were resolved by agreement, yes.

**Senator O'NEILL:** How many complaints went all the way to formal determination?

**Mr Locke:** It would be seven per cent. It was just under 5,000 last year. It was 4,800-and-something. I can provide the precise figure.

**Senator O'NEILL:** Thank you. How does AFCA deal with complaints against firms that are insolvent?

**Mr Locke:** If the firm is already insolvent, we pause the case and don't progress the matter. What we don't want to do is waste the consumer's time and undertake a whole range of activity where there may be no successful outcome at the end of the day. We have paused matters where financial firms are insolvent. If the CSLR passes parliament, as we hope and expect, we will obviously be progressing the matters that are paused that are within the jurisdiction of the CSLR.

**Senator O'NEILL:** How many cases have you paused in the course of your work since 1 November 2018?

**Mr Untersteiner:** We have 4,667 cases paused against 51 different firms with a total liability claimed of \$670 million. Important to note is that is everything. Obviously, the compensation scheme of last resort is more limited than that. We anticipate that the cases we will be reviewing within the compensation scheme of last resort will be a smaller pool.

**Mr Locke:** It is about 1,900 matters.

**Senator O'NEILL:** Thank you.

**Mr Locke:** The figure that Mr Untersteiner has given is just based upon what the consumer has said their losses are. There has been no assessment of that. So that is a very broad, unreliable figure. We haven't considered the merits of those matters. Many may have no merit. We haven't considered what the liability actually is.

**Senator O'NEILL:** They are just on pause.

**Mr Locke:** It's a real maximum ballpark.

**Senator O'NEILL:** I have one final question. There has been an independent review of AFCA.

**Mr Locke:** Yes, there has.

**Senator O'NEILL:** How have you responded to that? I know that there were a number of recommendations. How are they progressing?

**Mr Locke:** Certainly. The independent review of AFCA was undertaken by Treasury. It was released on 24 November last year. There were 14 recommendations in the independent review. One of them was to government and 13 were through to the AFCA board. The AFCA board has accepted all the recommendations. We have a program of work underway addressing each of the recommendations. Some have been completed already. Many will be completed in 2023. There are a few matters where there are going to be rule changes or legislative change that might push that out to early 2024. But we published on our website and we've published in our annual review the progress that we're making on each of those recommendations. We are keeping the website and stakeholders constantly up to date with that. I'm very happy to table AFCA's annual review for 2021-22, which has information on that.

**Senator O'NEILL:** Thank you, Mr Locke.

**CHAIR:** Yes, we would appreciate that document being tabled. That concludes our questions for AFCA. Thank you very much for attending today. You go with our thanks.

#### **Proceedings suspended from 13:24 to 14:30**

**CHAIR:** We are now ready to recommence this meeting of the Senate Economics Legislation Committee. We welcome back the minister and we welcome to the table representatives from the Treasury portfolio markets group. Without any further ado, Senator Bragg will ask some questions.

**Senator BRAGG:** Good afternoon. I want to direct some questions to you about the superannuation disclosure arrangements.

**Mr Jeremenko:** Certainly.

**Senator BRAGG:** Basically, what was the advice the Treasury gave on the disclosure obligations that super funds should face?

**Mr Jeremenko:** In terms of the content of Treasury's advice and the actual detail, as you know, it's something that we are happy to talk to you about the timing of and the thinking around the policies that the government has put forward. But in terms of some of the detail around the actual policies, I'm not sure, without conferring with the minister, I would be happy to go there.

**Senator BRAGG:** As you know, in the last parliament there were regulations made which require all the individualised payments from super funds to unions and other bodies to be separately made out. The regulations made in this parliament remove some of those transparency measures and introduce an aggregation. I'm trying to figure out the policy benefit of that change from the department's point of view.

**Mr Jeremenko:** Certainly. It's about making sure that there is meaningful and digestible information for members of super funds. In terms of the transparency that those annual members' meeting notices are meant to provide, there is a balance to be struck in the government's mind between having a degree of information that is not easily digestible and understandable by the recipients of that meeting notice and making sure that there is disclosure around whether there have been any donations and expenditures and what types of expenditures the super fund has made. The ways in which that transparency can be achieved go beyond just the annual members' meeting notice. We are working with the government and looking at some further advice around how some extra transparency can be introduced that goes even further than what the annual members' meeting notices can achieve. It will make sure that super fund members see in greater detail and in a way that they can actually consume information on where their super funds are being spent.

**Senator BRAGG:** Was aggregation a policy of the government?

**Senator Gallagher:** Yes.

**Senator BRAGG:** It was announced before the election, was it?

**Senator Gallagher:** I should say it is a decision of the government. I'm not sure if it was announced before the election, but it's certainly and clearly a decision of government since the election, as you would have seen in the regs.

**Senator BRAGG:** I'm just trying to work out where the policy came from. It was a policy that the Labor Party took to the election?

**Senator Gallagher:** Your election commitments aren't the only thing you do in government—

**Senator BRAGG:** I understand that.

**Senator Gallagher:** so that is my answer to that.

**Senator BRAGG:** You don't know whether you announced it before the election?

**Senator Gallagher:** I'm happy to go back and check the record. We had a number of policies in this space. I don't want to mislead the committee.

**Senator BRAGG:** I'm just trying to figure out where the policy came from. Was it recommended by industry, this aggregation?

**Senator Gallagher:** My understanding—and I will check with the minister—is that there was feedback from stakeholders. We can assist with the stakeholders. Again, there was advice from consumer advocates about the duplication and process of putting together this information in a way that wasn't as meaningful, perhaps, as it could be.

**Senator BRAGG:** So you think there were consumers who wanted to see less transparency?

**Senator Gallagher:** No. I think there was feedback that the former regulations were increasing an administrative burden whilst not necessarily being meaningful or presented in a meaningful way that assisted members. I think there was feedback from some consumer advocates. But I will check that and come back to the committee if I have that wrong.

**Senator BRAGG:** I will go back to the Treasury department. As I said, these regulations were made in the year of the last parliament. Has the Treasury advice remained consistent that this sort of disclosure is good to be made in full, or has it changed?

**Mr Jeremenko:** Certainly Treasury advice remains that transparency around the expenditure of members moneys from superannuation is a very important part of the super and retirement income system. So how that is best achieved is, if I may, Senator, going to the nub of your question. What the government has proposed or what it has done with these regulations is to amend them slightly and look at other ways to better communicate information to members.

**Senator BRAGG:** I understand what Senate estimates is all about. I'm just trying to understand where the policy was initiated from. The minister—

**Senator Gallagher:** I have told you that it is a decision.

**Senator BRAGG:** I understand it is a decision. Where did the idea to aggregate this data come from? I can't imagine that Treasury has recommended that.

**Senator Gallagher:** I'm here representing the minister. I would imagine that it's like all things in portfolios where you have consultations, you take advice and you settle on a position. I think that is the way it would have happened.

**Senator BRAGG:** Just confirm to me that you will take on notice the origins of the policy, will you?

**Senator Gallagher:** I'm happy to provide you with what I can where I can assist, yes.

**Senator BRAGG:** If you could include in that any representations made by industry as to how they think the regulations could be improved, I think the committee would be grateful.

**Senator Gallagher:** Yes.

**Senator BRAGG:** Can I ask you about the review of the Your Future, Your Super performance test?

**Mr Jeremenko:** Yes.

**Senator BRAGG:** Where is it up to? Is that going to end with the proposed amendments that are before the parliament now, or is there more work?

**Mr Jeremenko:** Well, ultimately it will be a matter for the government. I'm not trying to be evasive at all. The consultation on that paper, on the Your Future, Your Super assessments—

**Senator BRAGG:** Performance test.

**Mr Jeremenko:** performance test only closed in the last two or three weeks—mid-October.

**Senator BRAGG:** When did it close?

**Mr Jeremenko:** On 14 October.

**Senator BRAGG:** And this is a Treasury process?

**Mr Jeremenko:** Yes, correct.

**Senator BRAGG:** But there is legislation before the parliament that is proposing to tinker with it in addition.

**Mr Jeremenko:** I might just check that I haven't misspoken. I will ask Ms Kelly.

**Ms Kelly:** The review is still underway. As Mr Jeremenko said, we consulted from 7 September to 14 October. Consultations have been pretty broad. We had 26 bilateral meetings and five roundtables. We've had a number of technical group meetings. We've had 69 submissions received as of 20 October. We've consulted with 73 organisations. So we're currently in the process of just digesting all the information we received through the consultation process. So the review is ongoing. In terms of your question around legislation before parliament, there was an election commitment of the government in relation to changing aspects of the performance test for faith based superannuation funds.

**Senator BRAGG:** You are dealing with the faith based issue now?

**Ms Kelly:** Yes.

**Senator BRAGG:** You are running a review into the overall performance test. Is that a fair characterisation?

**Ms Kelly:** That's correct.

**Senator BRAGG:** You will provide advice to government, will you?

**Ms Kelly:** We will provide advice to government on the review, but we have not done it as yet. The review is ongoing.

**Senator BRAGG:** Will the review include looking at this faith based idea?

**Ms Kelly:** The government has made a decision in relation to the faith based, and the legislation is currently before parliament.

**Senator BRAGG:** So it's a review of performance except for faith based super funds?

**Ms Kelly:** The government hasn't specifically carved out anything in relation to faith based from the review. The government has been clear that it is looking at all unintended consequences under the Your Future, Your Super reform package. The government has made a decision in relation to faith based, and that is currently before parliament.

**Senator Gallagher:** It was an election commitment.

**Senator BRAGG:** I understand that.

**Senator Gallagher:** So we're just delivering it.

**Senator BRAGG:** I understand that. I'm just trying to understand how the department is going to handle it. The department has been asked to review the performance testing system. You have an election commitment over

here that you are seeking to deliver through the parliament here. You may be successful. You may not be. I don't know. Time will tell. Therefore, is your advice going to include commentary on the faith based exemption?

**Mr Jeremenko:** As someone who will be ultimately signing off on that advice, I don't see that it restricts us from going into that space if during the consultation we hear something that is worth the government hearing.

**Senator BRAGG:** That makes sense to me. So you will look at all aspects of the performance testing regime?

**Mr Jeremenko:** Correct.

**Senator BRAGG:** I want to check on the other review that you have. I see that you have lots of reviews into the Your Future, Your Super package. How many people are working on these reviews?

**Mr Jeremenko:** I will ask Ms Kelly.

**Ms Kelly:** Our member outcomes and governance branch is working on this specific review. It's not the only thing that these people are working on. There are probably about five to six people working on it at the moment.

**Senator BRAGG:** Does that include the best financial interest test review?

**Ms Kelly:** Yes. That's correct.

**Senator BRAGG:** So there's a performance test review. There's a best financial interest review. There was a body of work done on the matter we discussed before?

**Mr Jeremenko:** Annual member meetings?

**Senator BRAGG:** Yes.

**Ms Kelly:** Yes.

**Senator BRAGG:** Can you give me an update on the best financial interest test review, please?

**Ms Kelly:** That is being undertaken as part of the Your Future, Your Super review. All aspects of the reform package are being reviewed together. I mentioned before bilateral meetings covered all aspects of that. It covered the performance test and the best financial interest duty. It sought feedback on the Your Super tool. It also sought feedback on stapling.

**Senator BRAGG:** What is it doing? You have a new duty that is in the law, which is the best financial interest test. That is a pretty comprehensive test. What is the purpose of that examination?

**Ms Kelly:** The purpose is to review whether it's operating as intended and if there are any unintended consequences in practice.

**Senator BRAGG:** Like what?

**Ms Kelly:** Through our consultation there are some themes that people have raised. There has been a divergence of opinions, as you can imagine.

**Senator BRAGG:** Sure.

**Ms Kelly:** Issues that have been raised are in relation to the reverse onus of proof, for instance, and whether that's appropriate. Stakeholders have had different views in relation to that. As I said, we're currently digesting all the different stakeholder views and submissions, so it's all still in process.

**Senator BRAGG:** What is the timetable on that review?

**Ms Kelly:** We are endeavouring to finish the review this calendar year.

**Senator BRAGG:** What will the product be? Will it be a briefing?

**Ms Kelly:** It will be advice to government.

**Senator BRAGG:** I want to ask you about these disclosures again. Obviously, we're now into the first round of these new disclosures of the member meeting. A fund here, Australian Super, made its disclosure and it has now been able to hide or aggregate \$100 million in related party transactions and over a million dollars in payments to unions in the last financial year. Do you think that is an improvement?

**Ms Kelly:** I think it's important to go back to the purpose of the annual members' meeting notice. The purpose behind it is to let members know the logistics of an upcoming meeting and to provide them with sufficient information so that they can prepare their questions ahead of the meeting. The primary process is still the actual meeting, where members have an opportunity to ask their funds all the questions that they would like and funds are required to respond. They are required to respond either in the meeting or, if they are unable to respond in the meeting, they have to respond in writing within 30 days of the meeting. They likewise have to make their minutes available. The annual member meeting still is the primary way for members to engage with their funds and ask all the questions that are important to them. So changes to the annual members' meeting notice does not in any way



impact members' ability to ask that information of their fund. If they have information that they would like around the composition of related parties, as was the case before, the annual members' meeting remains the primary way for them to have those questions answered.

**Senator BRAGG:** This is my last question on this. I will play back what I think you've said. Are you saying that you think there is a strong case for transparency but you're not sure that the member meeting disclosures is necessarily the right place for all that information? Is that what you are saying?

**Senator Gallagher:** Essentially, that is the argument that I just put. It is burdensome and not necessarily meaningful. The annual members' meeting remains a way of members inquiring and seeking information.

**Senator BRAGG:** The problem with that is that was the mechanism for the disclosure. So there's now less information known about related party transactions than there was before. Is that a good transitional step for us to be in—to be hiding information?

**Ms Kelly:** The question around—

**Senator Gallagher:** No-one is hiding information.

**Senator BRAGG:** Well, it is. It is being hidden.

**Senator Gallagher:** No, it's not.

**Senator BRAGG:** It's being aggregated.

**Senator Gallagher:** No, it's not.

**Senator BRAGG:** It is.

**Senator Gallagher:** You are saying it is provided. It is just provided in a way that you disagree with.

**Senator BRAGG:** Well, it's aggregated. You can't see who it is going to. So you can't see which union is being—

**Senator Gallagher:** You get aggregated information. You then go to the members meeting, which is the process that is there to inquire into it.

**Senator BRAGG:** Fine. So you're happy to guarantee that the government will ensure that any member who asks for that information will get it?

**Senator Gallagher:** I don't think the government can require that.

**Senator BRAGG:** That is what the old regulations did.

**Senator Gallagher:** We're not hosting the annual members' meetings.

**Senator BRAGG:** Yes. But you've changed the regulations to remove the transparency.

**Ms Kelly:** There are requirements on funds around the answering of questions. Funds are required to provide reasonable opportunities for members to ask questions either ahead or during a meeting. There are also very limited opportunities for them to refuse to answer questions. They actually are required to answer under current requirements if asked questions unless, for instance, it is something that is not relevant to the operation of the fund or would somehow jeopardise the interests of members. Otherwise, funds aren't able to refuse to answer a question, for instance, on the composition of related parties. They are required to answer.

**Senator BRAGG:** Can you please provide that on notice?

**Ms Kelly:** I'm happy to.

**Senator McKIM:** I want to quickly follow up one question that Senator Bragg asked. It is in regard to the faith based super legislation. I think Mr Jeremenko gave evidence to the effect, or one of his officers did, that if matters came up through the consultation process, you would take them on board and consider them. Would that include submissions and evidence given to the Senate inquiry? Would you regard them as matters that have been raised as part of the consultation process?

**Mr Jeremenko:** Certainly. Yes, it wasn't part of that actual process, but absolutely. Just the other day, as you know, Senator, there was that hearing. That is definitely on the public record. That was another way of bringing together stakeholder views.

**Senator McKIM:** You would consider them, I guess, in scope for consideration by Treasury in the formulation of those?

**Mr Jeremenko:** Yes. We certainly will not be turning a blind eye to anything the Senate uncovered in the committee.

**Senator McKIM:** Minister, I want to ask you a couple of follow-up questions from the secretary's statement yesterday, where the secretary acknowledged the exceptional circumstances that currently exist that are driving high prices in the energy market. He stated that interventions that directly address the higher domestic thermal coal and gas prices are more likely to be optimal. Is the government considering such interventions?

**Senator Gallagher:** Is this question to me?

**Senator McKIM:** Yes. Would you like me to go over it again?

**Senator Gallagher:** No. I was listening. I unfortunately took out the Treasury's opening statement at lunch and left it in my office. I recall and I know the point you are getting to. Is the government considering—

**Senator McKIM:** An intervention that directly addresses high domestic thermal coal and gas prices.

**Senator Gallagher:** Well, I think yes. We are dealing with that through this working group that we've been talking about this morning and yesterday afternoon.

**Senator McKIM:** That is one of the interventions that you are considering. Is another intervention that you are considering capping retail electricity prices?

**Senator Gallagher:** We are looking at all options. I think everyone who is involved in this work has been on the record saying that we don't want to restrict options. We want to understand all of the options available to the Commonwealth. Obviously, there are options that need to be discussed with the states. This is unusual. I think everyone would prefer it wasn't happening. We want to understand it and understand the implications and consequences of some of these decisions as well.

**Senator McKIM:** So a cap on retail electricity prices is not off the table as part of this. You said you're examining all options?

**Senator Gallagher:** We are looking at all options and advice that has been provided across a range of agencies about how to deal with these significant price increases.

**Senator McKIM:** I'm not sure if you are aware, Minister, but the Greens have costed a two-year suspension on the use of PRRT uplift tax credits and a super profits tax on thermal coal, with the revenue used to pay electricity retailers the difference in prices at the point that the Ukraine war started and the current price. Basically, it would act as a cap on electricity bills and freeze them at levels that they were at just before Russia invaded the Ukraine. It wouldn't be a cap on market prices. Therefore, it wouldn't discourage investment in new clean energy generation to seize on the high prices forecasted by Treasury in the budget. Would that be one of the things that is on the table and up for consideration, considering you haven't ruled anything out?

**Senator Gallagher:** We're not examining the Greens policy; I would say that.

**Senator McKIM:** A terrible mistake.

**Senator Gallagher:** We are taking advice on all options. Some will be ruled out. Others will be further developed. Then we'll get to the final decision. This is priority work that is underway now and has been for some time.

**Senator McKIM:** You have said that all options that are on the table in terms of that process. Does that include options to raise revenue to fund something like an intervention that directly addresses domestic thermal coal and gas prices or a cap on retail electricity prices—in other words, revenue options as well as expenditure options?

**Senator Gallagher:** We're looking at all options, including regulatory options and options that have been articulated publicly around interventions the government could make.

**Senator McKIM:** Sure.

**Senator Gallagher:** It's underway now and no decisions have been taken.

**Senator McKIM:** I understand that.

**Senator Gallagher:** It is very difficult. I'm not trying to frustrate you.

**Senator McKIM:** I'm not asking you to pre-empt the outcomes. These are questions more about the scope of the process.

**Senator Gallagher:** All options.

**Senator McKIM:** All options. To be clear, does that include options around funding as well as options around policy? In other words, you might decide to land on a policy to retail electricity prices or do something to directly address higher domestic thermal, coal and gas prices, but that would require money. In terms of where that money

might come from—either through new revenue measures or through more debt or through any of the other avenues available to government—is that in scope or out of scope?

**Senator Gallagher:** The government is taking advice on all options. I'm sorry I can't be more helpful. I'm really not trying to frustrate. But we are looking at every possible option that could assist. We want it to assist, though it is complex. It's unusual that you would be looking at interventions. Understanding the consequences and the implications of intervening is critical. That is why we are not ruling anything in or out at this stage. We'll refine those options down based on that advice and eventually get to the final decisions. But we are being cautious and careful. We are listening to what experts and industry stakeholders are saying. Because it is unusual and it is a temporary situation that we're trying to deal with, we need to make sure that we're actually delivering the policy outcome we want and understanding what the consequences of intervening would be.

**Senator McKIM:** Thanks, Minister. On another topic—this is with regard to the government's position on implementing the recommendations from the banking royal commission—when you were in opposition, you prepared a 64-page document, Minister, trumpeting how a Labor government would put in place 75 of the 76 recommendations of the Hayne royal commission. Can you confirm that your government will in fact implement all of the outstanding recommendations of the Hayne royal commission that you committed to when you were in opposition?

**Senator Gallagher:** I'm looking for my briefing.

**Mr Jeremenko:** As the minister finds her briefing, I can say that of the 76 recommendations from that royal commission, 54 of those were directed to government, as you would be well aware, 12 to regulators and 10 to industry. The government's position—this carries on from the previous administration in some respects of those recommendations—is that 45 of those government directed recommendations have been completed. Legislation for—

**Senator McKIM:** Under the former government?

**Mr Jeremenko:** I believe certainly most of those will have been, given just the time passage since the election. A further six have had legislation introduced, so that is in this parliament. To address a further six, legislation has been introduced. I will pause there and wait for your next question.

**Senator McKIM:** My question is to the minister. Is Labor going to commit to implementing 75 of the 76 recommendations, as you promised when you were in opposition, or are you walking away from that promise?

**Senator Gallagher:** I will check the record. I am trying to get further advice for you. My understanding is we are committed to the position that we took in opposition to implement the recommendations of the royal commission. If I have that wrong, I will update the committee.

**Senator McKIM:** Will you commit to implementing them in this parliament?

**Senator Gallagher:** Well, I know the Assistant Treasurer and the Minister for Financial Services is focused on implementing the recommendations of the royal commission. This is not my portfolio area of responsibility.

**Senator McKIM:** It's a fairly high-profile issue, though, Minister.

**Senator Gallagher:** Yes. But, to be fair, committing to implementing each one of those recommendations within this term is what I would take further advice on. Certainly the intention is. If there is anything more I can provide, I will.

**Senator McKIM:** My understanding is that we did truly provide a heads-up to you, Minister.

**Senator Gallagher:** Sorry, it hasn't got to me, Senator McKim. I've been in estimates since nine o'clock on Monday morning.

**Senator McKIM:** We're all busy people. Let's be clear about this.

**Senator SCARR:** That's the sort of empathy we expect, Senator McKim.

**Senator Gallagher:** To be fair, I haven't had a lot of time to catch up with messages.

**Senator McKIM:** I understand that. Let's be really clear about this. This was a once in a generation scouring of the banks. Labor made a massive song and dance when you were in opposition about implementing 75 of the 76. By the way, you said you would implement the last one in part, not in full. You can't tell us today whether or not definitively you are going to stick to that policy. That is where we find ourselves here.

**Senator Gallagher:** I'm just trying to find out. Nobody knows—

**Senator McKIM:** Nobody knows whether your promise in opposition is going to be held to in government.

**Senator Gallagher:** No. What I am saying is nobody in my office was aware of you wanting to ask questions about this. That's all I'm saying. You said you gave us a heads-up. I'm saying it is the first I have heard of it. I'm trying to get information for you. I genuinely want to use the Senate estimates to provide information to senators. I'm trying to get further advice for you as we speak.

**CHAIR:** What is the date of that document?

**Senator McKIM:** It is 2019.

**Senator Gallagher:** So it predates this election.

**Senator McKIM:** No. But you've never walked away from it publicly. It's a fair question.

**CHAIR:** Thank you, Senator McKim, for holding up Labor's policy document and speaking to it.

**Senator McKIM:** We'll see if it still is, Chair. I'm just not sure if it still is.

**Senator HUME:** I want to ask some questions first of all about the Treasurer's investment roundtable. When was the idea for the Treasurer's investment roundtable conceived?

**Mr Jeremenko:** I will pass to Ms Kelly on some of the detail. In terms of the announcement of the investor roundtable, that was further to the government's election commitment around super charging superannuation, as it was called. In terms of the time frame, that was an announced election commitment that is now partly being addressed by the investor roundtable and the housing forum.

**Senator HUME:** So it was conceived before the election?

**Mr Jeremenko:** Correct.

**Senator HUME:** Therefore, it essentially came from the Treasurer's office rather than from Treasury. If it was an election commitment, it obviously wasn't a recommendation of Treasury?

**Mr Jeremenko:** An election commitment, going back to some of the discussion in earlier sessions that Senator Smith was prompting around the incoming government brief. Certainly all of the election commitments that the departments track of the government and opposition are briefed upon in that first document, and then subsequent briefings happen beyond that.

**Senator HUME:** But the idea of it wasn't yours; it was the government's?

**Senator Gallagher:** It's an election commitment.

**Senator HUME:** That's what I'm trying to get to. What date was it officially formed?

**Mr Jeremenko:** Sorry, I just missed that?

**Senator HUME:** What date was the roundtable officially formed?

**Ms Kelly:** The government's election commitment was on 15 December 2021. In relation to the formation of the roundtable, on 7 October the Treasurer announced the roundtable. Prior to that, there was also the jobs and skills summit, which identified further work with institutional investors, including superannuation funds, to leverage greater private capital into national priority areas, including housing and clean energy. We continued to provide advice in relation to that to government. On 7 October, the Treasurer announced the roundtable to identify and unlock those investment opportunities.

**Senator HUME:** What was the process then for determining the members of the council?

**Ms Kelly:** As is normally the process, we provided advice to government in relation to the membership. Ultimately, the decision around the membership was with the Treasurer.

**Senator HUME:** So you provided a list to the Treasurer and then the Treasurer chose from that list who he wanted to provide?

**Ms Kelly:** We provide a list to the Treasurer of the different factors composition could take into account. Ultimately, the Treasurer decided who he would like, taking into account that advice.

**Senator HUME:** Did any of the other Treasury ministers have input into that?

**Ms Kelly:** I can only talk to the advice that we provided to the Treasurer. I can't talk to conversations between other ministers within the portfolio.

**Senator HUME:** If you are providing a list, does that mean that it is an open process and that anybody can apply to be on it, or is it a closed process and it's just done on the basis of short lists?

**Ms Kelly:** It was the government's decision who they would like to invite to attend the roundtable.

**Senator Gallagher:** By the invitation of the Treasurer.

**Mr Jeremenko:** I will add. The announcement and the details around the announcement include that there are 20 core participants. Then there will be additional participants depending on the particular focus of each roundtable. So there's a bit of flex in there even beyond what the Treasurer announced in terms of the composition.

**Senator HUME:** Has anybody approached you guys and said, 'I'd like to be on this?'

**Mr Jeremenko:** Not me personally, but I would not be surprised if it was revenue group, who look after housing. In terms of that housing overlay, I am certain that we have been approached. Unless Ms Kelly knows, I can take that on notice.

**Ms Kelly:** No-one has approached me personally in relation to wanting to be on the roundtable. I suspect most of them would have been to the Treasurer's office.

**Senator HUME:** What was the criteria, then, to determine membership?

**Ms Kelly:** Given the roundtables were around harnessing institutional investment, in terms of the criteria we were looking at, it was around who would be able to support the harnessing of institutional investment, which is why you will see in the list announced by the Treasurer that the composition includes a range of institutional investors, fund managers, banks and superannuation funds. It is the range of institutional investors.

**Senator HUME:** What were the objectives of the council, then?

**Ms Kelly:** I refer to the Treasurer's press release in relation to the roundtable, where he identified that the purpose is to identify and unlock investment opportunities in national priority areas.

**Senator HUME:** You have a lot of people in that room who are competitors. I am assuming that there are some sort of codes of conduct or rules about exchanging information during that council. Are there some guard rails around what can be discussed in that room and what can be taken away from it?

**Ms Kelly:** The first roundtable hasn't occurred yet so the actual process in relation to the governance and the rules of engagement in the roundtable are still being determined.

**Senator HUME:** Have they met yet?

**Ms Kelly:** No. The first one hasn't met yet.

**Senator HUME:** What about the Treasurer, then? Given that the government has planned to establish a \$15 billion National Reconstruction Fund, will he be bound by obligations of that code of conduct or whatever the rules of engagement are within that investment roundtable?

**Senator Gallagher:** They are different things. The National Reconstruction Fund is actually a fund that the minister for industry and I will be involved in. The investor roundtable is separate. It's a different forum.

**Senator HUME:** Do you have rules, then, around what it is that you can disclose to shareholder ministers for that National Reconstruction Fund?

**Senator Gallagher:** I'm not quite sure what you're getting at in terms of what I can disclose.

**Senator HUME:** There must surely be rules around what—

**Senator Gallagher:** Obviously, there is the ministerial code of conduct that has rules around conflicts of interest and declaring them appropriately. Shareholder ministers don't run the funds either.

**Senator HUME:** Will the participants in the investment roundtable potentially benefit from the National Reconstruction Fund?

**Senator Gallagher:** It's impossible to say, I think, in terms of the National Reconstruction Fund. It hasn't been established. Therefore, there haven't been any proposals that have gone for consideration by a fund that hasn't been established yet. But appropriate governance, good governance, can manage any conflict that would arise. That absolutely is a focus of not just the NRF but all the specialist investment vehicles and the GBEs and all the rest that I'm involved in as a shareholding minister.

**Senator HUME:** I suppose that's what I'm trying to get to. I might not be describing it very well. I wonder if there are governance rules around the competition impacts. You have essentially a series of regulated industries all sitting around a table to discuss investment priorities. At the same time, government is moving into this with a co-investment fund. What are those governance rules that you've got around that investment roundtable to ensure that there aren't conflicts or that conflicts are managed?

**Mr Jeremenko:** There is certainly no intention that this investor roundtable is held behind closed doors. This is about bringing together all of those different participants to share ideas and try to unlock some of the perhaps more innovative financing structures that might make, in the case of superannuation, the investment of members'

funds meet the best financial interests duty in social and affordable housing, for example. All of the participants will, we hope and the government hopes, share very openly their views. I don't see that there is the need for a formal code of conduct or rules of engagement in respect of competition concerns that might arise.

**Senator HUME:** What about non-disclosure agreements?

**Mr Jeremenko:** I'm not aware that is going to be required at all.

**Senator HUME:** It is done openly. So there's no confidentiality provisions or anything like that?

**Mr Jeremenko:** As Ms Kelly pointed out, the first roundtable hasn't occurred. It's planned for this month in November. Unless I am not informed that there has been a request, there's no suggestion that there will be any signing of such documents.

**Senator HUME:** Are any small businesses or small business organisations represented on the council?

**Senator Gallagher:** That are on the roundtable?

**Senator HUME:** The investment roundtable, yes.

**Senator Gallagher:** A list was provided. I think it's trying to deal, again, with a different section of large investors, major banks, global asset managers and large superannuation funds to look at unlocking institutional investors and to look at unlocking any barriers to investment opportunities. I think it's probably a different section.

**Senator HUME:** So it's not really something that retail investors could be involved in other than indirectly via those large organisations?

**Senator Gallagher:** Well, it's an investor roundtable.

**Mr Jeremenko:** It's a roundtable. As per my earlier comment, they are the 20 core participants that have been announced. There is the potential for additional participants. The government will be conscious not to have such a number of participants that in whatever time is available—a couple of hours or so—it's not a workable discussion.

**Senator Gallagher:** We really appreciate the preparedness of people to come and work with the government.

**Senator HUME:** I am going to switch things up a bit. I have only a couple of minutes worth of questions on the consumer data right.

**Mr Jeremenko:** Ms O'Rourke is your person for the consumer data right.

**Senator HUME:** I remember that Ms O'Rourke has skills in this area. I suppose my concern, Ms O'Rourke, is that this was such a big deal in the Morrison government. It had all the potential in the world, but it seems to have just gone quiet for a while. I'm just wondering whether you can give us an update on the progress of the rollout and the implementation of the CDR.

**Ms O'Rourke:** I would be pleased to. I am pleased to say that things have not gone quiet with the rollout of the consumer data right. There has been a lot of activity through the course of the last few months. I would be pleased to give you some information on it. Since the new term of government, there have been consultations in a number of areas. The first is in relation to new CDR rules for the expansion of the program to the telecommunications sector. We've also coupled that with consultation on what we are describing as operational enhancements and maintenance of the consumer data right rules. In there in particular are some provisions that address some of the frictions for small business participation in the consumer data right. So that part of the program has been progressed. In relation to the proposal to extend the consumer data right to the open finance sector, we've been working on a non-bank lending sectoral assessment. There has been active consultation on that, and a draft designation instrument has been consulted on. The final piece of consultation that has been occurring by the Treasury and the minister is in relation to legislation to introduce action initiation.

**Senator HUME:** I did see it.

**Ms O'Rourke:** So a draft bill has been out there. In addition to the consultation that I've just described, there has been ongoing consultation by the data standards body in relation to both standards associated with some of those reforms and maintenance of the standards that apply. There are updates by the OAIC in relation to the privacy safeguards and information and guidance in relation to those. The ACCC has just recently published a consultation paper to address issues around data quality, because that is an important part of the maintenance of the framework that those data quality issues—

**Senator HUME:** When you said data quality, this is the data that is coming out of the banks now?

**Ms O'Rourke:** That's right.

**Senator HUME:** Is that what you are talking about?

**Ms O'Rourke:** Yes. We have had an operational working group to think about how best to ensure that any concerns that are raised by accredited data recipients about quality issues are appropriately addressed. There is an incident management system that the ACCC administers. That is the primary mechanism through which particular issues, if there's a question or a concern, can be raised. They can be directed to the relevant data holder for resolution. The ACCC has that triaging capacity to help us make sure that those issues are resolved. The ACCC has recently also done a consultation paper to make sure that if there are any issues that aren't being resolved through that, they are aware of them so we can get on to their resolution.

**Senator HUME:** That is quite reactive. Is there any movement towards a proactive quality assurance of the data? Are there audit processes or anything like that?

**Ms O'Rourke:** The ACCC has a range of activities that it undertakes as the primary regulator in relation to the consumer data right. By no means is the incident management framework their only means by which they are ensuring issues are identified and resolved. So there's a lot of engagement through the accreditation process, the onboarding process. If there are issues that are raised, there are numerous consultation fora and bilateral and other meetings that the ACCC attends to make sure, to the extent any issues are arising, that there is a means by which they are being reconciled. So obviously as well as those kind of proactive pieces, there's compliance and enforcement. There is a whole range of activities. I think the ACCC will have an opportunity to provide any additional information on their activities.

**Senator HUME:** How many people are now working in your division?

**Ms O'Rourke:** The consumer data and digital division has three branches. Two of them are devoted to CDR only. They are approximately 22 people each. In our third branch, we have some people working on CDR PMO. We've also got some people working on the modernising business registers and the e-invoicing reform.

**Senator HUME:** So how many did you say specifically working on CDR?

**Ms O'Rourke:** Around 50. That is in Treasury. In Treasury as well, we've got the data standards body, which is a separate group of people.

**Senator HUME:** That's fine. What are the next milestones that we should expect in the rollout?

**Ms O'Rourke:** In relation to those consultation processes that I described, they will then lead to government decisions. They will be in relation to that question about finalising rules in relation to telecommunications and what I have described as those operational enhancements. That consultation process will conclude. Submissions have been received in relation to the action initiation bill. Finalising the consideration of those submissions with a view to introducing that bill is another major piece of work. The decision as to—

**Senator HUME:** When are we expecting that one?

**Ms O'Rourke:** Imminently. I think there is every effort to prepare advice for that as quickly as we can. The process has only recently concluded. I don't have a particular date for you, I'm sorry.

**Senator HUME:** Has either the Treasurer or, probably more likely, the Assistant Treasurer given any significant headline speeches or industry events around the CDR? I haven't seen any. That is why I ask.

**Ms O'Rourke:** I think probably the most recent is the speech that was prepared for the Intersekt conference. That was quite recent. The Assistant Treasurer provided a speech in relation to that. I would like to take on notice if there have been other events or speeches because I wouldn't want to mislead you as to their number or when they were.

**CHAIR:** Senator Hume, I might move to another block and come back to you.

**Senator HUME:** Can you give me one last question?

**CHAIR:** Yes, sure.

**Senator HUME:** Can I get a sense of whether there has been any feedback from any of the sectors whether it's going to plan?

**Ms O'Rourke:** Sure. During the last few months, we have had the statutory review process. Elizabeth Kelly was engaged to be the statutory reviewer of the consumer data right. That gave an opportunity to give everyone in the CDR community an opportunity to give feedback. We've published that review. There's synthesis there. In addition, all of the submissions that were provided are available. If there are particular ones that we can help you or your office find, we would be pleased to.

**Senator HUME:** I want to make sure it's all running on time and to the original time line.

**CHAIR:** We are still with Treasury markets group. Is anyone seeking a block of time? There are a few people to go still with markets.

**Senator McDONALD:** Thank you very much, Chair. I want to ask about the compensation scheme of last resort. With the compensation scheme of last resort legislation in front of the Senate, I would like to ask Treasury a question about the implication for the government and other stakeholders of a large-scale unfolding unpaid compensation matter. The Australian Securities and Investments Commission has recently issued a couple of media releases where they've encouraged the financial advice clients of a company called Dixon Advisory that is currently in voluntary administration to submit claims for compensation to the Australian Financial Complaints Authority. Its media releases have highlighted the proposed establishment of the compensation scheme of last resort. Seemingly, this has caused a substantial number of complaints to be made. It appears that the primary driver of these complaints is the fact that these clients were advised to invest in and retain investments in a financial product provided by a related entity that has suffered a significant decline in value. These complaints are being held by the Australian Financial Complaints Authority and will be assessed once the compensation scheme of last resort has been finalised. Can you please tell me who will pay for these claims under the compensation scheme of last resort?

**Mr Jeremenko:** I will throw to Ms Zaheed. I want to make a bit of a link initially to Senator McKim's questions earlier on the implementation by the government of the royal commission recommendations. As you rightly point out, the legislation for this matter was introduced into the House. It was passed the House and has received favourable report from the Senate from this committee, the Economics Legislation Committee. But the CSLR, if I can use that acronym, is one of those key remaining recommendations from the royal commission that the government is showing good faith in continuing to implement. I want to give that as a bit of a linking point. I will pass to Ms Zaheed on the substance.

**Ms Zaheed:** As you have noted, there is a large number of complaints that are currently sitting with AFCA that relate to the Dixon Advisory matter. AFCA has put those complaints on hold. The legislation that is before parliament in relation to CSLR has a few different tranches of who ends up paying for this compensation. The first step in that process is obviously going to be for AFCA to assess each and every complaint, make a determination in favour of the complainant and then have a level of expectation that compensation won't be available through Dixon. Because the firm is in voluntary administration, that is quite likely to be the case. If the complaints were lodged with AFCA prior to the date of production, those complaints are compensated through a levy that is proposed to be imposed on the top 10 financial firms. If those complaints were lodged with AFCA after the introduction of that legislation, who pays for the compensation if those determinations are made will depend a bit on the timing of when those decisions are made by AFCA. If the decision is made within the first financial year of the operation, that compensation is going to be paid for through Commonwealth funding. If it is at a later period, it goes into AFCA's levy model. There are different processes to make an assessment of who pays on that, depending on how many other complaints are in place. So it depends a bit on when the complaint was lodged, when AFCA makes a determination and when that flows through the CSLR system.

**Senator McDONALD:** Thank you. I'm done.

**Senator BRAGG:** I want to tidy up a couple of the questions from before. Mr Jeremenko, can you step me through the creation of the technical working group on the super reforms?

**Mr Jeremenko:** I will ask Ms Kelly to do that because she has been intimately involved in it before my time.

**Senator BRAGG:** Can you explain to me what the time line was for the establishment of the group?

**Ms Kelly:** The first thing I note is that Treasury regularly uses technical working groups to better inform our policy solutions. When we consult, a lot of people are very forthcoming with the problems. But we need solutions, so it is normal practice for us to use technical working groups.

**Senator BRAGG:** It's cheap labour, yes?

**Ms Kelly:** Well, it's about harnessing good ideas to come to good policy outcomes. In terms of the actual working group for the Your Future, Your Super review, when we looked to the formation of that group, it was around harnessing diverse opinions in different parts of the sector. So there are academics, thinktanks and different parts of the industry. We were mindful of composition around getting diverse opinions. In terms of the—

**Senator BRAGG:** Did you select the people?

**Ms Kelly:** We made recommendations to the Assistant Treasurer in relation to the criteria for the composition and did suggest some names. Ultimately, it was the Assistant Treasurer and Minister for Financial Services who determined the membership.

**Senator BRAGG:** So does the working group of 12 people reflect your advice, or is that a mix?

**Ms Kelly:** It takes on board our advice, but it ultimately reflects the decision of the Assistant Treasurer.



**Senator BRAGG:** Do you know what criteria the Assistant Treasurer used to select his own representatives?

**Ms Kelly:** I would imagine he took on board our advice and then made decisions based on his own views.

**Senator BRAGG:** You don't know what those views are?

**Ms Kelly:** We have not had a direct conversation about his views. For us, it was about having subject matter expertise. It was representation across the industry. It was about people with an interest in constructive engagement and, again, that diversity of background and experience.

**Senator BRAGG:** Have you got minutes of these meetings?

**Mr Spear:** We don't have minutes in terms of a set of words that was agreed by all the members of the meeting. As you would expect, though, we did take detailed notes of the issues that were discussed at the meetings.

**Senator BRAGG:** Can you provide that?

**Mr Spear:** We can take that on notice.

**Senator BRAGG:** That would be helpful. There was an address by the Assistant Treasurer I think yesterday at the AFR super and wealth summit. Do you know about that?

**Ms Kelly:** Yes.

**Senator BRAGG:** Did you provide any input to that?

**Ms Kelly:** As is normally the case, when a minister is making a public statement, they may ask us to fact check their speech. In this instance, we did fact check his speech.

**Senator BRAGG:** Is his speech going to be on the Treasury website?

**Ms Kelly:** It would not normally appear on the Treasury website, but he may release the actual speech.

**Mr Jeremenko:** I will clarify. Ministers speeches will appear. What you are asking is whether it will appear on the normal part of the Treasury website where ministers' speeches. It will be there already, not that I've looked. It usually goes up a lot quicker than a day.

**Senator BRAGG:** Do you know why it's not on there now?

**Mr Jeremenko:** No, I don't, but I can take that up with our corporate group.

**Senator Gallagher:** It was hardly a secret address.

**Senator BRAGG:** It's important that we have transparency on these matters.

**CHAIR:** Everyone who was there saw it.

**Senator BRAGG:** I would imagine it would be available on the Treasury website. How long do you think it will take to get it on the website?

**Mr Jeremenko:** I'll take that on notice.

**Senator Gallagher:** I imagine that people are responding now.

**Mr Jeremenko:** We have a team of people in Treasury keenly listening to every session.

**Senator BRAGG:** Well, we wish you well in your website development endeavours. In that address, the minister referred to some of his views on the balances in the funds. Is that referring to work done by Treasury?

**Ms Kelly:** The information that was contained in the speech was referencing information contained in a retirement income review around large balances. It also talked about information the ATO had released under FOIs on the size of SMSFs, the top 100. It commented on a number of things in the public domain. ASFA made comments in relation to large balances. Even the SMSF association has made comment. So he referenced a lot of commentary already in the public domain in relation to that.

**Senator Gallagher:** Factual information. Importantly, I think a key focus was around the objective of super—linking those two things. It is setting what is an objective of super and then using current factual information to facilitate that discussion, which is having account balances over \$100 million, in line with the purpose of super.

**Senator BRAGG:** I understand that.

**Senator Gallagher:** I thought you might.

**Senator BRAGG:** It's more getting to the point of where we were earlier today, which is whether there was a piece of work done on super taxation to inform this particular address.

**Mr Jeremenko:** To inform this? No. This speech was not based on any. Normal fact checking would have occurred. It is departmental fact checking.

**Senator Gallagher:** But we do want to settle on the objective of super.

**Senator BRAGG:** But that's not a tax policy.

**Senator Gallagher:** It's been around for years and years—understanding what your objective is and what super exists for are linked.

**Senator BRAGG:** Just so I understand, so the record is accurate, your answer is there has been no body of work done on super taxation to inform this speech or any other process of government so far?

**Mr Jeremenko:** The secretary, in his opening statement yesterday, referred to the budget pressures. He made quite clear the likely combination of spending restraint and increases in taxes that are going to be required to reduce deficits and lower debt over time. So, in that context, what I want my group to do and what the secretary wants the department to be doing every day is looking at ways that we can usefully advise the government along those lines. Given that, as Ms Kelly said, the contents of Minister Jones's speech were based around a number of facts in terms of superannuation balances that are out in the public domain, it's absolutely the case that we've provided advice to governments on super tax concessions, the pressure they are placing on the budget and their trajectory over time.

**Senator BRAGG:** So you have made recommendations to governments about tax policy?

**Senator Gallagher:** No. The evidence today has already answered that. They have factually checked information that would be used in a speech given by the Assistant Treasurer and probably informed by the retirement income review that was underway for two years, which looked at everything, including tax, under the former government. This is government doing government's work, day in and day out.

**Senator BRAGG:** I understand that. Of course, you know the retirement income review didn't make any recommendations. It was to work out whether or not there has been any particular recommendations made about tax policy in this area. Has there been any work commissioned to look at a particular tax option?

**Mr Jeremenko:** As I was saying, in terms of the work that certainly the retirement income division and various areas of markets groups and broadly the Treasury does on a day-to-day basis, we are consistently hearing from stakeholders about ways they want to improve and reform the broader tax system and, in our case, the superannuation and tax interplay. As the minister rightly says, the retirement income review commissioned in 2019 reporting in 2020 has some 600 pages of analysis and draws a number of conclusions—you are right; not recommendations—that are still very valid in today's context. In addition, Intergenerational Report last year that the government will be updating and refreshing next year makes the point that by 2040, the cost of superannuation tax concessions will exceed the cost of the age pension. That is a very stark reminder to policymakers across the department and across the government that it's an area that we need to be alive to and constantly be working on.

**Senator Gallagher:** There are stakeholders in the sector who are pretty vocal about what they think should happen. So there is a live discussion.

**Senator BRAGG:** What feedback has there been from the industry?

**Senator Gallagher:** In general?

**Senator BRAGG:** On the kite flying, on the super tax ideas and what not?

**Senator Gallagher:** I don't know that it's kite flying. I don't know that a speech can be expressed that way. Yesterday's speech was progressing the objective of super. You guys had a fair crack at it too but didn't progress it. There is a shared understanding of the purpose of super, which is a good place to start. The minister is right to try to settle that question, because I think it does inform discussions down the track about super having balances in the order of \$100 million to \$400 million. Super is about a dignified retirement. You understand all that. I haven't been involved in the discussions, but my understanding in a general sense is that the discussion—some of that, I think, was in the *AFR*, if I am right, that I read this morning or maybe yesterday—was that industry stakeholders probably don't have a unanimous view but think it is worthy of further debate.

**Senator BRAGG:** On the question of the objective, how does that sit alongside this proposal we have before parliament that would suggest that if you're in a faith-based super fund, you can have a lower retirement income? Where does that sit?

**Senator Gallagher:** I think the faith based one—

**Senator BRAGG:** The objective of super being about retirement income or being in a faith based fund and putting that before money?

**Senator Gallagher:** Again, I will be corrected if I am wrong. I think the one about the faith based measure is so that they are not penalised for decisions they make based on their faith or the constraints of their faith. Their members are joining because of that. Members are going into that fund for a particular reason. I'm not sure it is at odds with that. Maybe I'm not drawing the two things together as you would like me to, but that is a separate response to a separate problem.

**Mr Jeremenko:** I will add that the lack of a legislative objective, which has plagued the superannuation space for a number of years, has not prevented governments legislating in the super space. Yes, an objective is something that pretty much unanimously across the superannuation industry they agree should be set. But we certainly don't see it as a prerequisite to any legislative moves in the superannuation space.

**CHAIR:** Thank you very much, Senator Bragg. I will just do a time check because I'm aware that our next witnesses from ASIC are here and ready to go. I think Senator McKim has a few questions for markets, and then we'll conclude with markets.

**Senator BRAGG:** I have one more.

**CHAIR:** I will go to Senator McKim.

**Senator McKIM:** Minister, you have had some time to take some advice. Can you update us on the government's position on implementing the recommendations of the banking royal commission?

**Senator Gallagher:** Yes, I can in a general sense. I haven't found anyone who got a heads-up yet. I'm also on to that case.

**Senator McKIM:** I'll come and speak to you about that after. I'm not intending to name and shame you. I will come and speak to you about that afterwards.

**Senator Gallagher:** Fair enough. The advice I have is that the evidence I gave earlier was right—or correct. Further, some of the recommendations are being progressed through the quality advice review, where there are further consultations. The quality advice review will finalise a report mid-December. Government will consider it once it's finalised.

**Senator McKIM:** Just so that the committee can be abundantly clear, Minister, the advice you gave earlier was that—

**Senator Gallagher:** We are committed to taking action on 75 of the 76 recommendations, yes.

**Senator McKIM:** Will you commit to introducing legislation and giving best efforts to deliver them in this parliament?

**Senator Gallagher:** I haven't got further advice on that. Again, I think the evidence I dealt with earlier is that, yes, this is a priority for the government. Not all of it requires legislation. Yes, there will be a significant effort this term.

**Senator McKIM:** With regard to No. 76, if I can put it that way, which is actually recommendation 1.3 of the royal commission, do you still hold to the position that you took on that recommendation in this 2019 document, which is—

**Senator Gallagher:** Which recommendation? Can you remind me?

**Senator McKIM:** That was around remuneration for mortgage brokers. You did not commit to that recommendation in full. I actually understand why Labor took that turn. I'm not being critical of that position, just to be clear. You did support prohibiting trailing commissions. I want to be clear that still remains your policy?

**Senator Gallagher:** Yes.

**Mr Jeremenko:** Ms Zaheed has the details of that.

**Ms Zaheed:** Recommendation 1.3 was actually legislated under the former government. Legislation passed parliament on 6 February 2020 and came into effect on 1 January 2021. The legislation put the value of the upfront commission to be linked to the amount drawn down, banning certain types of commissions for mortgage brokers, volume based commissions and capping soft dollar benefits. That recommendation has actually been implemented and is in effect.

**Senator McKIM:** Just to be clear, did that legislation ban trailing commissions?

**Ms Zaheed:** No.

**Senator McKIM:** I am asking, therefore, Minister, whether the policy in this document and the Labor document of 2019—

**Senator Gallagher:** I will get an update for you, Senator McKim.

**Senator McKIM:** Thank you.

**Senator BRAGG:** I have one last question. With the consultation that was released earlier this year on the crypto asset secondary service providers licensing and custody stuff—

**Senator Gallagher:** We lost half of that through your head being down.

**Senator BRAGG:** I was just reading a piece of paper.

**Senator Gallagher:** It was like a tunnel.

**Senator BRAGG:** I have to try to keep some things secret.

**Senator Gallagher:** An audio tunnel.

**Senator BRAGG:** Where are we up to with the crypto asset secondary service providers licensing and custody arrangements?

**Mr Jeremenko:** I will pass to Ms Luu in a second. The government has announced that the Treasury will undertake a token mapping exercise as a first step. So the government is certainly keen to start the process of creating a regulatory framework in this area. But the first step is going to be the token mapping.

**Senator BRAGG:** What about the licensing of the crypto markets?

**Mr Jeremenko:** That is my cue to call on Ms Luu.

**Ms Luu:** As Mr Jeremenko mentioned, the government in August this year committed to comprehensive reforms in crypto. It announced that we would undertake the token mapping consultation paper first. We are concurrently working on licensing and custody. As you can appreciate, it's reasonably complex, so we are doing that concurrently. But at the moment we are prioritising the token mapping work. We hope to be able to release something early next year on licensing and custody.

**Senator BRAGG:** The government hasn't asked you to stop work on licensing and custody?

**Ms Luu:** No.

**Senator BRAGG:** That's good.

**Ms Luu:** I think it's outlined in the media release in August this year.

**Senator BRAGG:** Obviously, if one of these crypto market things falls over, it will be pretty ugly. What are you going to do in the interim?

**Ms Luu:** In the interim?

**Senator BRAGG:** Well, it's completely unregulated.

**Ms Luu:** Well, to the extent that an entity providing a crypto asset is classified as a financial product, it would fall under the ASIC oversight and would have the normal consumer protection

**Senator BRAGG:** Well, most of them are not, as you know.

**Ms Luu:** There are also general provisions under the ACCC for consumer protection.

**Senator BRAGG:** You are saying that you are not going to get to this until next year?

**Ms Luu:** We are working on token mapping.

**Senator BRAGG:** Hang on. If you are a consumer and you are using one of these crypto markets and you bought crypto on one of these markets, you are saying that your solution is, 'Come back next year and we'll regulate you next year?'

**Ms Luu:** To the extent that there are probably some crypto assets that could be considered a financial product. If they are, they would fall under the normal protections that exist today.

**Senator BRAGG:** But not many are, as you know. What are the interim arrangements that will protect consumers?

**CHAIR:** Those that have been in place for 10 years under your government. Where are we going with this?

**Senator BRAGG:** I wasn't part of that. I keep on saying that. Go on.

**Ms Luu:** To the extent that they are considered a financial product, they would fall under the Australian financial services law and would have the normal consumer protections under that.

**Senator BRAGG:** I appreciate your time.

**CHAIR:** Thank you, Senator Bragg. I believe that is all the questions we have for Treasury Markets Group. Thank you very much for appearing today. I also thank Revenue, Small Business and Housing group within the Treasury portfolio for appearing today as well. You all go with our thanks. Thank you very much.

**Australian Securities and Investments Commission**

[15:48]

**CHAIR:** We welcome representatives from the Australian Securities and Investments Commission. Welcome, Mr Longo, and officials. Mr Longo, do you have an opening statement that you wish to give?

**Mr Longo:** I do.

**CHAIR:** Please proceed.

**Mr Longo:** Thank you for your welcome. I am pleased to appear before the committee once more. Welcome, Senator Walsh, as the new committee chair. I am joined today by deputy chairs Sarah Court and Karen Chester; commissioners Sean Hughes and Danielle Press; chief operating officer Warren Day; the executive director of strategy, Greg Kirk; and our general counsel, Chris Savundra. We value the opportunity to appear before the committee. It's timely to be speaking to you today, with ASIC and our enforcement work once again in the public eye. This sort of attention shows just how important the work of ASIC is to the public, the financial and corporate eco system and the Australian economy as a whole.

I'm going to take a bit of time today to talk about what we do, as I know there are many new members on this committee. Our remit is broad and significant. We give careful consideration to how we can deliver on this remit within our resources. Last week, at our first ASIC forum in three years due to the COVID disruption, I spoke about the clarity of purpose underpinning our strategic and enforcement priorities. We developed these priorities to ensure ASIC's finite resources are directed to achieving strong outcomes that address the greatest consumer and investor harms. We will continue to deliver on those priorities.

For the benefit of the new members on the committee, I will take a minute to explain ASIC's regulatory remit, functions and oversight. ASIC has the broadest remit of similar regulators around the world. We regulate corporations, markets, financial services and consumer credit. This seems to be expanding as markets and services evolve. In essence, ASIC has the function of monitoring and promoting market integrity and consumer protection in the Australian financial system. ASIC's function complements those of other regulators, such as the prudential work of APRA and the competition and consumer work of the ACCC. Of course, you would be aware that in ASIC's criminal investigations, where we believe we have sufficient evidence, we refer the matter to the Commonwealth Director of Public Prosecutions for them to decide whether to commence a criminal prosecution. Most importantly, through our enforcement work, we hold to account those who contravene the law. We do this using a broad toolkit.

At last week's ASIC forum, we outlined our enforcement priorities for 2023. As always, ASIC is deeply committed to enforcement. To reiterate Deputy Commissioner Sarah Court's comments at the forum, there has been no lessening of enforcement in the last 12 months. In the last financial year alone, ASIC completed more than 1,000 surveillances and commenced more than 100 investigations. We completed 61 civil litigation actions, secured over \$229 million in civil penalties and commenced another 75 civil litigation actions. ASIC secured criminal convictions against 33 individuals and commenced another 50 criminal actions. ASIC also takes protective action, including disqualifying and banning people from directing companies and helping to protect small businesses. We took corrective action to address more than 60 instances of potentially misleading or deceptive conduct in wealth management. We continue to actively target cases of high deterrent value and those involving egregious harm or misconduct.

One of the challenges for a regulator is to strike the right balance. We need to take decisive action, where appropriate, against those who have perpetrated harms on consumers and investors. We also need to focus on deterrence, education and prevention to reduce consumer and investor harms arising in the first place.

We don't take this responsibility lightly. We have new powers following the royal commission, which allow us to take stronger action against misleading conduct and reduce the risk of harm to consumers. I'm sure we'll have an opportunity to speak about our DDO work later and the 11 stop orders we have issued under that new power. We have 10 targeted surveillance projects on foot focused on sectors where we are seeing consumer harm from poor design and distribution practices.

ASIC has played an important role in overseeing remediation activity across the financial system. Over the past six years to September 2020, ASIC has overseen at least \$5.9 billion in remediation for an estimated 7.3 million Australian consumers for failures identified. Around a further \$1.5 billion is yet to be paid to an estimated 2.8 consumers in remediations ASIC is currently monitoring. Our guidance, issued in September this year, is the culmination of this work. It puts the onus on industry to get on with fair and timely remediations, returning money owed to wronged consumers.

I will take this opportunity to speak about consumer concerns, complaints and disputes. Some investors and consumers have faced terrible outcomes and harms arising from misconduct that is within our regulatory remit. I'm acutely aware that people's financial security can often be on the line. ASIC has secured significant penalties and taken decisive regulatory action, and this is important. We recognise that we cannot be everywhere, so we do think very carefully about our choices because we have to be careful about how we use our resources. We cannot investigate every matter that comes to our attention. We have a range of considerations we take into account before we pursue a matter. To complement ASIC's strong regulatory focus, there is a framework set up by parliament to ensure consumers have access to a broad and efficient redress system. The vast majority of consumer concerns, complaints and disputes in the financial sector are resolved through the internal dispute resolution mechanisms that financial firms are required to have in place. Those matters which are not resolved through IDR can be raised with the Australian Financial Complaints Authority. You would have some sense of the scale of complaints from AFCA's appearance this afternoon. In the 2022 financial year alone, for example, AFCA received and resolved more than 70,000 complaints and achieved more than \$207 million in compensation to consumers.

ASIC plays an important part in the system by overseeing an effective licensing regime, releasing guidance for industry participants and assessing all the information and intelligence we gather about potential misconduct. Reports of misconduct, wrongs, are an important source of information for our enforcement work. We also use wrongs together with the much larger IDR and AFCA datasets to identify patterns and trends and broader systemic problems that may require ASIC intervention.

We are also administering a new reportable situations regime, which commenced on 1 October 2021. This also came out of the royal commission. This will further complement the intelligence that we were able to consider in delivering on our regulatory and enforcement priorities. ASIC's first report under that regime published late last month shows that some improvements are needed and that more work needs to be done to appropriately identify and report the root cause of breaches. Our responsibilities are set to expand further with the soon-to-be introduced financial accountability regime and our expanding involvement in crypto regulation.

I have much more I could say on our strategic priorities, including our work on crypto assets and greenwashing and some groundbreaking regulatory activity we are undertaking. I would also like to note that, in addition to Senate estimates, ASIC is subject to multiple layers of oversight. The Parliamentary Joint Committee on Corporations and Financial Services has oversighted ASIC and the corporations legislation. In addition to reg hearings, this committee frequently conducts inquiries on specific topics, including enforcement. Our annual reports and activity are subject to review by the House of Representatives Standing Committee on Economics. We respond to inquiries into ASIC's conduct in specific matters by the House of Representatives standing committee and the Senate Economics References Committee. ASIC has some powers to issue legislative instruments where needed. These are subject to parliamentary oversight by the Senate Standing Committee for the Scrutiny of Delegated Legislation.

There is, of course, ministerial oversight. ASIC, in accordance with cost recovery regulations, is industry funded. We publish a cost recovery implementation statement annually which explains how we recover the costs of our regulatory activities from each industry subsector under the funding model. The CRIS, as it is known, ensures we are transparent about our estimated costs and levies and helps industry participants plan and budget for this. The industry funding model is itself currently the subject of a government review announced earlier this year led by Treasury. ASIC is supporting and cooperating with that review.

Finally, following the royal commission, the government established the Financial Regulator Assessment Authority. This body is tasked with reviewing ASIC every two years. This year, the FRAA undertook its first assessment of ASIC's work and operations, and its report was tabled by the government on 25 August. The FRAA, as it's known, acknowledged ASIC's contribution to Australia's financial system and found us an effective and capable regulator in the space. It noted that we had the largest remit of any comparable regulator globally. The FRAA made four recommendations around enhancing our use of data and technology, strengthening our engagement with stakeholders, enhancing our ability to measure effectiveness and capability and continuing to broaden our mix of skill sets. These areas we have been working on and are working on right now.

In addition to the external oversight, ASIC is also transparent about what we are doing and what we are planning to do. Where we can do so without prejudicing our investigations, we also publicly comment on our work. We are not afraid to call out wrongdoers. We have developed strategic and enforcement priorities and launched our corporate plan in August. Of course, our annual reports are public documents so we can be held accountable in those ways too. This robust oversight helps us to ensure that we are constantly reflecting and reviewing our processes to remain a fit-for-purpose, active regulator. I thank the committee for your patience in

listening to my opening statement. I and the commission felt it was very important to open in that way. I thank you. We are obviously open to taking questions.

**CHAIR:** Thank you very much, Mr Longo. Before I see who is seeking the call, I will remind senators that we will proceed in 15-minute blocks, as we have been doing during these hearings.

**Senator SCARR:** Thank you, Chair. Thank you to our witnesses for appearing today. I must admit that we don't have Ms Armour with us, which is a change. I do hope she is doing well. I note your fulsome acknowledgement in the annual report, which I thought was quite kind of you, Chair. I've gone through the corporate plan for ASIC. I think there was one area in particular. Senator O'Neill might have a view on this as well, given some of the evidence we heard yesterday from AUSTRAC in relation to compliance with Australia's AML laws. Over the last number of years, we've had the significant civil penalty issued to Tabcorp of \$45 million. We then had the civil penalty of \$0.7 billion issued to CBA and \$1.3 billion to Westpac. AUSTRAC's investigation into Crown casino has led to the filing of a statement of claim now of 863 pages in the Federal Court with respect to Crown's compliance or non-compliance with AML laws. In the opening statement yesterday, the CEO of AUSTRAC provided advice that AUSTRAC also has enforcement investigations underway into the Star and SkyCity casinos. Last week, external auditors were appointed to Sportsbet and Bet365. I look at this, Chair, and I wonder. Shareholders around this country have suffered the consequences of those huge civil penalties and still we see these compliance issues in this very important area of the law. Where does it sit in terms of ASIC's responsibilities, in particular to ensure that individual directors and officers of companies operating in this space are complying with the law?

**Mr Longo:** Our strategic priorities reflect our best judgement of where we should be putting our resources. When it comes to money laundering, we have a specialised agency that is addressed to that issue. We need to take that into account in our how we prioritise our own activities. We work very closely with AUSTRAC. We share information. There has been obviously a range of developments, particularly in the gaming area, in the last 12 months, where we've been talking with AUSTRAC about what action we might be able to take arising out of those incidents. Your question is really addressed to our priorities. As I said in my opening statement, we have a very wide remit. We have to make choices about where we put our priorities. The commission is not saying that in an appropriate case we wouldn't take action against an entity or its directors arising out of this kind of misconduct. Indeed, as we all know, the inquiry into Star has just been completed. We have inquiries ongoing in connection with the Star situation. So we are not indifferent to this area. But in terms of priorities, it's not a major priority for us.

**Senator SCARR:** Do you recognise, Mr Longo, that as the CEO of AUSTRAC, Ms Rose, said yesterday, AUSTRAC does not have any ability to do anything else except to issue civil penalties against the companies? There is a bit of a lacuna in terms of what they can do, a bit of a hole, in terms of holding individuals who have statutory duties accountable. Do you recognise that it really is up to ASIC to hold—this is certainly based on what Ms Rose told us yesterday—to take action against individual directors and officers with respect to breaches in this area?

**Mr Longo:** I will ask Deputy Chair Court to take the matter further. We are not saying that we are not going to take action against directors or boards. It does depend on the particular circumstances.

**Senator SCARR:** Sure. I appreciate that.

**Mr Longo:** It's certainly quite a significant thing to be imposing civil penalties of that magnitude against a corporate entity. It's not in every case that there's a case against the directors as well. This is something we talk about a lot within ASIC. It is an area that we continue to be focused on.

**Ms Court:** I will expand on that a bit. I think the point you are making to us is a very fair question for members of the public to say, 'What does it take for ASIC to take action in relation to directors?'

**Senator SCARR:** And officers.

**Ms Court:** And officers.

**Senator SCARR:** It's not just directors.

**Ms Court:** Indeed.

**Senator SCARR:** It's particular officers with particular responsibilities within those organisations.

**Ms Court:** Indeed. In relation to the Crown matter, I think we have answered the committee's questions. I can't recall—forgive me if it was this committee or one of the other committees—but we have talked to some extent about the reasons why ASIC did not take action in relation to the directors of that company. One of the challenges we have is that we have to look at the circumstances facing particular directors at particular times and

the admissible evidence that we've got in relation to whether or not they acted with care and diligence that you would expect of a reasonable person at the time. In relation to the Star matter, though, we do have an investigation currently underway into these very issues. We are working closely with AUSTRAC in relation to that, as Mr Longo referred to. I hope that the outcomes of that investigation will be made public in the relatively near future.

**Senator SCARR:** Thank you. In terms of the most recent corporate plan, I was pleased to see the proposal for a project looking at compliance with the whistleblower obligations for listed public companies. I'm saying this as someone who used to serve as a whistleblower officer in an ASX listed public company. In terms of that project determining whether or not the whistleblower policies and procedures are being effectively implemented, are you going to go to the step of interviewing actual whistleblowers who have blown the whistle in a corporate context under a policy and procedure to see what their experience has been since they've actually blown the whistle? I guess my concern is that if you don't do that, you're not really closing the loop in terms of how effective the policy and the procedure is.

**Mr Longo:** We've actually had several investigations into whether whistleblowers have been properly treated and whether their issues have received appropriate attention by the entities that I'm thinking about. In those matters, we took no further action against the entity because we were satisfied that the entity responded appropriately to the issue. Clearly, in each of those matters we spoke to the whistleblowers as part of our investigation. I can certainly reassure you and the committee that matters of that kind are significant for us. They are a key part of the system to encourage people to speak up.

**Senator SCARR:** That would be part of the project that is foreshadowed in the corporate plan?

**Mr Longo:** I think Commissioner Hughes will be able to tell us a bit more about that.

**Mr Hughes:** The chairman is referring to situations where ASIC has set up an investigation off the back of a whistleblower complaint or where there has been whistleblower material. In relation to the forward looking supervisory or thematic piece of work, which I think your question was referring to, we've been starting with the framework, the overall apparatus around whistleblowing in the various companies that we have reviewed, looking at the quality of their policies, processes and frameworks and assessing them in relation to the legal obligations. We are now going through the second phase, which is to test what updates and improvements those entities have made. Necessarily, as part of our assessment of all reports of misconduct, including whistleblower complaints, there is a conversation with the reporter of misconduct, with the whistleblower, to assess the information that they are providing to us. It is also obviously open to that person to raise any concerns with us around the way in which they've been treated. That, of course, could theoretically spin off into a separate investigation as to whether there has been a breach of the whistleblower regime. As the chairman rightly noted, that is something that we would look at very seriously from time to time. The supervisory or thematic project that is underway is probably halfway through its natural life. We are still assessing the quality of the compliance with the regime and the new requirements. We hope to report on that in the next calendar year.

**Senator SCARR:** I don't want to put you in a difficult position. Are there any early observations you can share? Are you seeing improvements in this space?

**Mr Hughes:** Oh, absolutely, yes. Since we wrote our letter to companies in October 2021, we've been pleased to see the level of take-up in terms of the improvements and suggestions that we set out in that letter. That goes across the sector. It's not just the financial services sector, where we addressed it to banks, insurers and superannuation trustees. It also includes companies in the real economy.

**Senator SCARR:** I will move on to another area, which some may say is a bit of an obsession of mine, and that's the CHES replacement project. I note that John Fitzgerald Kennedy made a commitment to put a man on the moon in 1961. It was achieved in 1969 over a period of eight years. The CHES replacement project was first mooted in 2014. The ASX has put out an announcement that basically says—it was interesting the way it was worded—that they did not expect it to go live before 2024, which was a phrasing that didn't particularly instil one with confidence that it would positively occur in late 2024 or early 2025. Mr Longo, before another committee where we explored these issues, you did make some observations from your perspective in ASIC. It is not your project, as you have reminded us from time to time; it is ASX's project. You did express some thoughts as to where you thought the project was up to. I don't want to verbal you. You were reasonably positive that the project was at a space where it could do what it needed to do and they were in a testing phase. We then had the ASX come out and put its most recent announcement. Can you give us your observations on where ASIC's thoughts are with respect to this really important piece of financial infrastructure, which seems to be just delayed and delayed and delayed?



**Mr Longo:** I think it's fair to say that ASIC shares your concern. I think in the early statements I made, there was reason to believe that the CHES replacement project was relatively on track. We now know there has been a further delay. That was really disappointing. Clearly, the ASX is grappling with some issues with replacing CHES in the way that they had originally hoped and as quickly as they had originally planned. I think the bottom line for this question for us today is that we need to await the result of the Accenture review. I think that's going to be a very important review that has been commissioned by ASX. It's a very wide-ranging review. The findings of that review I think are due by the end of this month, in the next few weeks. Without going into the details here, I think the committee can expect that review to be quite comprehensive. It will look at the whole thing. I can also reassure the committee that ASIC's own experts, EY, have been heavily involved as well in ensuring that review is fit for purpose, that it's comprehensive and asking the right questions. I think there is reason to be concerned about what is happening with this replacement given the multiple delays.

**Senator SCARR:** Were you genuinely surprised when ASX put out that announcement? One phrase caught my attention when they put out the announcement. It was not just about the timing but the temporal description about not before late 2024, which is an interesting way to put it. More development was required than reasonably anticipated to meet ASX's scalability and resilience requirements. When I read that, I was left to reflect how that could be the case with respect to a project that has been in development for so long. Scalability and reliability, I would have thought, goes to the essence of such a key piece of financial infrastructure. Did that surprise you, Chair?

**Mr Longo:** We have a team within ASIC that works very closely with the ASX on this project. We have been kept informed. ASX is under a duty under its continuous disclosure obligations to disclose to the market what is going on with this project. We were obviously being kept informed. We know what is going on pretty much as the market knows. So we weren't surprised in that sense. But we had some early indications prior to the market announcement that there were issues. Between us, the Reserve Bank and the ACCC, we had meetings with the ASX prior to its announcement of the Accenture review. We were briefed about the details of what was not going so well. They went public, and we now have an Accenture review. All I can really say is that it's really disappointing. We thought it was going in the right direction.

**Senator SCARR:** And you obviously thought that when you gave testimony to the committee back in March.

**CHAIR:** Senator Scarr, you are at the end of your 15-minute block. If there's just one more question, that would be great.

**Senator SCARR:** I do have some other questions.

**CHAIR:** We'll have to come back to you later.

**Senator SCARR:** That's okay. I will close this out in terms of the CHES project. From your perspective, it's a question of waiting for the Accenture review. Do you envisage that review, or at least a very substantial summary of that review, should be released to the public given the extensive costs which are being incurred by market participants in terms of dedicating human resources and IT resources to this project on an ongoing basis? Do you believe the market participants have a right to know?

**Mr Longo:** They do. The ASX has undertaken to publish the findings of the Accenture review. That report will be released to the market when it's ready in a publishable form. All of its findings will be made known. There may very well be a confidential part of the report. But the substance of the findings, where they landed and what they think will be in the public domain before the end of November.

**Senator SCARR:** Thank you.

**Senator McGRATH:** To begin, I will table some documents. Do I need to go through each one? How do I do this?

**CHAIR:** No. The committee has circulated amongst ourselves the documents that you seek to table. It's appropriate for the documents to be tabled. The secretary will provide them.

**Senator McGRATH:** I will table some documents and then go to the table. All these are already on the public record. It's to do with a company called Titan Capital Markets, which you might be aware of. If not, hopefully someone can assist me with this. To begin with, I have three tweets from an investigative journalist in the United Kingdom called Martin Calladine, who runs a blog called the Ugly Game. This is in relation to Titan Capital Markets and their sponsorship of the Fulham Football Club. There are three tweets there from 11 October in relation to concerns that he had about what that particular company was up to. I also have an extract that I am tabling in relation to Titan Capital Markets and its representation to licensees, being Wholesale Investments and the HLK Group Pty Limited. I also table a press release from 30 September where Fulham Football Club were announcing their partnership with Titan Capital Markets. Just so people are aware, that partnership was torn up on

the weekend. I have tabled two articles from a website or a news organisation called The Athletic. This is by Peter Rutzler. That is in relation to Fulham's termination of their partnership with Titan Capital Markets. That is on 6 November. There is also an article from 14 October, where there were concerns raised by this particular journalist following Mr Calladine's investigation into the structure and other issues to do with Titan Capital Markets. The final piece is a piece by Nick Harris, who is the chief sports news correspondent for the *Mail on Sunday*. It goes into various issues. Essentially, you could say that piece brings together a lot of the other work undertaken by the other two journalists. You will note quoted through most of those articles are comments from Tom Greatrex, who is the chairman of the Fulham Supporters Trust. There have been some concerns expressed in relation to this company. That is a bit of background while you are reading through those pieces.

What is of concern—you may not be across this at the moment—is that this company claimed that they had an Australian financial services licence. That appears to not be the case. When concerns were raised in public forums by the Fulham Supporters Trust and by the two journalists concerned, the website was geoblocked and the CEO's website was scrubbed. Their website is visible anywhere else in the world apart from the US, the UK, Canada and Australia. Titan seem to be maybe licensed in only two jurisdictions in the world—Canada and Australia. People in those jurisdictions can't find any information.

My concern about Titan, to put it quite bluntly, is that they seem quite dodgy. I am embarrassed as an Australian senator that there is an Australian company that is keen to hop in between Craven Cottage, Africa and here selling all sorts of products and services and pretending to be something that they are not. I'm concerned about the impact that has for Australia and the people who are legitimately involved in the business world.

Titan may be operating a pyramid scheme. They have offered some quite amazing returns. You will notice in some of the articles that they talk about monthly returns of 14 per cent and, indeed, annual returns of almost 250 per cent. There is one article that I haven't tabled. Based on some of the returns, it looks like an annual return of 1,216 per cent, including three months when the company was not operating but claimed it was making a profit. To me, this is dodgy brothers incorporated. I hope it is right up your alley, Chair. I hope I can put some questions to you. I understand if you need to take some of these on notice. This company is dodgy. If you look at the *Mail on Sunday* piece—

**CHAIR:** Senator McGrath, you did just mention that you had some questions.

**Senator McGRATH:** I do. I want to remind everybody watching, for example. I want to make sure the witness has sufficient time to read the information.

**Senator SCARR:** A quick Reddit.

**Senator McGRATH:** I'm not trying to drive.

**Senator SCARR:** It is a rich tapestry.

**Senator McGRATH:** It is a rich tapestry. They talk about the chief operating officer. I'm sure he is a wonderful person. I'm sure that he is actually an actor called Darryl and he's a singer, not a chief operating officer. Their data analysts are also models. They are all good looking roosters. That's fair and good. Good luck to them. This is quite serious, especially when they are starting to operate in Africa and take advantage of people who may be disadvantaged around the world. Is ASIC aware of this company? Have you commenced an investigation at all into their operations?

**Mr Longo:** I haven't heard of this company until today. I'm trying to read the British papers, but I haven't come across Titan. My chief operating officer, who is responsible for the licensing part of ASIC's activities, might be able to throw some light on what we can do and what we would do with this material now. I don't know whether Titan is a current applicant for a licence. We really would have to take this on notice, unless Mr Day can add anything to this.

**Mr Day:** Senator, I share your concerns. I am aware only just now that we have had issues raised through media inquiries. But my understanding—I will go back and double-check this, if you like, so I will take this part on notice—and as far as we know, we haven't had anyone formally come to us raising complaints who might have been caught up as an investor or a customer or whatever. So we haven't got any of that. We'll obviously look at the material you've provided us to see what the circumstances might be for us and what the opportunities might be for us. Where we're talking about multilevel marketing—I think you used the phrase Ponzi schemes—of this nature, sometimes it's something that the ACCC can look at because of the multilevel nature. It's not a new circumstance where you will get a very simple proprietary limited company registered in Australia that is sort of pointed to by people offshore doing what you might call dodgy things; I think they are the words you used. That is not uncommon. What we might find is that the people behind that company actually may not even exist or may not even be in Australia. That is something that director ID long term and medium term will clean up. Outside

that, I don't think there's really much more I can share except that we are happy to take on notice what you have raised, see what there is and give you a more complete response about, if you like, what breaches there are and what opportunities there might be.

You pointed out that certain websites aren't available in, I think you said, the US, the UK, Australia and Canada. I think what that shows is the people behind this are being very careful who they are targeting this to because they don't want to run foul of laws in those countries. There probably are opportunities against those individuals. They are obviously targeting people in other places. In relation to investments in sporting organisations in other countries, it's obviously not something we've got jurisdiction over. But, as I said, in terms of the core matters you have raised and provided us documents about, we'll take them away and have a look at them.

**Senator McGRATH:** It has come to my attention because a constituent raised it with me. Why it's interesting is that claiming they were licensed by ASIC provided a cloak of respectability, which the good people at Fulham took on in good faith, perhaps naively, in terms of what undertakings were given to them by this particular mob. You are correct. Look at some of the tweets by Mr Calladine. Of the so-called directors or senior management, one claimed to have an MBA who doesn't have an MBA. There is no digital presence of the CEO. So there's quite a murky operation.

**Mr Day:** This obviously isn't the first time we've had people claim to have a licence in our jurisdiction. It happens quite regularly. Australia is seen as a legitimate beneficial jurisdiction to hold a licence in. Certainly we've seen lots of scams operating out of Asia who are passing themselves off as either close to or the same name as some Australian licensees or, in fact, fictitious licensee names. So it's not a new thing and it's something we're aware of. When we become aware of it through our own activities, either through public notice or through what we call our list of companies you should not deal with, which is colloquially referred to as our black list, we identify those entities and put them up there. What we find is that when we do that, they do stop most times. That is one of the techniques we use to disrupt scams, if they are a scam. We have to go away and look at this. I know Deputy Chair Court released information about some of our other work in the scams area, I think this week, in terms of the crypto scams and others. We see this quite commonly, where people pass themselves off because we are seen as a very reliable, authentic and valuable jurisdiction to hold a licence in. As I said, I'm not surprised that is being done. Where we can identify that they aren't licensed in this jurisdiction, we do so because we know it's a very good disruption activity to take.

In terms of representing yourself as having something you don't, we often find we will spend lots and lots of taxpayers' money to go after that when we've got plenty of things closer to home to look at in that type of space. So we have to make a judgement call whether we will be able to identify those people and take action, or we will just disrupt that and see whether that will do the work. If people are tricked by that, they can then make their own estimations and rely on that. If we need to make referrals of information to other jurisdictions, such as the UK et cetera, we do that as well.

**CHAIR:** Senator McGrath, that is about the end of that time block. Do you have one more question?

**Senator McGRATH:** I will ask you to look into this matter. I will write to you with a series of questions. I will put questions on notice to look into Titan Capital Markets and the various directors connected with it and the other two companies, being Wholesale Investments and HLK Group Pty Limited. I am quite concerned about this company.

**Mr Day:** I understand. I'm happy to have a look.

**Senator McGRATH:** It is a dodgy company. I'm happy to meet with you offline if need be. I can give further information. I know that the journalist concerned and the Fulham Supporters Trust are very concerned about the impact over there. It's also around the world.

**Mr Day:** Again, sporting organisations often will seek sponsorship or investment or be offered that from others. We see this domestically as well. At any point that a sporting club or a sporting code wants to talk to us about the authenticity of same, I guess that would go to major sporting codes overseas as well, we're happy to tell them whether or not we believe they are authentic. They can contact us and we will help them as best we can.

**Senator McGRATH:** Thank you. I will see you at the next estimates to see how we have got along.

**Senator McDONALD:** Good afternoon. On 19 September this year, an ASIC media release announced that the Federal Court had imposed a \$7.2 million penalty on Dixon Advisory and awarded \$800,000 in costs to ASIC. It was noted that the court found that, on 53 occasions between October 2015 and May 2019, Dixon Advisory was the responsible licensee of six representatives who did not act in the best interests of eight clients when they advised these clients to acquire, rollover or retain interest in the US Masters Residential Property Fund, which

was an investment offering provided by a related party that had significantly declined in value. Earlier in January 2022, the board of Dixon Advisory placed the business into voluntary administration, enabling the parent company to avoid exposure to what seemed to it be a growing regulatory and complaints problem. ASIC has actively encouraged these clients to complain to the Australian Financial Complaints Authority. Could you please provide an update on the status of this matter, including the number of impacted clients, the extent of likely losses for clients and how many clients have complained to the Australian Financial Complaints Authority?

**Ms Chester:** With respect to Dixon Advisory, I think it would be helpful to give a bit of context to the media release that we put out in August 2022, which very carefully outlined to previous investors in those funds that there was potential eligibility for them through AFCA and what was then the foreshadowed Compensation Scheme of Last Resort, which at that stage had been in the parliament for quite a period of time. We took that decision to put out that media release and made it very clear that there's no guaranteed outcomes here, but you can lodge a complaint with AFCA. The matters can be paused, as they were at that time because of the insolvency of the entity from earlier that year, which you mentioned. It was to make sure that the investors, many of which had lost a large amount of money, were aware of their eligibility and potential entitlement to the Compensation Scheme of Last Resort, noting that the legislation had not yet secured passage. The reason we did that, though, is because part of the eligibility for the Compensation Scheme of Last Resort, which is not widely known, is that the entity still has to be a member of AFCA at the time you lodge the complaint for you to then be eligible for the Compensation Scheme of Last Resort. So you have to lodge the complaint while they are still a member. Once an entity enters insolvency, there's typically a 12-month run-off period before their AFCA membership falls away. By that stage, we were looking at August at that time, there was only really a couple of months left. We were very concerned that was not widely known. It looked like there was support for the CSLR to go through in some way, shape or form. We felt it was the right thing to do for those investors to be aware of that potential right. So that is the context as to why we did it.

I wished you had asked David Locke when he was here earlier for the latest numbers. I do have some numbers in front of me from our wonderful team, but they are a bit dated. There are more than 1,600 complaints at the moment. This is at 1 October 2022. There are 1,600 complaints that relate to Dixon Advisory. I'm not sure how many of those were made following our media release. There were already quite a number of complaints with AFCA prior to our media release. Given the number of investors, it was a small take-up at that stage.

**Senator McDONALD:** Did you say you did or didn't know how many were with AFCA prior to your media release?

**Ms Chester:** We did know because AFCA reports to us on a regular basis a lot of data in terms of incoming complaints and their status, and particularly when an entity has entered insolvency and we're aware that they've then paused. They'll still accept the complaints, but they'll pause consideration and they won't go through a determination process that is very costly until they know whether or not they were likely to be eligible for the Compensation Scheme of Last Resort. The scope has still not been finally determined until the legislation has secured full passage.

**Senator McDONALD:** How many were with AFCA? This date was 1 October. There are now 1,600. How many—

**Ms Chester:** Before we put out the media release?

**Senator McDONALD:** Yes.

**Ms Chester:** That number I don't have in front of me, so we will need to take that on notice.

**Ms Court:** I may be able to assist. From a briefing that I have here, it indicates that after 3 August 2022, which is the date of the media release, up until 1 September—in that period of 3 August to 1 September—AFCA received more than 1,400 new complaints. So there may have been some more from 3 September. I suspect that the bulk of them would have come in shortly after that media release.

**Senator McDONALD:** Do you know the total number of impacted clients?

**Ms Chester:** Each client would make an individual complaint.

**Senator McDONALD:** No. The potential number of impacted clients. Do you know the number of transactions that Dixon had done so you would have a total pool that could potentially complain?

**Ms Chester:** I don't have that number in front of me.

**Ms Court:** I may be able to assist here as well. I know that ASIC sent emails and posted letters to former DASS clients. We sent 8,885 emails to recipients and another letter to 226 recipients. I presume they were people for whom we were unable to get an email address.

**Senator McDONALD:** Do we know the extent of likely losses for these clients?

**Ms Court:** That is a figure I can't help you with immediately. My apologies.

**Senator McDONALD:** An update on the status of this matter. What additional actions will ASIC be taking?

**Ms Court:** In relation to our enforcement proceedings, they are in effect finalised with the court ordering that a civil penalty of \$7.2 million be paid to the Commonwealth together with ASIC's costs, which were in the amount of \$800,000. Of course, given the state of the company, we don't anticipate either the penalty or the costs are likely to be paid. The other action we took is that in April this year, ASIC suspended the Australian financial services licence of DASS. That licence remains suspended. I think, at least from the enforcement side, that the matter pauses at that point.

**Ms Chester:** This is a good example, I think, Senator, of how ASIC's role in doing the enforcement side of the matter to disrupt and cause deterrence with respect to Dixon complements the work of AFCA in terms of making sure that individuals have had access to complaints being heard and potential losses to be recovered. In the instance where a determination is made that there has been misconduct or a failing of the company, there have been financial losses and the individuals make a whole. They are quite separate but complementary.

**Senator McDONALD:** Given that Dixon Advisory is in voluntary administration and there is a deficiency of assets to meet the liabilities, will the \$7.2 million penalty and the costs to ASIC have priority over the clients' claims?

**Ms Court:** No. They won't.

**Senator McDONALD:** That is terrific.

**Ms Court:** They are actually part of the next steps. My apologies; I should have finished with that. As I understand it, the voluntary administrators have been granted an extension to convene a second creditors' meeting, which will happen around the end of November, so that a deed of company arrangement can be tabled and considered. We at ASIC are continuing to deal regularly with the voluntary administrators on a range of matters, including the cancelled licence application, the deed of company arrangement and the investigations of the administrators. So we are continuing to be involved. But certainly the penalty and ASIC's costs orders would not take priority over other creditors, indeed.

**Senator McDONALD:** There is the media release on the 19th following the 3 August media release and the encouragement for impacted Dixon Advisory clients to submit complaints to AFCA to seek compensation. There is also a reference to potential access to the proposed Compensation Scheme of Last Resort. Given that the parent company has seemingly walked away from any liability for this matter, who will ultimately pay for these penalties and the losses sustained by the clients? Will it be the top 10 advisory firms, the government or the financial advisory profession?

**Ms Chester:** I don't think we can really add to what the Treasury officials responded to that question.

**Senator McDONALD:** Around the timing of when it was lodged?

**Ms Chester:** Yes.

**Ms Court:** I hope I am not being overly pedantic in response to the question. Certainly the penalty amount that the court ordered—the \$7.2 million—together with ASIC's costs won't play any part in the Compensation Scheme of Last Resort. That will unfortunately go as an unpaid debt to the Commonwealth. It sits quite separately from any compensation issues that the Compensation Scheme of Last Resort would deal with.

**Senator McDONALD:** Thank you. That is useful. Finally, on this matter, given the non-compliant advice about the acquisition and retention of a financial product provided by a related party that it's on a seemingly large scale, will ASIC investigate the extent to which this conduct was at the direction of senior management and if charges should apply to those individuals?

**Ms Court:** Perhaps I could put it this way. Despite the civil penalty proceedings being finalised in the manner I have outlined, we are continuing to consider issues arising out of the Dixon collapse.

**Senator McDONALD:** Perhaps I will ask about that at next estimates when you've had time to consider.

**Ms Court:** That may be very helpful to me, thank you.

**CHAIR:** Senator McDonald, are you at about your last question?

**Senator McDONALD:** I'm not at about my last question, but you've been very patient with me over the last few days, Chair. You have all been very patient; thank you.

**CHAIR:** If you can condense them into your last question for this block at least.

**Senator McDONALD:** During your opening statement you made some comments around transparency in cost recovery. I've asked questions at previous estimates about the number of financial advisers, which has declined by more than 40 per cent in the last 3 ½ years from approximately 29,000 at the start of 2019 to less than 16,000 currently. We've had a range of reforms around professional standards. ASIC is the responsible oversight body. I want to ask you a couple of questions within one question, which is whether or not you have cut the number of staff in the financial advice team to reflect this 40 per cent decline in adviser numbers and subsequent rise in professional standards. On 21 October 2022, you released the final cost recovery implementation standard for the 2021-22 financial year that addresses the ASIC levy for each sector. It quoted that you had spent \$35,000 on the oversight of licencees who provide personal advice to wholesale only clients and that each of the 1,742 licencees in this space are required to pay an ASIC funding levy of just \$20 per year as opposed to the \$55 million spent on financial advisers who provide personal advice to clients. I would like your thoughts on that transparency and cost recovery. Have you reduced the numbers in the financial advice team in line with the reduction of the size of the industry?

**Mr Longo:** I will ask Warren Day, our COO, to comment on a couple of those questions, particularly relating to the way the CRIS works. The way I would approach your staff numbers question is that the historical levies on that sector were largely driven by enforcement activity. That enforcement activity is now being directed elsewhere. As I hope I said in my opening statement, I don't have any plans to reduce the number of people doing enforcement at ASIC. In terms of our team that covers the sector, they will continue to cover the sector in terms of supervision and surveillance and matters of that nature. I will ask Warren Day to give you a bit more colour. The major reason for the size of the levies historically was the enforcement activity we were taking. Of course, those enforcement resources are now being directed elsewhere. The only other thing I would note—maybe Warren Day can help me with this—is that the previous government did freeze levies for two years, I think. That was announced in September last year for this subsector. I mention that for completeness.

**Ms Press:** Before Warren goes into the details, another thing that advice team is now focusing on is the Better Advice Act and the Financial Services and Credit Panel, which is obviously new legislation that has come in and must be run by that team. There has certainly been a shift in what they are doing, but there has been no reduction in the number of those people.

**Mr Day:** I will complement what Commissioner Press said. Other requirements handed down from government to us still require a lot of work. You can't say just because that's been reduced we've reduced the number of people. As my chair, Mr Longo, said, there is a freeze in place for the financial advice levy. The industry funding model is obviously under a review being conducted by Treasury, which we are assisting and supporting. We just recently released the cost recovery implementation statement for the next round of levies. That obviously acknowledges that freeze is still in place. As Mr Longo and Commissioner Press said, we still have work in that space and we are still doing that work.

**Senator McDONALD:** I will clarify that.

**CHAIR:** We will be able to come back to you.

**Senator McDONALD:** If you want to come back to me, that's fine. I just wanted to finish that thought bubble.

**CHAIR:** We are well over the scheduled break, which was 4.30 pm. We will take a 15-minute break at 5.00 pm. I thought it might be a good block of time for Senator McKim, who has been waiting during your slightly longer than 15-minute block. Senator McKim, you have the call.

**Senator McKIM:** Thank you. I want to ask some questions about greenwashing. Obviously, ASIC has recently released an information paper on how to avoid greenwashing. I presume you are concerned about greenwashing and that is why you have released an information paper. Can I start by asking whether ASIC is observing an increase in greenwashing? I'm not sure who. Is it you, Ms Chester?

**Ms Chester:** Yes, it is, thank you. Yes, we are very concerned about greenwashing. We actually think the economic costs of greenwashing can't be overstated for two reasons. Firstly, it undermines the efficiency and fairness of the market, where a company misrepresents its green credentials, be it from our perspective the provider of a sustainable financial product or in terms of their investment strategy—for example, net zero target or something like that—thereby attracting either the purchase of an investment product or the investment in the company on misrepresentations. Why does that really matter in an economic sense given how much capital needs to be allocated over the next 25 years and beyond to decarbonise? We are talking about a quantum of money, particularly for Australia, which is forecast at the moment, I think, to be about \$2.5 trillion in the decarbonisation path out to 2030. Getting that capital allocation wrong is very costly to consumers and the economy. So that is why we're concerned about it. It also undermines confidence in sustainable products and in those net zero

statements, which are critical for companies to sign up to them. That is why we are concerned about it. We are seeing an uptick in greenwashing conduct, which is unsurprising when you look at the denominator—the number of sustainable products out there and the number of companies making statements. We've got several streams of work underway. The first one that you touched on was a very important one. It followed our review of what we saw with super funds and investment fund managers, where we thought there was a lot of room for improvement. We put out a simple information sheet elegantly entitled 'How to avoid greenwashing: nine principles, questions to ask and answer'. It just takes you back to the basics of their current obligations under the law. We've also said to corporate Australia that they should be asking and answering a lot of those questions themselves about their investment strategies and their forward looking statements. That is stream No. 1.

Stream No. 2, I guess, relates to the fact that we're not an island here. There's a lot of work we're doing internationally and here in Australia on greenwashing. We've formed, to quote David Parker, the Clean Energy Regulator, a coalition against greenwashing with the Clean Energy Regulator, the ACCC and ourselves. We are working together to make sure we are working seamlessly here.

The third—my colleague Sarah Court might want to expand on this—is that we have surveillance and investigations underway looking for misleading claims by entities about their green credentials. We've been targeting several areas here—managed funds, super funds and listed entities. The areas that we're focusing on are net zero statements. With respect to sustainable products and investment strategies, we are looking at things such as investment screening in terms of the credentials they are claiming. The key thing really is making sure, be it for an investment product or a corporate on a forward looking statement, there's a reasonable basis to what they are saying and claiming.

**Senator O'NEILL:** Before you go on, I want to ask a clarifying question. I want to ask this one question, so thank you for opening up, Senator McKim. You mentioned investment screening. How do you do that? It is one of the tools that you are using. I want to understand that bit.

**Ms Chester:** What I am referring to there is a fund manager that says they've got an ESG fund that doesn't have any carbon investments and they are screening out those investments. We then find out, when we work through how they've actually applied that screening, that they apply a 10 per cent revenue threshold. It is about whether how they've disclosed that to the market and potential investors is consistent with the actual screening and whether or not we're dealing with misleading and deceptive conduct.

**Senator O'NEILL:** Great. Thank you. That's very helpful. Thank you, Senator McKim.

**Ms Chester:** It would be very remiss of me not to say that we've had our first penalty in this matter that I will let Sarah Court talk about.

**Ms Court:** I will be quick. We've identified greenwashing as one of our enforcement priorities going forward into 2023. We have taken our first enforcement action in relation to greenwashing by issuing some infringement notices to a company called Tlou Energy. That is an ASX listed company that is developing power, gas, solar and hydrogen projects in Botswana. Our infringement notices related to announcements made by the company that the electricity produced would be carbon neutral and low emissions and various other claims that we considered to be misleading. Tlou paid those infringement notices. I can confirm, as Deputy Chair Chester has outlined, we have a number of active surveillance and investigations ongoing in relation to this area. So it is an area of priority and focus for us into the new year.

**Senator McKIM:** Thanks. That's very helpful.

**Ms Chester:** I said there were four streams. The fourth stream, and it's probably the most important in that it is a potentially systemic antidote to greenwashing in some ways, is forward looking disclosure requirements. There are developments with the International Sustainability Standards Board on having a high quality comparable global baseline for disclosure and what is required to give effect to that. That is probably what we would consider to be one of the key antidotes here in terms of making sure that the efficacy of these statements, be they net zero statements or around how our climate risk is being managed as a risk or opportunity by the corporates, will be disclosed in such a way that we have transparency aligned.

**Senator McKIM:** Is that fourth stream a work in progress at the moment? What form would you anticipate the final version of that would look like or would take?

**Ms Chester:** The International Sustainability Standards Board came out of COP26. They were out of the gate straight away, and quite impressively so, in this area. They put out draft exposure standards back in April this year on sustainability and climate. So they are taking a climate first approach. They are looking at finalising that early next year, although we're getting an update on that tomorrow morning. The government has indicated that they are looking at lifting the quality of disclosure and international best practice. That will be important. I expect that

there will be some work by government in this area in the not-too-distant future with the idea being that Australia would look at implementing something in accordance with the ISSB standards.

**Senator McKIM:** Great.

**CHAIR:** Thank you, Senator McKim. It seems that senators still have questions for you, Mr Longo and ASIC. We will be taking a 15-minute break and we'll be back after that break to continue with our questions.

**Proceedings suspended from 17:01 to 17:20**

**CHAIR:** We're now resuming this meeting of the Senate Economics Legislation Committee. Before we start questions again for ASIC, I want to just note that the committee has had some informal discussions to do our very best to get back on track in terms of time. As a result of that, the committee has agreed to release the Inspector-General of Taxation and the Australian Small Business and Family Enterprise Ombudsman. The committee is very well aware of what we're asking officials who are waiting for us to do and the amount of time that we're asking people to wait. We're well aware of our own need to set a standard in terms of the sorts of hours that we're asking officials and staff to keep. I want to assure everyone that we are making our very best efforts to get on track with timing, with all of that in mind. Having released those two agencies, we are hopeful that we will be back on track with the program by about dinner-time, and we'll check back in then to see how we're going. With those comments, and having released those two agencies, we'll return to questions. Before we broke, Senator McKim had the call. Senator McKim.

**Senator McKIM:** I'll follow up on a few matters associated with greenwashing. You've said that you are observing an increase in greenwashing. Are you able to define any industry sectors where greenwashing is more prevalent than other sectors or where the risk of greenwashing, in the opinion of ASIC, is higher than in other sectors?

**Ms Chester:** Naturally, we're focusing on our regulatory remit, which is why it's important that we work with the ACCC and other regulatory brethren here. But certainly within our remit, based on some of the surveillance that we've done to date, it is around sustainable investment products. In the managed investment funds and the super fund space we've got some concerns about an uptick, which is unsurprising. I think the forecasts are now suggesting that about a quarter of global assets under management will be in the funds management space. Some \$53 trillion by 2050 will be in ESG related products. The denominator is growing; expecting an uptick in activity is unsurprising. The other area, though, is in corporate Australia around forward-looking statements around targets.

**Senator McKIM:** So, net zero by a certain date?

**Ms Chester:** That's right. There's obviously been an increased interest. This is really the price to access global capital, going forward. As to entities' commitments, especially when they're exposed to climate risks directly but also indirectly, investors will want to know this in terms of their own need to meet scope 1, scope 2 and scope 3 down the track. So, from that perspective, we are seeing an uptick in the potential for greenwashing in that area. We're making it very clear to corporate Australia what our expectations are, with information sheets and the like, but also by encouraging earlier uptake and better disclosure. As to the listed and the larger entities, we've been encouraging them now for five years to follow the TCFD, the Task Force on Climate-Related Financial Disclosures, which is the principal foundation for international sustainability standards boards, and actually looking at introducing this in a much more refined and prescriptive form.

**Senator McKIM:** What about industry sectors within the economy and specifically in the business or the corporate sector? For example, are you aware of a higher risk of greenwashing, for example, in the tourism sector as opposed to the fossil fuel sector? Do you go to that level and try to make a risk assessment there or have you seen evidence of higher risk in one industry sector compared with another?

**Ms Chester:** I don't think we've done the sort of analysis that you would be looking for to give an informed view. But I think intuitively you would expect with those sectors that are more exposed to climate related risks and are required to make forward-looking statements the denominator will be much larger and, therefore, the risks are going to be higher.

**Senator McKIM:** Understood. You've referenced COP. Overnight the UN high-level expert group on net zero emissions commitments called for red lines to stop greenwashing, particularly in relation to carbon credits. Mr Guterres, the UN Secretary-General, said that the use of what he described as bogus net zero pledges to cover up massive fossil fuel expansion is reprehensible, in his view. We have massive Australian corporations engaged in global-scale exploitation of fossil fuels that are claiming they will be net zero by 2050. Is ASIC having a look at any of those corporations in the fossil fuel sector to see whether their claims that they'll be net zero by 2050



actually stack up when they're directly engaged in exploiting some of the largest fossil fuel resources on the planet?

**Ms Chester:** I think as both Deputy Chair Court and myself intimated earlier, in terms of the pipeline of surveillance and investigations that we have under way, several of those do relate to net zero statements.

**Senator McKIM:** Are you able to inform the committee how many investigations you have underway that relate to net zero claims?

**Ms Chester:** No, I don't think we'd be in a position to disclose that, and nor would we, typically.

**Senator McKIM:** Correct me if I'm wrong, but I think you've said words to the effect that, if a company was claiming it will be net zero by a certain date, and ASIC formed a view that it wouldn't be, that would actually constitute misleading conduct; would that be fair?

**Ms Chester:** It all comes down to the individual facts and circumstances, but the high-level principle here, especially where we have full regulatory remit, is whether or not there's a reasonable basis for those forward-looking statements.

**Senator McKIM:** So, 70 per cent of the ASX 200 by market cap now have public net zero targets, and a large number, probably the overwhelming majority, rely on the use of carbon credits to make that claim. Obviously there are serious integrity issues with the Australian carbon credit market. The government has it under review obviously at the moment. Has ASIC investigated the integrity concerns raised with respect to Australian carbon credit units, given that they are actually financial products?

**Ms Chester:** You are right; we do have a role with respect to regulating the carbon market in and of itself. They are, because of legislation, deemed to be a financial product. I think from our perspective, though, we're very mindful that Professor Chubb's review is well under way and will be handed to government and the CER by the end of this year. We think that's the appropriate way for the integrity issues claims to be addressed. From our perspective, we're focusing on disclosure and the reasonableness basis for claims that are made. In that sense, and going forward, when we look at what's in the current draft exposure standard on climate by the international sustainability standards boards, it's very prescriptive around the provenance of the use of carbon credit offsets. This is the inevitable direction of travel in terms of what will be accepted for listed and large entities, going forward.

**Senator McKIM:** Obviously the Chubb review is under way. That's probably more in the nature of a system review rather than an assessment any particular company is doing. Would it be fair to say that ASIC would expect companies using Australian carbon credit units to underpin their net zero claims to actually engage in due diligence on the carbon credits they purchased? There's plenty of evidence out there that carbon credits have been purchased, for example, for managed forest regeneration where that managed regeneration either hasn't occurred or in fact the level of vegetation has gone backwards on the relevant land. Does ASIC expect companies to do that level of due diligence in order to underpin a net zero claim?

**Ms Chester:** I think there are two streams here. One is the ACCUs themselves, and that one we're leaving to see the results of the Chubb review. With respect to individual due diligence, I think for us it's again what's going to be required in a disclosure sense in terms of what certification or authorisation should be attached to carbon credit offsets that are used or relied on in meeting target statements by entities, going forward. It's not something that we're actively looking at at the moment, but we're very mindful that there is an expectation, going forward, that there will be much greater disclosure. For example, the ISSB current draft standard does actually state that you have to disclose the source and form of the offset, what sort of authorisation or certification it's been subject to. There are some that are endorsed in Australia by the CER at the moment. I should also mention that, working closely with the Clean Energy Regulator, if they became aware of something that they thought was untoward and fell within our regulatory remit, they would bring it to our attention.

**Senator McKIM:** If we set aside the Chubb review for a minute, would it be ASIC's role to investigate the integrity of ACCUs and other carbon credits, given they are a financial product? Does that fall within ASIC's mandate or scope, accepting what you said about the Chubb review being under way? I understand that. Is it within ASIC's scope to investigate the integrity of carbon credit units?

**Mr Longo:** There's a whole range of financial products where ASIC does not investigate or take an interest in the, to use your word, integrity of the products. We don't investigate whether a share has any particular value; the market does that for us.

**Senator McKIM:** I'm actually asking about the integrity. When someone makes a claim about a carbon credit unit and that claim actually is not based in reality—say, they claim that somebody's purchased a bit of managed forest regeneration and that bit of land is actually lost vegetation—wouldn't that be of concern?

**Mr Longo:** I think our expectation would be that, where boards are relying on ACCUs to meet their targets, that reliance will be reasonable. That does imply some reasonable inquiry on their part that what they're buying will have the result.

**Senator McKIM:** That's on a company-by-company level.

**Mr Longo:** Yes, that's right.

**Senator McKIM:** But what about the integrity of the scheme itself?

**Mr Longo:** Where a market is functioning properly—

**Senator McKIM:** This is exactly what I'm talking about.

**Mr Longo:** Yes, but the carbon credits themselves—

**Senator McKIM:** They're a financial product.

**Mr Longo:** Yes, but the integrity of the carbon credit itself is not a major focus for us at the moment. There are various reviews going on. A range of regulators are interested in this subject. We're interested in capital regulation. We're interested in consumers not being misled. We're interested in boards not making inflated claims about their green credentials. We are obviously interested in commodity markets functioning properly. But as I think your question implied, there's such a range of possibilities for companies to invest in carbon credits of one form or another. It's their primary responsibility to investigate whether that investment in that carbon credit, by whatever name it's called, will have the result or effect that they're claiming it will have in terms of establishing their green credentials.

**Senator McKIM:** Thank you.

**CHAIR:** Senator McKim, we have really significant issues with time.

**Senator Gallagher:** We're currently running quite behind time. The rough indication was that officials would be on at midday for an hour. Accepting that where there are questions it keeps going, we're now at 5.30 and I think we need to give some advice to people here who have other commitments, of which there are many, about whether those commitments need to be adjusted. Some time indication I think from the committee would be useful, including for the many officials we have currently waiting to appear who were due to start appearing at 2.30 today and who are currently waiting. I think some more direction from the committee would be useful.

**CHAIR:** The committee is trying to get back on track by the dinner break at 7.15. It's our intention to be back on track in terms of timing by then. We've also had a discussion about moving to five-minute blocks, and so we're going to move to five-minute question blocks from now. Senator Bragg.

**Senator BRAGG:** I'm happy to cede my questions in order to get through the program.

**CHAIR:** Senator Rennick, you have a five-minute block.

**Senator RENNICK:** I'd like to ask about the ASIC forum that occurred on the weekend. I note that ticket prices for the forum were more than \$2,000 each. Do you think it's appropriate that ASIC is giving the big end of town access to its senior leadership at a price point which is inaccessible to mum-and-dad retail investors? It's not a laughing matter. It's very difficult to get access.

**Mr Longo:** It's not a laughing matter at all. The forum was attended by a wide range of people. We can't pay for that, and so people are given an opportunity to attend the forum. It got a lot of support from across the market from consumer groups and industry. A whole range of people were there and a whole range of topics were explored. Speakers didn't charge for their time.

**Senator RENNICK:** If they didn't charge for their time, why have you charged so much?

**Mr Longo:** People were fed. There was a dinner and a range of other expenses associated with putting on a forum. I didn't expect to be questioned about this, actually, so I'm going to ask Mr Warren Day whether there's anything more we can add to assist your concern.

**Senator RENNICK:** That's alright. I have another question that he can answer. Are events such as the forum on the weekend an opportunity for senior leadership in ASIC to be captured by the big end of town?

**Mr Longo:** It wasn't on the weekend. It was actually last Thursday-Friday.

**Senator RENNICK:** Sorry.

**Mr Longo:** It's a very public event. It's very transparent. To my mind, it's an excellent example of ASIC engaging with all sectors of the community and industry. Representatives of the media were there. The Assistant Treasurer gave a keynote speech. Far from regulatory capture, I would put it the other way round. I think it's a fantastic example of ASIC engaging with the general community, listening to their concerns, and us being very

open with the issues that we think are important. Climate change, crypto, superannuation and a whole range of subjects were explored in a very public, thoughtful manner. I'm very proud of the ASIC forum—absolutely proud of it.

**Senator RENNICK:** Did you discuss scalping on the stock market by high-frequency traders? Was that raised at all?

**Mr Longo:** That wasn't raised, because it wasn't on the agenda.

**Senator RENNICK:** That's a big issue with small investors. I noticed that on 28 October this year ASIC issued a press release stating that they found a material deterioration of audit quality in the past 12 months. Has ASIC considered whether companies are engaging in remunerating auditors appropriately, given the size and scope of a company?

**Mr Hughes:** The audit quality report which we issued in October followed on from the audit file quality reviews that we've been performing for some years now. That does not involve as part of its scope the cost associated with the audit program. Indeed, it focuses on the key risk areas that we identify in advance based on prior surveillance, financial reporting surveillance, which happens in real time throughout the course of the year. The question of how much companies pay their auditors for the performance of the audit is not something that's within ASIC's remit. That is a commercial decision for the company to make and for the shareholders to approve as part of their ordinary governance role. We're not a price regulator.

**Senator RENNICK:** Thank you.

**Senator SCARR:** I have one follow-up question on that.

**CHAIR:** No; that was a five-minute block. I'm now going to circulate the call. Thank you. Senator O'Neill.

**Senator O'NEILL:** The PJC does have ASIC before it on 25 November. In light of that opportunity to oversee ASIC, along with all of the other agencies, I will cede questions to progress this whole session.

**Senator SCARR:** Can I just ask one question on the audit issue.

**CHAIR:** I very much appreciate Senator Rennick indicating his acceptance of my ruling there, Senator Scarr.

**Senator SCARR:** I won't have any more questions. I'll leave. I'll terminate my questioning.

**CHAIR:** You'll leave? Okay.

**Senator SCARR:** I will.

**CHAIR:** Be off!

**Senator SCARR:** I didn't know that was such an attractive proposition! I have one follow-up question. I was going to ask a question on the audit report, which I've read. I read something more into it in terms of fees perhaps. Maybe I was chasing a phantom. It actually states, on page 23, that 'directors and audit committees should also ensure that audit fees are set at a level that supports the audit work required'. That to me indicated that audit committees and boards need to be careful in terms of playing one audit firm off against another, decreasing the fees, because then that has an impact on the quality of the audit. Is that a fair comment?

**Mr Hughes:** With respect, the finding in the report goes to the question of whether auditors are paying sufficient attention to the key risk areas and whether they have adequate resources to address the key risk areas that we identified as part of our review. If they are being short-changed and cannot do the work they need to form a reasonable basis, then I think the question you ask is an appropriate one to raise.

**Senator SCARR:** I'll leave now, in accordance with my promise.

**CHAIR:** Thank you very much. I believe that is all the questions that we have for ASIC. Thank you very much, Mr Longo and all of the officials of ASIC, for your attendance. Thank you for your patience. You go with our thanks.

**Mr Longo:** Thank you, Chair, and thank you to the committee.

#### **Australian Prudential Regulation Authority**

[17:45]

**CHAIR:** We now welcome representatives from APRA. We welcome you, Mr Lonsdale. Is this your first estimates appearance in your role?

**Mr Lonsdale:** Correct.

**CHAIR:** It is? We're giving you the full estimates experience in your first appearance in this role. We thank you and your officials for joining us. Do you have an opening statement that you'd like to give?

**Mr Lonsdale:** I do have an opening statement. I'm happy just to table it. I know you're short on time. I'm very happy to take questions. The only thing I'd say is that the Treasurer has announced new appointments for APRA. There are four appointments. We have Helen Rowell and five APRA members here to take your questions. With that, I'll leave it to you.

**CHAIR:** Welcome to all of the new APRA appointments. We appreciate you tabling your opening statement instead of delivering it to us. We'll now go to questions. Senator Bragg.

**Senator BRAGG:** Congratulations, Mr Lonsdale, on your appointment. I think members of this committee will have a lot of confidence in your personal capability. We wish you well in that role. I wanted to talk to you about a few superannuation matters. Firstly, APRA has been looking at the payments made by super funds to the unions for some time. At the last estimates we had a lengthy discussion about this. You may have reviewed the *Hansard*. I'm not sure. Could you give me an update on that?

**Mr Lonsdale:** I might ask Ms Cole, the member responsible for superannuation.

**Ms Cole:** Yes, we talked about this previously, and we have ongoing work in this area. I'll just say a few words about what we've been doing. I think we said we were going to do this, but we've looked into further the publicly available data from the Australian Electoral Commission's Transparency Register, focusing on disclosures made in the last five years by any organisation that references a regulated superannuation entity. Based on that analysis, and in conjunction with our other supervisory work, we've not currently found evidence of payments made directly from a trustee or a superannuation fund to a registered political party, and so we have no evidence of direct political donations. But we are examining certain payments made by the superannuation funds to associated entities of political parties where the purpose of the payments and/or the value for members is unclear. That work is ongoing.

**Senator BRAGG:** So this ongoing body of work is looking at the payments that are going from the funds to industrial bodies; is that right?

**Ms Cole:** Certain payments of that nature, yes.

**Senator BRAGG:** What are you concerned about?

**Ms Cole:** I think, in certain cases, where there may be contracts for the provision of services—whether in this context or more generally—we want to be sure that value for money is being provided pursuant to those contracts and that the services have been considered carefully by the trustees, and that the trustees are acting in members' best financial interests in engaging in contracts for services.

**Senator BRAGG:** Do you think that there is evidence that there are uncommercial arrangements?

**Ms Cole:** I can't get ahead of what we're looking into at the moment. I think it's important that we shouldn't do that or make judgements before we've gathered the evidence, but we want to look at whether certain contracts provide value for money for the services being provided.

**Senator BRAGG:** So what we can take away is that there's an ongoing piece of work on payments to industrial bodies?

**Ms Cole:** Yes.

**Senator BRAGG:** I noticed you said before that there was no evidence of direct payments to political parties? Is that your position?

**Ms Cole:** Yes, on the basis of the work we've done specifically looking at five years of history of what the AEC publishes.

**Senator BRAGG:** What about this payment in 2019 that the Sunsuper fund made to the Queensland branch of the Australian Labor Party?

**Ms Cole:** I don't have that at my fingertips. Mrs Smith, do you recall that one?

**Mrs Smith:** I think we'll take that one on notice. I understand that was reclassified when that was looked into. We'll take that one on notice and just reconfirm. I haven't looked at that one again recently.

**Senator BRAGG:** But you do know about it?

**Mrs Smith:** Yes.

**Senator BRAGG:** It's not accurate to say that there's no political donations being made, is it?

**Mrs Smith:** I need to look at the specifics of that one as to the parties that actually received that payment. I can't remember the detail and I'd prefer not to guess.

**Senator BRAGG:** Let's go to the other issue we've discussed over time, which is the *New Daily* organisation. This is part of an organisation which you regard as an investment; is that right?

**Mrs Smith:** The *New Daily* is a subsidiary of Industry Fund Holdings. Industry Fund Holdings is an investment held by I think it's about 18 superannuation entities at this point.

**Senator BRAGG:** Do you believe that the *New Daily* element of that investment passes the best financial interests test?

**Mrs Smith:** It's not for us to make a decision in relation to a subsidiary of a company. We have talked about this a lot. Our role is to ensure that trustees have in place an investment governance framework and a process for reviewing the investments in line with those investment strategies. We asked trustees I think early in 2022 about how they consider those investments and how they review them, and were satisfied that the approach they take in reviewing those investments is appropriate. It would be for the trustees to consider if there's new information available, whether that investment remains appropriate and is still in the best financial interests of their members in accordance with their investment strategy and investment governance framework.

**Senator BRAGG:** There was an article last week or maybe this week in the *Financial Review* about the *New Daily* having a 92 per cent fall in revenue. You're comfortable there's nothing to see here? This is all good? The super funds can invest in this propaganda outfit?

**Mrs Smith:** As we've mentioned before, we don't regulate the *New Daily*.

**Senator BRAGG:** But you enforce the best financial interests test?

**Mrs Smith:** That's right. Trustees, I would expect, if they'd read articles, may consider relooking at their position based on their investment strategy in relation to that entity.

**Senator BRAGG:** Is that what you're saying—that you think some trustees have thought twice about this?

**Mrs Smith:** I'm saying that a prudent trustee would be looking at their investment governance framework and investment strategy on an ongoing basis and would review a range of investments as new information becomes available.

**Senator BRAGG:** I still have a couple more.

**CHAIR:** I'll come back to you, Senator Bragg. Senator McKim.

**Senator McKIM:** I wanted to ask some questions around superannuation annual member meeting notice requirements. Firstly, do the government's current regulations in place now, introduced by the new government, require that dividends be disclosed?

**Ms Cole:** No, I don't think they go to the subject of dividends. From recollection—

**Senator McKIM:** Sorry? Was there something else? Did I interrupt? No?

**Ms Cole:** I said 'from recollection'. I was giving myself the opening to check, but I don't believe so.

**Senator McKIM:** Would the previous regulations, put in place by the previous government, have required dividends to be disclosed in annual member meeting notices?

**Ms Cole:** No, I don't believe so. I don't think there was a distinction between the previous government's regulations and this government's regulations on that.

**Senator McKIM:** So, neither the former nor the current regulations require or required dividends to be released?

**Ms Cole:** Of course, they apply to member meeting notices, yes.

**Senator McKIM:** That's right. Does APRA collect data on dividends paid by superannuation funds?

**Ms Cole:** Going back about a year, we did ask for information about dividend payments made by the superannuation entities obviously in the sector that make such payments.

**Senator McKIM:** That's the retail sector?

**Ms Cole:** Yes, exactly. Off the top of my head, again, I can't remember whether that's in our standard data collection.

**Mrs Smith:** I think we'll take that one on notice.

**Ms Cole:** I think we'll take that one on notice. We did want to ask in the context of the best financial interests duty, out of interest, in fact how trustees in the retail sector were considering their decision making, if you like, and policy around dividend payments.

**Senator McKIM:** Did you just say that you did about a year ago ask retail funds those questions?

**Ms Cole:** Yes, we did. We got some understanding from them, which is what the exercise was about, in terms of how they were approaching dividend payments in that context, yes.

**Senator McKIM:** Does APRA have a handle on all of the different ways that profits can flow from superannuation funds? We've been speaking about dividends. That's one way.

**Ms Cole:** I think that is of some complexity, but obviously in the retail sector there's the issue of profits flowing up by way of a declaration of a dividend. That is part of it. If that's what your question is getting at? I'm not sure I understand where your question is focused?

**Senator McKIM:** It was quite general in nature. Perhaps I could move to a slightly more focused question. Does APRA have the powers it needs to compel super funds to provide information that would allow APRA to collect and report on the payment of dividends and other profit flow arrangements of retail super funds?

**Ms Cole:** We have powers to collect data where it's relevant to the performance of our regulatory functions. We do collect.

**Senator McKIM:** Is that relevant to the performance of your functions?

**Ms Cole:** I'll check whether there's a specific data stream for dividends, for example, but in relation to our normal work, if I can put it that way, we have large amounts of data that we collect in order to enable us to fulfil our functions. We've created data standards around that over a significant period of time for superannuation data. In fact, it's all part of our push for transparency in relation to super data.

**Senator McKIM:** I think it's implied in what you've said but I'll just clarify, anyway. Does APRA regard dividend payments by super funds as relevant to the determination of the best financial interests test?

**Ms Cole:** This is actually a more complex question than it sounds. In relation to retail super, and situations where the profits are declared and they are essentially not part of members' assets, the best financial interests duty does not bite at that level. That's something that I've sought to explain before and I'm not doing a terribly good job of it. The fees are charged to the superannuation members. They flow up. That forms part of the profits of a company in the corporate sector. As we know, the private sector is entitled to run superannuation funds through the private corporate arrangements. There is no objection to those companies operating in that way and being able to declare dividends. The declaration of the dividend in that context is not caught by the best financial interests duty, because it's no longer members' assets.

**Senator McKIM:** Because it's been transferred away from members in the form of a dividend, right? How could the extraction of profits out of a retail super fund that otherwise could be returned to members possibly be in the best financial interests of members?

**Ms Cole:** It goes to the structure of the superannuation entity and the corporate structure and the fact that parent companies often in that structure provide services to the superannuation trustee and are entitled themselves to fee arrangements.

**Senator McKIM:** That's a fee arrangement. That's different from a dividend, though?

**Ms Cole:** Yes, you are right.

**Senator McKIM:** My question specifically relates to dividends, not fee arrangements. How could it possibly be that the extraction of a dividend out of a retail super fund that otherwise could have been returned to members is in the best financial interests of members and how could it possibly be that the best financial interests test doesn't bite, as you said? I just don't understand.

**Ms Cole:** The legal advice suggests that it does not bite.

**Senator McKIM:** Whose legal advice is that?

**Ms Cole:** The legal advice that we've obtained on the subject.

**Senator McKIM:** Who have you obtained that from?

**CHAIR:** Senator McKim—

**Senator McKIM:** I am nearly done.

**CHAIR:** You would like one more question?

**Senator McKIM:** I would like two more, if I might, and then I'll be done with APRA.

**Ms Cole:** It's perhaps better that we try to articulate that in a written answer to a question, if you'd like us to do that?

**Senator McKIM:** I'll just ask you to take that on notice, in that case. I will give a forewarning. I'll put a bit more detail into a question on notice to you. The last question I have is whether there are any technical impediments to including in transparency regulations details on the payment of dividends by super funds?

**Ms Cole:** It's a matter for government to decide what it would like to be included. I don't see a technical impediment.

**Senator McKIM:** You don't see a technical impediment?

**Ms Cole:** I don't think so, not off the top of my head.

**CHAIR:** Senator Bragg.

**Senator BRAGG:** I was asking you about the *New Daily* issue. Have you had meetings with trustees where this has been raised?

**Mrs Smith:** We engaged with trustees back in early 2022 in relation to how their framework is considered, and holdings in industry funds. We haven't engaged specifically with them since that time. As part of our normal course of supervisory work, our supervisors might talk to them about investments, but for many the holding in ISH, Industry Super Holdings, is a very small part of their portfolio.

**Senator BRAGG:** I understand that, but there's no materiality test in law. The parliament considered that carefully and the parliament enacted a law without a materiality test.

**Mrs Smith:** ISH, the parent company of the *New Daily*, has been very profitable. I think over 10 years there was I think a 17 per cent return. So, at the aggregate level that asset is performing well for many super funds and for many members who are getting a benefit. The trustees we spoke to in relation to that consider that investment a totality, and will do elements of look-through as part of that analysis, and have made the decision that, based on the aggregate performance, that was in the best financial interests of their members, and they'll continue to review that as part of their governance process.

**Senator BRAGG:** I understand that. The point is, just because I create a corporate entity which is overall performing strongly, but there are components of that portfolio, organisation or corporate structure doing things that are not successful or even unlawful, you can't just bundle things up. That's not how the law works.

**Mrs Smith:** We haven't looked at the *New Daily* again since we did some work on it. I understand that the article reported on restructuring. I haven't investigated the nature of the information in detail.

**Senator BRAGG:** Will you have a look at it?

**Mrs Smith:** It's really for trustees. The *New Daily*, as I said, is a subsidiary of an entity that we don't regulate. The trustees look at the assets in their portfolio on an ongoing basis to make the decision that it's in the best financial interests of their members. We don't have jurisdiction over that investment.

**Senator BRAGG:** I understand that, but you do have jurisdiction over the best financial interests test.

**Mrs Smith:** We will continue to ask trustees.

**Senator BRAGG:** Could you take on notice whether or not any of your supervisors have had discussions about this? I would imagine that a reasonable trustee, given the profile this issue has had and it being commercial, would be checking with APRA how they should be managing this. Could you please take that on notice?

**Mrs Smith:** We will.

**Senator BRAGG:** I have one more question, and it's in relation to this issue of the poor old punters having to stump up for these fines that the funds have incurred. There was an article in August in the *Financial Review* about the EISS fund. Do you know about this fund?

**Mrs Smith:** Yes.

**Senator BRAGG:** They want to dip into their members' savings to pay their regulatory fines. We've been here before. What is the position? Is the position that people have to stump up effectively for the trustees' regulatory fines?

**Ms Cole:** The general issue, which we have discussed before, is the creation of a reserve raised in order to pay regulatory penalties that otherwise the superannuation trustees would not have been able to pay and would have involved a potential for their insolvency. That's the issue. Sorry; I was having a momentary blank on EISS, but I think it was one of the later ones to go to the courts to seek permission to change their trust deed to raise fees for that purpose; yes, you are correct.

**Senator BRAGG:** Have they been to the court?

**Ms Cole:** I think they have been to the court, yes.

**Senator BRAGG:** Which court? The Supreme Court?

**Ms Cole:** Whichever was the relevant court that their trust deed related to. I can't remember which one they went to. Our general counsel is here and could tell me. She might be slightly mortified if I invite her to the table. Yes, you will recall there were several of the trustees that went to whichever court was the relevant court that had jurisdiction over their trust. I think they were quite late in the day, the EISS.

**Senator BRAGG:** Effectively, that's happening because the funds don't have any capital requirements. If they have a reserve, that's the members' funds anyway? The companies that own the trust are not putting any money into this.

**Ms Cole:** They couldn't access the reserves that were already in place, principally the ORFR, for such purposes. The ORFR was created and was there. There are substantial amounts of funds in those risk reserves, but they were not permitted to access them for those purposes. My colleague reminds me that one was the Supreme Court of New South Wales.

**Senator BRAGG:** It's not your fault that the law is deficient. My last question is in relation to Senator McKim's questioning. We now have a situation where member meeting disclosures provide less detail than what can be sought from the Electoral Commission data, which we discussed in my earlier round of questioning. How is that a sustainable position for us to be in? A member of the fund, who is probably unlikely to be trawling through the Electoral Commission data, could get more data about their funds' payments than they could from their own members' meetings disclosures.

**Ms Cole:** I'd rather answer the question in a different way, if I could. APRA certainly is committed to transparency for members of superannuation funds. It's done a huge amount of work over the years in relation to creation of standards, collection of data, which is ongoing now, publication of our own heat maps, running a performance test. We will be collecting and we are collecting a great deal of information of the nature that you're referring to.

**Senator BRAGG:** You already collect that, do you?

**Ms Cole:** We collect a great deal of relevant information and we will look at—

**CHAIR:** Is this your last question?

**Senator BRAGG:** Never trust someone who says it's their last question. This absolutely is the last one. You already have the information—

**Ms Cole:** We have certain information.

**Senator BRAGG:** about the payments that the funds make to the industrial organisations, and the information that Senator McKim referred to. You have the dividend payments and you have the payments to industrial organisations; is that right?

**Ms Cole:** We have some parts of that information and we're extending data collections, and we may have more parts of that information. It isn't open to us simply to make that information public.

**Senator BRAGG:** But you can get it all?

**Ms Cole:** In some format I'm sure we could get most of what you're talking about.

**Senator McKIM:** Did you say it's not open? Did I hear that correctly?

**Ms Cole:** You did hear that. When we collect information from superannuation entities it's protected by confidentiality terms. If we decide we'd like to make this public, we're going to design a format that turns that from information that's not all that easily digestible into something that consumers of products would find digestible, and we'd have to have a consultation about making that information public, listen to what the entities say about whether it is commercially protected or sensitive and then take a view on that. I'm not saying it's impossible, I'm saying there are requirements about making such information public. Those will take time to work through.

**CHAIR:** I believe that's all the questions that the committee has for APRA. We thank Mr Lonsdale and the officials. You go with our thanks for appearing today.

#### **Australian Reinsurance Pool Corporation**

[18:12]

**CHAIR:** We now welcome the representative from the Australian Reinsurance Pool Corporation. Welcome, Dr Wallace. You may be well aware that we're running significantly behind time. Our apologies for that. If you have an opening statement, would you be willing to table that instead of delivering it?



**Dr Wallace:** Yes, I'd be happy to do that. Just a few brief remarks, if I may?

**CHAIR:** Yes, you are most welcome.

**Dr Wallace:** This is my first appearance before the committee.

**CHAIR:** You are having the full estimates experience.

**Dr Wallace:** I'm looking forward to taking questions on the reinsurance pool for both the terrorism pool and the new cyclone reinsurance pool.

**CHAIR:** As we are behind time, I'll advise senators again that we're proceeding in five-minute blocks and give the call to Senator Green. I'd ask that any private conversations happen outside.

**Senator GREEN:** I'll try to be really quick. I know there's time pressure. I have questions about the Cyclone Reinsurance Pool. For your interest, Dr Wallace, I live in North Queensland. It's a big issue for people in my community. Members of the previous government told people in North Queensland that the reinsurance pool would kick in on 1 July 2022. Those words, I guess, don't really capture the nature of when the pool will start to have an effect. The pool commenced on 1 July 2022, but in terms of the effect of the pool it might take a bit of time?

**Dr Wallace:** The reinsurance pool is in effect. It's operationally in effect. The scheme commenced from 1 July. In preparation for 1 July we undertook a significant build-out of capability, including systems, recruitment, developing a reinsurance contract for insurers, developing the premium rates, publishing reports and engaging with insurers. We've been working with each of the insurers. There are about 14 insurers that have exposure in northern Australia. Each of those has project teams in place working towards the implementation of the pool.

**Senator GREEN:** I will stop you there. I have brief, sharp questions and I expect the same with answers. The operation of the pool commenced on 1 July 2022, but it's true that insurers have up to two years, some of them, to actually be part of the pool?

**Dr Wallace:** Legislation provides major insurers up until 31 December '23 to join the pool, and small insurers a further year, up to 31 December '24.

**Senator GREEN:** So it could take until 2025 for the insurance actually to kick in for consumers of those insurers?

**Dr Wallace:** I'm hopeful that we will have an insurer join the scheme earlier than that. If we were able to achieve that, we could see cover commencing through insurers as soon as now.

**Senator GREEN:** I've got questions about some modelling that was recently released by our government. I just want to start by talking about some of the savings that were referred to when the pool was established. The previous government claimed that the pool would deliver savings of up to 46 per cent for homeowners, 58 per cent for strata properties, and around 34 per cent for small and medium businesses. That 58 per cent figure was used all over social media—I have some of that here—to spruik the scheme. The 58 per cent figure is quite prominent in the social media from those members in North Queensland. My question is: what does the modelling that was released by the government actually show premium savings would be?

**Dr Wallace:** ARPC has released two lots of modelling. We released modelling just before 30 June, and then we updated it and released it just before 1 October. The most recent update of the modelling shows that for home insurance policies, in particular, there'll be a 32 per cent saving for premiums in high-premium areas. There'll be a 13 per cent saving for home insurance policies in all of northern Australia on average, and six per cent for everyone across low-, medium- and high-risk areas.

**Senator GREEN:** Sorry? Six per cent for whom?

**Dr Wallace:** A six per cent saving for everyone in low-, medium- and high-risk areas. Low-risk areas include Brisbane and Perth, for example.

**Senator GREEN:** This is the cyclone reinsurance for North Queensland?

**Dr Wallace:** The Cyclone Reinsurance Pool covers the whole of Australia, and it's in risk zones. The legislation requires us to target maximum savings to medium and high-risk areas, and we've done that through the pricing. People in high-premium areas will receive, in our modelling, for home insurance a 32 per cent saving.

**Senator GREEN:** Is that an average number?

**Dr Wallace:** That's an average saving, yes.

**Senator GREEN:** Is that for strata properties?

**Dr Wallace:** That's for home insurance. For small business it will be 13 per cent. But for strata we're unable to provide a number at the moment because the data set is too small for strata.

**Senator GREEN:** So, we don't know what strata owners will save? Small business and medium business is 13 per cent. Can you explain or do you know—you might not have the answer—why there is such a difference between the numbers being referred to before the election, with the modelling the previous government had but wouldn't release, and the modelling that you've done now, which is different? Are there different settings that you've used as input? Did they get it wrong? Why are the savings less now than what was promised to North Queenslanders?

**Dr Wallace:** ARPC has administrative responsibility to set the premium rates. We undertook all the modelling over the period November '21 November to October this year. So, we've had to calculate the premium rates fresh, or from scratch. We've used that by purchasing catastrophe models, working with insurers and seeking data. One of the key changes was that the government assisted by writing to insurers just recently to request that insurers provide further data, which insurers did.

**Senator GREEN:** Was that the Assistant Treasurer, Stephen Jones?

**Dr Wallace:** Yes, the minister wrote to insurers requesting the insurers to provide further data, which we received in June, July, August, which we used to help update the modelling further.

**Senator GREEN:** And in terms of the operation, how many insurers have signed up so far?

**Dr Wallace:** We don't have any signed up so far but we're talking to every insurer and we've written to every insurer.

**Senator GREEN:** But not a single insurer has signed up yet?

**Dr Wallace:** No but I'm hopeful that we will get one. Hopefully—

**Senator GREEN:** And, to be fair, they're not required to sign up for a while. The legislation gives them the ability to time their entry to the scheme. They must do so by 31 December 2023. I appreciate that you might not be able to give a precise answer to this question, but it is important because this is what people want to know. They were promised 58 per cent savings kicking in on 1 July 2022 by the previous government. When will premium savings start to flow through to North Queenslanders in those high-risk areas, if insurers don't have to sign up for another 18 months?

**Dr Wallace:** I expect that the savings will flow as policies renew for those people that are customers of insurers that sign up. So an insurer will sign up with ARPC and then, as those policies renew, they will then receive the savings. The savings are being monitored by the ACCC. There's separate funding—

**Senator GREEN:** You're saying no-one has signed up yet. So some people living in North Queensland could have to wait until 2025 to start seeing those savings flow through.

**Dr Wallace:** I hope it's not that long but—

**Senator GREEN:** I know you hope that but genuinely, people have had—it's getting late and I don't want to be crass with my language, but people have had enough of being lied to and misled about what this potential scheme could actually achieve. And I guess people are really keen to understand when they'll see the difference in their premiums. It sounds like the Assistant Treasurer has really started to push the insurers. But in the worst case scenario, people could be waiting until 2025.

**Dr Wallace:** I hope that's not the case.

**Senator GREEN:** I hope that too.

**Senator McDONALD:** You've talked about the cyclone reinsurance pool being cost neutral. It was my understanding that would be over the 10-year period. But it is my understanding that the ARPC is operating on a cost-neutral basis quite quickly, which is adding to the costs for insurers. Could you speak to the cost-neutral part, please?

**Dr Wallace:** The legislation requires us to set prices that are cost neutral to government in the long term. We have done that. It is reviewed by our actuarial team, by external actuaries and also by the Australian Government Actuary, which in the legislation is the reviewing actuary. So it's had a lot of scrutiny. I can assure you that it is priced in the long term as a cost neutral to government. There are some significant risks. In our modelling we do actually model up to a \$15 billion loss. It's a low probability, but the plausible maximum loss of the scheme is \$15 billion in our estimate. That would be a category 5 cyclone falling on Townsville or Cairns or a category 2 cyclone falling on Brisbane. We need to allow for that in the modelling, the probabilities. So I can assure you that we're not taking a short-term view on the pricing. Our pricing is not linked to global markets. We're able to

actually look at the modelling for Australia and set a long-term price that smooths out the observed experience of cyclones in the long term.

**Senator McDONALD:** We might come back to that in a couple of weeks when we meet again. I have reports from North Queensland of renewals that are coming in up to 53 per cent since 2021 renewals, which had increased 30 per cent on the previous year. Are you continuing to monitor premium renewals?

**Dr Wallace:** The ACCC has responsibility for monitoring premiums and they have powers to compel insurers to provide data. I'll be providing a report, I believe, on that. I have a requirement to do so. Our role is to set premiums and to work with insurers to deliver those outcomes. I did want to make the point that I'm conscious and very aware of the price increases that are occurring in the market. There has been a very large amount of natural disaster in the global and Australian insurance industry, but the cyclone pool is committed to delivering a long-term stable outcome. From my perspective, I would say that we're the only part of the global and Australian insurance and reinsurance industry that's talking about stabilising and reducing prices at the moment.

**Senator McDONALD:** So the modelling does include inflationary pressures that have increased over the last few months? You mentioned other natural disasters but also there are costs of rebuild, shortage of building materials, shortage of workforce. Have insurers raised this issue with you?

**Dr Wallace:** Insurers have raised the issue of inflation, and reinsurers as well. Our premiums are set on sum insured and also our premiums allow for the coverage that is provided in policies for increased cost of repairs.

**Senator McDONALD:** When was the last natural disaster for Northern Queensland or Northern Australia that you were referring to? I'm concerned that the floods in southern Australia are now affecting the Northern Australia region.

**Dr Wallace:** Our pricing only focuses on cyclones and cyclone-related flooding, so we've not included in our pricing any other natural disasters beyond cyclone, storm surge related to cyclone, and flood related to cyclone.

**Senator McDONALD:** I'll put the rest of my questions on notice and see you on the 25th.

**Senator DEAN SMITH:** Going to your engagement with insurers and their cooperation in joining the pool, what are some of the outstanding issues or issues of concern that insurers are raising with the reinsurance corporation?

**Dr Wallace:** ARPC is engaging with all of the insurers in implementation. We've had multiple meetings with insurers and we're working with them to help implement. From my understanding, and I've spoken with insurers directly, the change is complex and they've all got project teams working on this. We're working collaboratively and closely together to help them put in place the processes and systems. So from my perspective, it's not one of resolving issues; it's just that it is a large, complex change. One of the challenges for insurers is they have to unwind or remove their existing reinsurance programs. That's one of the impacts on what we're seeing—some delays and some complexity for insurers.

**Senator DEAN SMITH:** So there are no disputes—disputes is too harsh a term; there are no ongoing discussions or concerns around definition or time frames or process issues?

**Dr Wallace:** We're administering the legislation and the legislation is very clear on time frames, how a cyclone is declared and the period of cover. We are helping insurers to implement that and to work with the reinsurance sector to help reinsurers understand that and to back out their cover. We've done presentations to both the insurance industry and the reinsurance industry to try to address any misunderstandings by insurers about those definitions in the legislation. The legislation is very clear on what cover is provided, and we are supporting insurers. We will be covering what's in the product disclosure statements by insurers and there is continuous cover from the pool during the period of a declared cyclone event.

**Senator DEAN SMITH:** I think this is the point. I've heard some commentary with regard to the exclusion period in terms of when the claim can be enacted, when the incident—I think 24 or 36 hours. There's been some sort of conjecture around the suitability of that.

**Dr Wallace:** Senator, just to explain, there is no exclusion period. When a cyclone is declared, there is full cover provided for the full period of the cyclone. And 48 hours after the downgrade of the cyclone, cover continues to be provided for further 48 hours. The insurers and reinsurers would like to see a longer period. But the legislation is very clear: it is 48 hours. That's what we're working towards as our legislative obligation.

**Senator DEAN SMITH:** I know that you're working to administer the legislation. You're comfortable, confident that 48-hour period is suitable, is appropriate?

**Dr Wallace:** That's not a question for ARPC, Senator. Our role is to administer the legislation, and the period is very clear in the legislation.

**Senator DEAN SMITH:** But it is a matter that insurers are raising with you, even though from your perspective it's clear because it's in the legislation?

**Dr Wallace:** We are communicating with insurers and reinsurers that 48 hours of additional cover is provided beyond the downgrade of the cyclone, and that picks up the further flooding that occurs after the cyclone is downgraded.

**Senator DEAN SMITH:** We'll be able to explore this further at the Joint Standing Committee on Northern Australia, of which Senator McDonald and I are members. In response to one of Senator McDonald's questions, you did talk about cyclone risk in Brisbane. You thought it was not likely or plausible—

**Dr Wallace:** Low.

**Senator DEAN SMITH:** Can you explain that to us further?

**Dr Wallace:** The cyclone pool covers all policies in Australia. So every household policy, small business strata, small commercial strata is covered by the policy, but there is zero premium for South Australia, Tasmania, the ACT and Victoria. Most of New South Wales is also zero premium. But there is a small amount of premium in the northern part of New South Wales and obviously in Western Australia on the coast as well. There are low-risk zones which have a probability of a cyclone occurring but where the premiums are not very large for cyclone. The legislation requires us to set a premium for low-risk areas that's comparable to what was commercially being charged previously. We are then transferring the profit margins that would otherwise have been held by those policies to medium and high-risk areas to maximise the savings for those areas. So it's very important that low-risk areas are in the scheme. We're using that to actually achieve the savings. I should also say that in the event that there was a cyclone that met the legislative requirements in another part of Australia, it would be covered as well.

**Senator DEAN SMITH:** I'm interested in the possibility—I say the word possibility but it could even be more highly likely than that—that a severe weather event, in this case a cyclone, moves down the coast of Queensland, so it moves from areas of low to medium population density to areas of higher population density over time. And I think I may have seen some evidence which suggests that extreme weather events are moving down the Queensland coast—less relevant in my home state of Western Australia because the population densities are so small. How does the reinsurance corporation manage that over time?

**Dr Wallace:** In our price modelling, we look at thousands of simulations of different types of cyclones in different locations over different periods of time. So we have a universe of simulations of different cyclone events. Some of these are very unlikely but they are important because they could happen. In our setting of the premium, we strike the premium based on a long-term average cost. But there is a process where we have to table in parliament a financial outlook report, and that will require us to provide information to the parliament about the sustainability of the scheme. That's an annual process. That will give us the opportunity to confirm whether the premiums are sustainable or not, whether they're delivering or not. And through that process, we would then consider whether we might need to make any changes. But our objective is to keep premiums stable and to reduce them as much as possible.

**Senator DEAN SMITH:** So that provides some sort of internal transparency but also a public level of transparency and accountability. Finally, what role, if any, does the corporation have with regard to mitigation?

**Dr Wallace:** We've got two roles. One is that in our pricing we have a requirement to provide financial incentives for risk mitigation. We've already done that in home insurance and we're looking to introduce that into small business and strata as well. So there'll be a financial incentive in the price. The second obligation that we have is to provide data, de-identified data, to other government agencies to help target risk mitigation measures. It's something we've built into our corporate plan because we believe there's a huge opportunity to be a centre of excellence on data. There's very little high-quality data available to the Australian community on cyclones. We want to make that available through that collection of information and de-identifying it and then helping other agencies target risk mitigation efforts.

**Senator DEAN SMITH:** Thank you very much, Mr Wallace. We look forward to following up when you come before the Northern Australia committee.

**CHAIR:** Dr Wallace, we thank you for your very concise first estimates appearance and congratulate you for it.

**Australian Office of Financial Management**

[18:37]

**CHAIR:** Welcome. Thank you very much for being here. Mr Bath, if you had an opening statement, it would be appreciated if that were tabled, due to time considerations, but we certainly welcome any opening remarks that you might have.

**Mr Bath:** Thank you, Chair. We did provide an opening statement, which I'm happy to have tabled. I would note, though, that on the second-last page there's some information about our current financial year's issuance activity and that's a little out of date as of yesterday, when we issued a new 12-year bond, or 11½-year bond, in the volume of \$14 billion. I can provide an update or just take it as read and, if you have questions on that, I can answer them.

**CHAIR:** That's okay. I think we all got that and we've all got the document. We very much appreciate those opening remarks.

**Senator CANAVAN:** I have some quick questions on the Public Register of Government Borrowings. On your website, the section on the Public Register of Government Borrowings says:

The Act requires the AOFM to establish, and publish on its website each quarter, a register recording the beneficial ownership, by country, of all securities issued by the Australian Commonwealth Government and any securities guaranteed by the Commonwealth that are issued by Australian States or Territories.

But when I go and download the register, it doesn't seem to be listed by country. There are only two countries that I can see in this register, the US and Canada. The bond holdings for all other parts of the world are just categorised by region, like 'North Asia' or 'South and South-East Asia'. Why isn't the public register categorised by country?

**Mr Bath:** Senator, I'd have to take that on notice, I'm afraid. I know it's been longstanding practice to report them the way that they are currently reported. It may be that there might be some single investors in certain countries that we might be a bit reluctant to draw attention to.

**Senator CANAVAN:** I doubt there's just a single investor in North Asia, with all respect, Mr Bath. I imagine there are quite a few.

**Mr Bath:** If we went from North Asia to—

**Senator CANAVAN:** We issue a lot of bonds to people in those areas. With all respect, Mr Bath, this is not a matter of practice. This is in the act that was referred to there. It's in section 7 of the Guarantee of State and Territory Borrowing Appropriation Act 2009. Section 7 says that you have to have a Public Register of Government Borrowings, and section 7(4) says:

The register must be in a form prescribed by the regulations and must record the beneficial ownership, by country  
I'm happy to table this. Chair, could I table the public register that's available?

**CHAIR:** Yes indeed.

**Senator CANAVAN:** It's available in an Excel spreadsheet. That's a printout of it. The act clearly states that you have to categorise the borrowings by country. So why isn't the OFM in compliance with its act?

**Mr Bath:** I don't think it's our act, Senator, but—

**Senator CANAVAN:** Okay—with the law. Section 7(1) of that act says:

The Australian Office of Financial Management must establish and update each month a register to be known as the Public Register of Government Borrowings.

And then section 7(4) says, as I read out, that it has to be by country. You should be complying with the law and it doesn't seem you are.

**Mr Bath:** Senator, thank you for drawing that to my attention. I'll look into it further. I don't have anything to add to my earlier comments though.

**Senator O'NEILL:** Mr Bath, how do the recent Commonwealth bond yields compare to PEFO?

**Mr Bath:** They're significantly higher.

**Senator O'NEILL:** A little more detail?

**Mr Bath:** I draw your attention to page 225 of Budget Paper No. 1. You'll see chart 7.2 there. That represents graphically what we call the yield curve, a representation of the yields on each bond in our portfolio, going up to 30 years. You can see that the blue line represents the current snapshot for the October budget and the red line represents that which applied in March, which probably would also have been used for PEFO, given the proximity of PEFO to the March budget.

**Senator O'NEILL:** Can you confirm that's the case, perhaps on notice?

**Mr Bath:** I would be happy to.

**Senator O'NEILL:** Thank you. I wanted to get a bond yield comparison with the recent yields compared to PEFO and also by comparison to MYEFO.

**Mr Bath:** MYEFO 2021?

**Senator O'NEILL:** Yes.

**Mr Bath:** Yes, I would be happy to do so.

**Senator O'NEILL:** Thank you. How much of the pandemic-related debt will need to be refinanced over the forward estimates?

**Mr Bath:** We don't tend to carve out the pandemic debt and treat it as sort of a separate entity to the rest of our debt. But I can probably draw your attention to—I think I've got some figures on the share of our portfolio that rolls over, and I might have even included some in the opening statement.

**Senator O'NEILL:** The whole of what I was seeking was: what yields were they issued at?

**Mr Bath:** I refer you to the second page of my opening statement that I was asked to table, under the operating environment and bond issuance in the last two years. Essentially in 2021 we issued \$207 billion of Treasury bonds with an extremely low average issuance yield of 0.99 per cent. The weighted average maturity of that bond issuance was just over 10 years. Part of that was to issue \$15 billion of a new 30-year benchmark bond at just under 2 per cent. That was 2021. There's some detail on 2021-22, where the issuance task fell in terms of volume. I think it was \$96 billion—towards the bottom of that page—and was issued at a weighted average yield of 1.9 per cent and a weighted average term of maturity of 8.6 years. We think in terms of financial years rather than calling something a pandemic bond.

**Senator O'NEILL:** Going to page 85 in Budget Paper No. 1, there's some data there. How does that intersect with what you've just been talking to me about?

**Mr Bath:** The chart that I showed you earlier on page 225 represents, if you like, a snapshot of the market at the time that the budget was put together and the time that, in this case, the March budget was put together—and I think PEFO but, as I said, I'll take that on notice and confirm that—whereas the chart on page 85, chart 3.8, demonstrates how the path of forecast interest payments will evolve through time. The chart to the left of that, chart 3.7, demonstrates that not all of the portfolio of debt is locked in forever. But similarly not all of the future issuance, or the future stock of debt that gives rise to the interest costs that you see in chart 3.8, is yet to be issued. Chart 3.7 demonstrates the stock of debt that's currently outstanding, that was issued prior to, in this case, 30 September 2022, and that which would be issued after 2022. As those red bars become a greater share of the total, because they're future issuance that hasn't happened yet, that issuance will happen at rates approximating or assumed to approximate the blue line on chart 7.2 on page 225, as opposed to the historic rates that have been locked in sitting behind the blue bars in chart 3.7. So over time, old debt is replaced with new debt gradually—

**Senator O'NEILL:** Which is called the refinancing of that debt?

**Mr Bath:** That's the refinancing task. But we've taken very deliberate steps in recent years to issue longer so that the rate at which that those blue bars are replaced by red bars is slower than it would otherwise be if we'd been issuing at the sort of target term to maturity as we were, say, 10 years ago.

**CHAIR:** Senator O'Neill, we're out of time in the five-minute block. Do you have one more question or would you be willing to put it on notice?

**Senator O'NEILL:** I'm happy to put it on notice.

**Senator BRAGG:** Can the AOFM advise how many Australian government securities, or the value of the securities, were on issue at 30 June 2022?

**Mr Bath:** I take you to the debt statement on page 218, Budget Paper No. 1. Table 7.1 has the year-end face values for the year just complete, 2021-22, as \$895 billion. You can see that it evolves as you move to the right across the forwards estimates period, ending the forward estimates at \$1.159 trillion.

**Senator BRAGG:** Just for clarity, was that less than estimated in the March budget?

**Mr Bath:** Yes.

**Senator BRAGG:** And that's due to the turnaround in the budget bottom line in 2022, is it?

**Mr Bath:** Yes.

**Senator BRAGG:** I want to ask you about the issuance. Can you tell me the level the 2021-22 issuance would have been without the pre-funding? You say on page 16 of the 2021-22 Final Budget Outcome that the AOFM:

... maintained a smooth rate of bond issuance largely in line with Budget estimates—  
for clarity, that being the March budget estimates—

As a result, the AOFM has effectively pre-funded some of the 2022-23 financing task by accumulating cash reserves.

Can you please advise by how much the 2022-23 financing task was pre-funded?

**Mr Bath:** I think so. It's difficult for us to split out how much of it was pre-funding for this year versus funding not required for last year. We did definitely reduce our stated issuance task for 2022-23 the day after the budget was released. That's the current financial year. We have reduced our issuance task for the current financial year following the budget. I can't tell you exactly how much—

**Senator BRAGG:** How much did you reduce it by?

**Mr Bath:** I don't have that off the top of my head. I will ask my colleague Mr Parry to comment.

**Mr Parry:** This is not exactly the question you're asking but our issuance task for the current year—we announced the size of that program after the budget in March and we announced a program of \$125 billion of Treasury bonds. We updated that program at the time of the October budget and the number that we announced at that time was \$95 billion. So it was \$30 billion less. That's not exactly the question you asked but it's a pretty close approximation.

**Senator BRAGG:** You might be able to take all that on notice then.

**Mr Bath:** Can we just clarify what the question was, Senator? You want to know how much we reduced our issuance task for the current year?

**Senator BRAGG:** Yes.

**Mr Bath:** I think we just said \$30 billion. But did you also have, Senator, a bit in there about last financial year, or not?

**Senator BRAGG:** Yes.

**Mr Bath:** So revisions to the last financial year's—

**Senator BRAGG:** Maybe just provide it all notice in writing. That way you'll probably have a—

**Mr Bath:** I'm happy to but I just want to be clear on what it is we're providing to you, Senator.

**Senator BRAGG:** Last year, yes.

**Mr Bath:** Thank you.

**Senator BRAGG:** Finally, have you undertaken extensive investor relations activities?

**Mr Bath:** Yes, Senator—me personally, or the agency?

**Senator BRAGG:** The agency.

**Mr Bath:** The agency has, yes.

**Senator BRAGG:** And what sorts of activities have you been running since the October budget?

**Mr Bath:** Since the October budget we've had presentations at investor conferences. One of the banks that we deal with, Commonwealth Bank, has an annual investor conference not long after the budget. We had a speaker, our head of funding and liquidity, speak at that. And we've had international trips, I think for two weeks, finishing last week. Mr Parry was on one of those to South-East Asia and South Asia. And two of our colleagues are on a trip in Europe at the moment that dovetails with the OECD working party for debt management meeting in Paris. They've got investor engagement sessions, usually with banks acting as introducers, with investors in Europe.

**Senator BRAGG:** So quite a lot then.

**Mr Bath:** After the budget there tends to be a flurry of activity.

**Senator BRAGG:** Has there been much feedback following the recent budget? And has there been any feedback on the high debt issuances over the medium term?

**Mr Bath:** Mr Parry can give you firsthand feedback from those investors.

**Mr Parry:** The short answer is no. The investors tend to be more focused on the near term. And the story there is, as I mentioned earlier, that we've got fewer bonds to issue than we had told the market to expect at the March budget—so no particular concerns there.

**Senator BRAGG:** We'll probably have some more questions on notice on that issue, but thanks.

**Senator DEAN SMITH:** I've got the 2020-21 Final Budget Outcome on my screen here. At page 16 the government makes the statement:

At the end of 2021-22, gross debt was \$895.3 billion ... \$10.7 billion lower than estimated in the 2022-23 March Budget. This reduction is smaller than the improvement in the fiscal position as the Australian Office of Financial Management ... maintained a smooth rate of bond issuance largely in line with Budget estimates.

What do we mean by a smooth rate of bond—

**Mr Bath:** It means that we tell the market what our issuance plans are following each official update to the budget, be it MYEFO or budget. This year obviously was a bit different with two budgets. We tend to follow that reasonably closely—do what we say we'll do—and when new information is released, then we change the trajectory. So essentially when the fiscal position improves between budget updates, it will result in us maintaining roughly the same issuance rate, perhaps a little slower but not markedly so. Essentially, Senator, the issue is you don't want to be a sovereign debt manager who gives away what the fiscal outcome is or the next budget position is before the budget's released. If you changed every week or every month what the issuance task was, you'd almost be giving away what the next budget update is going to and you're probably going to be giving away the profitability of a few mining companies while we're at it.

**Senator DEAN SMITH:** The final sentence in the paragraph says:

As a result, the AOFM has effectively pre-funded some of the 2022-23 financing task by accumulating cash reserves.

Are you able to advise how much of that 2022-23 financing task was pre-funded?

**Mr Bath:** I think so, Senator. The end of year cash balance is probably not the best measure of this because it fluctuates with intra-year differences in payments and receipts. But our plan is to run down assets that were on our balance sheet or in our administrative function at the beginning of the financial year by just under \$47 billion. I'll take you to table 3.9 on page 136 of the portfolio budget statements, budget related paper No. 1.15. If you work your way down the 2022-23 budget, so the second column of numbers, the third number from the bottom of that is the \$46.849,559 billion that we're effectively planning to run down over the course of the financial year. It's the third figure from the bottom of the second column, under CMA transfers.

**Senator DEAN SMITH:** Okay, thanks very much. We'll leave it at that.

**CHAIR:** Thank you very much, Mr Bath and team.

### Proceedings suspended from 19:00 to 20:01

#### Australian Taxation Office

#### Australian Charities and Not-for-profits Commission

#### Department of the Treasury

**CHAIR:** Welcome, Commissioner Jordan and Acting Commissioner Jenkins. I think you will have noted that, if there are written opening statements, we'd be very happy for them to be tabled. But we also welcome a few comments from you if you'd like to give them by way of opening.

**Mr Jordan:** Thank you, Chair. I'm more than happy to table my opening statement in the interests of time, and go straight to questions.

**Ms Jenkins:** Thank you. I'm happy to table the opening statement.

**Senator NAMPIJINPA PRICE:** Commissioner, could you please outline the requirements and assessment process for any organisation wanting to register as a public benevolent institution in order to gain DGR status?

**Ms Longley:** The process first is that they must be eligible to be a charity. There are four eligibility criteria for that, including that they are a not-for profit entity and that they have an ABN. They have to meet one of the charitable purposes. There are 12 outlined in the Charities Act. After that, we also will have a look at whether they are organised for the provision of benevolent relief. That's an assessment that we do holistically looking at the activities that they undertake as well as their governing documents, and we make that assessment at that point in time. If we do make the assessment that they are to be registered as a charity and also with the subtype of a public benevolent institution, we pass that over to the Australian Taxation Office and they determine eligibility for DGR endorsement.

**Senator NAMPIJINPA PRICE:** In 2021 the Australians for Indigenous Constitutional Recognition failed in their application to become a public benevolent institution and also to gain DGR status. They then took action against the commission for this but later withdrew this action. The government has now granted them DGR status and I'm assuming also status as a public benevolent institution. So can I get some clarification? On what basis are they now eligible? What process has occurred for this political organisation to obtain this status?

**Ms Longley:** There are a few ways that an entity can gain DGR endorsement. One of those is specific listing where the government, along with Treasury, will work to provide specific listing that's named in legislation. I



understand that is the case for Australians for Indigenous Constitutional Recognition. That does not grant them registration as a public benevolent institution. To my knowledge they're not registered as a public benevolent institution on the public-facing charity register.

**Senator NAMPIJINPA PRICE:** So all they have is DGR status?

**Ms Longley:** That is my understanding.

**Senator NAMPIJINPA PRICE:** Would an organisation that is based on the same objectives to assist Aboriginal people but is against constitutional recognition also have the opportunity to be granted DGR status on the same sorts of objectives?

**Ms Longley:** As I mentioned, that is a matter for government to work out with Treasury. The ACNC would not actually be involved in that process, as the ACNC was not involved in respect of the specific listing.

**Senator NAMPIJINPA PRICE:** So that would be entirely at discretion of the government. Is that correct?

**Ms Longley:** If that is the way that they receive DGR endorsement, yes.

**Senator SHOEBRIDGE:** Thanks, everybody, for attending and for your work throughout the year. Can I ask first of all about the Mormon Church, probably to the ATO. You'd no doubt be aware of reports that the church globally has a \$100 billion tax-free fund called Ensign Peak Advisors, which invests in companies including Amazon and Lockheed Martin. Have you been aware of those reports?

**Mr Jordan:** Yes, I am.

**Senator SHOEBRIDGE:** Are you aware of the allegations from former members of the Mormon Church here in Australia that the institution is engaging in potentially widescale tax avoidance and tax evasion, including by using a shell company?

**Mr Jordan:** I'm aware of those matters only through media reports. We will find it difficult to talk about the individual tax affairs of a taxpayer. Obviously we take note of media reports of this nature but I doubt whether we can go too much into specific details.

**Senator SHOEBRIDGE:** I wasn't going to ask about the details. You're aware of the concerns. Is there a current investigation into the church by the ATO?

**Mr Hirschhorn:** Senator, as the commissioner said, we are very aware of those allegations but, due to taxpayer secrecy, I cannot confirm or deny whether an investigation is taking place.

**Mr Jordan:** As I said, we are very well aware and take note of serious allegations made in the media.

**Senator SHOEBRIDGE:** Are you aware also of reports that in Australia the compulsory 10 per cent tithing that followers of the church pay is being funnelled through a charitable trust and therefore seeking to obtain tax deductibility even though, as I understand it, tied payments are not generally treated in that way?

**Mr Hirschhorn:** Yes, Senator, we are aware of the media reports. I'll also say as a general proposition, not talking about the specific taxpayer, that we do not view tithing as a gift, because a gift must be unconditional. Tithing, therefore, is not eligible for deductibility.

**Senator SHOEBRIDGE:** So, putting to one side the Mormon Church, having a structure where a faith-based institution had tithing in place and put it through a charitable trust and sought to treat it as tax-free income, that would face challenges, would it?

**Mr Hirschhorn:** Yes. There are two elements here. One is to look at the deductibility to the person who is tithing their income. The other element is to look at the taxability to the entity receiving the tithing. They are different questions. The tithing, because it is effectively compulsory, would not qualify for deductibility to the payer. The charity or the recipient entity may or may not be taxable. Generally, even if it is not deductible to the payer, it may well not be taxable to the entity, because the entity is itself a not-for-profit.

**Senator SHOEBRIDGE:** I will go, then, to the basic religious charity exemption. Does the ATO have any understanding about how much that is costing taxpayers annually?

**Mr Hirschhorn:** Senator, because the entities are exempt, we have not traditionally required them to lodge tax returns specifying how much of an exemption they are claiming.

**Mr Jordan:** It's also a bit difficult because—

**Senator SHOEBRIDGE:** Almost by definition you don't have the data.

**Mr Jordan:** At my local church they hand two plates around. One is the contribution to the building fund, which tends to be deductible, and one is a contribution to the priests' upkeep.

**Senator SHOEBRIDGE:** Commissioner, your church may treat their tax obligations with a high degree of—

**Mr Jordan:** Well, I hope so, but we don't know what is in which place, sort of.

**Senator SHOEBRIDGE:** Is there a limitation on the volume of money, the size of the charity, that can use the basic religious charity exemption for filing any documents, effectively?

**Mr Jordan:** I don't think so.

**Mr Hirschhorn:** From a tax perspective, no, Senator. I understand there are some reforms that my colleagues from the ACNC might want to talk about.

**Senator SHOEBRIDGE:** And while you're doing that, perhaps address the very real concerns that have been raised about it by, I think, a former commissioner of the sexual abuse royal commission as to how the basic religious charity has been working. But if there are other reform matters, please address them.

**Ms Longley:** The eligibility for basic religious charity status is set out in the act. It doesn't depend on size of the charity but there are some other matters that the charity must take account of. Things such as government contributions or government funding to the charity of over a certain amount, \$100,000, would mean that it's no longer eligible to be a basic religious charity.

**Senator SHOEBRIDGE:** But there are potentially charities with billions of dollars of assets using the basic religious charity exemption and providing almost no documentation to ATO, no audited accounts, almost nothing. Is that right?

**Ms Longley:** That's correct.

**Senator SHOEBRIDGE:** That seems to me a fraught environment. If literally billions of dollars can be channelled through the economy with almost no reporting to the ATO, that seems to me to be a very fraught environment, to say the least. Commissioner?

**Mr Jordan:** I'm not sure of the extent of reporting of financial results of religious organisations to the ACNC, which may provide scope. I know some not-for-profits, not particularly in the religious area, do file tax returns because they rely on the mutuality of income principle. But if they have rental income, interest income, they have to file a tax return and they are taxable on that. I'm not precisely aware of the nature of the religious institutions tax filing position but I assume they report to the ACNC.

**Senator SHOEBRIDGE:** From the ACNC, it is a very low-doc environment, isn't it? What are they required to file under the basic religious charity exemption?

**Ms Longley:** Basic religious charities are required to provide an annual information statement, as are all charities, but they do not have to answer the financial questions. So it is optional for all basic religious charities to answer the questions in relation to financial information.

**Ms Jenkins:** Senator, I can give you some numbers. In terms of the 2020 annual information statement, there were 8,210 charities reported as BRCs. Only 7,719 of those didn't provide any information. So there are some basic religious charities that do choose to provide some of that information. But, as my colleague said, there was a carve-out in the legislation in 2012 and so they don't need to provide that information.

**Senator SHOEBRIDGE:** Did you say 7,700 don't?

**CHAIR:** Senator Shoebridge, we're going to have to come back to you.

**Ms Jenkins:** I'm happy to provide that information separately if you like, but 7,719—

**Senator SHOEBRIDGE:** Do not share.

**Ms Jenkins:** Correct.

**Senator O'NEILL:** I expect the characteristics of the basic religious charities that you've been speaking about are really varied from one entity to another, so there's no blanket perception that can be gathered by the questions in those sorts of mass numbers.

**Ms Jenkins:** That's correct. The basic religious charity—their only purpose is advancing religion. There may be some other charities that perform other functions, but a basic religious charity can only have the single purpose of advancing religion.

**Senator O'NEILL:** I want to go to the reality of the floods that are so significantly impacting our fellow Australians. I'm really mindful of having been out and seeing how beautiful it is out west, the green, but now just so green—absolutely sodden and water not being able to get away. The impact on those communities of large and small business is going to be really very significant. I'm sure that those who thought they were going to get a great crop this year are going to find themselves in a different situation: unable to get the machinery on and get a crop off. Every day I hear a little more and it makes me more concerned for what might happen to the local economies that rely on this boom-and-bust cycle that occurs. My questions go to what happens to those individual people

who might find themselves unemployed, isolated, unable to work, or businesses who are affected by such a natural disaster and find themselves in a situation where they've used all the spare cash that they've got and they do not have funds to meet a tax obligation. What does the ATO do then? And can you be mindful of what I think is a massive literacy gap that happens sometimes between what somebody even running a small business might do when things run predictably, and their interaction with a large entity of government that can be extremely confronting?

**Mr Jordan:** Senator, we're very well aware of the difficulties that are facing some communities that are really struggling now, maybe for the second or third time. We take a very empathetic approach to ensuring that we don't add to their burden by requiring payments, lodgements et cetera. Generally we try, both through agents and through local publicity, to ensure that they're aware that we are happy to speak to them, to work out a payment program if that's necessary, to ensure they're not put under added pressure by lodgements. So we will often defer lodgements, defer any compliance activities in the area.

**Ms Smith:** Further to the commissioner's comments, there's a lot that we do to support these small businesses. We know there are about 5.1 million clients that are in the 40 LGAs that are suffering really dramatically from the current floods. It's kind of tough to say that at the ATO we have a very well-practised adverse events framework, unfortunately, that deals with all of the natural disasters. We have a dedicated hotline for clients who might be experiencing challenges. But generally what we find is that it's not till after the event has ceased that actually a lot of clients really face 'Okay, what do I do now?' We do things as the commissioner suggested. In addition to that, we prioritise refunds where we can help clients to get cashflow back; we set up payment plans; we can remit penalties and interest during the time that it's been impacted. And we really encourage anyone who's in those 40 LGAs to make contact with us, because we tailor our approach to the circumstances of that particular individual because it impacts people so differently.

**Senator O'NEILL:** Prioritising payments—I'm sure that's going to be something that people hear about. What's the dedicated hotline? Do you know the number? You never know who's listening and this could just be the answer to their prayers. Maybe they'll sleep better tonight having your number.

**Ms Smith:** Let me find that number and I'll give it to you rather than shuffling through my papers now.

**Senator O'NEILL:** So, 5.1 million clients—

**Mr Jordan:** It's important to note that not all are seriously financially affected. Postcodes can be quite large—local government areas. But that's the total potential number of people affected.

**Senator O'NEILL:** And we have to hope it's not all of them. You hope that a few—perhaps some of the more marginal lands that often get less water might be the ones that hold up in the local economy on this occasion. When you have a flood, a lot of your documentation can be destroyed, your computers might be destroyed, your records might not be available and, even though it's not a flood event, you can have ransomware attacks on your business and you've got all your digital copies. What do you do in those extraordinary circumstances where people basically have lost every bit of record keeping that they have and they may or may not have a backup? What happens then?

**Mr Jordan:** We work with them to do our best jointly to reconstruct their records. And we may rely on past years or the most recent information that we have.

**Mr Hirschhorn:** Sometimes the bank records will survive. We will help people reconstruct from whatever survives the event.

**Mr Jordan:** And if we can't get it perfect, we've got to deal with the facts as we've got them. We'll make a best estimate, agree that and move on. If they've genuinely lost the material, they can't do anything about it. We can't. We'll make the best effort to work with them to reconstruct whatever records, like bank account records, are available. But ultimately we just have to agree something and move on.

**Senator O'NEILL:** Ms Smith, do you have the number?

**Ms Smith:** I do. If anyone is impacted by floods and wants to talk to us about how we can assist, the hotline number is 1800 806 218.

**Senator O'NEILL:** Thank you.

**Senator DEAN SMITH:** Before I ask some questions of the Australian Charities and Not-for-profits Commission, Mr Hirschhorn, in response to Senator Shoebridge's question about—I'm paraphrasing—lost revenue, you used the word 'traditionally' to describe the activities of the ATO. That suggests that there might have been some work being done or some untraditional data collection. I'm just curious to know why you chose the word 'traditionally'.

**Mr Hirschhorn:** Senator, you may be running the risk of over-parsing my response.

**Senator DEAN SMITH:** Over-parsing?

**Mr Hirschhorn:** Yes.

**Senator DEAN SMITH:** It's not a term I've ever heard at estimates. One of my colleagues—

**Mr Hirschhorn:** So it is not relevant directly to Senator Shoebridge's comment, but a measure has come in where not-for-profits—so not charities but not-for-profits who self-assess as exempt—will have to start lodging a form of income statement from, I think, 24 July or from the year starting in July. But, going back to that previous question, we don't ask—as a general rule, we will not ask people to lodge a tax return if they do not have any taxable income.

**Senator DEAN SMITH:** Thank you—so not completely a long bow.

**Mr Hirschhorn:** A medium bow, perhaps, Senator.

**Mr Jordan:** I should say, Senator, Commissioner Hirschhorn is one of those people you want on your Trivial Pursuit team or—what do you call the things you do in pubs, where you get asked questions? You want him on your team.

**Senator DEAN SMITH:** Excellent. Well, we hope that Senate estimates doesn't go so long that we end up in Trivial Pursuit. Mr Hirschhorn, it is an interesting distinction you make, because, at the community affairs estimates this afternoon, I did ask officials from the Department of Social Services, when they think about their role in the charities and not-for-profit space, do they think about it in the broad or do they draw a distinction between charities and not-for-profits. In your brief remarks then, you did delineate quite clearly, it sounded to me, a difference between not-for-profits and charities. Could you just expand on that for me a little bit further?

**Mr Hirschhorn:** Yes. To some degree, charities and not-for-profits are both functionally tax exempt on the whole in terms of at least their—actually, sorry, I might go back a step. Charities are generally tax exempt and that is on both the donations and their investment income. Not-for-profits are generally exempt on their member contributions but will often be taxable on their investment income. In this ongoing reporting measure, not-for-profits will be subject to a different regime from charities. And, indeed, if I refer to my colleagues, they are somewhat confusingly referred to as the Charities and Not-for-profits Commission, but my understanding is that they only regulate charities and not-for-profits.

**Ms Jenkins:** That is correct.

**Senator DEAN SMITH:** As the shadow assistant minister for competition, charities and treasury, I'm genuinely interested in that and that will be of great value to me over what I hope will be a short tenure in the shadow assistant minister role. Thank you very much for that. Just turning then to the ACNC, thank you very much for the invitation to attend the 10th anniversary events on 2 December. Before we come to those and other matters, Minister, can you provide the committee with an update on the selection process for a new commissioner of the ACNC?

**Senator Gallagher:** it hasn't been finalised.

**Senator DEAN SMITH:** Could you just step us through process?

**Senator Gallagher:** I'll see if I can get any information on that.

**Senator DEAN SMITH:** Perhaps I can cover that at the end.

**Mr Jordan:** Can I also just mention that the acting commissioner has been extended from the end of November to the middle of December. So that's the sort of time frame that we're working on.

**Senator DEAN SMITH:** Thank you very much. My question is really just about the process, but I appreciate that.

**Senator Gallagher:** We can help with that.

**Mr Jordan:** Ms Brown has voluntarily agreed to come along in case you have any revenue questions.

**Ms Brown:** The appointment of the new commissioner is being conducted in accordance with the merit and transparency guidelines. It will ultimately be a decision of the minister and cabinet before going to the Governor-General to actually make the appointment. A merit selection process has been underway. The job was advertised—I haven't got the dates with me, but the job was advertised, a recruitment panel in accordance with the merit and transparency guidelines was established, interviews were held and it's now with government for decision.

**Senator DEAN SMITH:** Are you able to disclose who is on the recruitment panel or the selection panel?

**Ms Brown:** I can. I believe I might need to take it on notice just to confirm I've got the right names. I think there are only three members, but I could have that wrong. It was chaired by the Secretary to the Treasury, Steven Kennedy. Jenny Wilkinson, the Secretary of the Department of Finance, was on the panel, and Susan Pascoe, a former—

**Senator DEAN SMITH:** A former commissioner. Thanks very much. At a high level, Ms Jenkins, can you give us an overview of the most recent report and its key findings? I noticed that, in your opening statement, you draw attention to some of the key data that's been revealed or reported. Can you provide us an update with some of the other key metrics?

**Ms Jenkins:** Yes, absolutely, Senator. We've actually produced a number of reports recently. We have had our corporate plan, our annual report and our charity's eighth edition. So I'm going to give maybe some of the key statistics in the 2021-22 financial year that you might find helpful. In that year, we received 6,015 registration applications. Of those, we registered 3,152 charities. We did have some concerns raised about charities, because, obviously, part of the job that we do is we take concerns. So there were around 2,522 concerns. Things that people were concerned about included inappropriate advocacy, individuals obtaining private benefits and mismanagement of funds. Obviously, we had a look at those concerns and in some cases they went on to investigation. We had 96 investigations during that period and that resulted in revoking 15 charities' registrations for serious and ongoing noncompliance. But I must say that Assistant Commissioner Longley and the team work very, very hard before we get to a position of revocation to actually bring the charities back on track. Most of the work that we are doing is very much around education, and I'm pleased to say that, in the last financial year—actually, no, it was in August. It's hard to keep track of time. In August, we released free online training sessions, which are available to everyone. We have eight modules for that, just in terms of volume. So there are just over 100 staff that we have. We answered 20,449 calls and we processed 13,165 written inquiries. There was a lot of interest in the charity sector in the last year, with over five million views of our charities register—so people searching the charities register. The final point I might make is that we're very proud of the enhanced charities register. For those of you who are listening and haven't had a look at it, it now provides a lot more detailed information about the programs that the charities are providing, where they are located and the nature of their activities. That's searchable online and it was launched earlier this year.

**Ms Longley:** Yes.

**Senator DEAN SMITH:** Thank you.

**Senator McKIM:** I've got some questions for the ATO. We're in a commodity price boom, but the budget forecasts for the PRRT revenue are \$450 million down over the forward estimates. I've read the note in the budget paper about this, but could you just explain from the ATO's point of view what's going on?

**Mr Hirschhorn:** Senator, you're asking a question about the forwards for PRRT?

**Senator McKIM:** That's right, and why they're down so sharply.

**Mr Hirschhorn:** I might just talk about some general comments about PRRT as it's behaving at the moment. I welcome to my colleague Ms Brown. PRRT at the moment is paid primarily in relation to some historical oil fields—Bass Strait in particular; also Macedon and Pyrenees, I think—and we do publish the data of those who pay PRRT. That revenue is—

**Senator McKIM:** You don't segregate that data geographically, do you?

**Mr Hirschhorn:** So in terms of what fields?

**Senator McKIM:** No, so—

**Mr Hirschhorn:** So you're absolutely correct. We do not segregate it geographically. We have previously said which fields primarily drive it. And, indeed, the entity names do give some clues as to—and, indeed, the ownership structure. It's pretty easy to work out which company owns which fields. So, in the short run, the PRRT receipts are highly dependent on the oil price and the volumes of oil from those fields. But I might pass to my colleague as to how that is reflected in the forwards.

**Senator McKIM:** Thanks, Ms Brown. Thanks for sticking around for us this evening.

**Ms Brown:** You're welcome. I was just going to try to find numbers, but I can't quickly. But I think what you quoted was right. I would put it down to the forecasts influenced by three factors. The first is the movement in commodity prices, as Mr Hirschhorn indicated. In the forecast, there are assumptions made about commodity prices, and that is that they return to their long-run fundamental values after two quarters. So they're assumed to decline. That explains some of the movement in the PRRT. The second reason goes to maturing production in the

fields. We're seeing the fields maturing, so lower production. The third factor is some decommissioning costs as those fields and projects mature.

**Senator McKIM:** In regard to the third part of your answer, they are the Bass Strait fields in the main?

**Ms Brown:** In the main, yes.

**Senator McKIM:** Are there any fields that aren't in—the Bass Strait fields are the only ones mentioned in the note in the budget paper. Are you aware whether there are other fields that are not in Bass Strait that are decommissioning?

**Ms Brown:** I would have to take that on notice.

**Senator McKIM:** Okay, that would be good. Do we know how much PRRT revenue is attributable to the Bass Strait fields? I'm not sure whether that's a department or an ATO question.

**Mr Hirschhorn:** I don't think we can—I think we're in a challenge here. I don't think we can tell you. But I might refer you to our tax transparency reporting, which was published just last week, which does have several—I suppose it's public knowledge that Esso or Exxon has a stake in Bass Strait, as does BHP for that year. Our transparency reporting is probably a couple of years stale.

**Senator McKIM:** It's pretty grim reading, if I might offer that observation, Mr Hirschhorn. There's no criticism of the ATO there, but just the amount that we're getting from these companies that turn over massive amounts of money is in many cases zero. It's pitiful. But, anyway, thanks for allowing me that observation.

**Mr Hirschhorn:** Senator, may I make an observation in return to your observation?

**Senator McKIM:** Of course you can.

**Mr Hirschhorn:** We do publish the corporate transparency data each year. This is our eighth year of publishing it. We do try to provide a fair degree of contextual information as to the background to those statistics. One point that I would like to make is that, again, they are a little bit old. But obviously we know what is happening now and there are some very significant tax flows coming in from the oil and gas industry.

**Senator McKIM:** In terms of company tax?

**Mr Hirschhorn:** Yes. Senator, I think I might—

**Senator McKIM:** There are some pretty significant profits being made as well, Mr Hirschhorn.

**Mr Hirschhorn:** Indeed, there are. But as the tax administration, our job is to collect the tax payable according to the laws that the parliament passes.

**Senator McKIM:** Of course.

**Mr Jordan:** Can I just add—this is the oil and gas industry, not PRRT as such—that, as a result of the Chevron case, which dealt with the pricing of debt, we've been able to disallow around \$40 billion of interest deductions across the oil and gas industry. That equates to \$12 billion of company tax. Publicly, Chevron has announced that they will be paying, in the 2022 calendar year, tax of \$3.7 billion.

**Senator McKIM:** What's that on a profit of?

**Mr Jordan:** I don't know that figure, but I can tell you that, as a result of the Chevron case itself and the work that the ATO did, we have substantially brought forward their payment of tax and a very substantial part of that 3.7 is to do with that.

**Senator McKIM:** I understand.

**Mr Jordan:** Shell has announced they will be paying tax. Exxon has also said the same. This is bringing it forward. That was to do with the pricing of debt. The government has made some announcements in the budget about the thin capitalisation that sort of go to the quantum of debt by restricting deductions for interest to 30 per cent of the net profit of those companies. So you again see a larger flow of revenue coming from that sector, which is very highly leveraged, as I'm sure you know.

**Senator McKIM:** Thank you. I just want to move back to the PRRT. What's the latest figure that the ATO has on the value of the carry-forward expenditure—the tax credits under the PRRT?

**Mr Hirschhorn:** The most recent published total carry-forward losses are approximately \$280 billion.

**Senator McKIM:** And do you publish that? I presume that's published somewhere, is it?

**Mr Hirschhorn:** Yes, on the taxation statistics website. I think it's on data.gov.au.

**Senator McKIM:** And how regularly—do you publish that quarterly or annually or how often?

**Mr Hirschhorn:** That is updated annually, usually around June each year.

**Senator McKIM:** So you said \$280 billion, Mr Hirschhorn?

**Mr Hirschhorn:** Yes. That's the number I have at the moment. It changes as people lodge, but the exact number I have is around about 284.

**Senator McKIM:** How does that relate to the 12 months prior—to the previous report?

**Mr Hirschhorn:** At the end of 2019-20 it was about \$282 billion.

**Senator McKIM:** So it's going up.

**Mr Hirschhorn:** It's a \$2 billion movement.

**Senator McKIM:** Thank you. I'll come back to that.

**Senator DEAN SMITH:** Ms Jenkins, in your opening statement you talk about a number of formal mechanisms such as your advisory and sector forums and the fact that you've recently introduced a consultation panel. Can you just sort of expand on those two elements for me, please?

**Ms Jenkins:** Sure. I'll start and then I'll hand over to Ms Longley. A big part of what we do in the charity sector—the ACNC was established because the charity sector wanted the ACNC. So a big part of that is about getting the feedback and engaging strongly with the sector. There are two peak bodies. The first is the sector forum, which comprises members of the sector. There are just over 30, I think, in that forum. It meets regularly. Actually, what we've been trying—during COVID it was online. What we have been trying to do is to actually get the group back together. It's used to do things like talk about what are the current issues, and we've done roundtables, but it's also to consult with them when we've got changes coming up. Then there's the adviser sector. So there are two: the sector forum and then there's the adviser forum. The sector is represented by many charity lawyers, accountants, bookkeepers and other people. That's to give them a voice and to give a different perspective on the sector. The final one that you mentioned then is the consultation forum. What we discovered is that, a little bit like small business, there are lots of charities that would love to have their say and they would love to be consulted, but they can't necessarily commit the time to a formal committee. So what we've done is basically said that anybody who is interested can put their name down for the consultation, for a panel. Then we will say what we're consulting on. If there's a particular issue that they're really interested in then they can do that. So that's what that particular forum is about.

**Senator DEAN SMITH:** Ms Longley, would you like to add to that?

**Ms Longley:** I will say that, in relation to the consultation panel, we've got over 50 people who have already signed up to that and we have engaged with them on a couple of matters—two matters so far—and received some feedback from them. So we will continue to look to grow that panel. It's one where they can contribute voluntarily, so they will not have to respond to everything we send out. It's on a voluntary basis.

**Senator DEAN SMITH:** So I'm assuming that the ACMC appoints people to the adviser and sector forums and that charities and not-for-profits are free voluntarily to nominate themselves to the consultation panel?

**Ms Longley:** Yes, that's correct.

**Senator DEAN SMITH:** Can you just provide me with information in regard to who is on the adviser and sector forums and who is currently on the consultation panel? In regard to those three forums, the engagement happens how?

**Ms Jenkins:** Maybe I can give you some background there. We're actually about to publish on our website the names of all of the representatives from both of those. We thought that's a really good way of being more transparent and so that people in the community can connect with them. Your other question was just around how we conduct those. I think there were meant to be four a year at one point. I think it's two a year, just conscious of people's time, that are the formal meetings.

**Senator DEAN SMITH:** Of the adviser and sector forums?

**Ms Jenkins:** Yes, the adviser and sector, and they tend to be a week apart. The agendas are slightly different because the audience is slightly different. During the period of COVID they have been via Teams. But, for the advisors forum, we had it in person. We had workshop sessions, we broke out into groups, and we had discussions around various documents to get ideas. That's the format of those sessions. The intention is to use those sessions both to workshop some of the things—I have a simple example, if I may: the wording of some of the letters that we send out. One of the things that we find is that people really do want to have their say on which words we use and how they might be received. We also did some testing on who we should be contacting—for example, is it the responsible person and how should we be contacting them in the first instance. That's the group that we get the voice of the charity sector to help us really provide the best service that we can.

**Senator DEAN SMITH:** I'm assuming that there's rural, regional and remote representation of charities from the adviser and sector forums but also the consultation panel.

**Ms Longley:** At the end of last year, I refreshed the membership of both the adviser forum and the sector forum and we put out a call in our monthly newsletter. We had quite a few people who wanted to join. When selecting participants for that, I did have a mix of those who are already on the forums, but I also really looked very closely at regional and metro representation as well as the charity subtype and the beneficiaries that the charities worked in aid of.

**Senator DEAN SMITH:** Ms Jenkins and Ms Longley, you do that yourselves, independently of having to provide any advice up to government about your decisions or your choices?

**Ms Jenkins:** Yes, they are decisions of the ACNC, which decides who is on those particular committees. Can I distinguish that from the advisory board. That is a separate—

**Senator DEAN SMITH:** You must be reading my mind because that is where I'm going to.

**Ms Jenkins:** Fantastic. Would you like me to continue or do you want to ask a specific question?

**Senator DEAN SMITH:** Why don't we play a game and we'll see how close you get to my—

**Ms Jenkins:** I'll see if I can—

**Senator Gallagher:** Senator, let's not play games. Let's just do the Q and A.

**Ms Jenkins:** The two sitting on the advisory board—the advisory board is to advise the commissioner. So that is the source of the advisory board. That is managed by Treasury. There is a process at the moment where that has been opened up. But I don't know—is that where you were heading with your Q and A? Have I read your mind?

**Senator DEAN SMITH:** That is exactly where I was heading. My next set of questions was to the minister or to the deputy secretary in regard to what plans, if any, are there to refresh the advisory panel. If there are any, what's the process that will be gone through and what's the time frame around that?

**Ms Brown:** Unfortunately, I think I'll have to put those questions on notice. My colleagues would know, but they're not present. We'll try and get an answer back to you on notice.

**Senator DEAN SMITH:** Turning now to the government's election commitment in regard to charities and not-for-profits, which is headed 'Building capacity, building community: Strengthening Australia's charities and not-for-profits'. Acting Commissioner, can you just provide me with a sense of how the roles are delineated between the ACNC, the Treasury and the Department of Social Services—your understanding of how the roles between you, the Treasury and the Department of Social Services are delineated in delivering on those elements of that election commitment?

**Ms Jenkins:** The principles or the purpose upon which the ACNC operates is guided by three objects. The first object is to maintain, protect and enhance the public trust and confidence in the Australian not-for-profit sector. The second is to support and sustain a robust, vibrant, independent and innovative not-for-profit sector. The final point is the reduction of unnecessary regulatory burden on the sector. So, within that framework, that guides our role as the ACNC. For example, some of the work that we might be doing around fundraising and reduction of red tape, which has been part of the modernising fundraising piece, that is a piece of work that we would do. I also know that one of the parts of the document I think you're looking at was around protecting advocacy. The role that we can play as the ACNC is to guide people so they know when they can be advocating and when there are areas that it's not possible to be advocating on. That's certainly something that Ms Longley and I have been out speaking about, which is that it's very important that the sector understands that they can advocate. There are a couple of exceptions. Those are around, obviously, not being about a particular party or a particular politician. But, in terms of the sector, there is a lot of work that they do around advocacy. So I think that's really, from the ACNC's perspective, guided by our three objects.

**Senator DEAN SMITH:** That's helpful. The advocacy part is not included in this two-page document, but it is something that I want to come to in a moment. So I'm right to assume then that you're not involved in the commitment to convene a non-profit sector expert reference panel?

**Ms Jenkins:** That's correct.

**Senator DEAN SMITH:** Or the creation of a blueprint?

**Ms Jenkins:** That is correct.

**Senator DEAN SMITH:** And you're not involved in the commitment to charities and donors to double philanthropic giving by 2030?



**Ms Longley:** We will not be specifically running that, but I can see that there will be an opportunity for us to be an observer in some of those, as we have been, for instance, in relation to the fundraising working group. So it wouldn't be a lead role, but it may be observer status.

**Senator DEAN SMITH:** So the fundraiser working group is what?

**Ms Longley:** That is a working group that has been set up between states and territories as well as the Commonwealth in order to deliver on some previous government work as well. It has also been continuing now in terms of making sure that the fundraising rules are consistent nationally.

**Senator DEAN SMITH:** That would be under the fixed fundraising subheading of that?

**Ms Longley:** Correct.

**Senator DEAN SMITH:** Okay, thank you very much for that. Before we turn to the issue around advocacy, on page 22 of your report there are five performance measures. Before we get to those, I do note on page 23 that the ACNC has secured 91 per cent satisfaction on performance from stakeholders. So congratulations on that. Then I noticed that, on performance measures 1.3, 1.4 and 1.5, you've also exceeded your annual targets. But on performance measure 1.1, which deals with percentage of new charity registrations completed within agreed time frames, and 1.2, and the measure is percentage of charities complying with timeliness of annual information statement submission requirements, those two targets were not met. The first target on 1.1 is 90 per cent, but the result was 83. For the second target, 1.2, the annual target was 75 per cent, but what was achieved was 68 per cent. I thought this might be a good time just to provide on the record some of the factors that led to not reaching those two targets, given that the other three were exceeded.

**Ms Jenkins:** Absolutely. I might provide some observations, because I wasn't around at this particular—this financial year, and then I'll hand over to Ms Longley. One of the things that I've observed coming in has been the impact—for those of you who don't know, the ACNC is based in Victoria. All of the staff are based in Melbourne. There's been quite a significant impact to our workforce as a result of COVID lockdowns during that period. That's just an observation I would make around some of the challenges to our workforce during that particular time. One of the things I would also say, though, is that we're very focused on that. So, for the coming period, we are really working very hard to help charities understand their obligations to actually provide us with the annual information statements. But also we are processing those new registrations much faster. I'll hand to Ms Longley for any further details in relation to that.

**Ms Longley:** Thank you. I suppose the only part I would add in relation to 1.2 is the fact that many charities themselves have been significantly impacted by COVID, whether that means a reduction in their workforce or their volunteer base, as well as maybe an increase in the service provision that they've had to be giving. So that may well have impacted the number of charities that provided on-time lodgements. We have continued to assist them by sending reminders when their lodgements are due and also, as necessary, providing extensions of time within which to lodge as well.

**Senator McKIM:** Ms Brown, you gave three reasons in broad terms for the decline in the PRRT revenues that were revealed in the budget. Do you know what quantum of that decline is attributable to each of those reasons?

**Ms Brown:** I don't know that I've got any information here.

**Senator McKIM:** Is that something you could take on notice?

**Ms Brown:** I think we could find out some of it for you.

**Senator McKIM:** Thank you. Can I ask perhaps this question of Mr Hirschhorn? If not, please pass it on. Obviously, gas companies are making massive profits at the moment. I'd describe them as obscene war profits, but that's just me. Are gas companies using tax credits more quickly than previously expected at the moment?

**Mr Hirschhorn:** Yes. This will build on your question but also on some comments of the commissioner. The large gas projects spend an extraordinary amount of money building their assets. In 2019 I referred to this committee that, due to our efforts, we predicted that—and this is the denial of \$40 billion of deductions that the commissioner referred to—we would be bringing forward their tax to the 2022 year rather than the much later 2020s. I'm very happy to announce that has occurred. What that means now is that the gas projects on the whole are now tax payable. They have used up their corporate tax losses.

**Senator McKIM:** I understand that. But that's not the PRRT tax credits, is it?

**Mr Hirschhorn:** No. PRRT—and, indeed, we've spoken about this from time to time.

**Senator McKIM:** We have.

**Mr Hirschhorn:** The most recent modelling of PRRT forecast is the Callaghan review, which predicted that at a gas price of \$100—sorry, an oil price of about \$100—the big gas investments would be paying PRRT in the 2030s.

**Senator McKIM:** Yes. There's been no work done—that was a little while ago, that review. Has anyone done any updated work to forecast when in fact we might see those revenues coming in?

**Ms Brown:** That work still remains the most authoritative current work.

**Senator McKIM:** Minister, are you satisfied with \$450 million decline in the forecast PRRT revenues and is your government considering reform of the PRRT to actually make it work?

**Senator Gallagher:** We discussed this earlier today in the sense that the review that was commenced under the former government has been recommenced. The declines in revenue over the forward estimates are the application of the current arrangements influenced by the falls or expected reductions in commodity prices. So the government hasn't changed the law and hasn't made a decision about changing the law.

**Senator DEAN SMITH:** No, but you're a part of the government. You didn't bring a policy to the election to make the improvements that needed to be made. Minister, I'll put it to you like this. Australia's about level pegging with Qatar in terms of being the world's biggest LNG producer. Now, they in Qatar are collecting about US\$40 billion this year in tax from oil and gas. We're lucky if we're collecting 10 per cent of that. It's probably closer to five per cent. How is it that a petro-state like Qatar is 20 times better than us at taxing LNG? Would it have anything to do with the half a million dollars that the Labor Party took in political donations from the fossil fuel sector in the 2021 financial year?

**Senator Gallagher:** No is the answer to that in relation to the second part. I think it's improper of you to suggest and link the two things—the two issues. As I said, there's a review underway and there's a lot of work underway across the ministerial working group and secretaries group dealing with the mess that we have inherited from a government that didn't do anything or do what it should for the last 10 years. We are trying to address that with a range of options on the table.

**Senator DEAN SMITH:** Would you consider requiring the ATO to publish details on how much each company has in carried forward tax credits so we can actually know in detail which companies are taking us to the cleaners?

**Senator Gallagher:** I think the issue of transparency and tax transparency is important. I'm not the portfolio minister for this area. I'm happy to refer your question to them.

**Senator BRAGG:** I do want to ask about the ACNC. I wrote to you a couple of times during the election campaign. Do you know about those letters?

**Ms Jenkins:** Yes, I'm aware.

**Senator BRAGG:** You do? Okay, good. I was just wondering where that was up to.

**Senator Gallagher:** In terms of a response or the matters you raised?

**Senator BRAGG:** Yes. The issue was that effectively there was an organisation called Smart Energy which also had a sister or brother organisation called Smart Voting. They had common directors and common messages. One had some sort of charitable status and the other one was a campaigning outfit. It looked like it was in part a shell organisation to solicit charitable payments, which have tax preference status, and that then being used to finance political campaigns, which we broke down in detail. Just because I set up a sister or brother organisation shouldn't mean I should be able to evade the charity guidelines. So where did you get to with that? I know you were looking into it.

**Ms Jenkins:** Senator, I'll start with some high-level observations. I may not be able to go much further, but we'll see how we go and then I'll pass on to my colleague Ms Longley. I am familiar with some of the questions that you and the correspondents had. I've familiarised myself with that. As you are probably aware, we generally don't speak about specific charities, but we can speak in broad terms. I believe that my colleague spoke to you in broad terms about those last time. What I should say is that we take all concerns seriously.

**Senator BRAGG:** I am sure you do.

**Ms Jenkins:** They go into our risk ratings, and we then look at the information that's provided and consider how we should allocate our resources. But I might just pass to Ms Longley and see if there's anything more that she can add to your question.

**Ms Longley:** Thank you. Senator, what I will add is, again, some high-level observations around a number of concerns that we received in the lead-up to the election. We received some 400 concerns from the community.

The result of that was that we spoke to a number of charities. We advised them of their obligations and reminded them of their obligations. There were some charities that did take action in relation to their obligations as well. I think that's probably as much as really we would generally say around specifics.

**Senator BRAGG:** Yes. I've got your letter here from 17 May, where you note that 'The ACNC has no power to regulate Smart Voting Pty Ltd. However, I note your concern regarding the relationship between Smart Voting and Smart Energy'. I understand your obligations under the law. I'm not seeking to encourage you to undermine those. But I think it is important. I mean, a lot of these examples at estimates are just examples of situations which are in the grey area. If there is close corporate cooperation between those two entities, there is the potential to undermine the charities provision. So I guess maybe you can give me a bit more advice about what you're doing to deter that sort of behaviour.

**Ms Longley:** As we only have remit in relation to charities, as that letter said, we are not able to look at any other entities. However, where we do think that there may be consequences of relationships with other entities that mean that other laws are being breached or potentially there might be tax consequences, we do work with, in that instance, the Tax Office. We will make referrals to the Tax Office or to other regulators where there might be relationships between entities that we think do warrant further investigation if they're outside of our particular remit.

**Senator BRAGG:** Have you given advice to organisations like this where this is a perceived or real problem?

**Ms Longley:** Sorry, could you please confirm—'organisations like this'—which entities are we speaking about?

**Senator BRAGG:** An organisation with virtually the same name and with common directors working together on the same thing. One part of it collects DGR status or has charitable status and the other part of it is doing political campaigns. I mean, there may be a Chinese wall or there may not be a Chinese wall.

**Ms Longley:** Yes, Senator, as I said, because we really can only look at the charities, in an instance like that we may remind a charity of their obligations for good governance.

**Senator BRAGG:** Okay. I'm unclear about where you get to with that situation. Is there a deterrence program that you run or is that something that you communicate with the Tax Office about?

**Ms Longley:** Depending on the particular risk that we're seeing, it may well be that we do work with the Tax Office. It may well be that we work with a different regulator.

**Senator BRAGG:** Okay, and what work will you do on these particular Chinese wall issues in the next electoral cycle?

**Ms Jenkins:** Senator, we are always looking for ways in which we can help inform the charity sector of particular risks that we're identifying but also things not to do. One of the things that I was just conferring with my colleague on is that there are some changes to what's called related party transactions—around disclosure of related party transactions. Without going into the specifics of your particular case, it may be that type of scenario could be covered by the disclosure of related party transactions. I don't want to go into the specifics of your case, but that may be one of the disincentives to that sort of behaviour.

**Senator BRAGG:** Will that information be provided through guidance from you?

**Ms Jenkins:** On related party transactions?

**Senator BRAGG:** Is that coming?

**Ms Jenkins:** We consulted on that with the adviser or sector forum or maybe both of them last week. There is further advice coming in relation to that. Yes, that's correct.

**Senator BRAGG:** Outstanding—thank you.

**Senator O'NEILL:** Following from my last line of questioning, has the ATO noticed a significant increase of people seeking support, during this period of natural disasters, on that 1800 number—1800 806 218—if you've got a problem and you need to talk to the Taxation Department because of the impact of flooding?

**Ms Smith:** We haven't noticed an increase as of yet, but that's not unusual. When there's a natural disaster, it tends to be towards the end of the natural disaster that our clients start to turn their minds to things such as tax matters, and that's when we would ordinarily see an increase come through.

**Senator O'NEILL:** And that's those who would be putting in a BAS, not those who'd be doing an annual statement or pay as you go earners?

**Ms Smith:** Yes, it would be all clients that are in those LGAs—that's correct.

**Senator O'NEILL:** Okay. Just one personal one. I noticed you've got a reconciliation action plan. What are your current employment stats on Aboriginal and Torres Strait Islander employees at all levels?

**Ms Curtis:** We have a very strong commitment to diversity. In the Indigenous and Torres Strait Islander space, our current levels are just 3.2 per cent. So that's as at 30 September 2022 and that's up from 2.9 per cent in June 2022.

**Senator O'NEILL:** Okay. Could you take on notice a breakdown of what levels they are at and also by jurisdiction?

**Ms Curtis:** Yes, certainly.

**Senator O'NEILL:** Thank you very much. Also, the culturally and linguistically diverse and, if we're talking about diversity, all shapes and flavours of diversity: what are your strategic plans about that and what levels do you expect? Also, could you indicate again what levels they are at. Of course, it would be fantastic to see people of diversity at high levels in the SES.

**Ms Curtis:** I think you'll find our figures are really good in that space.

**Senator O'NEILL:** Great. I look forward to receiving them. One thing I love about being Australian is that, even though we don't always deliver fairness exactly, we still really believe in it and we like to talk about it and think it's about paying your fair share and pulling your weight. I saw great photos of kids out west this week filling sandbags—getting in, having a go and doing their bit. Paying your taxes is part of doing your bit. I know that you've had a focus particularly on multinational companies, and Australians are very pleased to see those companies pulling their weight more and more. I note the comments you make in your opening statements about significant improvements in capturing that fair tax. But how will the additional funding for the ATO in the October budget help drive up tax compliance to help us meet our current challenges with the budget?

**Mr Jordan:** Senator, we very much welcome the additional funding to increase the integrity and fairness of the tax system. It falls into three basic categories. For the Tax Avoidance Taskforce, our funding has been increased by around \$200 million a year and has been extended to 30 June 2026. This will enable us to recruit around 1,200 additional staff for task force work. While we will obviously continue to focus on the very large corporations, this additional \$200 million a year will enable us to also look at emerging large corporations and the larger medium private companies and high-wealth individuals. Also there's sort of a continual abuse of trusts. There are a lot of cases coming through the courts on that. Also, any other high-risk tax arrangements—we estimate around 3 billion in additional receipts over the forward estimates. So it's 1,200 staff but also a focus on high-wealth individuals and getting a better understanding of the tax governance arrangements of these large private groups that are a bit more opaque to us than listed companies, where there's a lot of public information. The second element of the additional funding is the shadow economy program, which has been extended for a further three years from 1 July 2023. In particular, the amount that's estimated is about \$8 billion a year attributed to the shadow economy.

Frankly, we acknowledge that's just unacceptable. It is an area that we can't audit our way out of as well. So we do have to rely on increased data feeds, the better management of data and the greater ability to use that to connect so we can isolate. It's sort of strange to me that, in today's world of technology, you can still just stay out of the system. We've got a lot of focus on what data feeds we need and how best we can match that to produce people that we just don't know or are aware of. There are a lot of things. It sounds easy. We can get the data, but there's no point having the data late. We've got to be able to match it in a way that focuses on a business or a business premise that's not in our system. So there's a lot of work to be done there across agencies as well, because a lot of this shadow economy work is government payments, fraud and all sorts of things. So that \$8 billion a year represents about 60 per cent or so of the whole small business tax gap. So that's a great area.

The third area is the personal income tax program. That's been expanded for further two years from 1 July 2023. Again, this is an area where there's a large underpayment or a tax gap of around \$4 billion a year, just related to work-related expenses—the overclaiming and the developed checklists for particular occupations that people use, and some agents just sort of tick boxes. We found that, in some of our random audits that we have to do as part of the tax gap analysis, people just didn't have receipts and they couldn't prove the expenditure on work-related expenses. Again, it's an area we can't audit our way out of, so we have to be able to use smarter data, as one of our business lines is called, and it's a scale market. When we talk about the Tax Avoidance Taskforce, it's more bespoke. We can have people looking at individual companies and embed them there. This is a scale market and you can have an audited way out of it, but with better use of analytics, again—for example, for a couple of years now, we do real-time nudging of people claiming work-related expenses throughout myTax. In other words, they'll get a pop-up that'll say—it's called 'nearest neighbour' as a project. You get a pop-up saying,

'Do you really want to claim that amount for that work-related expense, because it exceeds what a similar person earning similar income in a similar area would be claiming', because we have data on the parameters of these sort of things—benchmarks.

**Senator O'NEILL:** And in some cases that would be appropriate because there's a particular dimension that they do and then in others it's the conscience on the shoulder?

**Mr Jordan:** Yes, we changed the system because people used to go down until they didn't get the pop-up, so you can't do multiple entries anymore. But we're working on a new system that uses artificial intelligence, or what I like to call machine learning, that will be able to analyse that material and request from the claimant, if they want to go ahead with the claim, information to justify the claim—receipts or something. That program will also be able to analyse the response, put it into a format and hand it to a case officer, because you want humans to exercise judgement, and they'll be able to read the receipt. So that's a really big deal in a scale market to be able to ask for information, analyse it, put it in a way that the case officer can look at it and then exercise judgement. That's a big deal. This additional funding will help us in that personal income tax area to try to reduce the \$4 billion gap just on work-related expenses. Also, for rental income and expenses, there's over 100 billion in total—roughly 50 on expenses and 50 something on rent. There is not a lot of negative gearing in the system in the figures we've got.

We are installing a process that will be able to absorb rental statements from third parties like property management agents. Largely, all that rental income and expenses was not assured. It wasn't verifiable. So we will be able to verify, using third-party data, a large amount of the income and expenses on rental property owned by individuals, and that will provide a much, much better assurance in that personal income tax program.

They're the three elements—the Tax Avoidance Taskforce, the shadow economy and the personal income tax program—where, really, that funding will help increase the integrity and the fairness of the tax system, particularly in the small business area, to provide a level playing field. It's just not fair that those out in the shadow economy can operate in a different way to those actually doing the right thing.

**CHAIR:** Thank you, Commissioner, and thank you, Senator O'Neill. I'm aware that there are still some questions here. I remind senators we're going in five-minute blocks and we're still an hour behind for our next witness.

**Senator McKIM:** Thanks, Chair. Mr Hirschhorn, you mentioned in one of your previous answers the company tax transparency reports. We've had eight years of those now, and the number of big companies paying zero tax has consistently been around one in three. Given your previous answer and also previous comments made by Mr Jordan, do you expect that rate to come down? That is, do you expect, over time, the number of big companies paying zero tax to decline?

**Mr Hirschhorn:** For most of the companies which pay no tax, it's because either they have made losses in the current year or they have made significant losses in prior years which their current-year profits are not sufficient to absorb. So there is an element where it is dependent on the economy. But, pleasingly, if we look at the most recent report published, that number has drifted down from 36 per cent to now 32 per cent. All other things being equal, we would expect that to continue to come down.

**Senator McKIM:** You would?

**Mr Hirschhorn:** Yes, but perhaps not significantly down from that, because, even with the largest companies, a proportion of them will in any given year make a loss, and there is an element of the population that has made such significant losses in the past that it will take many years, if ever, for them to recoup those losses.

**Senator McKIM:** Because they just don't use up their deductible expenses?

**Mr Hirschhorn:** They just are not profitable enough to, in a sense, recoup their past errors.

**Senator McKIM:** But one in three of the biggest companies in Australia can't be operating at a loss in any given financial year, so a lot of that must be due to carrying forward previous losses.

**Mr Hirschhorn:** Yes. We do talk about this in the contextual material. If you compared it, for example, to some of the broader ASX population, I think it would surprise many Australians how many large companies actually make a loss for accounting purposes in any given year. Of course, companies like reporting accounting profits. But you're right that the two significant groups are those that make losses in the current year and those who are, in a sense, still recouping prior-year losses.

**Senator McKIM:** We've got a few companies—ExxonMobil, News Corp and, with the exception of paying the princely sum of \$30 in tax this year, Chevron—who for the entirety of the dataset have paid no tax. That is, they have paid no tax in the last eight years. How does that work? Would you give the same answer—are they

still making losses every financial year, or are they still not recouping their previous losses? And what can we do about this? Their cash flows are massive.

**Mr Hirschhorn:** Again, if I might make it a little bit more abstract. If I look at companies which have invested significant money in large capital projects, they will often have significant depreciation deductions, potentially financing deductions, albeit limited through our very effective work around transfer mispricing. In their start-up phase they will generally have years of start-up losses before the gas starts flowing and they start recouping those losses. As the gas industry has published publicly—it's difficult for me to talk about—they are expecting to pay significant tax in the 2022 year. That reflects the fact that those start-up losses have now been broadly recouped in that industry.

**Senator McKIM:** And, of course, they're making large profits.

**Mr Hirschhorn:** They have now recouped their start-up costs and are now making profits and so will now be paying significant tax. I spoke before about companies that may have had shifts in their industry, that, fundamentally, once had, for example, very significant advertising revenues, made significant losses, and may never recoup those losses because their business, even if profitable now, is in a sense a profitable small business against very significant historical losses.

**Senator McKIM:** I know you probably don't want to talk about specific companies, but News Corp has been around a while. They're not a start-up. They didn't have massive sunk costs from establishing gas pipelines and things like that. They've never paid tax in the history of the dataset. What's going on there?

**Mr Hirschhorn:** I will not talk about News Corp, but I might talk about an element of the corporate tax transparency report and I might also talk a little bit about the publishing industry. The corporate tax transparency report reports the tax payable at lodgement. It does not record the tax payable after compliance action. It is a list of what people have lodged, not what they have ultimately paid. The second thing that I would say is that, in the publishing industry, what we have seen is that in the past those traditional press businesses, the famous Fairfax 'rivers of gold'—those advertising revenues now sit in entities like Seek and realestate.com. They do not sit in the traditional press entities. You will see, from the corporate tax transparency report, significant taxes paid by entities like realestate.com. It's very important in looking at this list to really think about the economic circumstances of a particular industry over the last decade.

**CHAIR:** Last question, Senator McKim.

**Senator McKIM:** It's on a different topic, in that case. It's about the director ID requirements. It's specifically in its applicability to First Nations directors, acknowledging that there has been an extra period of grace given for company directors of Indigenous corporations but that doesn't apply to First Nations directors of non-Indigenous corporations or non-First Nations corporations. I want to ask whether there'll be any measures put in place to support First Nations directors of non-First Nations corporations and whether there's been any consideration given to extending the deadline for that subgroup, as has been the case in terms of an extension for directors of First Nations corporations.

**Ms Smith:** Thank you for the question. We have had approximately 1.3 million directors apply successfully for their director ID since we embarked on this some 12 months ago. Whilst the deadline is 30 November for the client group you refer to—and, in fact, all client groups—we will be very pragmatic and reasonable when it comes to assisting everyone to actually go through that process. Without giving an absolute guarantee, the deadline is 30 November. However, we are certainly going to take a very pragmatic approach to assisting clients get through, should there be circumstances where they require an extension. We're working with many clients on that, and we'll make sure that we give everyone the assistance they need.

**Senator DEAN SMITH:** Thank you very much. This is my last set of questions, but it would be remiss of me, at the first estimates after the federal election, not to ask the ACNC some questions in regard to the election and its impact on your work. In your media statement of 26 October, coinciding with the tabling of your annual report, you had this to say:

The ACNC received 2,522 concerns about charities, a 26% rise on the previous year. In the lead up to the Federal election, the ACNC received 490 concerns that charities were engaging in political advocacy. Of those, 19 were identified as being at risk of non-compliance. Those charities were provided guidance that they are allowed to advocate for or against a policy in line with their charitable purpose, but need to ensure they do not promote or oppose a political party or candidate.

I thought it might be worthwhile just to articulate for this committee exactly what the rules are—the guidelines. In addition to that, I'm particularly interested to know what guidance—it says here that you provided 'guidance'—was provided and in what form, and whether or not any of those 19 were referred to other agencies. And what is the status now of those 19 that were identified as being at risk of non-compliance? It's probably not necessary to

name them at the moment, but that's a decision for you under questioning from other senators, if that's where they'd like to go.

Before we get to that, just to conclude to the previous line of questioning: you provided some responses in regard to your performance against outcomes 1.1 and 1.2. I thought that was a very, very fair explanation, and we can explore that in greater detail at a future point. But this set of questions just go to that particular paragraph in your statement of 26 October.

**Ms Jenkins:** I will begin, and Ms Longley was around at the time of the federal election, so she can provide a bit more colour and movement.

**Senator DEAN SMITH:** Not too much colour or too much movement!

**Ms Jenkins:** I'll just go back to basics, because it is a question that I get asked a lot. Charities can advocate if it furthers their charitable purpose. One of the things that we have been talking to charities about is being very clear about what their charitable purpose is. It is important though, in the context of an election, that they don't endorse a particular party or a particular candidate. But what they can do is look at the various policies that are in place and provide criticism or some other feedback in relation to those policies. And, very specifically, promoting a change to law and those other things is also allowed, subject to my previous comments.

**Senator DEAN SMITH:** It must be associated with their charitable purpose.

**Ms Jenkins:** As a general proposition, that's correct. Now, as Ms Longley mentioned earlier, one of the key things we try to do is actually work on education first. I think around 400 to 500 concerns were raised with us in the lead-up to the federal election, and in about 19 or 20 of those cases we actually thought that there was something to chat to those people about.

**Senator DEAN SMITH:** To be clear, the number is 490 and 19, based on your 26 October statement.

**Ms Jenkins:** Thank you. I was rounding. In those conversations, as Ms Longley mentioned earlier, in some cases they adjusted their behaviour or maybe some of the information that they had produced. There is guidance on advocacy and on charities' election and political advocacy on our website. I'll just note for completeness, before I hand over to Ms Longley, that, in the context of the Victorian election that is currently ongoing, we try to get ahead of the game. If we know that there is an election coming up, we want people to know what they can and can't do. So, for example, we have been promoting our guidance through the Victorian Electoral Commission as well. But I might pass to Ms Longley, just for a bit more context.

**Ms Longley:** I would note that many of those 490 concerns related to the same charities. When we contacted 19 charities, a lot of them were because we had multiple concerns raised about the same ones. I am not aware in any case that we started investigations—which is a formal mechanism that we have—in relation to any of those particular charities. For the most part, they were telephone conferences or perhaps videoconferences. I'm not exactly sure. And in many cases they were followed up with a letter as well, and in many cases they were also referred to the web guidance that the acting commissioner has referred to.

**CHAIR:** Senator Smith, that was quite a long question, which has taken up a block of time. Do you have one more question, or do you want to put some of them on notice?

**Senator DEAN SMITH:** I might just ask two questions, but they'll be tight. Am I correct in assuming that, at the registration process, if the ACNC is taking greater care and effort to make sure that charities, when they're applying for registration, are being clear and concise in regard to their charitable purpose, that would assist manage the issues around political advocacy? Is that a fair statement? Is that a possible remedy? You could take that on notice.

**Ms Jenkins:** My broad observation would be: in all cases, when a charity is clear about their charitable purpose, it makes it a lot easier for us when we are doing any form of discussion with them or thinking about political advocacy—whether it is aligned with that charitable purpose.

**Senator DEAN SMITH:** Earlier in your media statement, you point to—and I think you portray it as a virtue—the fact that there are large numbers of charities seeking registration. I think it's fair to say that the size of our charity and not-for-profits sector is a demonstration of our pluralist and liberal democratic traditions. I think they are virtues. Are you foreshadowing that there could be greater levels of complexity and concern around charities participating in the political process, given the experience of the most recent federal election?

**Ms Jenkins:** I don't think I've been drawing that conclusion.

**Senator DEAN SMITH:** Perhaps we might wait to see after the Victorian state election and then subsequent state elections.

**CHAIR:** Thank you, Senator Smith.

**Australian Taxation Office**

[21:37]

**Senator BRAGG:** I have some questions for the tax office. Could you please explain how tax deductibility operates for the purposes of donations made to individual candidates or to parties?

**Mr Hirschhorn:** I will make some comments, but I fear that I will soon stray beyond my knowledge, and I might have to take some of this on notice. But, as a general proposition, for an Independent candidate—they have to be a candidate, so it's got to have started—

**Senator BRAGG:** I understand.

**Mr Hirschhorn:** a payment to an individual candidate can be deductible, not to an entity associated with that candidate. Separately, a payment to a registered political party can be deductible as well. Of course, there are limits. I think it's \$1,500, if my memory serves me.

**Senator BRAGG:** For a donation to be deductible, does the donation need to be made to the candidate, or can it be made to an associated vehicle or entity?

**Mr Hirschhorn:** In terms of an Independent candidate, it should be made to the candidate. In relation to a member of a political party, the payment must be made to the political party.

**Senator BRAGG:** That's very clear. The purpose of me asking you these questions is to make sure that my understanding is right, because I want to ask you about an example here. How would the ATO consider a structure where a donation was made to one entity but the claim for that deductibility was made on the basis that the money was expended by another? Does that make sense?

**Mr Hirschhorn:** In some cases, an entity may receive an amount not in its own capacity but as an agent for somebody else.

**Senator BRAGG:** What do you think about that?

**Mr Hirschhorn:** That is possible. The entity—

**Senator BRAGG:** It is possible?

**Mr Hirschhorn:** It is possible, in the very limited circumstance where that entity is an agent. You're still making a deduction to the real person, but somebody is merely collecting it on their behalf—a sort of nominee or an agent. But the ATO would urge caution if you are paying an amount to somebody other than the candidate or the registered political party because, generally, if you're paying to that entity in its own right, you will not be entitled to a deduction.

**Senator BRAGG:** Can the deductibility be applied to a payment made to a significant third party or to an entity that isn't associated with the candidate, assuming there is no agent?

**Mr Hirschhorn:** If it's paid to an entity in its own right—that is, not either the individual candidate or the registered political party—it will not be deductible as a political donation.

**Senator BRAGG:** In summary, it needs to go to the individual who is a candidate or to the party. The only exception to that is that it could go to an agent.

**Mr Hirschhorn:** In reality, in a legal sense, it's still a payment to either the individual independent candidate or the registered political party—it is merely that somebody has received it on behalf of that entity as an agent. They're not receiving it in their own right and then paying an amount on; they are merely, in a sense, a means of collection.

**Senator BRAGG:** You say 'agent'. Is there a formalised arrangement that you would expect to see, or by 'agent' do you mean anyone acting for someone else?

**Mr Hirschhorn:** It is, in a sense, the legal concept of 'agent', which is somebody acting on behalf of somebody else, and not receiving the amount in their own right but receiving it for somebody else. This is why I urge caution—it is very hard, if you are paying money to somebody, to know in what capacity they are receiving it. We would urge caution on somebody paying an amount other than directly to the individual, the independent candidate or the registered political party.

**Senator BRAGG:** That's very clear. Thank you for clarifying that. Do you have guidance on this?

**Mr Hirschhorn:** I would have to check. I suspect we do, but I would have to check.

**Senator DEAN SMITH:** If you do, could you make that available to the committee?

**Mr Hirschhorn:** We will provide whatever guidance we have on this point to the committee.



**Senator DEAN SMITH:** But if there's no guidance, perhaps you could be explicit about the fact that there is no guidance.

**Mr Hirschhorn:** Indeed. I'm sure that our group, which is focused on public advice and guidance, will be paying close attention to this exchange.

**Senator BRAGG:** I have one more question, and it's not about this anymore—it's about a new issue. There was an article in *The Daily Telegraph* on 30 October, which I'm sure you've read. The article was called 'Australian Taxation Office cracks down on cash cheats to recoup \$33b'. There was a quote from Assistant Treasurer Jones, who said:

If we had \$30 billion in the budget this year that would be what we're spending on Medicare.

In the ATO's opinion, what is this \$33 billion or \$30 billion of tax fraud that's just waiting there to be reclaimed?

**Mr Hirschhorn:** I am aware of the article. I strongly suspect that the article is referring to our tax gap analysis. This is analysis that we do every year. We have a very comprehensive program around this where we estimate the amount of tax that we are not collecting, according to law. Putting it around the other way, we estimate that we collect about 93 per cent of the tax payable according to law; 91½ per cent of that is in lodgement and 1½ per cent is through our compliance activity after lodgement. At 93 per cent, that is a world-leading level of performance. The seven per cent gap, in the most recent published statistics, is about \$33 billion. In some form of tax administration nirvana, where every Australian paid all the tax that was payable according to law, there would be an extra \$33½ billion in estimated receipts.

**CHAIR:** This is your final question, Senator Bragg.

**Senator BRAGG:** I think there were some statements made about this matter in this room about 30 years ago.

**Senator SHOEBRIDGE:** About tax office nirvana?

**Senator BRAGG:** About taxation policy.

**Senator SHOEBRIDGE:** It sounds like the seventies!

**Senator BRAGG:** Are we mainly talking about companies, or trusts, or individuals—or what?

**Mr Hirschhorn:** I will refer you to this wonderful tome in your report of the tax office.

**Senator BRAGG:** It looks long!

**Mr Hirschhorn:** It is spread across all markets. The commissioner did refer to elements of the individuals' tax gap. I think that's, off the top of my head, about \$8 billion. About \$12 billion relates to small business. But we have a full set across all taxes and all markets, and obviously we can point you to the relevant sections. I think it's chapter 3 of our annual report.

**Mr Jordan:** I mentioned in the opening statement the four largest tax gaps by dollar amount, which are small business, individuals, GST and then large business. We publish the most comprehensive suite of tax gap calculations—more than any other country in the world. It was a fairly big deal for us to put all that out there, because it's sort of judging us on our performance in a very systemic way. In the five years we've been doing it, fortunately it's come down. And that seven per cent gap is very much a theoretical amount in total, but our job is to incrementally continue to bring that down, and that's a measure of our performance.

**CHAIR:** Okay, thank you. Senator Shoebridge.

**Mr Hirschhorn:** Chair, may I make some quick additions?

**CHAIR:** Very briefly.

**Mr Hirschhorn:** I refer the senator to page 64 and following in our annual report for our comprehensive gap information. My colleague has pointed out to me that on our website we have a section, if you search under 'claiming political contributions and gifts', with some guidance as to what deductions are available.

**Senator SHOEBRIDGE:** I have some further questions to the ACNC. If the ACNC had undertaken an investigation, and you had evidence that somebody is seeking to provide false or misleading information to that investigation or otherwise deliberately and intentionally hinder an investigation, what steps would you take?

**Ms Longley:** We don't have the same powers as the ATO does in that respect. In fact, our powers are rather less significant. So, in that circumstance, there is a penalty available that we could potentially apply. But we would look to try to find other sources. If there is an instance where we actually think there might be criminal behaviour, there is the opportunity for us to refer that.

**Senator SHOEBRIDGE:** Do you have an MOU with the Australian Federal Police, for example, that would enable you to refer somebody if you identified somebody—

**Ms Longley:** We don't have an MOU with the AFP, no.

**Senator SHOEBRIDGE:** Have you referred any matters to the AFP for investigation?

**Ms Longley:** I would have to take that on notice, but my feeling is no.

**Senator SHOEBRIDGE:** I might just show you a document. Have you seen the statement of claim filed in the matter of *Moses v Hillsong Citycare & Ors* in the Federal Court?

**Ms Longley:** I have seen it. I don't know it in any detail at all.

**Senator SHOEBRIDGE:** Good news—here it is.

**CHAIR:** We've got the document, and it looks appropriate to be tabled, and it's being tabled.

**Senator SHOEBRIDGE:** Thank you, Chair. This statement of claim was filed only on 12 August 2022. Did you say this is the first time you've seen a copy of it?

**Ms Longley:** I have seen it before, but I don't know it in detail.

**Senator SHOEBRIDGE:** This statement makes some fairly extraordinarily damaging allegations about the conduct of a number of staff of Hillsong church and its associated charities. You said you'd seen a copy. Are you in possession of a copy, apart from the one that I've just provided to you?

**Ms Longley:** Not with me, no.

**Senator SHOEBRIDGE:** Is the organisation in possession of a copy?

**Ms Longley:** Yes.

**Senator SHOEBRIDGE:** It indicates that the ACNC is commencing an investigation initially into four and then into a further six Hillsong entities that were listed as charities with the ACNC. Are you in a position to confirm or deny that?

**Ms Longley:** I'm not in a position to confirm or deny. I should say in relation to the statement of claims that this was something in the media and that's where I've seen it. It was attached to a media article. That's how I've seen it. That was the reason for my pause at, 'Are you in possession of it?'

**Senator SHOEBRIDGE:** This statement of claim, from one of the senior financial officers inside the Hillsong grouping, alleges in some detail that Hillsong were consciously seeking to mislead, misdirect and hide information from the ACNC in relation to an investigation that the ACNC has on foot in relation to at least four and potentially up to 10 Hillsong entities. That's a serious allegation. I'm not asking you to say whether it's true or not, but it's a serious allegation, isn't it?

**Ms Longley:** That type of allegation is a serious allegation, yes.

**Senator SHOEBRIDGE:** Surely in those circumstances you, as the regulator, would have an obligation to obtain a copy of the statement of claim and then commence some process to determine if you were being misled and what impact it would have on your audit and your investigation. It troubles me that that hasn't happened.

**Ms Jenkins:** Senator, we didn't say that. You were talking about referral to the AFP et cetera. As we said earlier on, we don't generally speak about specific charities, and it is not appropriate for us to talk about the current matters before us. This is, obviously, someone's statement, and we take into account all information that's available to us. What I can say is that we are very interested in matters like this, but it's not appropriate for us to talk any further about it.

**Senator SHOEBRIDGE:** The statement of claim not only makes allegations; it identifies a whole series of contemporaneous documents that would be available to a regulator such as yours—you could seek to compel the production of those and then take them as part of the investigation.

**Ms Jenkins:** Correct.

**Senator SHOEBRIDGE:** But to do that you need to get the statement of claim first. So I ask again: was the ACNC in possession of a copy of the statement of claim prior to me providing you one tonight?

**Ms Jenkins:** As Ms Longley said, we have seen the statement of claim in the media. It was published online, so we have seen a copy of it, yes.

**Senator SHOEBRIDGE:** I might move on to another matter.

**CHAIR:** Senator Shoebridge, that is more than five minutes, so if you're moving to a different matter I think we'll need to conclude there. I believe that that is the end of the questions that we have for the ATO and the ACNC. We very much thank you, Commissioner Jordan and Acting Commissioner Jenkins. Thank you very much for your time and for answering our questions. You go with our thanks.

**National Housing Finance and Investment Corporation**

[21:59]

**CHAIR:** We welcome representatives from the National Housing Finance and Investment Corporation. Thank you so much for being with us and for your patience with the schedule. Welcome back to estimates, Mr Dal Bon. I'm not sure if you have a written opening statement at this stage. We would prefer, if you do, that it just be tabled for us, but we certainly would welcome any opening remarks that you have.

**Mr Dal Bon:** We're happy to go straight to questions.

**CHAIR:** Thank you very much. I'll go to you, Senator Tyrrell.

**Senator TYRRELL:** I'd like to ask some questions about the National Housing Finance and Investment Corporation. The budget provides \$350 million over five years for the National Housing Accord, and it will include availability payments over the longer term to facilitate institutional investment in affordable homes. The budget papers say that this institutional investment can be made by superannuation funds, yes? Why are the superannuation funds investing in affordable housing? Do you know?

**Mr Dal Bon:** I think, at the end of the day, rate of return is one of the motivations. When you also look at the membership of superannuation funds, a lot of them relate to low-income workers, key workers, so a lot of them are interested in affordable housing solutions for their members. I'm aware of a number of different transactions that involve superannuation funds in various parts of the financing stack. I should also mention that NHFIC issues its own bonds. We've been issuing bonds since inception, and that's how we finance the community housing sector with respect to long-term affordable finance. Some of the strong purchasers of NHFIC's bonds have been superannuation funds. For example, we know of a number that have been reporting that they've been purchasing our bonds, and we also suspect, through intermediaries, that a range of superannuation funds have been investing in NHFIC bonds. Again, that's driven by a range of reasons. I think it's based on rate of return metrics, generally from their fixed income area. It also reflects a growing interest in the ESG agenda, where there's a greater focus on social governance and environmental aspects. NHFIC's bonds are all rated as either social or sustainability bonds, which satisfies international standards. I think that's another reason it's been attractive for superannuation funds, among others. Superannuation funds are a subset of institutional investors.

**Senator TYRRELL:** So, for super funds that have an obligation to their members to be financially viable, how are we going to gauge that it's in the best financial interests of the members for the superannuation firms to invest in this?

**Mr Dal Bon:** That'll be a decision for superannuation funds. They have their own investment teams, they understand their responsibilities and they'll be looking at a range of assets. They have a look at real estate assets, including those relating to subsidised housing. So they'll form their own assessment based on risk return metrics.

**Senator TYRRELL:** Is there any guarantee from the government for that to happen so it's fair and reasonable?

**Senator Gallagher:** They have to by law, and they have to meet that test now. So they have to meet that test when they make their current investments in whatever they are. The same would apply here.

**Senator TYRRELL:** The housing accord refers to one million new homes, built in well located areas. How is 'well located' being defined?

**Senator Gallagher:** We had this discussion earlier today.

**Senator TYRRELL:** Apologies.

**Senator Gallagher:** No, that's alright. It's funny—NHFIC have a particular role under this program, but the policy responsibility sits in another part of Treasury. Essentially there are different interpretations of that. There's work to be done through the accord. The availability payments start in 2024, so we have a bit of time, with all the signatories to the accord, to work out some of the opportunities for location. Well located means different things to different people, but it can be about making sure that you have got housing opportunities close to where people work. It can be about being more centrally located, rather than having a long way to travel—and it'll cost you a lot of money to do that. There are also issues like the definition of 'affordable' can differ. States and territories have their own arrangements. In short, the discussion we had this morning was we have signatories to the accord. It has got a clear program. But there are things to work out, like the investment mandate, some of those definitional issues and the different responsibilities that the levels of government that've signed up to it bring to the accord.

**Senator TYRRELL:** There are 200,000 homes being built at the moment though. Are they being built in well-located areas as well or are the homes that're being built at the moment different?

**Senator Gallagher:** We went through a bit of this this morning too, about the average field—

**Senator TYRRELL:** I should've been here this morning. Sorry!

**Senator Gallagher:** Yes, I know. You didn't have to hang around until 10 o'clock tonight! We had a bit of a talk about what's expected going forward. If we look at between 180,000 and 200,000 houses per year, the vast majority of that's built in the private sector. This program is really looking a small but important additional supply to what would happen anyway. There is a view that by 2024 some of the housing activity we have seen in the last two years will start to ease a little bit. This is about supplementing that, but with a particular product, which is affordable housing, on top of some of the commitments we've made in the Housing Australia Future Fund.

**Mr Dal Bon:** I'll briefly add to that, Minister. The minister's correct, obviously, in terms of—

**Senator Gallagher:** Not obviously. Feel free to correct me if I'm wrong, please!

**Mr Dal Bon:** referring to the accord and the one million, based on the earlier sessions today. Just one thing from a NHFIC perspective which may also be useful, through our research function we also publish an annual state of the nation report that has 10-year supply and also new household formation projections. It's looking at projections of housing supply and demand. We will have an update to that publication next year. That will provide updated supply projections out for the next 10 years. At this point, in terms of well located—and there are various definitions—the state of the nation report that we're aiming to produce in the first quarter of next year will also have a dedicated chapter looking at needs analysis in terms of the various measures that can be used to assess various proxies for the housing need. That'll be also looking at the experiences of overseas countries and how they've used housing needs analysis to inform where support is delivered.

**Senator TYRRELL:** The \$10 billion investment in social housing in the budget—which is amazing—under the housing Australia fund, are the locations of those homes similar to the accord? It will be determined down the track with information, or is that similar—

**Senator Gallagher:** The Housing Australia Future Fund and what happens under the accord?

**Senator TYRRELL:** Yes.

**Senator Gallagher:** It's complementary and supplementary, basically. It's in addition to. The accord program is different to how the Housing Australia Future Fund will administer the returns from that investment into those particular areas.

**Senator TYRRELL:** And where they're located will be similar?

**Senator Gallagher:** Possibly, but it depends. There's more work to be done in relation to location. We had a discussion today—I think Senator Colbeck was here—about the work that Tasmania has done about planning laws. They've finalised their plans. Part of the accord is looking at how you can generate the additional supply—where it is, planning, zoning, all of those. States and territories are at different points on that, but it sounds like Tasmania has finished a big piece of work on that, so maybe they're in a better position in terms of understanding where the opportunities are there. But I don't know if I've got the breakdown from the HAFF and that. It's complementary, but supplementary. There could be some crossover.

**Senator TYRRELL:** So there's no—

**CHAIR:** Sorry, Senator Tyrrell, I'd note that your five-minute block has gone for about 10 minutes. Are there questions you'd like to put on notice?

**Senator TYRRELL:** I've only got one more.

**CHAIR:** Please go ahead.

**Senator TYRRELL:** How many are going to be built in Tassie? Isn't that the most important bit?

**Senator Gallagher:** That's to be determined.

**Senator TYRRELL:** So stand by?

**Senator Gallagher:** Yes, and you start ahead, with the housing minister being a local.

**Senator TYRRELL:** You've got to have a win every now and again! Thank you so much.

**CHAIR:** I understand Senator O'Neill has just two questions.

**Senator O'NEILL:** Much of it has been filled out. Was there anything else you might like to add with regard to how the government changes to the National Housing Infrastructure Facility will make it easier for NHFIC to get homes on the ground? What's the change? What's the critical change?

**Mr Dal Bon:** Thanks for the question. The recent change that's been announced with respect to the infrastructure facility—to give context, the infrastructure facility up until recently has been focused on funding critical infrastructure to unlock new housing supply. That fund is \$1 billion. It comprises concessional loans, \$825

million, and also \$175 million of grant money. To date, we've had about 420 to 425 board commitments under that infrastructure facility. The government's recent decision in terms of broadening the remit of the infrastructure facility will enable us to accelerate new housing supply, in particular for social and affordable housing. Just very briefly, the way that we can do that is through using the grant and also structuring the concessional loans to essentially close the financing gap that you typically see with resubsidised housing. There are a variety of ways that you can do that. Based on that change to our investment mandate—which is currently out for public consultation—based on the projects that we've seen to date, we would like to accelerate that new supply in the course of this financial year, certainly in terms of financial close, and hopefully we'll have some of those projects starting construction this financial year as well.

**Senator O'NEILL:** Okay. So it's a significant shift in the way that you can move the money to meet the market and the challenges. When you said that revised structures are under consultation, are there a range of those that on offer or are they being constructed in the process of consultation?

**Mr Dal Bon:** The investment mandate essentially reflects the direction that comes from government, and then that gives us the necessary power, if you like, to go off and look at various structuring opportunities. I think the important thing too is that, because it looks at closing the funding gap, it also provides an opportunity to learn some lessons in terms of the broader rollout under the HAFF, which will be coming shortly after, subject to the passage of legislation. What we've seen so far is a cross-section of projects looking at various structuring opportunities, and I think that will provide some very useful insights when we move on to the bigger rollout of the HAFF.

**Senator O'NEILL:** One on notice, if I can, just so that I stick to my five minutes. Could you, on notice, explain how the NHFIC financing model works to leverage investments into housing on the ground and provide some examples of the projects that are being funded by NHFIC.

**Mr Dal Bon:** Happy to take that on notice, Senator.

**Senator O'NEILL:** Thank you

**CHAIR:** Are there any other questions for this witness? The opposition senators will put their questions on notice. Thank you very much for attending estimates, Mr Dal Bon and representatives of NHFIC. You go with our thanks.

### Productivity Commission

[22:16]

**CHAIR:** Welcome. Thank you for being with us to answer our questions. Mr Brennan, if people have an opening statement, we're seeking that people table it, but we very much welcome any initial comments that you may have for us, this evening.

**Mr Brennan:** Thank you, Chair. I have no opening statement, happy to get into the questions.

**Senator DEAN SMITH:** Thank you very much, Mr Brennan and others, for making yourself available at such a late hour. During the course of today, particularly in the morning, there was some discussion around productivity measures, the need for productivity reforms and the performance of productivity across the Australian economy generally. I noticed that you have released a five-year productivity inquiry report. I'd like to start with you making general observations about Australia's productivity performance in the international context.

**Mr Brennan:** You're correct, the then government gave us terms of reference in February to undertake the second of what are to be five-year reviews of the Australia's productivity performance, the first of which was the *Shifting the dial* report back in 2017. It's a 12-month inquiry, and we'll be issuing a final report in February 2023. As an initial step, we've released six interim reports on various themes that are essentially there to give stakeholders and the community a bit of an indication as to our thinking on a range of potential reform directions, to lay out the nature of the challenge and to seek a bit of feedback. It's really been an exercise in putting out a few hypotheses and a few in-principle views, flagging some directions and seeking feedback. We've been in the process, of late, of having some roundtables and public hearings.

To your question, Senator, the first of those interim reports, from memory, we entitled that *Key to prosperity*. It really laid out, if you like, the recent productivity performance, both in Australia and across the developed world. The broad contours of that, if you like, are that productivity growth in Australia has slowed in the first couple of decades of this century relative to the performance in the 1990s but also, in general, to the post-war period of the 1950s and the 1960s. Australia's not unique in that respect. It's a pattern that's been evident across much of the developed world. The reasons for that are speculated about and are many. There are some reputable economists

who will simply say that the pace of innovation, the pace of invention, just doesn't match up compared to what it was for much of the late 19th and 20th centuries, that for all of the rapid pace of change associated with digital technologies, data and communications it just doesn't really compare to the sort of advance associated with electricity and the internal combustion engine and the sweep of things like antibiotics, air conditioning, and sanitation—all manner of things that came in rapid succession over that period. But a couple of key issues that we've pointed to, as well, are the fact that the economy of Australia, like everywhere, is increasingly a services dominated economy. The rate of productivity growth in services in the past has been a bit slower than has been the case for the traditional goods sectors like agriculture, manufacturing and mining, and to some extent, the path of productivity growth looks a bit different. In areas like agriculture, manufacturing and certainly mining the path of productivity growth was a lot of capital coming in to substitute for labour and the application of science, in many ways. If you think of agriculture, it was improved crop yields through different crop types, the use of fertiliser, pesticides and all manner of things. Services are a bit different. They tend to be labour intensive. They tend to be a bit bespoke. There's a sense in which the producer and the consumer co-create the service. They're not necessary amenable to automation or mass production in quite the same way. There's a particular challenge with driving productivity growth in a services dominated economy. That's one of the key themes that we've been trying to grapple with in this process.

**Senator DEAN SMITH:** If we were to think about the low-hanging fruit of productivity reform possibilities for Australia over the medium term, what would they look like?

**Mr Brennan:** Without foreshadowing where we're likely to end up in the report in February next year, because that's where we will endeavour to provide a menu of options—I guess the interim reports that we've put out try to provide some thematic guidance as to where we think it's important to look. We've put out a report focused on the role of data, digital technologies and new emerging issues like cybersecurity and the regulation of it. We've put out a report about what innovation might look like in a modern economy, which might look a little different to what it has looked like in the past. As important as things like traditional R&D activity are, maybe some of these service industries will innovate in slightly different ways. We've talked a bit about that. We've talked about the role of human capital and the importance of a strongly performing schools, skills, university and lifelong education sector. And then there are a range of other matters that go to specific challenges like decarbonising the economy, dealing with the state of the globe in a world where we've benefited hugely from free trade, open investment and the free movement of people. In a world where the mood of much of the world has soured on some of those things, how do we navigate our way through? Some of those themes—I won't say they're low-hanging fruit, and I'm certainly not giving you concrete policy prescriptions here—are at least the sorts of areas that we've identified and are pursuing with a view to more detail in February.

**Senator DEAN SMITH:** Staying at the high level for the moment, if we turn that on its head, what are the risks domestically and internationally that might make it hard for productivity reform issues to be embraced? What sorts of trends might we be seeing that could see a further reversal of productivity gains? You highlighted the fact that international trade agreements and the free movement of people had been elements that supported productivity growth not just in Australia but globally. What are some of those domestic and global risks to productivity improvements?

**Mr Brennan:** In addition to that large-scale challenge I outlined around the shift to a service dominated economy, I mentioned the challenge of decarbonising the economy, which we think is best seen almost through a productivity lens because it is an effort to reduce a cost—namely, the cost of carbon emissions—albeit it is a cost that we haven't been bringing to book in either firm profits or the GDP statistics. Doing that in the least-cost, most-efficient way, is going to be a significant challenge not just for us but for the other signatories to the Paris Agreement et cetera. I would repeat the point that the third challenge which we outlined in the initial document, around kind of a renewed view about perhaps being a little less open to the world and having a greater focus on sovereign capability and self-reliance—it's not that there aren't instances where that won't be an important policy goal for various reasons, but it is important for us to maintain a strong openness to investment, trade flows and the free movement of people. It's one of the main channels by which ideas move around the globe, and as a small, open economy, that's one of the main ways that Australian firms adopt innovations from overseas.

**Senator DEAN SMITH:** When people are expressing disappointment with Australia's productivity performance, it's not correct to see that as singularly Australia's failure. It's important to see it in the context of international productivity gains or losses, and productivity gains globally have deteriorated. Is that a correct statement?

**Mr Brennan:** There are a combination of things. It's not that there's no role for domestic policy in improving productivity growth or hampering it—I certainly wouldn't want my comments to be read in that way—but I would

note that it's a fairly common challenge across the developed world that productivity growth has been slow. It's been true in the United States, it's been true in Europe and it's true in Australia.

**Senator DEAN SMITH:** At a high level, there are some general questions I'd like to get onto the record. How many briefings has the Productivity Commission provided in person or been asked to provide in written form to the Treasurer since 23 May 2022?

**Mr Brennan:** It's generally not our modus operandi, if you like, to be providing ongoing briefing to the Treasurer. I've met with the Treasurer. We've certainly outlined our work program. We provide information about the various projects we have underway and the release schedule for those projects, and we talk a fair bit with the office around the potential work program and other matters. I'll take on notice what we would say by way of formal briefing, but in that respect, and it's been true under successive governments, we don't brief government in quite the same way as we did in my old job in Treasury, for example.

**Senator DEAN SMITH:** Has the government critiqued your comments to the Melbourne Institute?

**Mr Brennan:** To me?

**Senator DEAN SMITH:** Yes—to you or to the commission.

**Mr Brennan:** No.

**Senator DEAN SMITH:** Turning to those comments, how important is industrial relations reform generally to progressing productivity gains in the Australian economy over the immediate and medium term? If we had to think proportionally of the top four or five issues, how significant is the industrial relations element of those future productivity gains?

**Mr Brennan:** Rather than attribute a relative weight to it, I guess I would note it is a lever. Workplace relations is an important policy lever because it affects firms and individuals across the economy. So, yes, having well-structured, flexible arrangements that have a robust safety net but provide a high degree of flexibility to achieve productivity gains is an important policy lever.

**Senator DEAN SMITH:** Did I understand correctly your comments to the conference that where decisions are made by employers at a lower level or closer to the workplace they deliver better productivity gains? In federal-state relations we would call it subsidiarity, I think. Is it true that when you keep that decision-making and negotiation closer to the workplace you get better productivity reforms? If that is the case, what's the evidence for that?

**Mr Brennan:** The comments I made at the outlook conference last week really were just a kind of a reflection of what we put in the interim report. I think it was sixth of the interim reports that we put out. It dealt with a range of labour market matters, workplace arrangements, skilled migration, the gig economy, occupational licensing et cetera. In the workplace relations section we were making some broad reflections on what the basic direction of reform might be, to move it in the direction of improved productivity prospects. I'll make two qualifying remarks about that. The first is that the role of the interim reports as part of that productivity review is to be looking a little bit over the horizon, so I'm not seeking to provide commentary on particular pieces of legislation being presented to the parliament et cetera. Secondly, we were expressing views across a range of aspects of the workplace relations landscape: the awards system and what might be some incremental and perhaps longer term changes there, how the existing firm-level enterprise-bargaining stream could also be reformed, what to do about platform economy et cetera. But, yes, we did raise the question of whether there is a role for multi-employer bargaining in addition to firm-level bargaining? The view we put was that, yes, there is a role for multi-employer bargaining. In fact, we have that at the moment. It can play a role in reducing the transaction costs of bargaining, particularly for small enterprises who are in the award system, but for whom the enterprise bargaining stream is perhaps not really feasible. So there can be benefit to small and medium enterprises in having an alternative that they can take off the shelf and use as an alternative, perhaps, to the award. That has to be balanced against however protected industrial action is treated, but also the prospects for productivity growth. You've alluded to it. There is some literature out there to suggest that systems that are focused on firm-level bargaining tend to drive better productivity outcomes than those that are purely based on centralised bargaining, but I would note that Australia overwhelmingly has a firm-level bargaining system, and I don't think that's likely to change, irrespective of current proposals.

**Senator DEAN SMITH:** Where are the international jurisdictions that we should look to for inspiration in preparing for our productivity agenda? What do they look like? What characteristics might they have?

**Mr Brennan:** I think, to be honest, it will—

**Senator DEAN SMITH:** Or is the next productivity reform for Australia a uniquely Australian agenda?

**Mr Brennan:** You always want to take advantage of the evidence and good practice that exists overseas. Whether there's an individual model out there that we could, as it were, take off the shelf—clearly there's not. Workplace relations is a good example. Australia's system is unique and it has grown up through a range of unique historical, constitutional and other forces that have shaped it. It isn't always easy to identify a single better system and say, 'We're going to adopt that.' That's true across a range of policy areas, but that's not to say that there aren't good examples of practice out there that we should have regard to. I know that's an imperfect answer to your question. I don't know that there's even a small number of jurisdictions that I would point to and say, 'We just need to emulate them.'

**Senator DEAN SMITH:** Given the independence of the commission, would you like to venture some strengths and weaknesses of the most recent budget in regard to driving productivity gains in Australia?

**Mr Brennan:** No. I think, given the independence of the commission, I'll probably just refrain from doing so, Senator!

**Senator DEAN SMITH:** Neatly put, Mr Brennan. That's right.

**Senator Gallagher:** If you look at the budget measures against some of those priority areas identified in the interim report, you'll see there is some alignment there.

**Senator DEAN SMITH:** Senator, I was going to go more towards the discontinuation of certain innovation and research-and-development grant programs, but that's for another time. Mr Brennan and others, we'll make sure you we put you on at 9.00 am at the February estimates.

**Mr Brennan:** I should point out that my comment's not any sort of critique. I have no commentary to make. It's not my practice to comment on budgets and such.

**CHAIR:** Thank you very much, Senator Smith. I understand that other questions will be put on notice, given the hour and how long you've been waiting. Thank you very much, Mr Brennan, and representatives of the Productivity Commission. Thanks for answering our questions. You go with our thanks. I thank Minister Gallagher and officers of the Treasury portfolio who've given evidence to the committee today. Thank you also to Hansard, broadcasting and the committee secretariat. I declare the hearing adjourned.

**Committee adjourned at 22:35**