



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

ECONOMICS LEGISLATION COMMITTEE

**Estimates**

Public

THURSDAY, 21 NOVEMBER 2024

CANBERRA

BY AUTHORITY OF THE SENATE

**ECONOMICS LEGISLATION COMMITTEE**

**Thursday, 21 November 2024**

**Members in attendance:** Senators Bragg, Colbeck, O'Neill [by video link], Rennick, Roberts, Sheldon, Dean Smith, Stewart and Walsh

## TREASURY PORTFOLIO

### In Attendance

Senator Ayres, Assistant Minister for a Future Made in Australia, Assistant Minister for Trade

#### **Australian Prudential Regulation Authority**

Mr John Lonsdale, Chair

Ms Carmen Beverley-Smith, Executive Director, Life and Private Health Insurance and Superannuation Division

#### **Australian Competition and Consumer Commission**

Ms Gina Cass-Gottlieb, Chair

Mr Scott Gregson, Chief Executive Officer

Ms Sarah Proudfoot, Executive General Manager, National Anti-Scam Centre [by video link]

Ms Sharon Alley, Chief Financial Officer

Mr Tom Leuner, Executive General Manager, Mergers, Exemptions and Digital [by video link]

Mr Rami Greiss, Executive General Manager, Consumer and Fair Trading

Ms Nicole Ross, Executive General Manager, Infrastructure Regulation [by video link]

Ms Kathie Standen, Executive General Manager, Consumer Data Right [by video link]

Ms Melinda McDonald, Executive General Manager, Competition Division [by video link]

Ms Madeline Richardson, Executive General Manager, Consumer Product Safety [by video link]

#### **Housing Australia**

Mr Scott Langford, Chief Executive Officer

Mr David Le, Acting Chief Financial Officer [by video link]

Ms Rowena Johnston, Chief Credit Officer [by video link]

Ms Jennifer Chew, Chief Program Officer, Home Ownership

Mr Michael Camerlengo, Chief Origination Director [by video link]

#### **Australian Bureau of Statistics**

Dr David Gruen, Australian Statistician

Ms Kylie Bryant, Deputy Australian Statistician

Mr Brenton Goldsworthy, Deputy Australian Statistician

Ms Jenny Telford, General Manager, Census and Population

#### **Productivity Commission**

Professor Alexander Robson, Deputy Chair

Dr Lisa Studdert, Head of Office

Ms Rosalyn Bell, First Assistant Commissioner

#### **Committee met at 19:00**

**CHAIR (Senator Walsh):** I declare open this hearing of the Senate Economics Legislation Committee into the 2024-25 supplementary budget estimates. I begin by acknowledging the traditional custodians of the land on which we meet today and pay my respects to their elders past and present. I extend that respect to Aboriginal and Torres Strait Islander peoples here today. The committee has set 28 November as the date by which senators are to submit written questions on notice and 9 January 2025 as the date for the return of answers to questions taken on notice.

The committee's proceedings today will begin with the Australian Prudential Regulation Authority. 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.

The Senate has endorsed the following test of relevance of questions at estimates hearings: any question 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 does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Witnesses are reminded of the Senate order specifying the process by which a claim of public interest immunity should be raised. I incorporate the PII statement into the *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:** I remind all senators that, as we continue our work implementing the *Set the standard* report, I will ensure that proceedings are conducted in an orderly, respectful and courteous way. The committee has agreed to authorising media outlets to record the proceedings.

**Australian Prudential Regulation Authority**

[19:02]

**CHAIR:** I welcome Senator the Hon. Tim Ayres, representing the Treasurer. I also welcome representatives from APRA, Mr John Lonsdale and Ms Beverley-Smith. I see that you've given us an opening statement. Would you like to speak to it briefly or proceed straight to questions?

**Mr Lonsdale:** Thank you, Chair. I'm happy to table the opening statement. I would like to make just one comment—less on the statement and more on the logistics—for the committee to note we have found the logistics to be here tonight quite difficult. I'm the only APRA member able to be here tonight, so you have me. We have several travelling overseas on international standard-setting meetings and could not be here. I want to assure the committee, though, that we take our responsibilities to the parliament and to the committee very seriously, particularly the accountability part, and we'd like to work with the committee to make sure that we can ensure, next time, we're all able to be here.

**CHAIR:** Thanks, Mr Lonsdale. I'll go straight to questions and I will table your opening statement.

**Senator BRAGG:** I have some questions about superannuation, tonight. Are you aware of the independent review undertaken into the Cbus Super fund by former ACCC chair Graeme Samuel?

**Mr Lonsdale:** I am aware of a report, yes. It's a very dated report, if it's the same one that I think you're talking about.

**Senator BRAGG:** Yes. It was a review into the governance of the fund, about 10 years ago.

**Mr Lonsdale:** That's the one I'm aware of.

**Senator BRAGG:** Are you aware of the recommendations?

**Mr Lonsdale:** No, I've not read the report.

**Senator BRAGG:** Do you happen to have a copy of it?

**Mr Lonsdale:** I believe we do have a copy of the report.

**Senator BRAGG:** The matters to do with this fund were discussed at the royal commission conducted by Ken Hayne, and the counsel assisting Jeremy Stoljar said, in relation to this fund, that it was 'infected by the separate private interests of the CFMEU, and a deep-seated loyalty to those interests'. Stoljar went on to say that it was 'so divided in interests and agendas' that it poses particular governance challenges in a modern environment. That's what Stoljar said. Graeme Samuel made similar comments, and he recommended that there be changes to the board composition of that particular fund. Do you have any insight into why those recommendations or issues haven't been progressed?

**Mr Lonsdale:** No, in the sense of the remarks you're talking about and the report itself. As I said, it's quite a dated report. I have not read the report, personally. What I can say, which is a matter of public record, is the fund you're speaking about is a fund that is under scrutiny by APRA at the moment.

**Senator BRAGG:** Effectively, you have commissioned a governance review; is that right?

**Mr Lonsdale:** This is in respect of Cbus?

**Senator BRAGG:** Yes.

**Mr Lonsdale:** We issued a press release where we imposed some licence conditions that went to the fitness and propriety of board members, as well as the BFID. That is a process that is currently under way.

**Senator BRAGG:** Is the scope of that work to look at the governance arrangements of the fund in terms of ownership and board composition?

**Mr Lonsdale:** The scope of that is, as I understand it, by an independent party. We've asked for a review—

**Senator BRAGG:** By Deloitte, right?

**Mr Lonsdale:** That's not something we have publicised. What we have said is that there is an independent party looking at this, and it will look at the fitness and propriety of board members, as far as I'm aware not the governance more broadly.

**Senator BRAGG:** So the issues that were flagged 10 years ago by Graeme Samuel—for example, the lack of independent directors on these boards—won't be looked at by the Deloitte review.

**Mr Lonsdale:** As I said, it is quite specific on the fitness and propriety of the board—

**Senator BRAGG:** Of the current directors or the proposed directors? Or both?

**Mr Lonsdale:** Both.

**Senator BRAGG:** What happened yesterday? My understanding is that three new directors were put onto this board, and you have released a statement saying that you are still considering your position as to whether these are appropriate persons. What is your position in relation to yesterday's developments?

**Mr Lonsdale:** We think our position is clear. We have, as I said before, put licence conditions on the fund. That involved an independent party examining the fitness and propriety of directors and the BFID. As I sit here before you, we have not seen that independent report. And so, the licence conditions that currently apply to Cbus still apply and are not resolved. That is our position.

**Senator BRAGG:** It's unresolved?

**Mr Lonsdale:** Yes, it's unresolved.

**Senator BRAGG:** Including the appointment of these new people?

**Mr Lonsdale:** We need a fitness and propriety test to be applied. That is the licence condition that applies.

**Senator BRAGG:** Can you not resolve this matter until you see the report? How will you resolve it?

**Mr Lonsdale:** One step at a time. We need to see the report and we need to make sure the requirements that we require are satisfied.

**Senator BRAGG:** How do chairs of these super funds usually get appointed?

**Mr Lonsdale:** When you say 'these super funds'—

**Senator BRAGG:** How do you become a chair of a super fund, usually, in industry practice. Mr Swan's been appointed as the chair of this fund. How do you think he was appointed? Was he the best person for the job? Do you have any sense of what process the board went through?

**Mr Lonsdale:** I can't comment on that. I wasn't close enough to that appointment, but what I would say is that we have a set of standards that apply. We expect those standards to be satisfied. I can also tell you that we do not have the powers to say a person should not be on the board, or to veto, or to take somebody off a board. That is clear.

**Senator BRAGG:** If a person doesn't pass the fitness and proprietary test, then what happens?

**Mr Lonsdale:** Then they would not fulfil the standard.

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

**Mr Lonsdale:** We would say to the board that they need to satisfy the standard. If they did not satisfy the standard, we could issue a direction.

**Senator BRAGG:** So a person needs to meet that test?

**Mr Lonsdale:** That is correct. We expect people who are fit and proper, who have integrity, who are honest, who can manage conflicts. There is a whole list of requirements that we expect of people to sit on a board.

**Senator BRAGG:** Have you asked for the Deloitte report?

**Mr Lonsdale:** Have we asked for the Deloitte report?

**Senator BRAGG:** Yes, have you asked for the Deloitte report into Cbus?

**Mr Lonsdale:** It's an expectation that we would be provided with the report, once the report is complete. My understanding is that our supervision team is talking not just to the entity but the reviewer as well.

**Senator BRAGG:** I want to read out a media release from two days ago, 19 November, from the Cbus website, and it says, 'All existing and new directors on the Cbus super board have satisfied a fit-and-proper persons test as part of an ongoing independent review being conducted by Deloitte at the direction of APRA.' What does that mean?

**Mr Lonsdale:** Sorry, what is the question?

**Senator BRAGG:** I'm wondering, as the regulator, what you make of this very strong statement by the fund, which is from its website, from two days ago. It's declared that its existing and new directors have met a fit-and-proper persons test as part of the ongoing independent review being conducted by Deloitte at the direction of APRA. What do you make of that?

**Mr Lonsdale:** What we made of it was the press release that we put out on the same day. It's a matter of public record. What we said was that we have not received an independent report.

**Senator BRAGG:** You haven't received it?

**Mr Lonsdale:** No, we have not received an independent report, and, because we have not received it, we think the licence conditions have not been fulfilled. That's very clear. We are very clear on the public record.

**Senator BRAGG:** So the fund's declaration that it has met a fit-and-proper persons test is actually not a test that it can declare that it has met itself, though, can it?

**Mr Lonsdale:** Ordinarily, an entity would apply the fit-and-proper test themselves. In this particular case, though, as I've outlined, we have imposed licence conditions that require an independent party to do the test, to do a report, to give us the report, and not only give us the report but also make that report public. That's our position; I think it is very clear.

**Senator BRAGG:** Do you expect the Deloitte report to be made public?

**Mr Lonsdale:** That is correct. It's part of the conditions.

**Senator BRAGG:** Why do you think the Samuel report wasn't made public? Because it wasn't commissioned by APRA, perhaps?

**Mr Lonsdale:** You're asking me to go back a decade. I've not seen the report. My understanding is that the report was commissioned by the entity itself.

**Senator BRAGG:** I suspect it will traverse a lot of the same ground. Thank you for clarifying that, because it wasn't clear to me exactly what had happened there. When do you expect to receive the Deloitte report?

**Mr Lonsdale:** I'll check. Do we have a date?

**Ms Beverley-Smith:** We don't.

**Mr Lonsdale:** We don't have a date.

**Senator BRAGG:** But you've already put out a media release about it. They've already put out a media release about it. Don't you think that's strange?

**Mr Lonsdale:** I know Cbus have put out a media release. We've indicated, in our media release, a different set of facts. We've put that on the public record.

**Senator BRAGG:** Thank you for clarifying that. Let me just clear this up as well: do you expect to receive the report from Deloitte at the same time that it is made public, or would you expect to be able to inspect the report before other people are allowed to consider it?

**Mr Lonsdale:** I would expect that it would be provided to the regulator first and then it would be made public. That would be my expectation.

**Senator BRAGG:** This is only about fitness and propriety; it's not about anything else. If your judgement is that there are persons who do not meet that test, what is the next step? Do you go back to the sponsoring entities, or do you go back to the board and say, 'You need to find new people'?

**Mr Lonsdale:** It is a complex set of issues because there's an administrator as well. The way I'd prefer to answer that question is just one step at a time. Let's get the report first. Let's find out what is in the report and what the facts are, and then we will make our decisions based on that.

**Senator BRAGG:** I want to take you to some of the very clear statements in the prudential standards. As you know, the prudential standards are a significant delegation of parliamentary authority to the regulator, which we give you because we think that you are best placed to make subordinated laws and then enforce those laws in your role as regulator. Prudential Standard SPS 510 Governance contains, I think, very clear statements in relation to the role of the board. It reads:

The Board is ultimately responsible for the sound and prudent management of an RSE licensee's business operations.

... ..

The Board cannot abrogate its responsibility for functions delegated to management.

So the board is accountable, isn't it?

**Mr Lonsdale:** Yes—ultimately accountable.

**Senator BRAGG:** The chair of this fund gave a television interview on Friday—I'm talking about the insurance issue that's been pursued by another regulator—where he said, 'The cause of this lay principally with a third-party operator.' What do you make of that? Is that the sort of accountability you would expect of a board?

**Mr Lonsdale:** I don't particularly want to comment on the actions of another regulator.

**Senator Ayres:** I don't think that you can really expect Mr Lonsdale to be able to answer questions in relation to the other regulator's engagement. I'm listening carefully to the questions. I haven't stepped in thus far, but asking Mr Lonsdale hypotheticals or questions that go to APRA currently exercising its functions have to be done carefully.

**Senator BRAGG:** Fair enough. Who is responsible in an RSE for appointing material service providers? The super funds are effectively like shell companies; they don't really do many things. There are a trustee and a few people rattling around a building—investment management's generally run by someone else. They don't do insurance and they don't even do administration, so they don't do many things. Who is responsible for appointing service providers?

**Mr Lonsdale:** I could answer the question in a general way, and maybe that will help. We have a lot of standards, and we have another standard, CPS 230, which will come into effect July 2025. It talks specifically about the provision of third-party—and, in fact, fourth-party—providers. The general principle in that standard is that, although the service can be outsourced, the accountability can't be outsourced. Entities, whether they're a bank, whether they're an insurance company or whether they're a superannuation fund, entities need to ensure that, when they're outsourcing, they have risk covered and controls covered.

**Senator BRAGG:** I used to be an internal auditor, so I used to write those internal audit reports.

**CHAIR:** Last question, Senator Bragg.

**Senator BRAGG:** Can you say that again? You can outsource functions, but you can't—

**Mr Lonsdale:** The accountability lies with the entity. Because you outsource the function to an entity that we don't regulate, if something goes wrong—if I can put it this way—we will come and talk to the entity.

**Senator BRAGG:** So—

**CHAIR:** Senator Sheldon.

**Senator SHELDON:** Welcome tonight and thank you for joining us.

**Mr Lonsdale:** Pleasure.

**Senator SHELDON:** At least there's two of you! I have just a couple of lines of questions, and we'll see how we go with timing. I've got many more questions that I'll probably need to put on notice and also some matters I'll need to follow up on after that. Does APRA have a governance policy in place for people working at the regulator—particularly, senior figures leaving the regulator and joining a regulated entity in quick succession? Is there a policy in place to prevent conflicts of interest in that regard?

**Mr Lonsdale:** In broad terms, yes, but it does depend—

**Senator SHELDON:** No, not in broad terms. I don't need too much detail, because of the time of the night. But can't you give me—what does broad terms mean?

**Mr Lonsdale:** It depends. We have members, if I can just put members to one side, who are appointed by the Governor-General for a term.

**Senator SHELDON:** Also, senior executives. Let's move there first, and I'll do follow-up questions on the others.

**Mr Lonsdale:** For senior executives, there is usually a notice period when we will become aware that an individual has accepted a job, particularly with a regulated entity—

**Senator SHELDON:** What is that notice period, to clarify?

**Mr Lonsdale:** It depends on the contract, but it could be six months. It could be—

**Senator SHELDON:** Six months. Is that all?

**Mr Lonsdale:** It could be three months. I'm happy to come back to you with a more authoritative response.

**Senator SHELDON:** No, you're helpful. Keep going.

**Mr Lonsdale:** So there is a period. The normal course would be that, if they were leaving for a related entity, they would be immediately put on what we would call 'gardening leave', so they would no longer be working on frontline issues or on entity issues.

**Senator SHELDON:** It's probably easier for me to unpack that, to understand. I'm not meaning to interrupt. Keep answering the first question, but I'll just unpack that a little bit. If you found someone who's going to work somewhere else that's a regulated entity, you'd just put them on gardening leave? Would you give them other jobs to do, which could be with other regulated entities or with policy areas? Or is gardening leave just: stay home, get paid and don't do anything?

**Mr Lonsdale:** It could be the latter, but it could be the former too, in the sense that it wouldn't be a regulated entity set of issues. It could be an internal set of issues, completely removed from the population of entities that we're—

**Senator SHELDON:** Or it might not be. It's a decision of the chair, is it?



**Mr Lonsdale:** It's a case-by-case decision, and there are people who leave. We do have a lot of people in APRA who do not have frontline responsibilities.

**Senator SHELDON:** They wouldn't be allowed to talk to anybody else? A bit like PwC: you're not allowed to talk to anybody else—

**Mr Lonsdale:** They'll be quarantined.

**Senator SHELDON:** on any matters where there might be conflicts of interest.

**Mr Lonsdale:** Certainly. We have a very strong conflict of interest policy.

**Senator SHELDON:** I just want to be clear, because I did ask about the connection with PwC. So it's similar to PwC? You'd have walls between people, a bit like PwC?

**Mr Lonsdale:** You mean once they're leaving?

**Senator SHELDON:** Once you become aware of the fact that they might be still working there whilst they've applied for a job, been approached for a job or considering a job with a body that APRA has been regulating—not only themselves involved directly but that APRA is regulating.

**Mr Lonsdale:** Usually we would not know if they had been courted for a job. Sometimes we do, but the point at which they accept a job is where we would know.

**Senator SHELDON:** There's not an expectation for them to tell you if they've been courted for a job?

**Mr Lonsdale:** There's an expectation that if they are aware of a conflict—

**Senator SHELDON:** No, I'm asking specifically about being courted for a job.

**Mr Lonsdale:** We rely on our people. We have a strong conflict of interest policy. We have processes in place. We rotate people to make sure that we minimise conflicts of interest.

**Senator SHELDON:** I'm talking specifically about someone being offered a job. Do they have to notify you, as the appropriate officer, that they've been offered a job?

**Mr Lonsdale:** If they've been offered a job and accept the job—

**Senator SHELDON:** Only accepted, not offered?

**Mr Lonsdale:** I don't think there is a requirement for them to inform me if they've been offered a job.

**Senator SHELDON:** That's helpful. The—

**Mr Lonsdale:** But if I could just finish—

**Senator SHELDON:** By all means finish.

**Mr Lonsdale:** If there is any conflict or perceived conflict, we expect our people to manage that.

**Senator SHELDON:** What if someone offers somebody a job and says, 'I'm offering you'—I'll pull a figure out of the air—'\$10 million to come and work for me'? APRA is investigating that body, and that person doesn't then tell you that they've been offered what I think is an extraordinary amount of money. I'm not sure if you think that's an extraordinary amount of money, but I do. They're considering it but they haven't actually said, 'I'm going to consider that job,' or, 'I'm going to take that job,' or, 'I might take that job,' or, 'Let's have another meeting.' In all of those scenarios, they're not required to actually tell you?

**Mr Lonsdale:** No. In that particular example, I would say that's not just an actual conflict; that's a perceived conflict. I would expect that to be raised.

**Senator SHELDON:** What happens if they're offered a million dollars or \$100,000?

**Mr Lonsdale:** It doesn't matter if they're offered \$1.

**Senator SHELDON:** Righto. Now let's say that they're offered a job without dollars attached, but everyone knows it's actually worth considerable amounts of money.

**Mr Lonsdale:** We're getting into—

**Senator SHELDON:** It's not a hypothetical. That's actually how jobs are offered.

**Mr Lonsdale:** What I'd say is I'd go to the conflict issue. I'd go to our values.

**Senator SHELDON:** I'll go back to your earlier answer.

**Mr Lonsdale:** Can I just finish—

**Senator SHELDON:** No, you're not going to avoid my question. I would like you to go back to the previous answer you gave, just so I'm clear. I'm not putting words in your mouth. You're more than capable of saying whether I'm right or wrong, and I'm very respectful of the fact you can tell me whether I'm right or wrong. As I

understood the evidence you just gave, people aren't required, if they're approached about a job, to notify you; it's only if there's a conflict. I'm trying to clarify not only what 'a conflict' is but whether they have to notify you if they're offered a job.

**Mr Lonsdale:** Can I just—

**Senator SHELDON:** I'd like to know what you do.

**Mr Lonsdale:** Good. Let me explain it to you.

**Senator SHELDON:** I'm very much looking forward to it.

**Mr Lonsdale:** Will you let me explain it, please?

**CHAIR:** You have the call, Mr Lonsdale, and I'll let you finish.

**Mr Lonsdale:** That would be good. In APRA, we have a set of values. They're very important values. We expect all our employees to satisfy those values. We have a code of conduct that includes the values integrity, collaboration, accountability, respect and excellence.

**Senator SHELDON:** Like PwC, yes.

**CHAIR:** Mr Lonsdale, you have the call.

**Mr Lonsdale:** I don't want to comment on PwC.

**Senator SHELDON:** I'm not asking you to comment on PwC.

**CHAIR:** Senator Sheldon, I've indicated that Mr Lonsdale will be given the opportunity to answer your question. Mr Lonsdale, you have the call.

**Mr Lonsdale:** The values are embedded in the code of conduct, and we expect people to act ethically at all times. And that means—

**Senator SHELDON:** Can you give me a copy of the code of conduct? That would be very helpful to me.

**CHAIR:** Senator Sheldon!

**Mr Lonsdale:** managing the conflict of interest—

**Senator SHELDON:** Sorry, Chair. I would really like a copy of the code of conduct. You can give it to me. You can put it on *Hansard*. It'll be publicly made available. I only have so much time. I do need to ask the questions.

**Mr Lonsdale:** Chair, I've been asked a question. The senator is not allowing me to finish the answer.

**CHAIR:** I agree with you. You have the call, Mr Lonsdale.

**Mr Lonsdale:** We expect all our employees to act ethically. I've talked about conflicts of interest and I have talked about disclosing financial holdings. If there are any gifts or hospitality, we expect those to be declared. We expect reporting of incidents and breaches and we expect security. There is a whole list of issues that we expect in the code of conduct, which I'm happy to table.

**Senator SHELDON:** Thank you. If you had tabled it that would have saved us a little bit of time—but that is okay. Please table it. I understand that former APRA chair Wayne Burns joined the board of Macquarie Bank, an entity he used to regulate, less than 18 months after he left APRA. Before Mr Burns left, did he ever disclose that he was looking at or was interested in working at Macquarie Bank or another regulated entity or offered a job?

**Mr Lonsdale:** I am assuming that you are talking about Wayne Byres.

**Senator SHELDON:** Yes, that is him.

**Mr Lonsdale:** Senator, as I started answering the first question, you can split the senior leadership in APRA between the senior executives and the members. Mr Byres was the former chair of APRA. He is appointed by the Governor-General for a term. As I am aware, there are no requirements specified by the parliament or by the Governor-General following the departure of a member. Having said that, we have employed a convention where members who leave APRA's employment would not go onto a board or employment in a regulated entity for a period after they leave APRA. In Mr Byres' case, I am fairly certain that he did not take up a board position on a regulated entity within 12 months of leaving APRA.

**Senator SHELDON:** I appreciate that you have given us a clear answer—and thank you for that; that is, as I understand it, that there is a convention rather than requirement. Do I have that right?

**Mr Lonsdale:** That is of our own volition, I want to add. These appointments are not made by APRA; these appointments are made by the Governor-General.

**Senator SHELDON:** Sorry; I was asking something slightly broadly than that. Is there a convention regarding executive officers or is there only a convention regarding the chair that they don't—

**Mr Lonsdale:** Are you talking about APRA members, including the chair?

**Senator SHELDON:** Yes.

**Mr Lonsdale:** Any appointment by the Governor-General—at the moment there are four members—we would expect, as I just outlined, that there would be a period following departure—

**Senator SHELDON:** Twelve months?

**Mr Lonsdale:** In Mr Byres' case, there was a period of 12 months.

**Senator SHELDON:** And others?

**Mr Lonsdale:** They vary.

**Senator SHELDON:** The deputy chair, for example?

**Mr Lonsdale:** That broad convention would apply to them all. But, if you are asking me whether every member that has been in APRA observed the 12 months, we would have to go back and look.

**Senator SHELDON:** So not clear about the convention. If you can take on notice about the convention that you have applied to at least the most recent deputy chair and chair, that would be helpful. I also understand that Mr Byres was 56 when he announced he was stepping down from APRA. So it's not surprising that he might be looking for other work. But he never mentioned to anyone on the APRA board or executive that he was interested in looking at working for a regulated entity—is that correct?

**Mr Lonsdale:** I'm not aware of that. I would not expect him to discuss his future career plans 12 months on from APRA. I'm not aware of that.

**Senator SHELDON:** Can you take on notice whether that was communicated to any other people within APRA as well?

**Mr Lonsdale:** I'm not sure how we would find that out, Senator.

**Senator SHELDON:** I'm asking you to ask the question, and I'm sure you would do your best endeavour.

**Mr Lonsdale:** I am happy to take the question on notice, Senator.

**Senator SHELDON:** Thank you. So he didn't say to the entire team, as far as you know, that he had been offered a job with another entity and there may be a conflict of interest?

**Mr Lonsdale:** I can't see how he could have.

**Senator SHELDON:** That's okay.

**Mr Lonsdale:** My understanding at the time—and we're going back over two years—was that Mr Byres' term expired and Mr Byres left to pursue another career and did not take up a role, as I said, with a regulated entity within 12 months of departure.

**Senator SHELDON:** This goes back to my earlier questions regarding people—somebody who is 56—considering what their future is and how long they were going to stay at the board. That would be a normal conversation that would happen around boards. But you are implying—I am not sure if you are actually saying it—that that conversation didn't happen within the board about what the future holds and where somebody wants to go somewhere else—and 56 is not an unusual age for someone to think about other career opportunities. I'm just raising that colloquial pub test about conversations that happen around boards.

**Mr Lonsdale:** Can I just clarify that?

**Senator SHELDON:** Absolutely.

**Mr Lonsdale:** The appointment process for members is on a term basis—usually five years. So it is usually very clear that there is a term that is about to expire.

**Senator SHELDON:** Mr Lonsdale, can I just put to you then that, if a term is about to expire, you would think that conversations would be taking place within 12 months—I hope that's part of the convention you mentioned—like, 'What are you planning on doing?' and, 'By the way, here are potential conflicts of interest.' Even informally, there would be conversations taking place about, 'What's your next step? Do you want to stay on the board? If you weren't to stay on the board, where would you go?' Wouldn't you think that would be a pretty regular conversation—a normal human interaction?

**Mr Lonsdale:** The appointment process, as I understand it, is made in APRA's case, by the Treasurer. It is not a decision made by the APRA board.

**Senator SHELDON:** I'm not talking about the decision; I'm asking about the conversations.

**Mr Lonsdale:** But it is important, because I think what you are implying—

**Senator SHELDON:** I'm implying nothing; I'm asking questions.

**Mr Lonsdale:** Well, if you are asking a question, the answer is: the Treasurer makes a recommendation to the government that is then put to the Governor-General for the appointment of APRA members. That is the fact.

**CHAIR:** I will share the call. Senator Bragg?

**Senator BRAGG:** I want to ask you questions in relation to the engagement of service providers. If you are a board, does the board sign off, typically, on material service providers? I won't give you hypotheticals; I will give you a real example. In the case of a super fund, if they are engaging an investment manager, an insurer or an administrator, is that a judgement of the board?

**Mr Lonsdale:** I would have to come back to you on that, Senator.

**Senator BRAGG:** Surely if a fund were making a decision to engage a life insurer and it had a large MySuper portfolio, I would imagine that would be material judgement for that fund, would it not?

**Mr Lonsdale:** I would have thought that there would be all sorts of outsourcing that happens in a fund, an insurer or bank—from little outsourcing to major decisions, as you say—and, the more significant the decision, the more the involvement the board, I would have thought.

**Senator BRAGG:** Let's go back to the internal audit function issue. When you look to perform compliance checks with the prudential standards, do you ask for a risk and control matrix?

**Ms Beverley-Smith:** Senator, can I ask you, if you could give me a bit more specificity on your question?

**Senator BRAGG:** Well, of course I can. Prudential Standard SPS 510 Governance sets out:

An RSE licensee must have an independent and adequately resourced internal audit function.

So they must have an internal audit function. Does that mean that they can get an internal audit function from their internal resources, or do they need to bring in an external body to do that?

**Ms Beverley-Smith:** Funds have a choice as to whether they have an internal audit function or they outsource that.

**Senator BRAGG:** They'll go through and look at their risks and controls?

**Ms Beverley-Smith:** The internal audit function? Yes.

**Senator BRAGG:** Okay. That's as I imagined it would be. Then, what do you seek? Your prudential standard goes on to say:

The objectives of the internal audit function must include evaluation of the adequacy and effectiveness of the financial and risk management framework of the RSE licensee.

When I did an internal audit, that was a risk-and-control framework. It wasn't very exciting, but it was a good way to catalogue all the different risks. Would you ask for that?

**Ms Beverley-Smith:** In a supervision engagement, where we're focusing on risk and compliance capability, we would ask for a range of things from an entity. That would include frameworks, policies, examples of risk-and-compliance matrices and controls testing. We would test a range of things to determine whether the risk-and-control frameworks are adequate and in line with our expectations.

**Senator BRAGG:** Do you stress-test them all on some sort of cycle?

**Ms Beverley-Smith:** We don't replicate an internal audit function. We would usually pick a particular scenario and run it through a risk-and-control scenario with an entity in order to test the strength and resilience of the frameworks.

**Senator BRAGG:** What do you do for the super funds that have group insurance as a service provider? What sort of test do you put them through from a prudential point of view?

**Ms Beverley-Smith:** I can't be specific; I can be general in terms of what we would do.

**Senator BRAGG:** Yes, that's okay.

**Ms Beverley-Smith:** We would look at whether the entity had clarity on end-to-end processes and whether the entity was clear on what controls were in place to manage the risks inherent in the end-to-end process, regardless of who performed the steps in that end-to-end process. That would be the kind of engagement that we would undertake.

**Senator BRAGG:** There is a prudential standard for group insurance, isn't there?

**Ms Beverley-Smith:** There is.

**Senator BRAGG:** Does that include obligations for the board to appoint a group insurer, or is it more operational than that?

**Ms Beverley-Smith:** It's more operational.

**Senator BRAGG:** Do you have a view on so-called profit-sharing arrangements that sometimes happen between the group insurer and the super fund?

**Ms Beverley-Smith:** I'm not aware that we do.

**Senator BRAGG:** It's not something that's captured by the standards?

**Ms Beverley-Smith:** No.

**Senator BRAGG:** But if there was a profit-sharing arrangement—and I'll explain it for the record. A profit-sharing arrangement might be a case where the super trustee has an arrangement with the insurer where, if there are fewer claims paid by that super fund, then there is a financial benefit to the super fund itself. That's not something that you'd manage in this standard-making process?

**Ms Beverley-Smith:** It wouldn't be covered in the standard that you're referring to. I absolutely would expect it to be covered under an entity's obligations in terms of the best financial interests of members.

**Senator BRAGG:** Is this something that you think happens in the Australian market?

**Ms Beverley-Smith:** I don't know if I can answer that question. I'm not aware of it happening.

**Senator BRAGG:** You don't have that many options. You either say you don't know, you take it on notice or you give the answer.

**Mr Lonsdale:** We'll take it on notice.

**Ms Beverley-Smith:** Sorry, Senator. I'll take it on notice.

**Senator BRAGG:** You're not sure?

**Ms Beverley-Smith:** I'm not sure.

**Senator BRAGG:** You're not aware of that either, Mr Lonsdale?

**Mr Lonsdale:** As I said, we'll take it on notice.

**Senator BRAGG:** That's fair enough. Are you across—I'm sure you must be in a broader sense—these issues to do with section 56 of the SI(S) Act?

**Mr Lonsdale:** I'm aware of the issues, so I'll do my best.

**Senator BRAGG:** Okay. How many times has APRA provided friend-of-the-court services to superannuation funds that have sought to change their trustees?

**Mr Lonsdale:** That's a very specific question in terms of the numbers. What I can tell you is that there have been a number of court cases—15 that I'm aware of—

**Senator BRAGG:** Fifteen?

**Mr Lonsdale:** Fifteen in total that I'm aware of—state court cases. I would have to come back to you on how many of those we acted as a friend of the court in.

**Senator BRAGG:** Okay. What exactly did APRA do when these funds were changing their trust deeds, or—I should be accurate—seeking to change their trust deeds so that they could pass on future regulatory fines to their members?

**Mr Lonsdale:** My understanding of the broad sequence is that there were amendments—section 56 and 57—in 2020, so this was four years ago. The start date was deferred a year to 2022. During that time, various funds explored the idea of charging a fee to set up a reserve and sought various state court's views on whether they could do that. In terms of what APRA was doing—

**Senator BRAGG:** How many funds did it?

**Mr Lonsdale:** I can't give you the number of funds.

**Senator BRAGG:** So what did you say?

**Mr Lonsdale:** I didn't give a number.

**Senator BRAGG:** You didn't give a number?

**Mr Lonsdale:** No. I said 'a number of funds'. If you would like a number then we can see whether we have a number.

**Senator BRAGG:** I thought you said '15' before. Do you know?

**Mr Lonsdale:** There were 15 cases that I am aware of.

**Senator BRAGG:** Was that 15 cases of funds seeking to change their trust deeds?

**Mr Lonsdale:** Yes, that I am aware of. APRA formed a view. APRA asked itself the question whether the behaviour of the funds in seeking the amendments was consistent with the new provisions under the SIS Act and came to the view they were not inconsistent. By the way, that seems to also have been the view by four supreme courts in New South Wales, Victoria, Queensland and South Australia. As you pointed out at the beginning of your question, APRA played a role as a friend of the court, and my understanding is that involved providing the court with context, information, particularly around the operation of the BFID prudential policy, that assisted the court, we believe, in forming its view.

**Senator BRAGG:** And the view was that it was not inconsistent with the Commonwealth statute on superannuation? That was effectively what you put forward as a friend of the court, is it not?

**Mr Lonsdale:** That is my understanding—correct.

**Senator BRAGG:** Effectively, those judgements now have cascaded to a position where, where there are going to be large fines levied on major super funds, it is the members that will pay, not the shareholder organisations, so that was a very consequential period where those trust deeds were changed. I guess, that takes me to my next question, which is: how big are the reserves which are currently held by the super funds as a result of being able to change their trust deeds and then collectively charge their members?

**Mr Lonsdale:** Are you talking in total when you say 'how big'?

**Senator BRAGG:** Yes. What is the total value of the reserves now held by the funds which can be used to pay future fines?

**Mr Lonsdale:** I don't have that figure in front of me.

**Senator BRAGG:** Okay.

**Mr Lonsdale:** If you would like us to take it on notice, I am happy to take it on notice.

**Senator BRAGG:** I think it is very relevant to the current debate, so I would be grateful. What happens then if the reserves built up by a super fund—it could be Cbus, could be any fund—are not sufficient to meet the regulatory fine? If they had a reserve of \$5 million but the Federal Court awards ASIC a \$50 million fine for Cbus not paying their insurance policies, for example, what would happen in that case?

**Mr Lonsdale:** I want to be careful that I'm not drawing parallels to live cases. It is very important.

**Senator BRAGG:** I don't you to; I am just giving you examples.

**Mr Lonsdale:** You are raising, in a sense, a hypothetical issue. If I can answer the question this way, one of the primary motivations, as I understood it, from the funds in seeking to raise fees to create a reserve was that the inability to pay a fine or a penalty could result in insolvency of the fund, which would be very detrimental to the members' best interests. I think that was the primary motivation behind the events of the creation of the reserves.

**Senator BRAGG:** But that was on the basis there was no effort to take the money from the shareholders. The organisations which own the funds have not made any contributions to these reserves. These reserves have been built up by the members of the fund through paying higher fees; hence, the amount of public interest in it. I guess my question is: what happens if the reserves are insufficient now? You say it is hypothetical but perhaps you could take on notice what might happen if the reserves are insufficient. I'm interested in what APRA is doing to assess the adequacy of these reserves given the slew of cases which are before some of these funds.

**Mr Lonsdale:** I've answered the first part of your question but I'm happy to take the second part on notice.

**Senator BRAGG:** You will take it on notice—okay. I know the chair wants me to stop but I have one last round of questions. Do you want me to stop or come back?

**CHAIR:** Is it a five-minute job?

**Senator BRAGG:** I think the answers are very efficient, so it could be.

**CHAIR:** We will do three five-minute blocks and then release APRA and move to ACCC.

**Senator SHELDON:** According to the *Financial Review's* coverage of the announcement of 29 January this year, Macquarie said it hired Mr Byres because his deep connections were attractive to help navigate relationships with regulators. Has Mr Byres helped Macquarie Bank navigate its relationship with APRA?

**Mr Lonsdale:** Mr Byres is a member of the bank-only board, so I would expect Mr Byres would be fulfilling his duties as a board member in the same way as any other board member.

**Senator SHELDON:** I'm asking a very specific question: has Mr Byres helped Macquarie Bank navigate its relationship with APRA?

**Mr Lonsdale:** I have not dealt with Mr Byres.

**Senator SHELDON:** Has APRA?

**Mr Lonsdale:** I will just finish the thought. I have not dealt with Mr Byres.

**Senator SHELDON:** But answer the question—yes.

**Mr Lonsdale:** The thought is going with the answer. I have not dealt with Mr Byres in his current role as a bond on Macquarie, but we have a supervision team who does deal with Macquarie. I am aware that all the board members, including Byres, are operating as board members, as you would expect.

**Senator SHELDON:** Can you now be direct? I gave you time to answer the question the way you wanted to answer it. I am now asking a direct question which I asked before: has APRA, to your knowledge, dealt with Mr Byres, not whether he is acting as a board member or as a chair or as any other role? I'm asking: does Mr Byres talk to APRA?

**Mr Lonsdale:** I have answered the question. Mr Byres—

**Senator SHELDON:** You have not answered it directly.

**Mr Lonsdale:** Mr Byres is a bank-only NED on Macquarie Bank. We deal with Macquarie Bank, we deal with the management and we deal with board members.

**Senator SHELDON:** I'm asking a simple question. And Mr Byres?

**Mr Lonsdale:** Mr Byres is a member of the bank-only board of Macquarie Bank.

**Senator SHELDON:** So you do deal with him—thank you. Three years ago, under Mr Byres, correct me if I am wrong—I don't want to verbal you, so if I misrepresent what you just said to me, please correct me—

**Mr Lonsdale:** Senator, can I stop you? I've answered the question and you sought to re-answer the question.

**Senator SHELDON:** You have dealt with Mr Byres. I'm just a lay person; I'm just trying to understand your answer.

**Mr Lonsdale:** Good, and my answer—

**Senator SHELDON:** So you haven't dealt with Mr Byres; it is APRA that has dealt with Mr Byres.

**Mr Lonsdale:** My answer is Mr Byres is on the bank-only board of Macquarie Bank, who we deal with.

**Senator SHELDON:** Three years ago, under Mr Byres's watch, APRA took action against Macquarie Bank over multiple breaches of prudential and reporting standards. Some of those actions, including additional capital requirements, are still in effect. Mr Byres would be privy to confidential information about that enforcement action that Macquarie could find useful to know, wouldn't he?

**Mr Lonsdale:** What's the question?

**Senator SHELDON:** I'll repeat it very slowly.

**Mr Lonsdale:** That would be helpful.

**Senator SHELDON:** Three years ago, under Mr Byres's watch, APRA took action against Macquarie Bank over multiple breaches of prudential and reporting standards. You're aware of that?

**Mr Lonsdale:** I'm aware that APRA took action.

**Senator SHELDON:** Some of those actions, including additional capital requirements, are still in effect. You're aware of that?

**Mr Lonsdale:** I am aware of that.

**Senator SHELDON:** Mr Byres would be privy to confidential information. Is that correct?

**Mr Lonsdale:** Mr Byres was the chair of APRA. As the chair of APRA, he would have had access to information. Whether that's direct supervisory information is something different, I think.

**Senator SHELDON:** I'm asking about confidential information. He would have access to confidential information, wouldn't he?

**Mr Lonsdale:** He was chair of APRA; yes.

**Senator SHELDON:** He would have access to information about that enforcement action that Macquarie could find useful to know, wouldn't he?

**Mr Lonsdale:** You would have to ask Macquarie that, Senator.

**Senator SHELDON:** I'm asking you. Would that information be useful for Macquarie Bank to know?

**Mr Lonsdale:** It's not clear to me what information you're talking about.

**Senator SHELDON:** Don't double guess the next question I'm going to ask you. I'm asking you a simple, direct question right now.

**Mr Lonsdale:** Your question to me, Senator, as I understand it is: is Mr Byres in possession of some information—you haven't specified what information—that may be useful to Macquarie?

**Senator SHELDON:** I'm not aware what information's confidential. You are.

**Mr Lonsdale:** Macquarie's a regulated entity. If you're asking me—I don't know whether you are asking me this—would Mr Byres be aware of what good regulatory practice and prudential practice would look like, yes; he would be.

**Senator SHELDON:** He'd be aware of enforcement arrangements and also the attitude of APRA, which would be confidential approaches to particular issues. There would be an insider's understanding of how APRA operates, wouldn't there?

**Mr Lonsdale:** Mr Byres spent a good amount of time of his career in APRA. I would expect that he would have a good understanding of how APRA operated.

**Senator SHELDON:** According to the *Financial Review's* coverage of the announcement of Ms Rowell, the deputy chair, she joined the board of the Australian Retirement Trust less than a year after leaving APRA. Is that correct?

**Mr Lonsdale:** I think that is correct.

**Senator SHELDON:** That's before the convention applies? You said a convention applies for 12 months.

**Mr Lonsdale:** That's a convention that I have adopted since becoming chair of APRA.

**Senator SHELDON:** I just want to be clear: is it an unenforceable or an enforceable convention?

**Mr Lonsdale:** It isn't enforceable because I have no tools to enforce it. I would say that we look very carefully at conflicts, as I outlined. If we saw a conflict after a member had left or perhaps a member—I'm not sure whether this happened—joined a regulated entity very close to leaving, it would be open to us to write to that entity and to the member, remind them of our conflict policy and remind them of the protection of information. I would also say—it's very important—that when a member or an employee leaves APRA they remain covered by section 56 of the secrecy provisions. That's very important.

**CHAIR:** Last question.

**Senator SHELDON:** The deputy chair has been within 12 months, which is that convention you've suggested is appropriate. According to the *Financial Review's* coverage of the announcement of ART, the Australian Retirement Trust said:

Ms Rowell's regulatory experience ramped up ART's expertise in that area at a time when funds' operational resilience and investment governance was under growing scrutiny.

Very similarly to Macquarie, there are regulatory entities saying how glad they are to get greater expertise on how the regulator—that is you, APRA—operates. Is that in any sense concerning—in the broadest consensus, let alone the most specific?

**Mr Lonsdale:** I think I've explained that the information that a member or employee may learn while working in APRA is protected by section 56 and the policies we have. Is there a benefit of having people who work in APRA working in regulated entities if conflicts are managed and the provisions that I mentioned before are adhered to? Yes, absolutely, because we expect our regulated entities to act prudently. If you've worked in APRA, you have a very good understanding of what that is and you can import that way of thinking about risk into regulated entities.

**Senator SHELDON:** If I had more time, I'd put more direct questions to you on a series of other matters, but I'd just be very clear to you that PwC answered the very same questions in a similar way. I'm not challenging your answers at this point; I haven't got time. But I have deep concerns about how APRA is operating in a very general sense and specifically about how it operates its governance arrangements.

I also want you to answer the following questions on notice. Do you have any view on whether superannuation should be used to fund house deposits? Does APRA believe it should have a role in determining what policy funds should or should not support? Does APRA believe it should have a role in determining whether or not funds should communicate or take public positions on policies? Does APRA believe it should have a role in educating members on matters of policy? Did you at any point discuss with any superannuation fund proposed expenditure



on member education initiatives? And can you please produce notes on your meetings with super fund chairs and CEOs and whether APRA indicated a view or held a discussion on potential education initiatives run by superannuation funds? I'll put those on notice.

**Mr Lonsdale:** I'm very happy to take them on notice.

**Senator SHELDON:** Thank you.

**Mr Lonsdale:** I want to make a final comment on your final comment.

**Senator SHELDON:** Please go ahead, with the chair's indulgence.

**Mr Lonsdale:** We take our responsibilities as prudential regulators very seriously. I've talked at length about our code of conduct. I've talked at length about our values and what we expect of our people. If you have concerns, I'd very much like to hear them, but I can assure you that we're very serious about our business, and—

**CHAIR:** Thank you.

**Mr Lonsdale:** Yes. I'll stop there.

**Senator SHELDON:** And, Mr Lonsdale you are hearing them, and you'll hear more of them.

**CHAIR:** Thank you. Senator Bragg.

**Senator BRAGG:** I want to tie up a couple things before we move on. In terms of the role of the chair of a super fund, going back to our discussion about the appointment of directors, the funds are able to choose their own directors, are they not?

**Ms Beverley-Smith:** In the end, yes, they are. Depending on the specific operating model of the fund, whether it is a for-profit or profit-for-member fund, the board has ultimate decision rights in terms of who its members are.

**Senator BRAGG:** Okay. So your role is to put each director through a fit-and-proper-person test?

**Mr Lonsdale:** We have a set of standards. Fit and proper is part of the standards. We expect standards to be satisfied, but at the end of the day, as I said before, we do not have the power to appoint or remove directors. That is up to the board.

**Senator BRAGG:** It's unclear to me how, in fact, this fit-and-proper-person test works. I've listened to you carefully explain the license conditions you've placed on one particular fund at the moment, and you've explained, I think—without verballing you—that you are putting those persons through a fit-and-proper-persons test. Is that right?

**Mr Lonsdale:** Correct. They are being examined by an independent party to make sure that they fit the requirements under 510.

**Senator BRAGG:** So this is additional vetting?

**Mr Lonsdale:** Yes. This is additional vetting in the sense that we have a licence condition that requires it and an independent party doing it.

**Senator BRAGG:** That's very helpful to understand that. When you look at these people and make this assessment, do you take into account points from their past? For example, if they have chaired the worst performing super fund in the country, is that a factor?

**Mr Lonsdale:** The key factors, in general: 520 on fit and proper looks at competence, character, diligence, honesty, integrity, judgement and whether they are qualified for the job under the APRA Act; and, in particular, on conflicts, if there is a conflict, sometimes there might be a conflict but not a material one, so there are a whole range of factors, and we would expect that to be done regularly.

**Senator BRAGG:** Does their prior work experience come into the picture?

**Mr Lonsdale:** I would have thought that that would have fit under the ability to do the job.

**Senator BRAGG:** I would imagine so. Finally—and thank you for going over time with us tonight—I want to ask you about what I thought was an unusual—

**Mr Lonsdale:** Are you moving off governance now?

**Senator BRAGG:** This is my last question. It's still about governance. Is that okay?

**Mr Lonsdale:** I just have one general point to make on governance, but you go.

**Senator BRAGG:** Okay. We had a hearing with the CEO of Cbus last week. In that hearing, I asked the chief executive about the commitment of \$500 million of the members' money by the chair of the Cbus fund in relation to the Housing Australia Future Fund. The CEO said, 'I wasn't involved in that interaction.' I'm wondering from a

governance point of view whether you would expect that the chief executive would be involved in committing members' money to major projects or to major investments.

**Mr Lonsdale:** That's quite a specific example.

**Senator BRAGG:** It's a public example, on the record.

**Mr Lonsdale:** I would answer it this way: we would expect at all times funds to be operating in the members' best interests. And where we do not think that that is the case, we're on the public record—there are lots of examples of it—where we take action.

**Senator BRAGG:** Can you take action against a chief executive, or is it only the directors in which you have jurisdiction under the governance prudential standards?

**Mr Lonsdale:** We would take action against the fund, but new provisions are coming in—for example, the FAR—that enable civil penalties, for example.

**Senator BRAGG:** So, as it stands, you wouldn't be able to sanction a person who wasn't on the board?

**Mr Lonsdale:** That's very specific. I'm happy to come back to you. I'll take that on notice. Can I make one general point, Chair, because we've a lot of questions on governance. Our corporate plan flags that we will be reopening the governance standards. We have 50 standards. This is quite an old one. We will be reopening and issuing a discussion paper that will look at issues around fit and proper, capability, tenure and a whole range of issues. I just want to flag that will be happening.

**CHAIR:** I'll go to Senator Rennick.

**Senator RENNICK:** I'm going to keep talking about governance, but it may be a question of policy, so I'm happy for Minister Ayres to answer. I am happy to get both points of view here. Shouldn't super funds allow members to elect their board? Wouldn't that be a much more democratic process?

**Senator Ayres:** That sounds like a matter of policy. It is not something that the government is contemplating.

**Senator RENNICK:** Don't you think they should contemplate it? Let me put it another way. Shouldn't the members have a say in who manages their money?

**Senator Ayres:** These funds, and I assume you are referring to the industry funds.

**Senator RENNICK:** No; I am actually referring to both funds. I am not taking sides here.

**Senator Ayres:** The other funds are private funds and they don't have those sorts of arrangements. They are for-profit funds.

**Senator RENNICK:** But they are still appointed as well, aren't they?

**Senator Ayres:** The industry funds have been very successful. It is a very successful model. The government is obviously—

**Senator RENNICK:** That is not the question.

**Senator Ayres:** The government is obviously alive to future reforms to support the growth of superannuation. But you would have to say that, all these decades down the track, from when unions and employers in these industries founded industry superannuation, many of them, after very difficult industrial struggles to form these funds and to establish them in the award system and through the enterprise bargaining system over that period, it has been a very, very successful model in the national interest—

**Senator RENNICK:** That is a matter of opinion.

**Senator Ayres:** and in the interests of workers who now have retirement income that they otherwise would not have had.

**Senator RENNICK:** A lot of people don't, actually. The median balance for women aged 60 to 64 is \$158,000. So I wouldn't consider that a figure to retire on.

**Senator Ayres:** If you have questions about superannuation policy, APRA is probably not the place to ask them.

**Senator RENNICK:** They oversee superannuation funds. Don't avoid the question.

**Senator Ayres:** On the prudential regulation of superannuation funds, I'm sure Mr Lonsdale will be delighted to answer your questions.

**Senator RENNICK:** And that involves governance.

**Senator Ayres:** Policy questions.

**Senator RENNICK:** Part of the problem is the poor governance—which we have seen in just the last two weeks. It has been disclosed that Cbus Super and other super funds have not been paying out people in a timely manner.

**Senator Ayres:** That is why we have regulation. As these problems emerge—

**Senator RENNICK:** Clearly, we haven't had good enough regulation. I've spoken to people who are dealing with the grief of losing a loved one, and the super funds are making it very difficult for these people to access money to help pay for the bills.

**Senator Ayres:** As I've indicated, that is why we have prudential regulation arrangements and the other regulation arrangements that engage with superannuation. When the regulator discovers an issue that they need to engage with, that is what they do.

**Senator RENNICK:** Okay. I'll leave it as a comment that I think members should be able to have a vote. We vote in a democracy, and we should be voting in the way our capital is allocated. Should super funds also seek direct proxies before they get to vote in AGMs? Companies actually have AGMs where they get to appoint the board; yet super boards, who are not elected, then go and vote in company AGMs without seeking the intentions of their members. Do you think that is democratic?

**Senator Ayres:** Again, Senator, I think you have probably arrived at the wrong place for that.

**Senator RENNICK:** No; I think I'm in the right place, actually.

**Senator Ayres:** In terms of the agenda, you are very welcome here, but, in terms of these questions about the regulation environment, if you ask me what I think about that, I think superannuation boards have to make decisions about all sorts of questions, including making judgements about their ownership of businesses or parts of businesses and they have to make those decisions wisely.

**CHAIR:** Last question.

**Senator RENNICK:** I will leave this comment, though I have one other question. People weren't actually given a choice to ask if they want to hand over 12 per cent of their wages. I will leave that comment.

**CHAIR:** Last group of words.

**Senator RENNICK:** Mr Lonsdale, do you know why banks don't offer 25-year loans here in Australia? I know other countries do it.

**Mr Lonsdale:** I think the short answer is that we are not regulating the product that they sell. That is a commercial decision for the banks. We are regulating around the risk.

**Senator RENNICK:** Sure. I just thought I'd ask. Thank you.

**CHAIR:** Thank you, Mr Lonsdale and Ms Beverley-Smith. You go with our thanks.

### **Australian Competition and Consumer Commission**

[20:15]

**CHAIR:** The committee now welcomes representatives of the ACCC—Ms Gina Cass-Gottlieb and members of her team. Ms Cass-Gottlieb, if you have a statement that you wish to make, you are welcome to do so. We have it and we will table it.

**Ms Cass-Gottlieb:** Thank you. I will do it promptly. Good evening, Chair, and senators. I would like to start by acknowledging the Ngunnawal people, the traditional owners and custodians of the land on which this wonderful house sits. I pay my respects to them, their culture and elders past and present.

I and my colleagues in the senior executive management team of the ACCC are pleased to be here. We are here both in person and virtually. With rising cost of living front of mind for many Australians, the ACCC is maintaining a strong focus on competition, consumer protection and enforcement in these areas, particularly in respect of essential products and services important to household budgets. Last month, the ACCC instituted proceedings against Optus for allegedly engaging in unconscionable conduct when selling telecommunications goods and services to hundreds of vulnerable consumers—products we allege they often did not need or want. Since we last appeared before you, we have also instituted proceedings against Coles and Woolworths. We allege that each of them breached the Australian Consumer Law by making misleading claims when the discounts were illusory.

We are not only instituting new proceedings but also have seen results from previous enforcement actions. In October, the Federal Court ordered a \$100 million penalty against Qantas for misleading consumers by offering and selling tickets for flights it had already decided to cancel, which is in addition to \$20 million in remediation to customers. In September, EnergyAustralia was ordered to pay \$14 million for making misleading statements

about electricity prices and for breaching the electricity retail code by failing to state the lowest possible price in their pricing communications. These cases are the result of the careful application of our enforcement priorities and triaging systems to the hundreds of thousands of contacts and intelligence datapoints we collect each year. Our model prioritises cases with the greatest harm or potential for harm and focuses upon the priorities that we have set, which each year are informed by this information and intelligence we receive.

We have recently received, under an announcement from the Treasurer, \$30 million over 3.5 years in additional funding to go towards investigation and enforcement relating to the supermarket and retail sector, which will enable us to escalate a range of investigations in the sector, including in relation to potential misleading pricing claims or practices, misleading claims about delivery timeframes and costs, and businesses misrepresenting consumers' rights and guarantees under the Australian Consumer Law.

We also have an important role in enforcing competition in cartel cases, which is an enduring priority for the ACCC. Over this past period we received—and went into consolidated revenue—total fines and penalties in our competition enforcement program exceeding \$100 million, including cases in the waste services industry and flat steel products pricing industries. That is the highest total we have ever achieved in competition cases in a financial year. I anticipate we will get some questions in respect of the merger law reform bill, which is making its way through and still under consideration in this House.

Our inquiry work is also relevant to the cost of living. We are currently conducting public hearings involving senior executives of Aldi, Coles, Metcash and Woolworths and representatives of consumers and suppliers. These hearings will help the ACCC gain a more complete understanding of the key issues in the retail grocery sector and its associated supply chains before providing the final report to the Treasurer. Our monitoring roles more broadly in sectors such as telecommunications, retail electricity and aviation also report on areas that are key drivers of household costs. I expect we will cover the National Anti-Scam Centre, so I won't address that in these remarks. I do point out that each of these are important contributions to consumer protection and the promotion of competition, each of which are important in the context of cost-of-living pressures, and I thank the committee for the opportunity to provide this statement. We look forward to your questions.

**CHAIR:** Thank you very much, Ms Cass-Gottlieb. We'll go, by agreement of the committee, in five-minute blocks. So that we can release you, I'll go to you, Senator Colbeck.

**Senator COLBECK:** I want to go to some questions with respect to what I regard as misuse of market power down the supply chain, where wholesalers are being asked to sign an updated supplier agreement with a business, Akubra. It starts in a pretty interesting way. The background to all this is that Akubra say they have conducted a review of their operations. 'The review identified the need for us to make some improvements. These improvements include streamlining our wholesaler network.' The first thing in this whole thing is a threat. 'Some of you guys are for the chop. Agree with our new conditions or get the chop.' The next point is: 'We're approaching our online presence more strategically to better manage our brand and deepen our connection with our customers. As part of this, we'll be taking control of the ecommerce distribution of our products.' In other words, 'We're stealing your online business.' I don't think that's an acceptable way to operate. 'You will no longer be permitted to sell our products online.'

The business that I'm talking to is not a huge business. They've got a local area network, where they've got good and loyal customers, but they sell online. But they're being told by Akubra under threat of 'streamlining our wholesaler network' that they need to sign up to this new agreement. The agreement goes on to say that they must—under 'Promotion, marketing, advertising and sales'—'promote in a manner which, to the extent reasonably possible, promotes and supports the image of Akubra and the goods in the market and not do anything which could adversely affect the value, reputation, brand or image of Akubra.' In other words, they're telling them what price they have to sell the product at. It's almost price fixing as well.

Then they're saying, 'You must not use the intellectual property in any paid advertising marketing campaigns as opposed to organic use on your social media.' They're effectively stealing their online market and saying that they can't advertise anything other than the recommended retail price. If I'm a small operator operating in a regional town in Victoria, New South Wales or somewhere like that and I want to sell Akubra hats at a lower margin than Akubra's recommended retail price—say I'm happy with an \$80 margin on a hat instead of a \$90 or \$100 margin, so I'll sell it \$20 cheaper—I'm not allowed to advertise that fact by Akubra. Is that reasonable behaviour by Akubra?

**Ms Cass-Gottlieb:** I think it best that I talk about the nature of conduct you're describing rather than particular companies, because I would not want to appear to be forming a view.

**Senator COLBECK:** I've been approached by a small operator scared witless—they don't want to be identified because if they're identified they become part of the streamlining of the business. They're very interested to know if Akubra can steal their online market. They really do want to understand it.

**Ms Cass-Gottlieb:** Let me run through the various aspects that have been referenced. The constituent who has raised this with you can also approach us in a confidential manner to report concerns.

**Senator COLBECK:** Could I provide information to you confidentially on their behalf?

**Ms Cass-Gottlieb:** Yes, you can, absolutely. You can write to us and we will reply. I'll quickly address a number of points. Whether or not there would be a question of misuse of market power will depend on whether there are constraints upon Akubra such that they are operating constrained by other manufacturers. It may not be the most relevant part of our act to look to. However, if a company is supplying to a distributor and sets a minimum retail resale price, that can be a contravention of the resale price maintenance prohibition, because our act does wish to see competition in price at the retail level. That could be a question that should be looked at.

In addition, there would be questions under the consumer law as to whether these are unfair trading contract terms, particularly to change terms unilaterally. If there is a large company to a small business with an imbalance of bargaining power then we can also have an unfair contract term. We would also note that one of the areas of legal change that the ACCC has been very strongly supportive of is the introduction of an unfair trading practices prohibition. That would be the sort of prohibition that would allow a general review of an overall course of conduct, without needing to find specific unfair contract terms.

There are a range of questions that could be considered, and we would be happy to receive a letter in relation to this.

**Senator COLBECK:** Clearly, they've been in a trading relationship over a period. If they're effectively coming in and saying, 'We're taking your online market,' how does that fit within the terms of fair trade? That's what's happening here. It's effectively a threat of no longer having access to the product.

**Ms Cass-Gottlieb:** Yes. Under the unfair contract terms, there are provisions that specifically look to the reasonableness of terms. Are they being changed unilaterally? Do they set unreasonable periods? Do they impose a burden, particularly in circumstances where small businesses are engaging with larger businesses with an imbalance of bargaining power? We also have, under the current law, prohibitions of unconscionable conduct in the dealings of large companies with small businesses. We would have even more effective power to address such questions—in the broad—with an unfair trading practices prohibition, but we have current powers.

**CHAIR:** Are you able to conclude with this question, Senator Colbeck, or shall I share the call and come back?

**Senator COLBECK:** I'll finish with this question. Thank you for your clear evidence. What about the pricing on it? If supply is saying, 'You can't advertise our product to your customers, but if you do you have to advertise it not at your price'—

**Ms Cass-Gottlieb:** There is a prohibition on what's called resale price maintenance, which is stipulating a mandatory minimum price because distributors are under our law to be free to set a price which is lower. The price setting is competitive, so that can certainly be considered or investigated in that context.

**Senator COLBECK:** As a distributor, my margin is my business, and I cannot be constrained in setting what I think my margin for my business is?

**Ms Cass-Gottlieb:** Interestingly, apart from a recommended retail price, a manufacturer can set a maximum resale price. However, they cannot set a minimum resale price.

**Senator COLBECK:** Thank you for your evidence.

**CHAIR:** Senator Smith.

**Senator DEAN SMITH:** I might just start with a constituent related matter, if I may. In July, I wrote to the ACCC on behalf of a variety of constituents raising concerns with the Craveable Brands franchisees. I was just hoping I might be able to get an update on that. Then I have some high-level questions with regard to a related matter.

**Ms Cass-Gottlieb:** I am aware of that. It has certainly been subject to investigation. I will also pass to the head of our consumer and fair trading enforcement team, Rami Greiss

**Mr Greiss:** We are aware of the allegations, and we have received information from a number of parties and we have sought information, as well. We're at the beginning stage of an investigation. Our investigations, as you'd appreciate, are confidential, so I'm not really at liberty to share too much detail other than to say that we are

engaged in that matter. It is worth noting that these matters can be quite complex and involve a reasonably lengthy period of time of investigation. It is just worth being aware that it may not result in a public outcome in the near future.

**Senator DEAN SMITH:** What steps does the ACCC take to get to a point of initiating an investigation, and am I right to assume that an investigation has formally commenced?

**Mr Greiss:** It has, that's correct. We don't normally make our investigations public. However, if they happen to be in the public domain, as this one is, then there is no bar to us referring to it. Essentially, when matters come to our attention, fall within our priorities, we examine them and look at conduct we consider to be serious and significant. If there is an evidentiary base to proceed, then we continue to investigate.

**Senator DEAN SMITH:** I saw in the chair's opening remarks that this matter has met the requirements to be considered a priority investigation.

**Mr Greiss:** That is correct, insofar as we have as an enduring priority around conduct affecting small business. Clearly, that meets that description.

**Senator DEAN SMITH:** In the chair's opening statement, it says, 'Contacts from consumers and small businesses are also important contributors to our annual setting of our compliance and enforcement priorities for the coming year.' This particular matter falls into that compliance and enforcement priorities that the ACCC has currently identified?

**Mr Greiss:** That's correct.

**Senator DEAN SMITH:** How does the ACCC keep interested parties abreast of the investigation, and at what point do interested parties learn about further legal action or initiatives that the ACCC might take, in this case, on behalf of the franchisees?

**Mr Greiss:** Perhaps I could just address that last comment. It's not action on behalf of the franchisees.

**Senator DEAN SMITH:** True.

**Mr Greiss:** And it's also worth noting that sometimes the franchisees' interests aren't necessarily the matters of the investigation. However, to your main question, it's often the case that interested parties may be persons with information that the ACCC will need to speak to. To that extent, they will have engagement with the ACCC about the progress of the matter, at least from the point of view of their giving evidence. But, as I think I said earlier, we don't normally keep parties informed about the progress of a matter while ever it's confidential. It may be that, if there are interested parties, they may have to wait until the matter becomes public, if it becomes public.

**Senator DEAN SMITH:** Are you able to disclose to the committee how many representations or complaints you received in regard to Craveable Brands?

**Mr Greiss:** Yes. We received 41.

**Senator DEAN SMITH:** I might turn to the matter of merger reform. The chair will be pleased to know that one part of the parliamentary process was achieved today, with its passage through the House of Representatives. Much of the commentary has focused on transparency around implementation. In the Senate economics committee report, the coalition's contributions, while offering support to the bill, did echo some of the remarks that had been made by the Business Council and others about improved transparency and a focus on the implementation regime. In the ACCC's own document *Statement of goals for merger reform implementation*, it specifically identifies the Performance Consultative Committee. I was hoping you might give us an up-to-date explanation—up to date as of today, given we've had the Senate committee report now. What is the suite of things the ACCC is going to do to meet some of that stakeholder interest in transparency, reporting and implementation?

**Ms Cass-Gottlieb:** We are very pleased to see the passage through the House. I have also reviewed the report from the members of the Senate committee and we are aware of the strong interest in transparency measures. I will just outline them, starting with the broadest. The broadest will be the register. The register will hold on it the initial information as to the parties and the description of the transaction. It will then hold on it and update, within the first 15 to 20 days, in a fast, streamlined process, if there is an approval. That will then, within 24 hours, go onto the register with the reasoning.

If however, by the end of the 30-day period, it moves to the next phase, there will then be an explanation of why it's moving to phase 2. Then, if there's a notice of competition concerns, that will also go on the register in the final decision with the reasoning and grounds.

So we will move from a situation, currently, that 90 per cent of notifications are cleared confidentially in preassessment, again, within a maximum of one month, but are wholly confidential to a position in which there is a significant increase in transparency available publicly on the register and directly to the parties.

In addition to that breadth of transparency, we are in the process—in fact, in the coming week—of writing to members of our reconstituted ACCC Performance Consultative Committee. The members will include small business and large business. It will include particular sectors which have close interest in mergers, and concerns, and were strongly supportive of the bill, including the National Farmers Federation as well as small business. We'll include the BCA and consumer representatives, and we'll have a Treasury observer as well.

We intend to have the first meeting by March next year and then regular meetings during the year. In that committee, we will set an agenda that reflects the issues that the stakeholders want to raise with the ACCC. We anticipate that, at that point, we will be in consultation on our draft guidelines, so we will use it as a basis to receive input, but that is still in the preparatory phase. We will commence getting voluntary notifications from 1 July and mandatory ones from January, and very rapidly the register will deliver it.

In response to the BCA's request, which was endorsed by the coalition in the committee report, we are also going to provide quarterly publication of the performance indicators on the merger timelines, particularly the use of section 155 notices. As I said, in the hearing before the committee, we would adopt and respond to that as well. We will also be reporting annually on the overall progress. It will be a very significant shift from quite a degree of confidentiality to a very transparent system.

**Senator DEAN SMITH:** Will the ACCC Performance Consultative Committee be agile enough as a consultative forum?

**Ms Cass-Gottlieb:** We consider so. We also intend to send documents in advance and to give the committee the capacity to give us input on what matters they are looking for for the purposes of consideration. I have received—at least from various business representatives—an interest and a keenness to participate, so I do think they can see that.

**Senator DEAN SMITH:** Am I right to assume that it's a committee of practitioners, or is it more of a policy committee, in terms of the membership?

**Ms Cass-Gottlieb:** It will be a mixture of stakeholders. We'll have business representatives and those chosen, including the Tech Council of Australia, the BCA, ACCI and COSBOA, but we'll have legal practitioners as well.

**Senator DEAN SMITH:** Will the minutes of those consultative committee meetings be publicly available?

**Ms Cass-Gottlieb:** We were intending to have the discussions in a Chatham House fashion to encourage people to feel free to speak, but we would then provide to the participants a summary of what was discussed. If they were comfortable, we would then publish it.

**CHAIR:** Senator Roberts.

**Senator ROBERTS:** Thank you for appearing tonight. I'm pleased to hear you say in your opening statement that the cost of living is important and that competition impacts the cost of living. I'd like to understand a little bit about the motor vehicle industry and your involvement in it. There seems to be some systematic level of 'lemon' cars being sold by some manufacturers. If they feel there are no consequences for selling dodgy products, won't that have a significant impact on competition in the motor vehicle industry?

**Ms Cass-Gottlieb:** This is an important issue that the ACCC and the state and territory consumer protection regulators are very engaged in. In terms of a range of new vehicles, they are each subject to consumer guarantees so that there is an underpinning of fitness for purpose and that they meet the qualities and specifications on which they've been sold. The ACCC is seeking, and the government has announced, reforms to the law such that if there are contraventions of a guarantee, including on a motor vehicle, the ACCC can take action not solely to require giving a consumer the remedy, which currently is an action that can be taken—

**Senator ROBERTS:** ACCC can do that?

**Ms Cass-Gottlieb:** We can. However, consumers find it very difficult to do so. We find it is a poor way to get actual compliance. The law reform proposes that that will actually be a breach of our act. Where you see repeated indications of this, that we can seek significant penalties as well as consumer remediation—it is reported to us and to state and territory regulators that this is a problem particularly a problem for low-income families and consumers, and it is a problem we seek to take action on with the states and territories. Being able to take action for a serious and systemic breach and to get significant penalties will be the best deterrence.

**Senator ROBERTS:** In other words, you will strengthen your provisions and add provisions to it.

**Ms Cass-Gottlieb:** Yes. That is what we are seeking.

**Senator ROBERTS:** Specifically because you're aware there are systemic quality issues among some manufacturers.

**Ms Cass-Gottlieb:** Exactly.

**Mr Greiss:** We've also taken, over the years, quite a number of actions for those types of systemic issues against a number of car manufacturers—Ford and Mazda, just to name two. They are very intensive exercises, very resource intensive. As the chair just pointed out, the ability to penalise for failure to abide by the consumer guarantees will be a very important reform.

**Senator ROBERTS:** That was a comprehensive answer; thank you very much.

A car is the third-biggest investment cost of a person's life, usually. Housing would be No. 2. Government is far and away the biggest cost during a person's life. Let's move on to housing. Are you doing any work in the property market in terms of land development? Some developers are acting like a cartel and keeping land locked away in the middle of a housing crisis, waiting for the demand get even bigger to raise their price. What are you doing in this space?

**Ms Cass-Gottlieb:** Our exposure will arise in mergers, and we reviewed what was voluntarily notified to us—a merger in terms of the function of masterplanned communities. It was an acquisition that brought together assets; Lendlease was selling some assets which went to Supalai. In relation to the Illawarra area, where we considered there would be too much concentration post the transaction, we required a divestiture in order to retain continuing competition. One exposure we have to this, and an important role we have, is merger control. With the reforms, if passed by the House, we will have much more visibility in relation to the transactions we need to look at. If we were to become aware of cartel conduct or reports of anticompetitive conduct, that would absolutely be within our enforcement remit against anticompetitive conduct. We do not have an overall supervisory function in relation to housing. It arises in relation to maintaining and promoting competition.

**CHAIR:** The committee advises that it is releasing the Productivity Commission; you go with our thanks.

**Senator ROBERTS:** Are you aware of any developers withholding land from the market to bump up prices?

**Ms Cass-Gottlieb:** I don't believe we are aware of that, no.

**Senator ROBERTS:** Thank you.

**Senator DEAN SMITH:** I will turn to the ACCC's National Anti-Scam Centre. Can you tell the committee how much money has been provided to the ACCC for the National Anti-Scam Centre thus far?

**Ms Cass-Gottlieb:** Let me just make sure we get the complete answer on that. You can see on screen Sarah Proudfoot, who is the general manager and head of our National Anti-Scam Centre. I think our CEO, Mr Gregson, will give that answer.

**Mr Gregson:** We've received different amounts over time. In relation to the National Anti-Scam Centre, in this financial year we received \$9.6 million to assist with the campaign; that continues in outyears at lower amounts. We've also received underlying funding to support the NASC—in total, \$43 million over three years, with \$11 million last year, \$16.4 million this year and \$15.6 million the following year.

**Ms Cass-Gottlieb:** A key part of that is the technology cost to establish the infrastructure to enable automatic sharing of data.

**Mr Gregson:** If I can correct myself: the numbers I just gave for those last three were for that underlying IT. The base funding for the NASC has been over two years—for 2023-24 at \$7.1 million, and 2024-25 at \$6.9 million.

**Senator DEAN SMITH:** The technology build is the \$11 million plus the \$16.4 million plus the \$15.6 million—so approximately \$43 million?

**Mr Gregson:** Precisely.

**Senator DEAN SMITH:** Then there is a \$9.6 million contribution which is a campaign contribution?

**Mr Gregson:** That's right.

**Senator DEAN SMITH:** Then, finally, there has been a \$7.1 million contribution and a \$6.9 million contribution which is for the—

**Mr Gregson:** Effectively the staffing of the NASC at the ACCC. In total, that's the \$14 million for that component.

**Senator DEAN SMITH:** Thanks very much. Does the National Anti-Scam Centre publish reports and updates on scams data and trends?

**Ms Cass-Gottlieb:** We have, and we do. We have quite a breadth of sharing of scam reports. We do some automatic and regular, some periodic and then others ad hoc. I will quickly cover that.



Looking at automated, every two hours we send scam-suspect BSB and account numbers from Scamwatch reports to the Australian Financial Crimes Exchange for provision to the relevant financial institution; this is all where the party reporting has consented for the information to be provided. The Australian Financial Crimes Exchange then puts an email compilation together and sends that information to the banks weekly. MoneyGram and Western Union both receive reports weekly about scams citing the payment method where the reporter has consented for the sharing; that's in the financial services sector and telecommunications. Every week, suspect phone numbers are reported and alleged text or phone call scams are provided to 11 telecommunications service providers and ACMA. The providers are all the usual telecommunications carriers and carriage service providers.

With digital platforms, every day we send suspect URLs on the Meta platform and identify Meta where the reporter has consented to do so. Gumtree receives reports weekly. We send investment scam reports to ASIC; that is done daily via an application programming interface, an API, so that ASIC can assess them and take them down. Every month we report to ACMA on phone porting and SIM swapping, and every month to ASIC. Every month to NBN there is an update on scams occurring on their platform. And ad hoc we provide intelligence reports of trending scams and provide information on key suspect identifiers to the relevant bodies. It includes, to WhatsApp, phone numbers that are problematic, and Google and Meta, and we provide that data and expect action to be taken.

In addition, we have on our ScamWatch website, in a sense, a dashboard that everyone can access and set the period of time to find out what is the number of reports, what is the number of losses and what are the top three areas or types of scams—investment scams, romance scams—and the channel by which it has come to people. We have built a very extensive set of data dissemination programs and processes, and we are continuing to work on them to move as many as possible to be automated.

**Senator DEAN SMITH:** Turning to the publication of reports, the ACCC website says that it publishes quarterly updates. There's a March 2024 update, there's a November 2023 update and there's a May 2024 update. I'm curious to know where the other quarterly updates are.

**Ms Cass-Gottlieb:** The most recent one has been delayed—though we are on track to produce it next week—and the reason it was delayed is that—we get ScamWatch data, the Australian Financial Crimes Exchange gets data from banks and ReportCyber gets data from the law enforcement agencies. We gather the data together. One of the aspects that requires care is that victims or family members of victims can report to multiple places, and we are trying to deduplicate that data from an overall, global reporting point of view to give the community, the parliament and the government a robust sense of what the actual data is, particularly as we're trying to track how the numbers are changing over time as we are taking initiatives to seek to disrupt and prevent. On this occasion there were some inaccuracies in data that we received from one of the contributing bodies, and we had to work to address it.

**Senator DEAN SMITH:** The quarterly report that will go up on the website next week is the—

**Ms Cass-Gottlieb:** To 30 June.

**Senator DEAN SMITH:** To 30 June?

**Ms Cass-Gottlieb:** Yes.

**Senator DEAN SMITH:** And it has not been necessary to delay previous quarterly updates as a result of any inaccuracies in the data?

**Ms Cass-Gottlieb:** Let me test that. I'll go to Sarah Proudfoot to get a precise answer on that question.

**Ms Proudfoot:** We have sought to publish a report every quarter since the National Anti-Scam Centre was created on 1 July 2023, so Q4, as we're referring to it, will round out the set. I can't tell you the exact timing. I know as we've developed more partnerships and have been getting more data in that the datasets that we're working with have become more complex. We generally seek to have a report out within two months of the end of the quarter—so, obviously, this one is a little bit behind that—but we are very pleased to be getting it out and creating that first year of the National Anti-Scam Centre in a full set of reports.

**Senator DEAN SMITH:** So the 30 June quarterly report gets released next week?

**Ms Proudfoot:** Yes.

**Senator DEAN SMITH:** When is the next scheduled quarterly report after 30 June? Will that be published on time?

**Ms Cass-Gottlieb:** We are in a process of considering whether we should move to less regular reporting in that set of reporting, and the reason we are considering that is that we have found that the process to ensure the data is robust and not duplicated is complex, and we are working with the other parties who gather the data in

order to seek to build up a better understanding amongst each of us about the rigour with which the separate datasets are put together. Once we have that, we will be able to then determine what is the right timeframe.

**Senator DEAN SMITH:** So the delay in the 30 June report is because of inaccuracies?

**Ms Cass-Gottlieb:** Yes.

**Senator DEAN SMITH:** What is the complexity that now exists that didn't exist to allow for the quarterly reporting of previous reports? What has changed?

**Ms Proudfoot:** I would use 'anomaly' rather than 'inaccuracy' to describe what came through in the data that was of concern for this Q4 report. One of the challenges we have and one of the areas that the NASC is working on is trying to get greater consistency in how scams and scam losses are reported, and that includes details like whether you're using the date that the loss was incurred or the date that the loss was reported. Those can be different and they can mean different things that get reported in different ways across the quarters, and so you may end up missing some in one quarter that then appears in the next quarter. Or, as we've seen on Scamwatch, people retract reports that they've made because they've discovered it wasn't a scam or they don't consider it a scam.

What we're finding, as we're getting more reports—on the one hand that's not a positive thing because it means people are still being scammed, but on the other hand it means they're sharing information so that we can use that as intelligence to try to break down the scammers and disrupt them—is it has added a level of complexity to the work we're doing. And, as Ms Cass-Gottlieb mentioned, we've already been thinking about concerns we have around duplication and what that meant. We really are keen to do what we can to get a really clear dataset that we can then use as a baseline to assess the ongoing success of the NASC and the work that's being done across the scams ecosystem to hide scams.

**Senator DEAN SMITH:** Has the ACCC found it necessary to keep government abreast of its changed approach—my words?

**Ms Cass-Gottlieb:** The minister does, from time to time, participate in the meetings of the advisory board, which include industry sector participants as well and aspects that relate to these challenges and our work with other participants. On that advisory board we have ACCAN, the AFP, AusPayNet, Blockchain Australia, Communications Alliance and consumer bodies. We are seeking to ensure, at an operational level and also across government, that there is an understanding by the participants who we receive data from of this process that we're seeking to engage in to improve the data and the robustness of the data.

**Senator DEAN SMITH:** The recognition that the data needed to be more robust, was that identified by the ACCC and reported to the advisory board, or was that identified by the advisory board and shared with the ACCC and the ACCC took that on and followed it up and has come up with an alternative regime for the publication of data?

**Ms Cass-Gottlieb:** I believe we have seen these problems emerging. I'll check with Ms Proudfoot if we should also add to that answer.

**Ms Proudfoot:** No, that's correct, Ms Cass-Gottlieb, particularly in relation to this incident. But it's reasonable to say there is a high level of interest within the advisory board and beyond in the scams data presentation and how people can see that and how it's presented.

**Senator DEAN SMITH:** On notice, can you let me know how many advisory boards there have been over the last—

**Ms Cass-Gottlieb:** Do you mean how many meetings?

**Senator DEAN SMITH:** How many meetings have there been since it was created, and how many of those meetings has the minister attended?

**Ms Cass-Gottlieb:** Yes.

**Senator DEAN SMITH:** Is there any interrelationship between the government's preparation of the scam legislation framework and the decision to change the regime around the publication of the quarterly updates?

**Ms Cass-Gottlieb:** None.

**Senator DEAN SMITH:** None. Just to recap, the 30 June quarterly update will be published next week. Then the one after that may not be published at all, or that is subject to this more robust—that is, the publication of that quarterly report is subject to this discussion about what is the best way to present the data?

**Ms Cass-Gottlieb:** It's subject to the discussion. Because we are providing in a sense raw data as quickly as we can in the way we started, we are also providing the ACCC Scamwatch data very regularly. Each month we're

updating it on the Scamwatch website. We know that what is really looked to with this report is the combination of all the sources of data. We can be much quicker with our own Scamwatch data because we understand it. It's done according to our template. But we know you're looking to and each of the key participants in the sector are looking to in order to rely upon this report in seeking trends, and we feel we need to devote some care and thought to get that right, though we are at the same time progressing a lot of data reporting.

**Senator DEAN SMITH:** Briefly on one matter, before I go to the Optus matter if I can, am I correct to assume the PEXA-Sympli matter is one the ACCC is alert to; has it done any serious work in trying to respond to the anticompetitive issues Sympli particularly has been making to government, Treasury, the competition taskforce and the ACCC; and do you have a suggested pathway in terms of how this impasse might be corrected?

**Ms Cass-Gottlieb:** We are alert to it. In an overview sense we do consider that this is an example of a very important policy to facilitate each e-conveyancing on a national basis. But set of decisions by state and territory governments put together what had been government sole providers into a privatised monopoly without a sufficiently clear and regulatory framework, and that is one which required interoperability as a condition in effect of the transfer of that ownership. The regulator has been established, ARNECC. The state and territory registries also have not had the sort of background in an enforcement skill and craft sense. We can see challenges in that framework, it is a key matter where we have engaged with the national competition review and we know this is being considered carefully at the taskforce. Before there is a privatisation that confers a private new monopoly, it is very important to have sufficient regulatory framework.

**Senator DEAN SMITH:** The national competition taskforce has its national competition review process and its consultation matters, so has the matter at a policy level been discussed with the national competition taskforce or has the PEXA versus Sympli matter been discussed by you and the competition taskforce?

**Ms Cass-Gottlieb:** Both. We are also aware there is consideration of enhanced regulatory requirements sitting with ARNECC. I can see that Ms McDonald, head of our competition enforcement team, is on the screen, and I will see if Ms McDonald would like to add to that.

**Ms McDonald:** Thank you for the question. I thought it might be helpful for you to know that, during the interoperability reform process, some concerns have been raised with ACCC that PEXA may be engaging in anticompetitive conduct. Naturally, wherever concerns of that kind are raised, we consider them carefully. But, where our work is ongoing, it's really not appropriate to comment further on that particular matter at this time.

**Senator DEAN SMITH:** Except it is a matter that has been going for a very long time. Parties associated with Sympli and Sympli itself are hugely frustrated. During the Senate estimates process a few weeks ago, Treasury officials did say that, if ARNECC were to refer the matter to the national competition taskforce, it would look at the matter—my words now—more seriously than it has looked at the matter thus far. From my point of view, is the ACCC investigating the matter or is the ACCC just aware of the matter? Has the ACCC identified a pathway that might be suitable to have this very obvious competition matter addressed?

**Ms McDonald:** I think the most appropriate way for me to respond to that question is to say that we are still in the process of assessing those concerns. I wouldn't characterise it as an in-depth investigation at this stage, but naturally the concerns warrant further consideration.

**Senator DEAN SMITH:** How does that consideration get considered? How does the matter get considered by the ACCC? At a high level can you provide me with some information about the steps in that? Do you have all the information you currently need, or will you be seeking additional information?

**Ms McDonald:** It's fair for me to say that we're still in the process of gathering relevant information in order to complete the assessment.

**Senator DEAN SMITH:** When the assessment is completed, what happens with the assessment? Does it go to PEXA? Does it go to Sympli? Do you invite PEXA and Sympli to the ACCC? Does it get sent to a relevant minister? Does it get sent to Treasury? I'm just curious to know, once the assessment is done, how it is shared and how the ACCC's assessed view of the issue becomes publicly known.

**Ms McDonald:** I'm speaking in respect of the work we do in the enforcement division of the ACCC, so in progressing an investigation we gather all relevant information to make an objective assessment of the alleged conduct in respect of the provisions of the Competition and Consumer Act. As to how an investigation progresses and whether it progresses to a state at which it may become a public outcome or not depends on the facts and circumstances and what we uncover during the course of the investigation. There's probably not much more I can add to that at this point in time.

**Senator DEAN SMITH:** It is like pulling teeth, no doubt about it, but I think we are ever so slowly making some progress. Thanks very much for your cooperation thus far. We can explore it again in February next year.

**CHAIR:** That concludes the questions for the ACCC. Thank you, Ms Cass-Gottlieb and team, as always, for answering our questions. You go with our thanks. The committee will now move to Housing Australia.

### Housing Australia

[21:15]

**CHAIR:** The committee will resume. We now welcome representatives from Housing Australia, Mr Scott Langford and team. Welcome, Mr Langford, to your first appearance before economics estimates in this role—but your second appearance in front of the economics committee in recent days. Do you have any opening remarks?

**Mr Langford:** I do. Thank you, Chair, senators and colleagues. I acknowledge that I have some colleagues online as well. Thank you for the opportunity to address the committee. I would like to briefly outline the contribution that Housing Australia has made to improving housing outcomes and briefly address the status of the first funding round of the Housing Australia Future Fund Facility and the National Housing Accord Facility.

Housing Australia has two main streams of work. Firstly, we support the development of housing through various financing, investment and grant mechanisms by partnering with the private sector, community housing providers and all levels of government. To date, Housing Australia has, through the Affordable Housing Bond Aggregator, approved finance to support approximately 18,800 homes held by community housing providers and providing funding approvals to unlock 11,700 homes through the National Housing Infrastructure Facility. This includes supporting approximately 3,800 homes that are currently in construction with support from those programs.

In addition, in September of this year, we announced an initial pipeline of 185 preferred projects that will deliver more than 13,700 social and affordable homes across the country under the first funding round of the Housing Australia Future Fund Facility and the National Housing Accord Facility. We are now working with preferred applicants to finalise and enter into funding contracts in relation to preferred applications. For this to occur, applicants may also need to finalise their own contractual arrangements with landholders, developers, builders, other authorities, capital providers and, in some cases, other grant funders, such as states or territories. Details of successful applications will be released in due course, in line with the reporting requirements under our investment mandate.

Our second stream of work is helping people access home ownership. We currently support this through the delivery of the Home Guarantee Scheme, enabling eligible homebuyers to provide a smaller deposit than the lender would typically require. To date, Housing Australia has supported over 184,000 people to achieve home ownership, with over 58,000 homebuyers assisted last financial year, including approximately one in three first homebuyers who purchased a home last financial year.

I would like to acknowledge the significant work of the Housing Australia board and team past and present in delivering these outcomes and acknowledge and thank colleagues in Treasury, Finance and other departments that support the work of Housing Australia. Since joining as CEO I have been working with the board and team to make sure we are using all the levers we can to support the delivery of more homes and support more people into home ownership. Whenever I see someone who has slept rough and when I see the lines of people waiting for a rental inspection or aspiring homeowners who are searching for a home perhaps feeling that step is too steep to climb, I am reminded of the great privilege and responsibility of working at Housing Australia to play a part in supporting more Australians to access affordable, safe and secure housing. Thank you, and I look forward to your questions.

**CHAIR:** Thank you very much, Mr Langford, for your opening statement and for outlining all the really important work that Housing Australia is doing and why it is so important. We will go straight to questions, and I will go to you, Senator Bragg.

**Senator BRAGG:** There was an announcement from the minister on 16 September 2024 called 'Albanese government green lights most social and affordable housing in over a decade'. Do you know about this statement?

**Mr Langford:** I am aware of it, yes.

**Senator BRAGG:** The government—and I think maybe even the Prime Minister was involved with this announcement—announced that there would be 13,742 houses built as a result of this press release. Has this arrangement that was announced by the Prime Minister been finalised yet?

**Mr Langford:** I will not comment specifically on the Prime Minister's press release. What I will say is that, on 16 September, Housing Australia released information that 13,742 homes had been identified as part of preferred projects in funding round one. As I said earlier, we are now working to finalise the contracts for those

projects. We will release information about each of those projects in line with the requirements under the investment mandate.

**Senator BRAGG:** Have contracts been signed?

**Mr Langford:** One contract has now been signed.

**Senator BRAGG:** Who with?

**Mr Langford:** We will be releasing information about that in line with the requirements under the investment mandate.

**Senator BRAGG:** So you can't tell us at the moment?

**Mr Langford:** Senator, I can tell you that we will release the information in line with requirements under the investment mandate.

**Senator BRAGG:** I will just check that it is right for you to do that.

**Senator Ayres:** There is a reasonable question, Senator Bragg, about whether the official is entitled to not provide that information in those circumstances, but it might be easier if he just takes it on notice at this stage and comes back with a response.

**CHAIR:** Yes, Mr Langford can take it on notice and consider what information he can provide.

**Mr Langford:** Thank you, Chair.

**Senator BRAGG:** So, of the 13,000 houses that were promised in this statement back in September by the Prime Minister and the Minister for Housing, you are saying that you have signed one contract in relation to that?

**Mr Langford:** That is correct.

**Senator BRAGG:** How many others are due to be signed?

**Mr Langford:** There were 185 projects identified as preferred applications. We have signed one contract.

**Senator BRAGG:** Are there 185 contracts?

**Mr Langford:** I might just ask my colleague online, Ms Johnston, to confirm. Ms Johnston, are you able to confirm it will be 185 contracts?

**Ms Johnston:** I can confirm that there are 185 preferred contracts—so, therefore, 184 left to execute.

**Senator BRAGG:** So a long way to go to finalise.

**Mr Langford:** We are working through the contracts.

**Senator BRAGG:** What types of organisations will be involved in these arrangements? Will it be community housing providers as well as other investors?

**Mr Langford:** That is correct. If I refer to the investment mandate, eligible applicants included states and territories and community housing providers. It also included special-purpose vehicles that included one of the other categories. There are some other categories of eligible applicants, such as an entity that has the primary purpose of improving directly or indirectly housing for Aboriginal and Torres Strait Islander people or improving directly or indirectly housing outcomes for members of the Australian Defence Force. There are other requirements in relation to each in relation to them being charitable organisations. With a special-purpose vehicle, it had to be a constitutional corporation with one of those other categories as a member of that.

**Senator BRAGG:** Will any of these investors be super fund?

**Mr Langford:** My understanding is that a super fund in its own right is not an eligible applicant under the Housing Australia Future Fund Facility or the National Housing Accord Facility.

**Senator BRAGG:** But will they be part of the consortiums that have bid for some of these contracts?

**Mr Langford:** I am not aware of any super funds that have been joined into a consortium. Of the eligible applicants, we are aware that superannuation funds have provided some support through other vehicles to some of the eligible applicants. But, in their own right, they are not eligible applicants.

**Senator BRAGG:** So, they're part of the overall proposition; they're not individually engaging with Housing Australia?

**Mr Langford:** That's correct.

**Senator BRAGG:** How many super funds would you say are involved in providing letters of support and the like?

**Mr Langford:** I will refer that question to my colleague Ms Johnston. I'm not sure whether we have that information on hand, noting that the relationship between the eligible applicant and their project partners is based only on information that they may have disclosed to us in the application. But Ms Johnston, do we know the answer to that question?

**Ms Johnston:** We don't have that level of detail. Participation of superannuation funds is usually in relation to the subordinated debt structures within projects, and we don't have visibility on that. That is subject to further commercial negotiations as we work through the projects.

**Senator BRAGG:** So, you're not aware of any super funds that are involved?

**Mr Langford:** We're aware of institutional investors, which may include super funds. For the avoidance of doubts, there are some aggregation vehicles that work with superannuation funds and have provided letters of support to applicants. But, as yet, applicants haven't entered into arrangements with them, and we haven't finalised arrangements with applicants.

**Senator BRAGG:** Is Cbus one of those, do you know?

**Mr Langford:** I think we've checked in accordance with the question that you asked most recently, and we're not aware, or there is no record, that Cbus has provided a letter of support to any of the applicants we're working with.

**Senator BRAGG:** When do you think you might actually get going with some of these houses being built that were announced back in September? When do you think the houses will actually be completed?

**Mr Langford:** The program target was to commence construction of 40,000 homes over five years. Out of the first round, we anticipate that a number of those will be either delivered or in construction during the course of this financial year. I don't have the exact profile of the completions and commencements this financial year, but I'm happy to take that question on notice if you'd like that level of detail.

**Senator BRAGG:** So, you don't know how many of those 13,742 would be completed in this current financial year?

**Mr Langford:** Ms Johnston, do we have any of that information on hand?

**Ms Johnston:** We don't have the information to hand, but we do have a requirement within the eligibility criteria under the HAFF program that projects must be able to commence within 18 months of contractual close and also must complete construction within five years.

**Senator BRAGG:** Five years? So some of these houses that were announced back in September this year might not be completed until 2029?

**CHAIR:** It's better than the nothing that happened in the 10 years of your government, isn't it?

**Senator BRAGG:** We built more houses than you—220,000 houses a year. You're down to 160,000 houses a year. I wouldn't go there if I were you.

**CHAIR:** This is the biggest investment in social and affordable housing on record.

**Senator BRAGG:** The numbers are not good for you.

**Senator Ayres:** If you want to try to defend the previous government's record, which was a record of neglect—

**Senator BRAGG:** You're down to 160,000.

**Senator Ayres:** Zero meetings and engagements with the states—zero—and no co-operation.

**Senator BRAGG:** More houses than you.

**Senator Ayres:** It was utter neglect. Tradespeople training fell off a cliff. The immigration system: completely cactus. The fact that you can smugly sit there and assert that there was something good about that period—

**Senator BRAGG:** More houses.

**Senator Ayres:** It left Australia with a completely constrained housing system. And this government—

**Senator BRAGG:** 220,000 is more than 160,000.

**CHAIR:** This is about social and affordable homes.

**Senator Ayres:** This government, after a delay from you and your colleagues—what has happened here is that the HAFF legislation, approved at the end of last year—

**Senator BRAGG:** We don't agree with it.

**Senator Ayres:** Well, you don't agree with anything positive that's about building housing for Australians.

**Senator BRAGG:** But we do. We have a supply policy—a \$5 billion supply policy.

**Senator Ayres:** The idea that neglect is a good policy framework, which is your proposition—

**Senator BRAGG:** We built more houses than you.

**CHAIR:** Okay—

**Senator Ayres:** It's like an arsonist complaining about the smell of smoke, Senator Bragg. It is completely at odds with what's happened. You didn't build anything. The private sector built it. You sat on your hands.

**Senator BRAGG:** That's the measure that counts—how many houses you build.

**Senator Ayres:** You sat on your hands.

**CHAIR:** Okay. Alright. I'll see if Senator Bragg has any more questions before we move to the ABS, who we also need to go to.

**Senator BRAGG:** I do. I have many more questions.

**CHAIR:** You told me you didn't have a lot of questions for Housing Australia, but you have the call.

**Senator BRAGG:** I'm trying to be as efficient as I can and ask the officials the questions. Some of them won't be built until 2029. That's quite a long time away. Thank you for clarifying that.

**Senator Ayres:** That's not what the official said.

**Senator BRAGG:** They said five years from now.

**Senator Ayres:** No, the official said that the contractual requirements require a commencement to start at a particular time and require a completion to occur at a particular time. That is not the same as saying that houses won't be completed in five years. That's the kind of smug political assertion that I expect from the coalition in this area where there's been utter policy failure for a decade and now a complaint that it's taking a little bit of time to get houses built.

**Senator BRAGG:** More houses than you, thank you. Okay. Let's move on. Let's talk about these institutional investors. There have been a few FOI submissions to Housing Australia. One of them was in relation to a fund called HESTA super. You have said in FOI documentation that there are 16 pieces of correspondence between Housing Australia and HESTA. What are they about?

**Mr Langford:** I'm going to ask my colleagues appearing online if they have any information about that. Otherwise, I'll have to take that question on notice.

**Ms Johnston:** Mr Langford, we don't have any information to hand. Senator, can we take that question on notice, please.

**Senator BRAGG:** Okay. What about Hostplus? There are three pieces of correspondence with them. What are they talking to you about?

**Mr Langford:** I'm not familiar with the correspondence and I don't believe that the team have got that correspondence with them, so we'll have to take that question on notice.

**Senator BRAGG:** So you don't know about those? Okay. I'll also get you to take on notice the two pieces of correspondence with Cbus Super and the 9,149 pieces of correspondence with Cbus Property, IFM Investors, Aware Super, BUSSQ, CareSuper, Rest Super and AustralianSuper. I don't expect you to give an answer on all 9,149 pieces of correspondence, but I'd like to know broadly why they are talking to you, a government agency, and what they're wanting from you. I don't think we've been able to get information through the FOI process. I want to ask you about the Housing Support Program. Do you administer that?

**Mr Langford:** I'm not familiar with that program, so I don't believe that—

**Senator BRAGG:** That's not Housing Australia?

**Mr Langford:** No.

**Senator BRAGG:** Those might be questions for Treasury. We'll ask those if we have another estimates before the election, which we imagine that we will. There's a governance issue I wanted to raise with you. Have there been any issues on the—sorry, who's on the Housing Australia board?

**Mr Langford:** The current board?

**Senator BRAGG:** Yes.

**Mr Langford:** I can take you through the board membership. The chair is Carol Austin. The other board members are Cathie Armour, Richard Wynne, Nigel Ray, Kelvin Ryan and Matina Papathanasiou.

**Senator BRAGG:** I know you're only new in this role, but have there been any issues with bullying complaints in relation to the board which have been made to the Treasury that you are aware of?

**Mr Langford:** We would encourage anyone who is facing bullying concerns to raise that and we'd investigate that in accordance with specific practices. I don't have any details.

**Senator BRAGG:** You're not aware of any bullying incidents inside the Housing Australia board which have been reported to Treasury?

**Mr Langford:** I won't comment on any bullying matters that are raised inside the organisation, to protect the anonymity of people. We want them to speak up. I haven't seen any documentation that relates to the board.

**Senator BRAGG:** Are you saying there is one or there is not one?

**Mr Langford:** If you're asking me if I've seen anything, the answer is no.

**Senator BRAGG:** Okay, that's fine. There's no-one else who could give a different answer? You're the CEO, so I assume that no-one else would know. Have you got 131 staff there?

**Mr Langford:** Just give me a moment. Are you talking currently?

**Senator BRAGG:** At Housing Australia, yes.

**Mr Langford:** Currently, I think we're just above that number now, because we've been recruiting additional staff. Mr Le, have you got that number in front of you?

**Mr Le:** Yes, the total staffing number as at September is roughly 170 full-time employees.

**Senator BRAGG:** You have a corporate affairs and government relations unit, don't you?

**Mr Langford:** We have a corporate affairs team, yes.

**Senator BRAGG:** Is the number you gave us from the last estimates right; is that accurate? You said that the budget for 2023-24 was \$1.99 million?

**Mr Langford:** Mr Le, can you confirm that?

**Mr Le:** Yes, we provided that information into a questions on notice request, and that was correct.

**Senator BRAGG:** What do you do for \$2 million in corporate affairs?

**Mr Langford:** The board assigns resources to achieve the objects of the act. Like a lot of government agencies, we have a corporate affairs function. It supports communication about our role and all the various programs. It covers raising awareness of the programs that we have—managing media inquiries, stakeholder engagement, corporate reporting, government relations and advice and internal communications.

**Senator BRAGG:** How many people work there?

**Mr Langford:** At the organisation?

**Senator BRAGG:** In corporate affairs.

**Mr Langford:** I believe we've got six ASL in that team. Mr Le, can you confirm that? Otherwise I will just need to take that on notice for confirmation, if that's okay. I just need to check a current headcount.

**Mr Le:** It's around seven ASL.

**Senator BRAGG:** Finally, just to clarify: with the question on notice you took before, around the issue of the contract, if you want to file a public interest immunity claim, I think there's a process for doing that. Effectively, we're allowing you to take it on notice, so you might want to consider doing that, if you need to.

**CHAIR:** That's the process.

**Mr Langford:** Thank you and apologies, I'm not familiar with some of these nuances.

**CHAIR:** Thank you, Mr Langford and team. That concludes our question.

#### **Australian Bureau of Statistics**

[21:37]

**CHAIR:** The committee welcomes representatives from the Australian Bureau of Statistics, Australian Statistician Dr Gruen and team. Dr Gruen, did you have any opening remarks, or are you happy to proceed straight to questions?

**Dr Gruen:** I'm happy to proceed.



**Senator DEAN SMITH:** Can you confirm for the committee which topics have been agreed to be added to the 2026 census, which topics have been agreed to be removed and which topics have been agreed to be amended?

**Dr Gruen:** A topic on sexual orientation and gender has been agreed to be added. I might get Brenton Goldsworthy to fill you in on all the other details.

**Mr Goldsworthy:** The government also agreed, at our recommendation, to remove the topic of the number of children ever born from the 2026 census. The idea there is that the data need is for it to be collected every 10 years, so our intention is to recommend that it be included in the 2031 census, but it wasn't necessary to be included in the 2026 census.

**Senator DEAN SMITH:** That is the total sum of the changes—of the additions, the deletions and any amendments?

**Mr Goldsworthy:** There are some language changes.

**Dr Gruen:** Yes, there are some language changes.

**Senator DEAN SMITH:** And they are? I'm asking these questions because I understood that you recommended to government five topic changes.

**Dr Gruen:** We can get the details on that. I think I've got them here. I've got the recommendations, and the recommendations were accepted. For 'language spoken at home' replace the word 'spoken' with 'used'.

**Senator DEAN SMITH:** Do I characterise that as amended?

**Dr Gruen:** Yes, indeed. For 'proficiency in speaking English' replace the word 'spoken' with 'used' and 'his' or 'her' with 'the person's'.

**Senator DEAN SMITH:** So that's two amended?

**Dr Gruen:** Yes. Would it be easier for us to just give you this list as a matter of—

**Senator DEAN SMITH:** No, because I'm going to the matter of the advice that was provided to government and the decisions that were taken by government.

**Dr Gruen:** Okay. So those are the—

**CHAIR:** While Dr Gruen is doing that, I thought I heard Dr Gruen say that all of the advice was accepted.

**Dr Gruen:** The advice was accepted. There were some changes that the government decided on. Our advice had been to ask the gender question for all ages and the sexual orientation question for 15-plus, and the government decided to ask both for 16-plus.

**Senator DEAN SMITH:** Thank you. We had an opportunity to discuss the matter of religious affiliation or religious identification at a private briefing a long time ago.

**Dr Gruen:** Yes.

**Senator DEAN SMITH:** Can you provide an update to the committee on how that matter is being considered.

**Dr Gruen:** Certainly. As you are aware, that is a decision for us, not for the government. In fact, I think it was at the last estimates that I said to you in an answer that we were very keen to hear the views of groups that had an interest in this question. I've had a series of meetings with a large number of groups. We have heard their views about the nature of the question that they would like asked on religious affiliation. Just to fill out the answer, the main options are: an updated version of what we did in 2021, which was to have a checklist with the most common answers from the previous census—that's one possibility; the other is to have a free-text field, with the idea that people write it in. So we have had those conversations with religious groups. We had something like 10 meetings, I would say, with different groups, both religious and secular, and we are close to making a decision which I think we will announce in the new year.

**Senator DEAN SMITH:** Just to clarify—topics are determined on advice to government by government, and the structure of the question is completely the authority of you as the chief statistician?

**Dr Gruen:** That's correct. The government or actually the parliament—as you would understand, these are disallowable instruments—

**Senator DEAN SMITH:** I'm coming to that in a moment.

**Dr Gruen:** Okay, sorry. So the parliament decides the topics, and it's left to the professional judgement of the Bureau of Statistics and—you're correct—ultimately to me to decide what question or questions will best elucidate answers for those topics.

**Senator DEAN SMITH:** I'm turning now to the Census and Statistics Regulation 2016. This is the regulatory function or mechanism that gives effect to the decisions that government has taken with regard to the topics to be included and excluded but not amended, because that's a word change which is in your authority.

**Dr Gruen:** I think that word changes are also—

**Senator DEAN SMITH:** In the regulation?

**Dr Gruen:** I think so.

**Senator DEAN SMITH:** When will the regulation hit the parliament?

**Dr Gruen:** They have been tabled in both houses of parliament by now. I think the one in the Senate was tabled yesterday or—

**Mr Goldsworthy:** Maybe on Monday.

**Dr Gruen:** maybe Monday. The House of Reps was earlier.

**Senator DEAN SMITH:** In a document that's available to everyone—it's part of the OPD, the production of documents, that was provided to the parliament recently, and I suspect it might be the subject of an FOI and publicly available through it and others—you identify a number of scenarios for the successful implementation of the 2026 census. One of those documents—this document here—is called the *Legislative timetable to support the 2026 Census Critical Path*. It explicitly identifies the possible interference of a federal election and being able to meet the legislative and regulatory timetable to give effect to the 2026 census. I wasn't aware that the regulation had been tabled in the Senate yesterday.

**Dr Gruen:** It was on Monday.

**Mr Goldsworthy:** It was Monday in the Senate, as I understand it.

**Senator DEAN SMITH:** How does the election timing interfere with the parliament's consideration of the regulation, and how could it impact the preparations for the 2026 census?

**Mr Goldsworthy:** The disallowance period is 15 sitting days, so if the election is called before those 15 sitting days expire, that interrupts the clock, if you like, and then it would need to restart following the election once parliament has been recalled or the new parliament has started. For us, the key date that I have in my head is the disallowance period having passed by about middle of next year. We're comfortable under either scenario. Say an election is called in April or May, that would mean the disallowance period is met prior to the election. If the election is earlier, there would be ample time after the election.

**Senator DEAN SMITH:** If the election is called for 22 February, meaning that the first two weeks in February are abandoned, the additional estimates period is abandoned and let's say the parliament comes back at the end of March, is the implementation timeframe for the 2026 census still able to be met?

**Mr Goldsworthy:** Yes, that's correct.

**Senator DEAN SMITH:** I do have more questions, but I'll defer to others, and if time allows, we can—

**CHAIR:** Thanks. Senator Roberts.

**Senator ROBERTS:** I'll just table this for my second question. My first question refers to your comparison of all-cause mortality—you'd be familiar with this—

**Dr Gruen:** Broadly, yes.

**Senator ROBERTS:** and COVID deaths against baseline using regression data. Firstly, thank you for the analysis. It provides a clear idea of where we are. I note that excess deaths are staying above the baseline, above the upper range of the baseline. It is something the monthly provision of mortality data also shows has continued into 2024. My question should be familiar to you. Is the ABS doing enough to produce the wealth of data the government and our health agencies need to review their decisions during COVID? Specifically, why haven't you added vaccination rates to this data?

**Dr Gruen:** The mortality data we get from births, deaths and marriages from each of the states and territories—I will make certain that this is correct, but my understanding is that vaccination status does not come with the births, deaths and marriages data that we get and publish. This is the publication that come out two months after the period?

**Senator ROBERTS:** I'm not sure of the agency's name. I think it's the Australian Institute of Health and Welfare or maybe the national institute of health and welfare—

**Dr Gruen:** No, the Australian Institute of Health and Welfare.

**Senator ROBERTS:** They are able to provide the vaccinations, I think.

**Dr Gruen:** Then they may well have done the analysis. Vaccination status exists, and it's, for instance, in our integrated data assets, and the Australian Institute of Health and Welfare does analysis on our data and produces reports. So I'm not saying the data doesn't exist. I'm saying it's not in the form that we get from the births, deaths and marriages from each of the states and territories on which we base the mortality statistics that I think you're talking about.

**Senator ROBERTS:** So isn't it just a matter of adding another dataset, getting that from somewhere—because this would be valuable information for health authorities.

**Dr Gruen:** The answer is that it requires analysis, and that's not what we do for that publication.

**Senator ROBERTS:** Do the health departments and health agencies use your data?

**Dr Gruen:** Yes.

**Senator ROBERTS:** So wouldn't it be helpful to them to understand the vaccination rates?

**Dr Gruen:** I think there's been quite a lot of work on vaccination status and the implications of vaccination status for mortality. There was a very big study published in the *Lancet* that was done by the University of New South Wales which looked at that. It followed 3.8 million Australians over 65 in 2022. So there have definitely been studies.

**Senator ROBERTS:** Okay. Let's move on. The scientific paper that I tabled—Melbourne university have done the work that you haven't done, and they've used regression analysis to test for the relationship between COVID boosters, if you have a look at the abstract—

**CHAIR:** The committee tables the document.

**Senator ROBERTS:** Yes. If you have a look at the abstract, it summarises what I'm saying. I've circulated their paper, published by the European Society of Medicine. This is their conclusion: 'The results suggest a strong regression relationship with an adjusted R squared of 71 per cent.' Correlation of zero is no correlation. One is a perfect correlation. In this paper, they found a correlation of 0.71. That's very strong, and it suggests that boosters are linked to excess deaths. As you already do this work—that's the graph again—why won't you just add vaccinations and boosters to the data and give the Senate better information upon which to base better decisions?

**Dr Gruen:** I've already answered that question.

**Senator ROBERTS:** I wasn't happy with the answer.

**Dr Gruen:** The point is—

**Senator ROBERTS:** You haven't explained it.

**Dr Gruen:** the data comes from somewhere else.

**Senator ROBERTS:** Why can't you do that?

**Dr Gruen:** I explained. Those data come from births, deaths and marriages from all the states—

**Senator ROBERTS:** I understand that.

**Dr Gruen:** Right. The vaccination status comes from elsewhere. It comes from the Australian Immunisation Register.

**Senator ROBERTS:** So you don't merge the two together; you won't do that?

**Dr Gruen:** We publish the data that is available to us. Others do analysis on that data. It is perfectly open to anyone who has a well-defined project to use the data that we have generated and to produce research on that. That's completely up to them. We are an organisation that produces the data, and it is predominantly others who do the analysis.

**Senator ROBERTS:** Okay. So you collect data from various agencies, you summarise it and present it, and other people use that data to do the analysis.

**Dr Gruen:** Yes. There are circumstances where we do some analysis, but in this case it's others who do the analysis on linking vaccination status and mortality.

**Senator ROBERTS:** Okay, thank you. Changing the topic, coming to Australia to work and send money home is something I often hear is a reason for people moving to Australia to study. I'm curious about how much money leaves the country from students sending money home. Your publication recording international students in the balance of payments has a lot of data. I couldn't find the specific item of how much money is sent home. Can you tell me please, how much money is remitted from Australia each year by international students?

**Dr Gruen:** Let's take that on notice. I don't have it in my head.

**Senator ROBERTS:** Okay. Moving on to the 2026 census and referring to the table, 'status of potential new topics'—it's on your website—the sexual orientation of children aged 16 and up is listed as a new topic. Is that correct?

**Dr Gruen:** Sexual orientation of people 16 and over?

**Senator ROBERTS:** Yes. It says, "'sexual orientation and gender" will be included in the 2026 Census, for people aged 16 years and older'. It's in—

**Dr Gruen:** That's right. That's correct.

**Senator ROBERTS:** Families fill this form out together, I'd assume.

**Dr Gruen:** Sorry, could you say that again?

**Senator ROBERTS:** Families would fill out the census together.

**Dr Gruen:** That's often the way it's done, yes.

**Senator ROBERTS:** So they can see each other's responses. The question is, are you exposing a child to a conversation they may not be ready to have with their parents, or which they may not be ready to have with themselves yet?

**Dr Gruen:** That's an important issue, Senator. The way that we handle this is that, for these forms, the household form, there's always the option of 'prefer not to answer'. That is an option for these sensitive questions, and the other important thing is that if a young person living in a household chooses not to discuss this with their parents but wishes to record answers that they do not wish to share with anyone else, they can fill in a private form and we will override the answers that they provide. So their form will take precedence over the family form.

**Senator ROBERTS:** Wouldn't the other members of the family know about that? If a family member over 16 was reluctant to answer, then that might start a conversation that no-one's ready to have.

**CHAIR:** This is the last question, Senator Roberts.

**Senator ROBERTS:** What business is it of the ABS to know the sexual orientation of children?

**Dr Gruen:** The answer is it's not our business. The answer is that we provide the option for people to fill in the form privately without having the conversation with their family, and they can choose to do that or not do it. We have an option in those questions of 'prefer not to answer,' so we have done the best we can to provide an environment where people do not have to reveal this information if they would prefer not to.

**Senator ROBERTS:** But just having the question there—

**CHAIR:** Senator—

**Senator ROBERTS:** Excuse me, Chair, I'm just following up on that.

**CHAIR:** Sorry. We've got three minutes. Senator Rennick?

**Senator RENNICK:** Hi, guys. How are you going? I put in a question on notice in the Excess Mortality inquiry, asking if I could get a list of the deaths in 2021 and 2022, along with vaccination dates and dates of death. The reply I got from the ABS was that I'd have to pay an estimated cost of about \$40,000. Why should I have to pay \$40,000 if it's a question in a Senate enquiry? Why does the ABS charge \$40,000 for data regarding vaccination status and date of death?

**Dr Gruen:** As you're aware, we put a vast amount of data for free on our website. We have about 500 statistical releases a year, all free, on our website. So there is a huge amount of information on our website. We also have a secure environment where we have de-identified sensitive data where researchers, after they have signed an undertaking that they will respect the nature of that data and will not attempt to re-identify it, can come in and do research on that data.

**Senator RENNICK:** Can I do that? Can I get access to that?

**Dr Gruen:** I think you have been in discussions with us about whether you could do that, and we have been talking to you about the conditions under which you can do that. One possibility is that you do it through our consultation service. You've been in discussions with the consultation service about the possibility of doing that. If you want to do it yourself, we need an assurance that we're dealing with someone who is a sophisticated data user who knows what they're doing in big data assets and understands the computer coding that will need to be done. We're not having separate rules for you than for anyone else: these are our global rules. These are expensive assets to maintain and—

**Senator RENNICK:** I accept all that, but I would have thought it's in the national interest to answer questions from senators in Senate inquiries. I don't think my particular query is a very big one. We can cut it to 172,000 deaths. It's not a huge database.

**CHAIR:** Do you have a quick final comment, Dr Gruen?

**Dr Gruen:** The answer is we engaged with you about this, and our consultation service gave you a sense of what it would take to answer those questions.

**CHAIR:** Thank you, Dr Gruen and team.

**Committee adjourned at 22:01**