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JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL SERVICES

Reference: Regulations and ASIC policy statements made under the Financial Services Reform Act 2001

THURSDAY, 11 JULY 2002

SYDNEY

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JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL SERVICES

Thursday, 11 July 2002

Members: Senator Chapman *(Chair)*, Mr Griffin *(Deputy Chair)*, Senators Brandis, Conroy, Murray and Wong and Mr Byrne, Mr Ciobo, Mr Hunt and Mr McArthur

Senators and members in attendance: Senators Chapman, Conroy, Murray and Wong and Mr Byrne and Mr Griffin

Terms of reference for the inquiry:

To inquire into and report on:

The regulations and ASIC policy statements made under the Financial Services Reform Act to ascertain the extent to which they are consistent with the stated objectives and principles of that Act.

WITNESSES

Committee met at 9.03 a.m.

GILBERT, Mr Ian Bruce, Director, Australian Bankers Association

CHAIRMAN—I declare open the public hearing of the parliamentary Joint Statutory Committee on Corporations and Financial Services. Today the committee will hold its second public hearing into the regulations and the ASIC policy statements made under the Financial Services Reform Act. It will also hold a public hearing tomorrow afternoon on this matter. While in Sydney, the committee is also taking evidence on its inquiry into the Managed Investments Act. The committee will hold public hearings on this matter later this afternoon and tomorrow morning.

Before we commence taking evidence, may I reinforce for the record that all witnesses appearing before the committee are protected by parliamentary privilege with respect to evidence provided. Parliamentary privilege refers to the special rights and immunities attached to the parliament or its members and others necessary for the discharge of parliamentary functions without obstruction or fear of prosecution. Any act by any person which operates to the disadvantage of a witness on account of evidence given by that witness before this committee is treated as a breach of privilege. These privileges are intended to protect witnesses. I must also remind you, however, that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. Unless the committee should decide otherwise, this is a public hearing and, as such, all members of the public are welcome to attend. Finally, I request that all mobile phones be turned off or placed on silent operation.

To commence our hearing this morning I welcome Mr Ian Gilbert. The committee has before it a written submission from the Australian Bankers Association, which we have as No. 22. Are there any alterations or additions that you need to that submission?

Mr Gilbert—Yes, Mr Chairman. At the top of page 5 there is a typographical error. In the first line the words 'Tier 2 standard ABA' should be deleted and replaced with the word 'majority'. It was a reference to the majority report of this committee in 2000 in its inquiry into these matters. I apologise for that error.

CHAIRMAN—Thank you. I now invite you to make a brief opening statement, following which we will proceed to questions.

Mr Gilbert—I will be very brief. It is almost two years to the day—I think it was 25 July 2000—that I appeared before this committee. I think that there are more people here than last time. I mentioned as a core point in the opening address that I made to this committee the concern that the Financial Services Reform Bill, as it then was, failed to adequately differentiate between basic deposit products—their functions, features and the activities involved in selling those products—and the more sophisticated market linked, high risk products that consumers can be exposed to. This committee in its final report, the majority report, concluded that basic deposits should not be kept within the FSR regime, and even the minority report recognised the strong evidence that was given not just by the ABA but also by Bendigo Bank that there should be amelioration within the act to allow for the different nature that basic banking deposits have. To an extent the act achieved that in its final form, and we were very pleased to see those amendments.

A lot of that work potentially could be undermined if subordinate regulations and particularly policy statements—and I include in that ASIC policy statements, although they are not strictly subordinate regulations—direct banking institutions back to the situation they were confronting when this committee first considered the bill, by imposing greater restrictions, inflexibilities and costs on what is basically a very simple, uncomplicated product and its sale. Coming back here today—as I said, almost two years later—I want to remind the committee of that history and encourage this committee to consider particularly policy statement 146, to which we devote quite a lot of time and attention in our submission, and the adverse effects that statement may have on banking and bank customers, particularly in rural and regional areas of Australia. There is also a submission on the file from Bendigo Bank, one of our members; and members of this committee will read in there direct reference to the effects that PS146 may have on the operations of Bendigo Bank. Thank you.

CHAIRMAN—From what you are saying, I take it that the way the legislation finally passed through the parliament was acceptable in terms of what you are trying to achieve, and that PS146 is therefore inconsistent with what you regard as the intent or the black letter aspects of that legislation.

Mr Gilbert—In an ideal world, it would have been better, in hindsight, for those deposits not to have been in the bill at all rather than excised for special treatment within the act; however, I think our industry recognises that things have moved on. We are now deeply involved in getting ready for the start of this legislation in March 2004. That means that work is already being invested in compliance arrangements and basic deposit products, within the work that is being conducted. We really need to make sure now that we do not go backwards and in fact subvert what I believe the intent of this committee was—close to unanimously, I think, if one reads the minority report in that way—and subvert all of that good work through subordinate structures.

CHAIRMAN—You are saying that that work was in fact picked up in the legislation?

Mr Gilbert—It was.

CHAIRMAN—But there is, in effect, an inconsistency between PS146 and the legislation?

Mr Gilbert—That is our submission, yes. It really fails to differentiate sufficiently the nature of a basic deposit product and the related non-cash payment facility as a class—which is your plastic ATM card—from a range of other products that are infinitely more sophisticated and have greater complications attaching to them. For example, for someone who wanted to assist a customer in deciding which account to open—be it a term deposit, a simple savings account or a transaction account—the training required to simply provide that service to the customer would involve economic training, understanding debt cycles and interest rate cycles, and would include product knowledge. All banks are training their staff on product knowledge. That is what the customer wants to hear, not that this particular moment in their life, when they are opening a deposit or transaction account, is one of those major investment decisions of their life that all things hang on. That is not what we are talking about here; yet PS146 has all of that in it. Bendigo Bank's submission demonstrates quite forcefully what the up-front cost of that will be to that company: $1 million in training with $300,000 per annum ongoing. That is a very significant cost to a bank that, as it disclosed in its submission, has 200 branches and a program to roll out further branches in rural and regional Australia, either through franchises or branches

themselves—it does not actually say which. That is a very significant impost on a small bank that is doing good things out there.

CHAIRMAN—Have you discussed PS146 with ASIC?

Mr Gilbert—I have discussed PS146 on a number of occasions with ASIC; ASIC have no doubt about what our view on PS146 is. My last discussion with ASIC was that PS146 will not be reviewed. In this submission we have sought, with respect, that this committee encourage and recommend that PS146 be re-examined, taking account of the factors that I have mentioned this morning.

CHAIRMAN—Have you put to them your view that PS146 goes beyond the intent of the legislation?

Mr Gilbert—Not beyond the intent of the legislation, but it is implicit in what we say that PS146 is treating the sorts of products that the act sought to circumscribe and ameliorate the effect of the act on, as being in the same category as those products that were not. It is a very difficult situation: the act actually creates a problem in this area in the way it defines 'advice', and I think a number of submissions before this committee raised this point. Advice can constitute direct advice, albeit inferred from circumstances in the course of the discussion with the customer. If, in the course of discussions with a customer, it can be inferred that there is a recommendation being made by the bank officer that this customer should open this account rather than that account, then that bank officer has advised the customer. We are talking about very simple, capital assured products with no risk: they are not mark to market, they are not managed funds; they are basically on-demand products. It will be virtually impossible to train staff to stay on the right side of the line, because they want to help customers.

CHAIRMAN—I take it, from what you are saying, that your view is that the problem has arisen because of the legislation trying to actually overcome the problem by dealing with the definition of 'advice', rather than with the definition of 'product'—

Mr Gilbert—Advice applies to everything—

CHAIRMAN—rather than excluding products from the requirements, which, as a I recall, is what we recommended—that is, that certain products be excluded from the legislation.

Mr Gilbert—Yes. You advise on these types of products, without needing the training of a financial adviser to give that advice. We accept that the person at the counter has to know about the product and understand the features of the product. We have, of course, got disclosure obligations. Not only will there be disclosure obligations under this new legislation, but also there will be disclosure obligations under our code of practice. That code is being reviewed and it is 99.9 per cent completed. We are looking forward to being able to publish that code very soon. When that is published, the range of disclosures available, which must be provided to consumers, will be very evident.

CHAIRMAN—As I understand PS146, an exemption is provided where staff use a prepared script in dealing with customers. Is that not a sufficient exemption?

Mr Gilbert—It is a helpful start. The difficulty is that, if I could control the flow of a conversation across a counter, I would need a prepared script for every conceivable alleyway that that conversation went down. It just cannot be done. If you want to talk to someone about something as simple as opening an account and the one that has the best product features for you, the last thing you want is someone reading from a script about these things. For example, you might say: 'I want to know more. Can you tell me a bit more?' And the answer might be: 'Well, we will have to refer you on to someone else to tell you that, because I can't give you advice.' It is one way that one might manage some situations, but it will just not work in all situations. It is very inflexible. It is not the sort of thing that I think customers would want.

CHAIRMAN—You indicated the costs that the Bendigo Bank have calculated. Have any other assessments of costs been made, or are there indications from agents, for instance, that they will withdraw their services if required to meet the standard of PS146?

Mr Gilbert—I have no evidence direct from agents, but the evidence from the Bendigo Bank and other banks that have spoken to me about this is that just getting people to work in these places, getting small business to take on these things and getting people to actually work these types of functions in those types of rural environments is hard enough in itself. If you actually pull people out and send them off for training, who does their job? There is a cost to training. It is self-evident that it could be a disincentive for these people to take up these services in the future—which is obviously very critical.

Mr GRIFFIN—What has been ASIC's explanation to you as to why they do not want to alter this in any way?

Mr Gilbert—They think that it is right. I have actually not been given a complete reason. You need to understand the history of 146: 146 was actually there before FSR came along. It was there for securities advisers and dealers. It simply was recast as an interim policy statement in the lead-up to the passage of the act. It has been altered since then, but, fundamentally, its structure is very much the same. ASIC has essentially committed itself to PS146.

Mr GRIFFIN—But they are saying that it is appropriate in the circumstances and that it should not cost that much for training?

Mr Gilbert—They believe that anybody who gives advice should be adequately trained.

Senator CONROY—That would be the intent of the bill as set out in the opening explanatory memorandum.

Mr Gilbert—Yes. That is right: anybody who gives advice, irrespective of whether it is general advice, which is simply advice with a disclaimer or a warning—'I have not considered all your financial circumstances and so, although I have advised you, do not assume that I understand everything about your circumstances'—or whether it is personal advice, which is a complete needs analysis that obviously every financial planner would undertake and would be trained to do.

To go back to the training: whether you give personal advice or general advice, you have to be trained as an adviser, not just in product knowledge but in relationship management and in

the types of economic principles that I mentioned earlier and which are included in the submission.

Senator CONROY—Your view is that PS146 requires full financial training for every teller?

Mr Gilbert—Not full financial training, Senator. Advice has to fit the context. What ASIC has done in PS146 is to divide products into two tiers or classes: sophisticated products generally appear in tier 1, and deposit products and related non-cash payment facilities appear in tier 2, along with a number of other products that are available. We had hoped that ASIC would actually adopt a tier 3 for PS146, which would drop the sorts of products we are talking about here today down into basically a product knowledge category.

Senator CONROY—And what sort of training do you believe would be appropriate for your tier 3?

Mr Gilbert—Tier 3 would be essentially product knowledge. We are talking about very simple products, ones that generally people understand and know about anyway; and ones from which, if they do not like them, they can move without penalty to any other product they choose.

Senator CONROY—How would they know if they did not like them, if they weren't told about alternatives?

Mr Gilbert—They could be told about alternatives. But as soon as you start talking about alternatives and have that discussion, the customer says, 'What do you think is the best product for me?'

Senator CONROY—So you think that omission is an acceptable form of financial advice?

Mr Gilbert—There is no obligation in the act to advise. It is only if, in the course of a discussion, you could infer a recommendation from that discussion that advice might be deemed to have been given. What was the training that the person who had given that advice had to have, as defined by law? According to PS146, it is the sort of training I have been talking about. If I am going in to open a transaction account and there may be three or four options that I want—it invariably has electronic access to it via a plastic card and it might also offer Internet access—I can well see a situation emerging very quickly where the person on the counter will be involved in providing advice. All the economic training in the world will not change the fact that what I know is the features of the product and why it will work for me if these are my circumstances. It is not a financial decision.

Senator CONROY—So that is giving financial advice?

Mr Gilbert—Yes.

Senator CONROY—And the intent of the bill is to cover financial advice and the giving of it. Your tellers, under what you have just described, are giving financial advice.

Mr Gilbert—They would be, yes.

Senator CONROY—So they should be trained, like everybody else.

Mr Gilbert—Yes. The intent of the bill also was—

Senator CONROY—It is a consumer protection bill.

Mr Gilbert—Yes; I understand that. As a result of the decisions of this committee, the report it made was clear that there was a case made—and accepted by both reports—that features of this act should be ameliorated for these types of products. PS146 does not do that.

Mr GRIFFIN—One of your arguments with respect to why there should not be a need for advice is that basically there is no financial penalty at this level, with no entry or exit fees in relation to these sorts of accounts. Given that banks are going through a process of levying fees on everything, almost including breathing, what makes you so sure that you are not going to have entry and exit fees in the future, in relation to these products?

Mr Gilbert—If banks do introduce entry and exit fees, the products will no longer qualify as basic deposit products under the act, and so they will lose the benefit of that excision.

Mr BYRNE—How many instances are there where counter staff in particular field a general inquiry and then there is a more specific inquiry about a financial service product? Are you saying that at every point these people are not providing any advice?

Mr Gilbert—Are you saying that the discussion moves from the product under discussion to—

Mr BYRNE—The discussion moves from the ones that you want exempted for training and on to a more generalised product. What happens when someone is having a conversation over the counter and starts moving on to other products?

Mr Gilbert—Such as: 'Have you got a superannuation product?'

Mr BYRNE—Or a more complicated product. What mechanisms does your bank have in place to stop them from giving that advice?

Mr Gilbert—That is probably where the script approach comes in: 'I cannot give you that advice. I am only authorised to talk to you about this range of basic products.'

Mr BYRNE—Are you saying that that happens in every instance?

Mr Gilbert—That will be the compliance arrangement that most banks will adopt; they will not want their frontline staff taking on that responsibility, because they are not going to be trained to do that. That clearly is the work of other people. As Senator Conroy has pointed out, this is a consumer protection statute. Customers will be referred to people who have that tier 1 level of training to ensure that the product fits the customer.

Mr BYRNE—How are you going to monitor that?

Mr Gilbert—Obviously all banks have to ensure that they comply with the law when they put compliance programs in. As with every other regulated activity in financial services, there will be compliance monitoring arrangements introduced by banks.

Mr BYRNE—What sort of compliance monitoring processes?

Mr Gilbert—I am not privy to them, because I do not actually work in a bank. Most banks have compliance officers or their senior legal counsel will be their compliance officer. There will be internal audits within banks of the types of activities that are going on. Obviously the regulator will have much more than a passing interest in how this act is working.

Mr BYRNE—What happens with staff now? What is happening in banks when they are being asked, particularly given that, with the era of increased competition, people seem to have some level of anxiety to make sure that the range of products that are offered by the bank is offered to the customer? You are saying that that does not happen as a front-end transaction: they have their conversation and, as soon as it moves to a more technical or complicated product, they say, 'Sorry, just hang on. I will go and grab someone for you.'

Mr Gilbert—I cannot give you an absolutely emphatic statement about that, because I do not have that information. I am happy to get that information for the committee if it is important. My personal experience in dealing with a bank and walking into a branch and asking for something more than what one would normally get over the counter in terms of transaction services is, 'You will need to speak to our financial planner. That person comes in on such and such a day; I can set up an appointment for you; I can do this or that.' That has been my personal experience.

Mr BYRNE—Again, we do not have any mechanisms that you are aware of at this stage other than the compliance person that actually monitors that; is that right?

Mr Gilbert—Yes.

Mr BYRNE—I will leave it at that at this stage. Thank you.

Senator MURRAY—Obviously one of the mechanisms for monitoring this system eventually has to be an informed customer, as all the regulators in the world and all the internal audit processes in the world are not going to work. I assume that in the same sense that customers have been advised of the changes to privacy laws, for instance, there will be an attempt to educate them as to what to expect; is that right?

Mr Gilbert—Yes. All banks that I am aware of have put out their privacy policies and amended their forms, terms and conditions and so forth to reflect the requirements of the Privacy Act.

Senator MURRAY—No; I am asking whether that same process will be undertaken with customers so that they are aware under the FSR Act what additional expectations to have about bank performance and bank advice.

Mr Gilbert—There is nothing in the act that actually requires that.

Senator MURRAY—The point that Mr Byrne is making is quite a strong one, because no matter what internal audit function you set up you cannot monitor every customer's experience. It is impossible. ASIC cannot—that is impossible. Ultimately you have to rely on the customer raising concerns, if they are being treated in a way which is not consistent with their expectations under the revised laws for consumer protection. To me, that means you need an educative process, and I draw the analogy with privacy legislation deliberately because privacy legislation has introduced a consumer protection device, and then the banks have provided what I think is a very comprehensive advice process to customers saying, 'This is what your rights are under this act.' My question is: do the banks intend to do the same thing for customers?

Mr Gilbert—I have not asked them. I do not know but I can ask them and provide that information to the committee.

CHAIRMAN—That would be good.

Mr Gilbert—There is a pretty solid disclosure regime under this act, particularly the product disclosure statement.

Senator MURRAY—But if people do not know about it—and that is really the point being made at the other end of the table—how do you reflect that?

Mr Gilbert—Our new code of banking practice will deal with some aspects of what you have raised, Senator.

Senator MURRAY—The second area is the area of costs. The first step you take related to your case is what additional disclosure or training needed in this. Once you have got the answer to that question, then the question is whether the benefit that accrues to the customer is worth the cost. You have said to us, taking Bendigo Bank as an example, that there is a million dollars worth of training costs over 200 branches, which is $5,000 a branch. Intuitively that sounds reasonable, but I do not know how it is constructed, thought through or made up. Have you looked within those costings to see whether you think they are accurate or reasonable?

Mr Gilbert—I did not formulate the costings—the bank did, from its own internal material. That would be something that the bank obviously could provide to the committee. There is the direct cost of training.

Senator MURRAY—The implication to us—if I could explain why I am pursuing this—is that across the entire banking sector you would translate that $5,000 a branch to all the branches of the banks. How many branches of the bank are there?

Mr Gilbert—I have not done a count recently—

Senator CONROY—They are sorting that out.

Senator MURRAY—Less than there were, you think.

Senator CONROY—Reducing fast.

Senator MURRAY—I have got 8,000 in my head—does that sound right?

Senator CONROY—That might have been the figure a few years ago—

Senator MURRAY—Let us just use that as a number. If there are 8,000, you are talking about $40 million, aren't you?

Senator CONROY—The famous economies of scale kick in at some point.

Senator MURRAY—I cannot see that, and that is the purpose of my question. You have got to train an individual and there must be a cost attached to that. Because you have got geographically isolated branches, you cannot easily mass-train people, I would have thought. Anyway, that is not an argument for us; it is really for the banks to say. What I am asking you is: if, for instance, there was a $40 million cost across the entire banking sector based on an extrapolation of the Bendigo Bank figures, would the benefit to the customers warrant that? If it did not, you would need to advise us. If you were going to go that route of arguing for cost, which you have, we need to know what the real costs are of this exercise. Otherwise, we should put the cost argument aside and simply argue about whether there should be a benefit versus a need.

Mr Gilbert—Two years ago this committee was convinced on both grounds and made a recommendation, and I have seen nothing in the work of this committee since then that has backtracked from that. The fundamental premise upon which I have raised this issue is that you do not need to be trained in the sorts of disciplines that PS146 would require you to be trained in to assist a customer in opening a basic deposit account. They have been opening basic deposit accounts from time immemorial with no adversity to customers at all. But this act—and, because of it, through to PS146—is now interposing a layer of regulation for which there has been no demonstrated market failure. If we are talking about disclosures in terms and conditions, fees and charges and things like that, that is not what we are talking about here. We are talking about assisting a customer in making a sensible choice between very simple accounts that we really do not need a financial wizard to tell us about.

Senator MURRAY—And your point is that as a consequence there is a bureaucratic imposition, namely training processes and all that—administrative impositions, if you want to put it that way—and the cost consequence. I am trying to arrive at the cost consequence feel for this thing.

Mr Gilbert—The cost consequence can be one of two things. Either you do not do it, which means you do not provide assistance for customers, or the other cost is that agents in remote and regional areas may not want to have their staff away from their business, being trained in these things. That is a cost to the community as well, because the service will not be there. Bendigo Bank's submission really teases out how fine the margins are. If you go back to the evidence that a director of the bank gave to this committee two years ago, you will read how marginal operating out there is. Every dollar you add to the cost of doing that makes it even more marginal. I recall hearing his evidence and those that were here would have heard it. That is what we are talking about.

Mr GRIFFIN—What would be required in the sort of environment of, say, giroPost, an outlet of Australia Post, in relation to training?

Mr Gilbert—If they go down exactly the same route and seek to assist in the way that I have described, they are going to need a financial services licence and be trained.

Mr GRIFFIN—Would they be able to? My understanding is that you mostly you have your accounts set up beforehand and you merely just use it in terms of—

Mr Gilbert—Yes. If you simply transact, this act does not affect you.

Mr GRIFFIN—That is really about all you can do at a giroPost.

Mr Gilbert—It is the actual opening and creating a relationship that is critical.

Mr GRIFFIN—With giroPost transacting is about all you can do, isn't it?

Mr Gilbert—Yes, I think that is right. I do not think they open accounts or close them.

Senator CONROY—I just want to follow up one of Senator Murray's points. He was talking about how, in the end, an informed customer is the best defence. Why do you think the 'know your client' principle exists?

Mr Gilbert—So that you can understand what it is that your client wants.

Senator CONROY—Surely an informed consumer would know that.

Mr Gilbert—An informed consumer would know that. An informed consumer can understand that by getting information, and there is a lot of information that bank staff can give about products. If we are talking about financial advice, we are talking about something completely different.

Senator CONROY—Okay. Can I try and break down the difference between products and advice? You want to draw a distinction there, but I am a bit more fuzzy on it. In terms of products, one of the many criticisms of the financial services industry—not just banks, but super and managed investments—is that it is almost impossible to compare apples with apples, because one person's exit fee is another person's something else, and the financial services industry has managed to finds a million different definitions for taking money out of their customers' pockets. I am not suggesting in any way that it is illegitimate, but the plethora of names, tags, products and variations is not, I put it to you, accidental. They have not developed because they are trying to inform the customer.

In terms of the best defence being an informed customer, one of the things you have to admire about the financial services industry is its ingenuity in making up names for its fees and charges. You only have to lay on the table five different statements to see that they are all called different things and taken in different ways, and no-one can agree on an MER. I find it extraordinary that we can have so many definitions that you cannot come up with a single definition for what the cost to consumers is. You are aware that we are having a legitimate debate about that particular issue in this bill. So, in terms of a well-informed customer, it seems the ingenuity of the financial services industry militates against a truly informed customer, because it evolves fast and it evolves a myriad different products and definitions all the time. I

cannot keep up with it, frankly. If you are worried about the training program, I am conscious of Senator Murray's point about an education program for your customers but I think that would probably end up costing more than training your staff would. To keep customers fully informed of the developments in each product and each definition would probably end up costing you more.

Senator MURRAY—I was not suggesting that.

Senator CONROY—'Know your client' is an important principle that accepts that this particular industry is a lot more complex than the average person on the street can ever really grapple with, and it needs trust and an understanding by the provider that they are providing a very complex set of issues to the customer. Is that a fair way to describe it?

Mr Gilbert—There are quite a lot of issues in there, Senator. The intentions that you imply in the comments that you made about these matters are not accepted by us. I will say that I am not talking about MERs, managed investments or superannuation products. I am talking about basic deposit products as defined in the legislation and I would defy anyone not to understand each and every fee and charge that is described in the disclosure booklets that my members provide to them. What is a transaction fee? I do not think there is a non-standard reference to that down at the basic deposit level. What is a dishonour fee? All these fees are well understood; there is a commonality about them all. We are not talking about the sophisticated, other end of the market, where there may be with other financial services providers a need to feel that their products are differentiated and that a different naming of the same thing needs to occur. But of course, at that end of the spectrum, you are going to have sophisticated financial advisers involved in explaining all this to people. Down at the basic deposit level, the same issues are not there; it is not the same dynamic.

Senator CONROY—As you have been coming to this committee, you probably will have—unfortunately for you—read the *Hansards* of this committee. Let us take a very simple term deposit as an example here. It is one you may have heard me talk about before. It involves my wife. We were in between buying and selling a house. We sold first, and so we had a large amount of money sitting in our account while we were in the process of purchasing a house and we received a call from a bank, suggesting to us that we might want to put our money into a term deposit of two years or less, and that we could earn interest of five per cent. We were probably only going to have that for four or five months, in between buying and selling a house. They explained that the fees were only going to be three per cent on the deposit. A simple calculation says that five per cent interest earned with a three per cent fee equals a two per cent profit. Does that seem fairly simple and straightforward to you?

Mr Gilbert—I query whether it was a term deposit, but keep going.

Senator CONROY—They were trying to explain that the three per cent was actually not on the interest earned but on the entire product, and could be taken out up-front when you entered into the arrangement. As I said, the person phoning did not know that I was in between a house purchase; it just looked like a lot of money sitting in our passbook—or Streamline account or whatever it is that we have—and we could do better by putting the money into this other product. That sounds attractive. My wife has two degrees but, after going through the actual calculations, we ended up behind if we went down this route for the three, four or five months. It is not simple at all; in fact it is very un-simple to try to explain that we would be worse off by

putting this money into the term deposit than we would be by leaving it in the account for three, four, five or six months—however long it took us to find a house. So even on the simplest of products we were being offered over the phone and over the counter when I went into the bank—I am one of those stupid people who still go into a bank and put up with the queues—the people who used to be tellers are now a sales force trying to sell me a product. I was not interested; it was the phone call at home that got my wife interested in this particular issue.

So simple figures like a five per cent return and a three per cent cost are not quite so simple, particularly when you are being asked to put into a product that, as you define it, is as simple as possible and anyone in the world could understand it. Could I put it to you that there is a difference between opening and closing an account and investing in a product and, although it sounds very simple—two years at five per cent—in actual fact it is more complex than you are trying to suggest. There is a quantum leap between opening a basic transaction account and going into a term deposit—not necessarily a leap as far as ASIC are concerned in this particular case. A transaction account is not a term deposit, and once your teller starts saying to you, 'Well, this is the best product for you,' you have crossed the line into financial advice. There is a level of training and 'know your client' that is required under this bill. I am happy to sit down with ASIC and try to work through some of the differences and have a chat with ASIC about what their views are, but your simple assertion that a transaction account equals a two-year term deposit, frankly, I do not accept at all, from personal experience.

Mr Gilbert—Chairman, this creates a very difficult situation for me, because I am not privy to the circumstances, unless Senator Conroy is prepared to provide the details and terms and conditions of that transaction to me. I have serious reservations as to whether the transaction he refers to was a term deposit, in terms of a basic deposit product.

Senator CONROY—What does it sound like to you?

Mr Gilbert—It sounds like a managed investment, which is a vastly different thing from the thing we are talking about. A term deposit does not have fees on it; you basically put your money in for an agreed term with an agreed rate of return and, at the end of the term, the deposit matures and the proceeds, including interest, are credited to your normal everyday transaction account. I had exactly the same call when I did the same thing with my house, and I was very impressed with the level of service that this bank was offering to me. It was saying to me, 'Do you realise you have something sitting in there that we can do better with for you?' I was most impressed with that. I think that is great service.

Senator CONROY—It is great service if it actually adds up for you. It is not great service if it leads you into the wrong product.

Mr Gilbert—I would not make that decision over the phone.

Mr BYRNE—Following up on that, if someone comes to the counter and says, 'I want to know what to do with my money: should I put it on term deposit or something else?' what happens? What is the standard response of counter staff?

Mr Gilbert—If the 'something else' is going to be outside the realm of the basic deposit—

Mr BYRNE—What if they ask the counter staff person? This happens a lot.

CHAIRMAN—Mr Gilbert is responding by clarifying.

Mr Gilbert—If it is outside the realm of these basic deposit products, the counter staff are going to refer the customer.

Mr BYRNE—What if they say, 'I want to know what the best value for money is; I want to know what to do.'

Mr Gilbert—They will say, 'Here is a brochure; if you want to find out more about it, go and talk to one of our financial advisers.'

Mr BYRNE—And you are saying that is what happens now?

Mr Gilbert—That is what happens, yes.

Mr BYRNE—Okay.

Mr Gilbert—I cannot say that happens every day in every branch around the country, but I know from speaking to banks that that is the type of protective regime they are developing, and have developed over time.

Senator CONROY—I am interested in the incentives—and I use the word advisedly—given to tellers now to achieve either referrals for or sales of a product. Do you think there is an inherent danger that, if a teller gets a credit—in whatever form, whether it is points or a monetary reward—by getting people to go into a term deposit, as opposed to referring them on to a counsellor who may then put them into another product, there is a financial incentive created for the teller to try to shuffle somebody into a two-year term deposit because of their remuneration or their bonus points, which may accrue towards frequent flyer points for a flight somewhere? Is there a financial incentive created for them to try to get the money into a two-year term deposit as opposed to another product, as Mr Byrne talked about, which they will not get the benefit for? They may get a referral credit; I am not saying they get zero benefit from a referral as opposed to a direct product sale. I would have thought there is a financial incentive being created for the tellers, unless they get exactly the same amount of credit or bonus points—or whatever—from a sale as opposed to a referral.

Mr Gilbert—I have not investigated individual remuneration contracts of bank staff in the membership.

Senator CONROY—Do you think it is relevant to the issue, though?

Mr Gilbert—Actually I do not, because I do not understand what financial training would actually do to change that result. It is actually a breach of some sort of general duty to a customer to shunt them into the wrong product.

Senator CONROY—In your voluntary code of practice, what law would that be a breach of?

Mr Gilbert—It is actually not a voluntary code of practice, in the sense you describe it. It is enforceable as a contract against the customer. If the bank breaches that contract—which is the

code—and the customer suffers loss, the customer can get compensation, free of charge down at the ombudsman's office.

Senator CONROY—Are you able to give us any statistics on how many people have been the beneficiary of breaches of the code of conduct? Is it hundreds or thousands?

Mr Gilbert—No. The last report by ASIC into the compliance with the code of conduct is on their web site, and they reported a high level of compliance.

Senator CONROY—I was talking about breaches.

Mr Gilbert—That is it: breaches are non-compliance.

Senator CONROY—Nobody has been successful in getting compensation for a breach of the code? I am trying to find out whether or not this is something that is—

Mr Gilbert—The statistics on compliance with the code are reported annually by ASIC. Its last report reported a high level of compliance. The statistics from the Banking Ombudsman's office, which I think is where you are really directing the question, are not reported in that way; they report on a different basis, in terms of category of complaint about the particular products and so forth, and how that dispute was resolved.

Senator CONROY—Part of the problem with financial services products is that they tend to be long-term—putting aside your two-year term deposit—and you cannot always tell immediately or sometimes even longer-term whether or not you have made a bad financial decision. It may be that by staying in a term deposit for five per cent or four per cent—they have gone up recently—they do not realise that they either have been in a product that was not appropriate or have forfeited a better return from a different product. In that situation, do you think it is better to put the protections up-front, more so than in the normal run-of-the-mill products? If you take a car out and the steering wheel comes off, you know that you have got a problem. You do not necessarily know that the steering wheel has come off until too late, with a financial services product.

Mr Gilbert—The act deliberately confined term deposits in the basic deposit category as TDs within two years.

Senator CONROY—That is right. I think the act was trying to make this issue by putting protections up-front. I would like to move off the PS146, if I could, unless someone else has questions.

Senator WONG—What sort of training do you say is sufficient for staff dealing with these basic deposit products?

Mr Gilbert—We said in the submission that the type of training is product training; so that, when the customer wants to know how this thing operates and what it is going to do for them in a functional sense—

Senator WONG—Is that effectively the only training currently that the bank would offer their staff?

Mr Gilbert—Yes.

Senator WONG—So you are talking about no additional training other than what you already have prior to the introduction of this legislation.

Mr Gilbert—That is right.

CHAIRMAN—So what you propose is what you call your tier 3, is it?

Mr Gilbert—Yes.

Senator CONROY—Tier 3 is zero.

Senator WONG—It is effectively the status quo.

Mr Gilbert—Of course we are also talking about related non-cash facilities. We are talking about your plastic card. If you recommend they take a plastic card, do you need a certificate 3—a diploma almost—in financial advice to recommend that someone pick up a plastic card to operate their bank account? What the customer wants to know is: what will this do for me in a functional sense? Unfortunately, with the way the act is structured and the impact of PS146, this all constitutes advice.

Senator WONG—Yes, I understand that. If there were to be some consideration of a tier 3, would you consider any additional training which ought to be required over and above what you describe as 'product features'?

Mr Gilbert—I would say not. Our new code of banking practice is going to provide that staff will have to be trained to competently and efficiently discharge the duties that are assigned to them. So they have got to work within their job description and they have to be trained to competently and efficiently discharge those duties. In one case it will be product training—it may be more for staff doing other things, but that is a contextual exercise. ASIC has basically said, broadbrush, of training right across the board that, if you advise, this certificate 3 training has to be there.

Senator CONROY—So if somebody walks in and says, 'I want to open a term deposit,' is training required?

Mr Gilbert—None. 'I will open it for you, Senator Conroy.'

Senator CONROY—You do not need the PS146?

Mr Gilbert—Correct.

Senator CONROY—What if I walk in, as Mr Byrne said, and ask, 'What is best for me?'

Mr Gilbert—'When we are talking, Mr Byrne, about what is best for you—what you are thinking and what you are wanting to do and whether you just want a transaction account—I would like to be able to help you but I cannot. I can read to you from a script.'

Mr BYRNE—'I want the best value for money. I want to know what you are recommending, and I don't have much time.'

Mr Gilbert—'Here are some brochures. Go and have a look at these brochures.'

Mr BYRNE—'But I want to do something now. I have got some money and I want to do something with it. I want to know what to do now.'

Mr Gilbert—'I think you should go and talk to one of our advisers.'

Senator CONROY—You would have a problem with that, though?

Mr Gilbert—We do not, no. We do not have a problem with that.

Senator CONROY—I am just trying to understand. If I walk up to the counter and ask for a term deposit, there is no training required on the other side of the counter from the bank staff.

Mr Gilbert—Correct.

Senator CONROY—But if I ask the question, 'What is best for me?' you have a problem with the staff being trained to answer that question.

Mr Gilbert—I think the staff should be able to at least engage with the customer to talk about what they want and identify what it is that they are actually looking for. It might be a transaction account.

Senator CONROY—We come back to this question of what you describe as a general product class, I guess. Your argument is that, as long as they only advise them towards a product class of term deposit or basic transaction accounts, they should not need any training but, if they cross outside that boundary, they do need training. How does a staff member that is asked the question by the customer, 'What is best for me?' not cross over that line?

Mr Gilbert—I could walk into a hardware store and say, 'I would like to buy some hardware to renovate my house.' I think the next question is 'What do you want to do?'

Senator CONROY—But this is not a hammer.

Mr Gilbert—No. This is the sort of dialogue that takes places every day in a branch and has taken place every day in a branch since time immemorial.

Senator CONROY—But that does not mean that they necessarily have always got the best advice.

Mr Gilbert—If they are looking for basic deposit products, those staff will be able to help them. If they are looking for anything more than that, those staff will need to refer them on.

Senator CONROY—But how will that staff member, if they are not trained, be in a position to give them the best possible advice, if they do not know their client and if they do not know the different products that are available? How can the staff member actually meet your voluntary code of conduct?

Mr Gilbert—'I can provide you with brochures setting out all of the products that the bank has.' If you want assistance with those products within the narrow band of basic deposit products, that staff member will be able to help you.

Senator CONROY—I do not know what I am asking for. When I walk in to you, I am not saying, 'I want you to tell me only about these.' 'I want you to provide me with my options.'

Mr Gilbert—'Then you would need to talk to an adviser. I cannot help you.'

Senator CONROY—Yes. What is the problem with that?

Mr Gilbert—None. If your request is as non-specific as that, then the customer has to be managed into a situation where they may well need advice.

Senator MURRAY—So your answer is that, if the customer knows what they want, the teller will serve them. But if they do not know what they want they will go to an adviser.

Mr Gilbert—Not necessarily.

Senator MURRAY—That was the nub of your answer then.

Mr Gilbert—If I want to open a transaction account, it has got no investment component at all: I just want a transaction account.

Senator MURRAY—But you have just repeated what I have said.

Mr BYRNE—If they come to the Endeavour Hills branch—these people have relationships with the customer services officers and they go to the bank every week—they want to know what to do with their money. They have a relationship with the person at the counter. They do not want to go and see someone else, because they have got a relationship with this person, and they want some advice because they have built up a relationship with that person.

Mr Gilbert—Okay. It depends what we are talking about here. What money is it? Is it their salary coming in every week or fortnight that they want to put into a particular account? Is it a nest egg that they have inherited from somebody? Is it a superannuation fund that they want to roll over into something else? People will walk into a branch, and I suppose the most general question you might get is, 'I want to open an account.' That starts a line of inquiry and an exercise in understanding what that request is about.

Mr BYRNE—'I have got some money and I want to know what to do with it, Jane. I have been here for the last 12 months. What do I do?' What happens?

Mr Gilbert—'What do you want to do with it?'

Mr BYRNE—How are they supposed to know?

Mr Gilbert—Can I say that all manner of financial training is not going to assist in this particular instance. I can give you a whole product suite brochure and say, 'There you are. Have a look at those. They are the rates of return we are currently offering on these. These are the prime features of that particular product. Make a choice.'

Mr BYRNE—And the reality is that the person that has the relationship says, 'Jane, what do you recommend?'

Mr Gilbert—That often happens. The person behind the counter is going to say, 'If you are going to be opening one of these basic deposit products, this one sounds like it might be right for you. It is ultimately your choice, Mr Byrne, but this would probably fit what you have just described. If you want any of these, then I cannot give you that recommendation or statement of opinion, because I am not trained to give you that statement of opinion. You will have to go and get advice from somebody.'

Senator CONROY—That is a fair response, though. Do you accept that?

Mr Gilbert—Yes. We are not asking for PS146 to be taken away, other than from basic deposit products and related non-cash payment facilities. That is it.

Mr GRIFFIN—But what you are relying on is that the customer service person who is dealing with the customer about the question of whether a transaction account or some other product is best for them will actually not take it that step further.

Mr Gilbert—The staff are going to be trained not to advise, recommend or opine on products outside that narrow band.

Mr BYRNE—Do they get some incentive payment if that customer takes the money and puts it into a term deposit or a basic deposit?

Mr Gilbert—I cannot possibly answer that question.

Senator CONROY—That is standard practice now.

Mr Gilbert—I cannot give that evidence, because I just do not know.

Mr BYRNE—You do not know?

Mr Gilbert—I do not know.

Mr BYRNE—Why wouldn't you know?

Mr Gilbert—The Bankers Association does not inquire into—

Mr BYRNE—Don't you represent banks or bankers?

Mr Gilbert—Yes; but the Bankers Association does not inquire into the private remuneration arrangements of a financial institution and its employees.

Senator CONROY—But you cannot ask?

Senator WONG—Surely it is an employment practice; it is not a private arrangement.

Senator CONROY—It is an employment practice; it is not a private arrangement for remuneration.

Mr Gilbert—No, I cannot ask that question.

Mr GRIFFIN—In the situation where it is going to directly influence the question of the actual behaviour of the staff in dealing with the customers, and in the case we are talking about here—the issue about what training is required by staff in order to deal with customers—surely it is incredibly relevant to the issue you are actually here to talk about today.

Mr Gilbert—If you have a contractual requirement that you are to use your best endeavours to ensure that a person gets the product that best suits their requirements, would that satisfy the committee's concern?

Mr GRIFFIN—I would certainly like some more information. On the basis that banks are making these sorts of incentive payments to their staff, I would really like some information back about what sorts of payments are made in those circumstances. What I would say to you about the ABA's point of view is that, if you are arguing that these staff do not require training to this level because they are not giving advice on these sorts of products, if in fact they can attract incentive payments in order to basically sell these sorts of products, then that is incredibly relevant to the issue here today. We would like some information about that; I certainly would, anyway.

Mr Gilbert—But don't you understand that the training that was required under PS146 has got nothing to do with that? It is nothing to do with whether a person is going to be swayed by an incentive; it is to do with whether or not the customer on the other side of the counter should be getting full-blown financial advice.

Mr GRIFFIN—But if you are—

Mr Gilbert—Can I finish the answer? The issue here is that between, for example, transaction accounts it is not going to affect you one way or the other. I will ask the question again, Mr Chairman: would it make a difference if there was a contract between the bank and the customer that the bank would do what was reasonably necessary to ensure that the particular product that the customer was seeking was provided and was suited to that customer's needs? Would it make a difference to this committee if there were a contract between the bank and the customer that that should happen?

Mr GRIFFIN—Mr Gilbert, we ask the questions; can you answer them? The point I would come back to is that I think it is being said today that there are incentives provided to staff to flog particular financial products to customers. We are here today considering the issue as to whether the training required by those people to inform those customers should be at a particular level or, in the case that what you are providing today, zero compared to what is the case now. In a situation where there are incentives being provided, surely it is relevant to making those sorts of choices to understand what payments are available to be made to staff at that level?

Mr Gilbert—I agree that it is relevant in determining whether the bank officer has discharged what I would call a duty to that customer in respect of that customer's needs. I believe it is irrelevant in respect of the matter of training.

Mr GRIFFIN—Okay. I have asked you to consider whether you would provide, on behalf of the ABA and the ABA's members, information about payments that are being made to staff or incentives that are being offered to staff to sell particular financial products at the counter. Are you refusing to do so?

Mr Gilbert—That is the first time that I have been asked to provide that information.

Mr GRIFFIN—Are you going to provide it?

Mr Gilbert—I will take that question on notice and seek that information from members.

Mr GRIFFIN—Thank you.

Mr Gilbert—The committee could invite banks to give evidence.

Mr GRIFFIN—That is true.

Senator CONROY—We have a standing invitation to anyone who wants to make an appearance. We advertise and invite submissions. Adding to Mr Griffin's comments, not all of these incentives are necessarily monetary. In fact, in some banks some of the incentives work on the basis that, if you do not get 40 points per month, you are invited to a retraining camp—

Senator MURRAY—Run by the Democrats!

Senator CONROY—and you are given your first warning. If you fail to get 40 points for a second month, you get sent to another retraining camp, and if you fail to get 40 points for a third month you are dismissed. So they are not all straight monetary incentives, although I am sure that, if a judge were asked to determine whether or not getting to keep your job was an incentive to reach your 40 points a month, he would probably define it as an incentive as well. So the practices involving tellers at the moment are not just for straight monetary gain—for example, 'If I get the 40 points this month, then I get a trip overseas or a bonus for $500' or whatever—but actually go to just keeping their job, as well. They are not purely a monetary or other form of remuneration. They are actually there for them to keep their job. If they fail for the third month, they can be moved off to Siberia and be gradually eased out.

Mr GRIFFIN—Coming back to that point, I am just worried, Mr Gilbert, that you are not quite clear what we mean here. If staff are given either incentives or penalties if they do not push certain products and are not able to sell certain products, and we are talking about a standard which relates to the question of which information they provide to the customer in the circumstances, surely that is relevant. If you are saying that it will not influence the behaviour of staff, it should ensure that they have more information available to ensure that they better offer advice, at the very least. It suggests that their jobs are more than what you are saying they are in the circumstances.

Senator WONG—Does the training not extend to ethical and regulatory requirements?

Mr Gilbert—Yes. That is in the submission.

CHAIRMAN—Are you saying that the issues that have been raised here in the last little while by members of the committee may be relevant to determining whether a bank officer steps over the line of the advice they should give under the particular category into which they fall but that it is not relevant to advice they give within the area that they would be qualified to give under the regime you want to see apply?

Mr Gilbert—Exactly. The fact that I have been trained in the economic environment, the operation of financial markets and the concepts, natures and types of financial products—which is the training that PS146 requires me to have at certificate 3 level—is not relevant to whether my behaviour is going to be different, depending on whether or not I receive a financial incentive. It is a totally different issue.

CHAIRMAN—You are saying that the financial incentive might determine the extent to which you comply, within the areas for which you are qualified to give advice.

Mr Gilbert—Yes.

CHAIRMAN—I will paraphrase what the members of the committee are saying: therefore, because that incentive exists, rather than take the risk that you may not comply with that narrow level, you should be trained across the broad level.

Senator MURRAY—If I may just interject here, one of the confusions which may arise from this is that it should not actually relate to training at all. It should relate to disclosure. In other words, you are under an incentive and the customer does not know that you are under that incentive: if when they make a choice you have steered them to a particular choice, it may be because you, as the teller, are going to benefit from the customer taking that direction. That is a question of disclosing an influence, rather than one of ability to deliver financial advice. It is an issue that we covered heavily during the discussion when the act was still a bill: should the incentives that are provided to people—and we were talking about insurance people and so on—be disclosed to the customer? That may be the issue to which you might like to give some more thought, because it is not in your submission. That is quite distinct from whether a person is trained in the product knowledge that is required.

Senator CONROY—I would like to say two things. Firstly, in the end we decided to exempt these products from the disclosure requirements.

Senator MURRAY—That is right.

Senator CONROY—We made that decision.

Senator MURRAY—But we have come back to it in this situation.

Senator CONROY—Because of where we have gone, I think we are back to it. I disagree with you, Mr Gilbert, in terms of the simple case which happens every day in hundreds of branches across Australia: a person walks up to the teller and says, 'I want to open a transaction account.' The teller requires no training. If the person walks in and says, 'I'd like to open a term deposit,' the teller requires no training. But if a person walks in and says to the teller, 'What's the best place to put my money?' this is both a training and an incentive issue. Certainly I think the incentive should be disclosed—I have always felt that—but we decided to do something different.

Secondly, on the training issue, I think you need to be trained to make a judgment about the person's circumstances and whether or not it is appropriate—putting aside an incentive—to recommend the simple transaction based two-year term deposit. When the person asks you what to do, you have to be able to make an asset class decision if you are not going to refer them automatically to someone who is appropriately trained. There is a training issue here; it is relevant that the teller be in a position to make an informed judgment about what is the best product. I disagree with you that it is not relevant. A teller has to know enough to be able to say, 'Look, there are these products, and there are those products. I can't tell you about those products; I can only tell you about these ones.'

If there is an incentive, the teller is certainly going to start pushing the person into the products the teller can get remuneration for. There have been a number of practices by the banks—practices that ASIC has stamped down on recently—where there was a choice between a bank's own product and a non-bank product, and the incentives were weighted. Certainly ANZ and, I think, Westpac—although I may be doing Westpac a disservice—got into trouble recently because they had an incentive program for their staff that gave them more if they sold an in-house product rather than an out-of-house product. So the incentive does become an issue here, as Senator Murray said. Another issue is the ability to make a judgment about whether the most appropriate form of deposit is a certain one as opposed to something else. You need to know; you need to be trained to make that judgment.

Mr Gilbert—I think we agree that the question of the incentive is not relevant to the matter you have just raised. The question is whether a person needs to be trained to get the customer into the right product.

Mr GRIFFIN—No. That is not what I think. The point is this: if incentives are being offered to move people from a transaction account to a term deposit—and that incentive is offered to the staff whom a customer deals with first up—there is the potential for people going through that process to be influenced in a particular direction. Even according to your view of the standard, people who advise on that type of product ought to have a greater degree of training than they currently have. I think that is incredibly relevant, if that is what is happening. Today, the problem is that we do not know what is happening for sure, because you are not aware of the details of what banks are offering in those circumstances.

Mr Gilbert—Yes; I am not.

Mr GRIFFIN—That is what we would like to know a bit more about.

Mr Gilbert—The committee has given more evidence than I am able to on that matter.

CHAIRMAN—If others have no further questions, I will ask about your comments in relation to the anti-hawking provisions. Could you give a practical example of how you see the problem that you highlighted being an issue?

Mr Gilbert—The first thing I would say is that all the parties that the members of this committee represent ought to be congratulated for the sensible amendment to 992A that is currently in the House. That has certainly reduced the scope for a concern with these hawking provisions. There still remains a fair degree of compliance uncertainty, and this hawking provision is a day one requirement regarding what you can and cannot do in terms of contacting people and what sorts of activities you can conduct in the course of making sure your customers are getting the sorts of services that they should get.

We agree with the thrust of 992A. We strongly support the objectives of the act which prevent people being put under boiler pressure tactics and being sold high-risk, speculative products. But dare I get back to the situation we have just been talking about: if your term deposit matures and rolls over, it is not unreasonable for your banker to give you a call and say, 'Senator Chapman, what are you going to do with this money once it rolls over? What do you want to do with it?' You could say, 'Oh, I will put it back into a TD for another three months, please. Can you organise that for me?' I have offered to issue a financial product in the course of an unsolicited contact. I have effectively breached the act. We are concerned about those aspects. The existing customer relationship needs a bit more servicing and bedside manner than that. In recent days what has happened is that ASIC has put out some guidance.

Senator CONROY—Do you think that has altered it?

Mr Gilbert—It creates some issues, but if we can go back to ASIC and talk about some issues that that raises maybe we can get a level of comfort back into these provisions without having to rush back to the parliament. It would be nice if we could fix it that way.

Senator CONROY—A few retentive lawyers have been let loose in this particular argument, I am afraid.

Mr Gilbert—Yes, exactly. I have seen all sorts of advice. We all understand what the act is designed to do in this area, and with some sensible work from ASIC I think we can probably settle it down. There are some issues there, and we need to go back to ASIC to discuss them. Although it is a final document out there and it is not open for discussion, there are issues that we will need to raise.

CHAIRMAN—As there are no further questions, thank you very much for appearing before the committee and for the evidence you have given us, particularly the answers to the detailed questions that have been put to you this morning.

[10.23 a.m.]

BREAKSPEAR, Mr Kenneth Charles, Chief Executive Officer, Financial Planning Association of Australia

HRISTODOULIDIS, Mr Con, National Manager, Policy and Government Relations, Financial Planning Association of Australia

CHAIRMAN—Welcome. We have before us your submission, which we have as No. 4. Are there any errors, omissions or amendments you need to make to that submission?

Mr Breakspear—No.

CHAIRMAN—I invite you to make an opening statement, if you care to, after which we will proceed to questions.

Mr Breakspear—Thank you. Recently we conducted a survey of Australian consumers and it found an increasing number of people turning to financial planners as a principal source of advice. The survey found that the most popular source of advice was financial planners, at 34 per cent—followed, interestingly, by family and friends, at 20 per cent. We found that women were more likely to seek advice from family and friends. Men, on the other hand, seemed more likely to seek advice from a financial planner. This consumer sentiment survey was conducted in May this year by RMIT University, and we are doing further work on the implications of that survey.

The main thrust of the survey is that the whole concept of financial planning and financial planners is clearly in the minds of consumers when they seek to manage their financial affairs. FPA has about 14,500 members Australia-wide. We represent about 500 licensed advisory firms who employ the individual advisers. They are responsible for looking after the financial affairs of about five million Australians, with $500 billion in funds under management. The FPA has a code of ethics and rules of professional conduct, and seeks to promote professional financial planning within the community.

As outlined in our submission, we would like to take the opportunity to comment on the regulations and the early experience to date in the transitional period. It is a little difficult, because we know that there have been only limited numbers of applications for the Australian financial services licences, and that there have been some 34 granted to date, to our knowledge. Our members are telling us that everybody is in a heavy learning phase—both practitioners and licensees seeking to transit across and ASIC as the regulator responsible.

For our members we have run seminars and workshops Australia-wide, and we have given them templates seeking to explain how to transit across to the new licensing scheme. We have produced a very comprehensive implementation guide that is available within the marketplace, to help them do that. We are also finding that people—the early adopters who have been successful in going through—are sharing their experiences, which is healthy. We sought to capture that experience, feed it back to ASIC and also feed it back to our members so that they can learn how to go about it in the smoothest fashion.

At the beginning we thought that the electronic exercise for getting a licence, the streamlining option, looked very attractive to everybody, but the reality is that quite a large number of the licences are actually composite licences whereby you need to vary the scope of your licence, and therefore the pathway is a little more complex in that it is not as straightforward and you have to lodge additional information. The pathway is not as streamlined as originally anticipated.

We have been pleased with the level of interaction with ASIC. We meet with them on a regular basis. When we find problems, we tend to prepare a Q&A on them so there is experience coming back into the financial planning community. We certainly welcome the additional funding that ASIC received through the last budget. We understand that additional staffing is going into the relevant areas. It is very important, particularly in the licensing area, that those policy officers are able to explain how to go about it.

At this point we are looking at a survey of our members to gauge the compliance costs and other problems that they are experiencing. We will be undertaking that over the next month or so. We will be trying to capture whether there are other things that have not come to bear. We have a web site and dedicated people responsible for taking calls from members to help them on the other side. For small dealers, there is a very steep learning curve here. They have to review their internal policies and procedures; they need to understand what it means to have a risk management system, what it means to have compliance and how that scales down to the level of their particular operations.

It is okay for very large institutions that have resources, but the smaller financial planners do need some assistance in understanding how they go about it from a compliance point of view. Sometimes the feedback is that they may need some special assistance. Whilst we give them as much help as possible in gaining a licence, there have been a number of examples where people have sought to gain some specialist advice, and that advice may be that they review their current internal systems, do some upgrading and then apply for their licence. They are not in a position to apply for a licence unless they can certify that they are compliant with the new requirements, and so one has to do the work first before one applies.

We are currently looking at the just-released ASIC guide on anti-hawking provisions. We welcome that. We think that is a good step forward. We hope that we can go back to ASIC and, if there are some problems identified, seek to deal with that through the ASIC route rather than having to come back and seek some legislative amendment. We hope that will be able to be worked out.

I would like to make some comments about a proposal that we have to make ‘financial planner’ a restricted term. Clearly, a major point in our submission is that, as the term ‘financial planner’ is beginning to be widely used, it has the potential to be abused. Our concern is that that would undermine the confidence that consumers have in accessing financial markets. We have been doing some work with Treasury and have asked them particularly whether any other professions which fall under the jurisdiction of the Financial Services Reform Act do not have their professional title restricted under section 923B. Treasury are yet to come across any such group other than financial planners. The current exclusion of financial planners from the restrictions flies in the face of the intent of the legislation, as the intent of the legislation is clearly to provide a harmonised single regulatory regime for market integrity and consumer protection.

In our submission to the parliamentary joint committee prior to the bill's passage, the ACA in particular strongly supported the establishment of a consistent, uniform, clear regulatory platform in financial services. Further, the Financial Services Consumer Policy Centre advised the committee at that time that the consumer movement had been wildly anticipating an important bill which would provide a new foundation for the provision of consumer protection in financial services, with particular focus on the general shift towards consistency and uniformity.

In seeking to define exactly what a financial planner is, we have talked to Treasury and we have come to seek to define a financial planner as tied to the requirements of the minimum education requirements under ASIC policy statement 146, which outlines quite detailed requirements for the natural persons giving financial advice. Our suggestion is that the definition of 'financial planner' be along the following lines. An authorised financial planner is a natural person representative of licensee or a natural person licensee who has fulfilled the training requirement specified in ASIC policy statement 146 or any succeeding policy statement covering the knowledge and skills for providing financial planning advice.

Whilst we would prefer that the term 'financial planner' stand alone and not be qualified by a descriptor, our concern is there that if we use the words 'authorised financial planner' it may still leave some opening for abuse by people just using the words 'financial planner' instead of 'authorised financial planner'. Nevertheless, we believe that it is of merit that we seek to define it. We have not sought to say that a recognised financial planner has to have certification by a professional body. We tied the definition back to the existing framework in PS146, which provides quite a detailed set of competencies, knowledge and skills for a financial planner.

By way of emphasis, there are three primary reasons why we believe the term 'financial planner' should be restricted under section 923B. Firstly, emphasising consumer protection is clearly a major theme and objective of the act in terms of consumers having confidence to deal in the market and to access the market. It is really about having confidence in the pedigree of the adviser whom you are dealing with. The restriction of the term, we believe, will increase consumer confidence. Again, this is something that the consumer movement has been very strong about. Consumers need to be assured that they are dealing with, and receiving reliable, sound advice from, suitably qualified professional people. This is particularly the case when they think they are dealing with a qualified financial planner but in fact could be dealing with somebody else. We think there is great scope for people to abuse the term and, therefore, for consumers to suffer.

In addition, we think that if people have confidence in dealing with authorised financial planners they are more likely to seek advice and better manage their financial affairs and not risk being ripped off by some unscrupulous operator who is using and abusing the term. In terms of the regulation of other professions, we have seen that consumers are easily able to ascertain whether practitioners in other professions have certain qualifications and meet educational requirements. They have got reserved titles—it may be 'solicitor' or 'doctor' or some other reserved title—and so when people are dealing with a person with a reserved title they can have confidence. However, at this point any individual can hold themselves up to be a financial planner. They need have no relevant qualifications or experience. The public really cannot tell the difference between someone who is qualified, professional and legitimate and someone who is not.

Further in terms of competitive neutrality, as far as the FPA can ascertain, financial planning is the only profession which falls under the jurisdiction of the FSRA but which does not have its title restricted. We come back to the principle of having a single regulatory regime and consumer protection. We believe that, if we are able to reserve this term, consumers clearly will be protected and the principle of having a universal, single licensing regime will be maintained. That concludes my evidence at this point. We would be delighted to take questions.

CHAIRMAN—Thanks very much, Mr Breakspear. Can you outline for me the difference between the role the members of your organisation, the FPA, play and the role the members of the AFA play.

Mr Breakspear—Yes. There is a reasonable overlap at the individual adviser level. About 400 of the AFA members are also members of the FPA, and I think there are about 800 in their organisation; so there is a degree of overlap. Historically, the AFA have represented the life industry agents and, in particular, those who specialise in investment risk advice.

Our organisation, the FPA, has a broader brief. We represent the licensees—the organisations that hold the licences, and we look after 500 of them—as well as the individual financial planners. The philosophy of the FPA in terms of financial planning is that we are committed to a particular quality of advice, a certification of that advice. We have certification standards—which, I think, is a differentiator—we provide specialised training courses and we have an enforceable disciplinary code that reinforces the commitment to that code of ethics. Those are some observations.

In terms of the spread, we represent the larger institutions within the membership and right down to the smaller boutique financial planners. We have a full range, and so when we look at an issue we seek to look at it from the larger institutional side, the smaller individual side and the small business side.

CHAIRMAN—In an earlier hearing we had concerns expressed by representatives of the AFA in particular about the impact of this legislation through, in effect, the new structures that it allows to be created and where they will now be required to fit into that structure, as compared with their previous relationships. Are you aware of that evidence? Are you able to give your perspective?

Mr Breakspear—Yes, I have had the opportunity to read the *Hansard* of that earlier meeting. I will make a couple of observations. Firstly, there is no doubt that the Financial Services Reform Act has changed the world for a number of different sectors of the industry, and that was clearly its intent in terms of the commitment to a common set of standards for competency and conduct in advice-giving and about clear accountability to clients with regard to some minimum standards for training and supervision. So those principles are being applied to particularly the multi-agents that we talk about, a particular sector which perhaps has one of the larger adjustments to make to this regime. I think the banks probably also have some adjustments.

Prior to this regime, multi-agents often represented perhaps five or six different life companies. They were the agents for five or six life companies, and so there was some ambiguity about to whom exactly they were accountable among their multiple masters—or whether they were accountable to anyone at that point. Lots of their businesses have grown

quite successfully, and so they have quite large businesses with large insurance registers, but in going forward into the new regime there are questions about, firstly, minimum training competencies for the life agents who have to then comply with the new standards. That is an adjustment for them.

Secondly, in terms of accountability, whilst the new regime provides the potential for cross-endorsement of representatives' authorities, because of the liability regime of joint and several liability it is unlikely that many licensees will want to pick up the liability for another organisation, because they will be caught. There is no doubt that there is a trend towards having a clearer line of accountability back to a single licensee, where there are clear responsibilities in terms of training, compliance and accountability.

The marketplace has responded to the opportunity because multi-agents need to change their structures. Firstly, a large number of institutions have set up what might be called 'neutral branded' licensees. For instance, AXA have set up a group called Charter Financial Planning. That is a neutral brand of licence whereby someone can come along and align themselves and access AXA products and a whole range of other products.

There are probably three or four different ways a multi-agent can restructure into the new regime. One is to go and find a neutral branded licensee. They can find a branded licensee if they want. They can group together, which a number of them have done, and make an application for a licence. The multi-agent, if they are large enough, may have the resources and the expertise to gain their own licence, and there is provision under legislation for limited licences for a transitional period. They can either continue where they are for two years—that is, have a transitional period; they can go and gain their own licence; they can group together, which a number of them have, with other multi-agents to get some scale to gain a licence; or they can go and align themselves with one of the existing life institutions that they already have. So there is a range of choices.

If I can make a comment about that, certainly in the restructuring that will take place, regarding the capital gains tax situation and the other taxes, we are working with Treasury to make sure that that adjustment is carried off and that people are not unfavourably treated, when they do restructure, under the new legislation. It is very important that people are not penalised for that restructure. Our work to date with Treasury has been very productive, and we are in the final stage of agreeing to the potential legislation there.

The other thing that came through was the assertion that the value of their business had been reduced. There is no evidence that has come to me that that is the case. Certainly the value of the business is a multiple of their insurance registers which they currently have and is perhaps a multiple of the trail commissions that they have on the funds under management. The evidence we have obtained from a number of the large institutions is that the buyer of last resort, which is a mechanism that large institutions have introduced over the last few years, would pay something like twice the agency income stream. So if you have an agency then twice is probably the minimum and, if you are a licensee or a broker, then it is probably 2.5 to three times the recurring income stream.

There is no evidence that the value of the business has declined because of the changeover. Clearly there are additional costs: if from your freedom as a multi-agent you come across into a licensing regime, there will be costs of compliance. There are costs that go with the quality

assurance programs that are in place, and the representative may share in the cost of running the business and the quality controls that go with that.

The evidence that we have is that, when we talk about distribution control, the power still remains clearly at the advisory level. The adviser has the relationship with their clients. If an agent or an adviser moves shop, the clients travel with the adviser, because the primary relationship is there. That is still the case and has not changed: the strength and the control are really about the adviser's relationship. We understand that large institutions are very keen to pick up the non-aligned multi-agents at the moment. They have an attractive business that people want to bring into alignment with their particular licence.

CHAIRMAN—We had one example of correspondence that came to the committee in the course of the inquiry regarding one of the multi-agents who had received a letter from the institution with which he had been linked saying, to paraphrase, 'Because of increased costs under the new regime, we no longer want you as one of our agents, because the amount of business you are writing basically is not enough to have you on our books.'

Mr Breakspear—It has always been the case that institutions have made judgments about productivity, because there are costs associated with having agents. If production is very low, they query the economics of having someone there that you have to now train and supervise, with all the other costs that come into that. There must be a point where it becomes uneconomical for a dealer or whoever it is to carry someone who is not meeting minimum levels of productivity. That has always been the case; that is not new.

CHAIRMAN—Has the legislation increased the cost of that? Why would the legislation suddenly prompt dealers to take that action?

Mr Breakspear—We do not have the evidence of what took place there in terms of the full facts, but certainly the legislation will require that person to be trained. They may already be trained, but the requirement to make sure they keep up professional development and ongoing training is much clearer now. So there is a whole string of requirements there that I think have been made more explicit. Perhaps they were there in more general terms, but I think the legislation, particularly PS146, has made more explicit what the standard is. Whether the agency was terminated because there was a lack of productivity rather than because of the training costs is not clear.

Mr Hristodoulidis—The PI insurance issues that are going out on outside this FSR legislation may also have had an impact on that decision, and so there may be other factors outside the legislation. Without being privy to the evidence, we cannot make a concrete statement.

CHAIRMAN—Again, I have only received correspondence from AFA in the last few days in relation to the professional indemnity insurance issue. It highlighted a dramatic increase in premiums.

Mr Breakspear—While we did not comment on that, we are up to our armpits in crocodiles in terms of the whole professional indemnity area. We have been very active in working with our members, ASIC and the underwriters to make sure that they understand how quality financial planners operate, so that they can properly price the risk at an individual level. We

were concerned that financial advisers were all lumped together and then assessed on the basis of a whole sector rather than getting an assessment of individual risk on a firm level.

Clearly, premiums have gone up quite dramatically. The availability of cover and the number of underwriters in the marketplace have been reduced quite considerably—we are down to only one or two that are active in the marketplace, and that puts pressure on everybody. Our experience has been that probably 99.5 per cent of our members have obtained renewal cover, but at much higher premiums. The last round has been successful in the sense of people gaining cover, but it has been at a much higher price. The premium increases have ranged from 300 per cent up to 1,000 per cent in very extreme cases. There are some examples where people have not been able to obtain cover where they have a very bad claims history. There have been cases where exclusion clauses have expanded: things like margin lending or advice on tax-effective schemes have been excluded from cover.

Mr Hristodoulidis—Superannuation products which may go bankrupt in the future are also excluded, which seems to be a fairly—

Senator CONROY—Is anything left?

Mr Hristodoulidis—Fairly basic, low-risk products are left. We are working hard with the insurance industry, we have made submissions to the Senate Economics References Committee, and we are going around for another follow-up to look at things like capping and statutory limitations. We are looking at those in more detail to see what we can get out of them. We are looking at broadening the powers of the professional standards legislation here in New South Wales, which provides some limitations. We are trying to do a number of things on the run. We think the longer-term solution lies in some sort of government legislation and in better education of the insurance industry.

Senator CONROY—I am interested in your concern that the PDS-level commissions paid on risk products are not required to be disclosed. Are you concerned that they are not disclosed at all, or that you have to do it at a different point from somebody else? Can you take me through that so that I can understand it?

Mr Hristodoulidis—The concern is that, at the PDS level, you have two different levels of disclosure for two different types of product. If we are talking about a uniform piece of legislation, the disclosure should be consistent for all financial products as defined by the act. So, in terms of the way the act is written at the moment, the commission on a risk insurance product does not need to be disclosed; that goes to the adviser in the PDS. But the commission does need to be disclosed when you are talking about other investment products.

Senator CONROY—Are you saying that it is not disclosed at all or that it is disclosed in a different document?

Mr Hristodoulidis—When you get down to the statement of advice in the financial services guide, it does need be disclosed. The issue is at the PDS level, which is the marketing tool that captures the imagination of consumers and encourages them to enter into that product or not. So we think it should go higher up.

Mr Breakspear—We, as an organisation, have had a longstanding commitment to a full and frank disclosure of all fees and charges and commissions and other soft dollars, and anything else that goes around that might influence the giving of advice. We have quite a detailed best practice guideline, and so our view is that the adviser is well placed to be able to both calculate and explain the cost of advice to the client.

Senator CONROY—Take us through, practically, how you deal with a consumer. A consumer sits down with you, you give them the PDS, and that does not contain the summary of risk of this product. At what point do they receive the SOA? Is that after they have signed? 'Oh, by the way, here it is.' So you find out the commission, but you find out only after you have already signed the product. Can you take me through the practical side of it?

Mr Hristodoulidis—The statement of advice, really, is the replacement of the financial plan. The consumer will get that after the planner has done his needs analysis of the client and has worked out what the ambitions of the client are. That is the end product that they get, and they will get that in the mail. They get the chance to think about it and come back and have a further follow-up interview before the investment products are placed.

There is another disclosure document, the financial services guide, which in most cases is given to the consumer at the first interview that the consumer has with the planner. The financial services guide outlines the competencies of the adviser and also the types of commission payments that the adviser will get for the different types of products that they may be recommending. So that would be handed over at that first interview stage.

Senator CONROY—Okay. So I sit down with you, and you give me the FSG.

Mr Hristodoulidis—That is correct.

Senator CONROY—Which does or does not, did you say, contain—

Mr Hristodoulidis—It does.

Mr Breakspear—In broad terms, it will say, 'I am paid by commissions,' but it will not translate that down—

Senator CONROY—Into a dollar amount?

Mr Breakspear—No, it cannot do that until you know the quote.

Senator CONROY—Fair enough. So then you go through that discussion and then you get given an SOA.

Mr Hristodoulidis—The SOA would be handed over, probably after the second or third interview, once the planner has completed this.

Mr Breakspear—A simple risk product.

Mr Hristodoulidis—It depends on the advice. If the client wants holistic advice, you will probably go through two or three interviews. If a client comes in and says, 'I want specific risk insurance advice,' or 'I want just the managed investment,' that is quicker.

Senator CONROY—Where does the PDS fit into this?

Mr Hristodoulidis—The PDS will be given to the client, and the client might be given a number of PDSs, depending on the products being recommended.

Senator CONROY—You would not be given the PDS and the SOA at the same time?

Mr Hristodoulidis—No.

Senator CONROY—In fact, you might be getting three bits of paper, depending on how many products.

Mr Hristodoulidis—Yes.

Senator CONROY—So it would be the FSG, then the PDS and eventually your SOA before you have signed the document.

Mr Hristodoulidis—That is correct.

Senator CONROY—I am sympathetic to the uniformity argument, which I thought was the basis of the bill.

Mr BYRNE—Can you give me an example of low-risk products where there is a quicker disclosure, and high-risk products? Can you describe low-risk, which I presume is like super?

Mr Hristodoulidis—There is no difference between the product differentiation of low- and high-risk. The differentiation is the type of advice the client wants. If the client comes in and says, 'I just want to look at my insurance circumstances', then the adviser will then go through that part of the advice. The adviser will then disclose to the client, 'I don't have a full knowledge of your financial circumstances, because you've asked me to look only at your risk profile. You have been given limited advice, based on the information you have given me,'—therefore, you may only go through one interview.

Whereas if a client comes in and says, 'I want holistic advice: I want to look at my insurance, at my investment options, at my state planning options and at my salary packaging,' the planner would spend a lot more time going through all of those circumstances. The planner will go through a lot more interview processes before they actually hand out the statement of advice.

Mr BYRNE—In 916B of the Financial Service Reform Act 2001, it says 'acting on behalf of'. What do you see as the consequences of that?

Mr Hristodoulidis—Previously, under the old Corporations Law—which is where the transition is from—the term that was used was 'by arrangement with' to describe the relationship a licensee would have with an authorised representative—in the old terms, a

'proper authority holder'. The licensee would have an arrangement with the proper authority holder to provide financial product advice on their behalf. Under the new legislation, the term 'acting on behalf of' has now replaced the 'by arrangement' term. Our fear is, and the advice that we have got is, that it may trigger some payroll tax implications, because the term creates a closer relationship between an independent adviser and the licensee.

We currently have got a case here in New South Wales where the state revenue office has taken one of our licensees, and the representatives, to court under the relevant contract provisions. We have spoken to Treasury about it, and they have told us that the intent of the law is not to create that type of scenario. We have asked for a clear statement that the 'acting on behalf of' is, from the consumer protection point of view, to say that 'this representative is acting on behalf of that licensee and so, if you have got some problems, then you need to go see that licensee as the first point of call'. However, from a payroll tax implication point of view, this relationship is not supposed to be captured as a payroll tax issue.

Mr BYRNE—And they are sympathetic to that?

Mr Hristodoulidis—Treasury are sympathetic, but we need a clear statement from the parliament that that is the intent of those terms. As I said, they are new terms which have never been used before; and so, if we can get a clear statement from the parliament that that is the intent, we can then give that to state revenue officers and say: 'This is the intent.'

Mr BYRNE—How substantial an issue is that with the people that you represent?

Mr Hristodoulidis—As the CEO said, we have both the licensees and the authorised representative members. The cost would obviously be borne by the licensee in the first place, but how would that cost be passed on? Would it be passed on to the representative and maybe then passed on to the client? It is an unnecessary cost. It affects all our membership, basically, in the advice giving business, at both the licensee and the authorised representative level.

Mr BYRNE—Do you have some sort of preliminary assessment? Do you have an example of a particular organisation and how much that might mean in dollar terms?

Mr Hristodoulidis—Take an organisation like AMP and Hillross, which is part of the AMP group, AMP have some 1,800 advisers. In Western Australia alone they have, I think, 120. So AMP in WA would be hit with a bill for payroll tax for those 120 advisers that are independent. We are not talking about those who are employees; payroll tax does not apply to them. It applies just to those independents. AMP have about 120 in WA, so in WA they would be hit with a payroll tax bill for those 120 advisers, and that would go across the countryside for all the larger institutions.

Mr BYRNE—Would there be any other linkage if it were not changed? Would that then lead to other sorts of legal nexus?

Mr Breakspear—Clearly, there are other tests for payroll tax, and they will run independently. This creates some ambiguity about the nature of the relationship. It has not changed; the independent small business is sitting there. But does changing a term in the act therefore change the nature of the relationship? The underlying reality has not changed, but an

ambiguity has been created that could be used against a small business independent financial planner, if the state revenue wanted to run that argument.

Mr Hristodoulidis—As you are aware, there is already a court case in New South Wales. That member has put a fair bit of resources into fighting it. We have also put in resources with another industry association and made submissions to state revenue officers and state treasurers, and so we are probably expending resources unnecessarily. If we can get a clear statement of intent, that would put an end to that resource movement and allow the resources to be put where they should be put—that is, in advice giving.

CHAIRMAN—Under the new legislative structure and under the training that will be required, what is the breadth of assets which financial planners will be competent to advise on, in respect of investments?

Mr Breakspear—Our position as an organisation is that we set certification levels, and our minimum point of entry into the industry is the PS146 level that relates to the speciality of financial planners. So some people would have core competencies, knowledge and skills, and then some people would also satisfy the additional specialist requirements for a financial planner. To progress further, we have an advanced diploma course in financial planning. That is an eight-subject course across the full spectrum of assets and products. It is a very comprehensive exercise. The minimum training gives you core knowledge across a range of products. The way that PS146 works is that it is flexible according to what you are doing. If you are not advising in, say, listed shares, you do not need to have that knowledge and skill. If a client wanted information in that area, you would have to refer them to a stockbroker who has that knowledge.

Generally, most financial planners are seeking to have a comprehensive knowledge across the full spectrum of financial products and, therefore, gaining the knowledge for that. A great majority of our members are seeking to gain full professional qualification, which would be gaining a full advanced diploma—an eight-subject course—and then do our postgraduate course, which is the Certified Financial Planner Education Course. That comprises another four subjects that people do before they gain their certification as a certified financial planner. The short answer is that financial planners are seeking to generally be more broadly based in their advice and to have knowledge, skills and competencies across the full spectrum. Some of them may choose not to specialise in investment risk products, and they might have a specialist that will do that. Some of them may choose not to get involved, as I said before, in listed shares and would have a relationship with a licensed stockbroker.

CHAIRMAN—Hypothetically, if someone said, 'I have a sum of money to invest. Should I add 100 acres to my farm, buy a residential investment property, buy some commercial property, buy some shares or invest in a managed fund?' are they competent to advise which would be the best option across that whole range of investments, or is it more limited than that?

Mr Breakspear—That is a bit of a challenging 'what should I do with my life' type of question. I guess the financial planner is very holistic in terms of their broad background, and so it is about understanding economics and the full investment options. Within our course, investment property and the other asset classes are dealt with. They are not specialists; they would be generalists in understanding those choices, and therefore be able to give some very broad advice. Normally they would refer, for specialty advice.

Mr Hristodoulidis—If I could just add a very quick comment, Chairman, there is a bit of a conundrum with the legislation and the advice given. The legislation defines financial advice by financial products, and that is under section 764A. That section does not go to everything that we would class as financial product advice, such as advice on real estate. Such advice is not covered by the legislation, but planners may give that advice, and we would provide the training for those planners who want to give that advice. If they have not got the training, then the planners will refer the client to someone who has got the training to give that advice.

CHAIRMAN—As there are no further questions, I thank both of you for appearing before the committee and for your answers to our questions.

[11.11 a.m.]

LARKEY, Mr James Victor, Executive Officer, Australian Association of Permanent Building Societies

VENGA, Mr Raj Ashwinn, Director, Policy and Regulatory Affairs, Australian Association of Permanent Building Societies

SAMS, Mr Derek David, Insurance Manager/FSR Committee, Heritage Building Society Ltd

CHAIRMAN—We have before us your submission, which we have numbered 2. Are there any errors, omissions or amendments that you need to make to that submission?

Mr Larkey—I do not think so.

CHAIRMAN—I invite you to make an opening statement following which we will proceed to questions.

Mr Larkey—I hope that between the three of us we can make some useful contribution to your considerations about the consistency of the policy statements and the regulations with the act. As this is about consumer protection, it might be worthwhile reiterating where we fit in and what our contribution to consumers might be.

There are 17 building societies in Australia. There are 330 branches—a significant number of community banks or building societies and agencies. The building societies operate as approved deposit institutions under the Banking Act. Along with banks and credit unions, we are in that category; others are not. Our members represent about 80 per cent of the building society business today by way of assets. One and a half million people do business with us by way of accounts. I have to say, the mutual business structure dominates—and this is not unique—our membership.

I mentioned our role for consumers and their interests. I always say that the best contribution we can make to a consumer is to provide them with services at a lower cost than others. We suspect that we are able to provide that competition on our traditional banking products. So we have to keep reminding peak bodies and others, who take up the cudgel for consumers, that we see our best contribution as being providing consumers with a competitive product every day, every week. We are low margin operators. I should also say that we are prudentially sound, having been subject to bank and bank-like supervision now for 10 years.

There is a tradition in the societies of personal service. Our branch and agency network is strong. I have to say that we have not been in the business of closing branches; in fact, there has been a tendency to add branches. That does not mean we do not change where branches might be, of course. I also need to say at the outset that the staff are well trained and experienced. In other words, it is not a matter of saying, as I think I heard in your meeting with the bankers, that no training is required for this and for that. There has been a very high level of training for the

conduct of the traditional business of banking in building societies. There have been no systemic problems, as far as I am aware, in relation to that.

We and others are making submissions on this issue of the training requirements that are being imposed on our traditional business because the big issue for us is competitive pressure. Every cost is looked at very critically. Prescriptive regulation is a cost to everyone; therefore, it needs to be subject to rigorous review by us. We are here today because we have given it rigorous review in terms of the cost to us and it does not measure up. We are appealing to you because it is somewhat inconsistent and needs to be looked at again.

The key issue for us is the uncertainty about what is advice in the traditional deposit taking and non-cash facilities we provide. I think some of you are embarking on another review of branches and agencies, their adequacy and why they are disappearing. People like branch and agency arrangements because they provide face to face contact. Branches and agencies are where people go when they are thinking about dealing with some of their funds. It has been a market development by the societies to make that as friendly and as positive as we can, and undoubtedly financial issues will be aired in that area.

When people go to the doctor I am told they get more medical advice from other people in the waiting room than they get from the doctor. Particularly in country areas where our societies are very important—all the head offices are out of the cities—a branch is that kind environment. Management is concerned that in that environment advice may inadvertently be given. We cannot take a risk that we may do that and as a consequence we have to look at the training requirements that are being proposed. We are of the view that for 99 per cent of the business we do they are far in excess of what is required. So the rigorous analysis of them requires us to look at the way we should respond. That is why we have come here: we do not want to embrace unnecessary costs that have the potential to put agency and branch arrangements, particularly in some marginal areas, under threat.

I should also mention the history of policy statement 146. It originated from interim policy statement 146, which preceded quite a lot of the FSR. I suspect it was not written for the banking culture or our branch culture and that is why it has things in it that are unnecessary. Frankly, we do not have any evidence that it was sensibly modified to meet the requirements of deposit taking institutions.

Our recommendation is that the transactional deposit training should remain with the manuals and the training that the ADIs have in place, because I believe that is adequate. It may have to be improved as the businesses change but the manuals have been there a long time and they have been improved. We have a vested interest in having staff who know what they are doing. So I and our members recommend that for our deposit taking transactional business the training manuals of the societies are adequate and competent. We think that is the best way to continue to have personal service concepts. It is the best way to have face to face banking, with branch and local agency arrangements.

We think that policy statement 146 and tier 1 and tier 2 were originally drafted for people who were involved in, or trying to deal with, risk products. Our banking products are not risk products. They were drafted for people in financial planning, commission salespersons, people associated with superannuation and all those sorts of people. That is basically where we have come from and that is what we are advocating today: that policy statement 146, as it is presently

drafted, should not apply to our traditional banking products. We are very happy to answer questions. Importantly, we have Derek Sams, who is in the business of looking after people and making sure that they are properly serviced and provided for by the societies.

CHAIRMAN—Thank you, Mr Larkey. When you refer to basic banking products as distinct from risk products, I assume you are using 'risk products' in the sense of an investment product?

Mr Larkey—Yes.

CHAIRMAN—You do not mean an insurance product, which is another term that is applied to risk products. You are distinguishing between basic bank products and—

Mr Larkey—All bank products, building society products and credit union products invested in the society, in the bank, are no-risk products.

CHAIRMAN—They are essentially capital guarantee as opposed to non-capital guarantee type products.

Mr Larkey—That is right. So we do not see the need for that. It gets very difficult for us when we hear questions such as, 'When is a door not a door? When is advice not advice?' The nature of people is to ask all sorts of questions. Sometimes you know what their motives are and sometimes you do not. You know they are probably talking to half a dozen other people who are in the banking business. The staff are trained to handle the building society business and the products that the building society may have on offer.

CHAIRMAN—In your submission you express concern that the line between general and personal advice is unclear and you fear that there is a danger that agencies might stray over that line. I understand from what you are saying that even if they stray over that line the advice they are giving relates only to basic banking products, therefore, there is no need for them to be trained to understand the broad range of investment products, as PS146 currently would require them to.

Mr Larkey—That is right.

CHAIRMAN—So the distinction is between the nature of the products rather than the advice that is being given.

Mr Larkey—That is right, yes.

Senator CONROY—I think you heard some, if not all, of the ABA testimony. I got the sense that your definition of a basic credit union product was somewhat broader than their definition of a banking product. They defined it quite clearly as two-year term deposit and transaction accounts. I got the impression—and I hope you can clear it up for me—that you seem to be talking about a wider range of products.

Mr Larkey—They are all banking products. There are a lot of additions to basic banking. If you want a transaction account, a Bpay facility and a chequebook, it all comes back to the basic

banking product of a deposit. You have to have a deposit relationship to build up those other transactional type services. I am regarding those as banking products.

Senator CONROY—Would a credit card fall into the category of a banking product?

Mr Larkey—Yes.

Mr Venga—It is still under the credit side of it. Very few societies issue credit cards.

Senator CONROY—So yours is slightly broader than just 'two-year term deposit and transaction accounts' because you are offering Bpay—the bells and whistles that hang off a basic bank account.

Mr Larkey—Absolutely, yes.

Senator CONROY—They are not captured currently, though, are they?

Mr Venga—They are.

Senator CONROY—So if someone walks in and says, 'I want to open a Bpay,' you are saying staff have to be trained?

Mr Venga—As a non-cash payment facility, yes.

Senator CONROY—As opposed to if you try to sell it to me, you have to be trained. If I walk in and say, 'I want to open a Bpay,' you do not have to have any training.

Mr Venga—That is right.

Senator CONROY—I think you were here as well, Mr Venga, when the discussion revolved around whether or not the customer sought to buy a particular product. If I ask, 'What is best for me?' are you, as a teller, then giving me advice?

Mr Larkey—You have said several times that they do not have to have any training.

Senator CONROY—I am talking about whatever you normally do at the moment.

Mr Larkey—There are manuals.

Senator CONROY—I am talking in terms of your existing training standards as opposed to the enhanced training standards that PS146 imposes upon you. If I walk in and say, 'I would like to open an account. I would like to have Bpay; I would like a two-year term deposit,' there is no extra training required at the moment under the new regime.

Mr Venga—That is right. Under PS146, no.

Mr Sams—No.

Senator CONROY—I might walk in and say, 'I'm not sure what's the best account for me; can you give me some hint, some advice?' The intent is clear. The problem here is that I am seeking advice. How do I then draw out whether or not the teller is trained to say, 'I can tell you about this menu of things; it's the basic product so I don't need any extra, enhanced training.' For the teller to make that mental decision is what the committee is trying to work its way around and has been for two years.

Mr Larkey—That is catered for in the training manuals of the societies—

Mr Sams—Correct.

Mr Larkey—that ability to respond to a customer along the lines that you have suggested. They get that not only from the manuals, let me say, but from years and years of working.

Senator CONROY—How is that catered for? How is it that a teller can make a decision in their mind to recommend a particular asset class? A bank account in which you put money is an asset; therefore, it is an asset class.

Mr Larkey—It is not a different asset class vis-à-vis a risk product. It is a bank—

Senator CONROY—There is no risk in a two-year term deposit?

Mr Larkey—No, not in terms of losing your money.

Mr Sams—From that point of view, because there is no crossing across—we heard the financial planners a little earlier talking about the levels of low risk and high risk and moving across different asset classes—

Senator CONROY—They said that it is low risk.

Mr Sams—We are also talking about the same asset class as well—a cash deposit.

Senator CONROY—The key is: how is the teller in a position to make a judgment about the level of risk that is best for the individual? And I do not accept your argument that there is a zero risk; I accept that there is a low risk in any product situation. You see, the teller makes a decision about 'low risk' as opposed to more 'high risk' products. There is still a decision there. The question is: are they trained to make that decision? You are saying that your manual covers off on it.

Mr Larkey—I do not know where the difference in risk is between a deposit account, a passbook account or a cheque account, where there will obviously be—

Senator CONROY—I am saying that they are all in the low to zero risk.

Mr Larkey—Yes, that is right, and our training is for those purposes.

Senator CONROY—If I can then ask for them, I accept your argument. But I might come in and say, 'What's best for me?' and your teller says, 'These products'—they have made a

decision to put me in a low-risk/zero risk category rather than into a high-risk category. You would be familiar with the economic concept of opportunity cost. The teller is making a decision for me about my opportunity cost. Fundamentally, they are saying that I can put all my bank savings into 0.01, but that may not be the best option for me. I might have just opened a straight bank account at 0.1 deposit. There is an opportunity cost between that and a five per cent, two-year account and between, maybe, an eight per cent managed investment and then onwards into the more exotic investments. At the moment, the teller is making the decision without any enhanced training. They are deciding my opportunity cost, and that is the real nub of the problem when you want to move out of, say, identifying products into financial advice. We are getting down to the pointier edge of what is in and what is out, and that is what this is really about, so I am hoping you can help.

Mr Venga—You are contemplating a situation in which someone literally comes to the bank teller and says, 'I've got X number of dollars; what do I do with it?'

Senator CONROY—As you have heard me say, I have extra money in because I have sold the house. I am not sure whether the same practice is used in building societies but at the moment bank tellers are required under their script on the screen, under the flag system they have, to try to sell me a product. It is now actually a requirement of tellers to do so. They are now a sales force; they are not passive assistants. There is no problem with banks turning tellers into a sales force as long as they acknowledge that is what they are doing and do not try to pretend that it is not what they are doing. And if you are turning them into a sales force, there are different regimes that are going to apply. I am not sure whether it is as hardline as that in building societies as yet. Mr Sams might be able to tell us whether or not those practices have reached your staff.

Mr Sams—Building societies in general do have cross-sell budgets and things to achieve; that is a business decision. Let us go back to the example, though, where you walk in with a $2,000 deposit. As the teller, I only have one class of assets that I can give you, and the issue with that is access. It can be either a transactional access on a day-to-day basis or it can be put away for a period of time. They are the only two things that I have on my shelf that I can do from a building society point of view. Anything outside that, another asset class, would have to be referred on to somebody who has done the appropriate tier 1 type training. The issue for me then is whether the person standing in front of me is looking for advice on what to do with this money or whether, because they have walked in through my front door, they already have an idea of what they want to do with it.

What we are trying to look at here is the issue of giving advice, because giving advice is the thing that triggers the training in the first place. If the line of questioning, through the training that we have in our manuals now, is along the lines of, 'Do you need that money now or are you able to lock it away for some period of time?' the decision making process then is, 'One of these asset types may suit' or 'Have you received advice from somewhere else before?' A lot of the consumers that we tend to find across the front counter may already be receiving advice from other people, but they do not feel that it is appropriate to take differing sums of money for differing terms to those particular people (a) because they may get charged some other fee for obtaining the advice and (b) because they may not feel that they rank right up there on the scale of things in terms of having to get advice; they take ownership of their own decisions to that degree. Once the sale is made, if you have a term deposit where you issue instructions for an automatic rollover, even if it was at three years, five years or whatever, it is a customer service

issue for ongoing intervention into that rollover, as you go through. This training is not going to force an intervention from somebody to continually work out whether that decision that you made X number of years ago still meets your needs.

Senator CONROY—I am trying to get to a situation where a customer's needs and opportunities are being maximised. I am not trying to stop cross-selling. I am not trying to stop giving the person the best advice. If you walk in and say, 'I want to open an account; I have $2,000,' probably the best thing, on balance, is to just open a transaction account. It may be put in a term deposit account. For clarity, if I exit a two-year term deposit early, am I up for any fees?

Mr Venga—You would have a reduction of interest.

Senator CONROY—Yes, but that would be a cost.

Mr Larkey—There is no fee.

Senator CONROY—That would be reducing my earned income interest to what—zero, perhaps? To me, that is not a cost, but we can call it a fee. I did mention earlier the creativity of the financial services industry in describing how they take money out of your pocket with 10 different definitions. My net worth is reduced by leaving early.

Mr Venga—There is a contract for the money to be in there for two years. It is a cost to the bank to have to release it—or to a building society, as the case may be.

Senator CONROY—I accept that it is a perfectly reasonable penalty—if I can use the word 'penalty' rather than fee.

Mr Larkey—No, it is a different arrangement. It is not a penalty.

Mr Venga—We are not penalising them.

Mr Larkey—We have to be careful, giving advice like this!

Senator CONROY—I do not mind what you call it, but I would not be as well off as I would be if I had left the money in.

Mr Larkey—Our teller would tell you that this is not advice, this is a different arrangement. We did point this out to you.

Senator CONROY—I accept that that would have been the case. I am not arguing.

Mr Larkey—But this is a nice little example of people's perceptions; people can get a little confused.

Senator CONROY—I agree.

Mr Larkey—Therefore the staff are trained to try and sort out those misunderstandings as best they can. This is where you run the risk that under these arrangements it becomes advice. We are really not advising them in the sense of the original 146.

Senator CONROY—Maybe I have $5,000 and I am up for a substantial cost which I am going to need most of that money for in 12 or 18 months time. Let us say it is two years and one day, so I have safely got the two-year period. I know I am going to need it the day after it matures. The problem is if suddenly that cost comes forward and I have got to access the money. I am rehashing an argument about whether two years should be in or not, but that is where we have come down as trying to be fair. The question still becomes maximising the best possible advice to the customer if I say to you, 'What should I do?' You are not generating this.

Mr Larkey—There is a lot of that. We all tend to only talk about modern gung-ho people looking for the highest interest rate, but the vast majority of the population and, given the nature of our deposit base, a disproportionate number of our customers are risk averse, pensioners and people who do not like ATMs who want branches and write to you about the fact. They cannot handle modern technology well.

Senator CONROY—All the time.

Mr Larkey—So a lot of older people are very dependent on the staff in a branch. We have all got relatives in this category. I think the track record is quite excellent. They are not people who are going to go to financial advisers, they are not really wanting financial advice, they are really wanting to know how to deal with their banking business. They might change their mind tomorrow but they explain today what they want, and there is no doubt in my mind that a good customer service officer in a financial institution that we represent would try to take them through that and try to sort out where the money is and what they want to do and will offer them a banking product, be that a call deposit, a passbook account, a deeming account or whatever else. That is what we do and that is what we are trained to do under our manuals. To do that business we do not need some centrally driven standard that was written for the financial advisory industry, because that is where it comes from. All our advocacy has been to have it tailored to our business based on our manuals. If there is something wrong with our manuals and they need to be improved, so be it, but I do not think anyone has even looked at our manuals.

Senator CONROY—Sure, but there is a quantum difference between someone who walks in and says, 'Give me this product, give me your two years and give me Bpay,' where you do not have to have any extra training other than your manuals at the moment, and if your cross-selling regime clicks in, which says, 'Cross-sell. This person has got $5,000 in their account.' You would then be in a situation where you are soliciting. Within an existing relationship I accept, but there is a different situation with a new customer compared with an existing relationship. With the cross-selling, where normally you would not necessarily have your teller, they will ask you if you want a referral to your financial adviser.

Mr Sams—In some cases. I think we come back to the first issue that you raised: am I going to get the best return on my investment? As Mr Larkey was just saying, not all people are driven by that. Our community branches are a very good example of that, where the community actually incentivates their own inhabitants to invest their spare funds with the organisation.

Senator CONROY—I was not trying to define best return as the maximum level of interest.

Mr Sams—The other thing is that it is a fairly simple question to ask somebody what is the driver. I think the example given before, Mr Byrne, was that I have $2,000 burning a hole in my pocket and I want to do something with it now. In that case, the first question I would still ask would be, 'What were you intending to achieve with the $2,000?' If it is something that can be achieved within the two products that I offer, my asset classes, knowing that personal piece of information about what Mr Byrne wanted to do would still constitute offering personal financial advice.

Senator CONROY—It probably would, because you have crossed over the line between trying to sell me a product I have asked for and trying to solicit.

Mr Sams—And his response to me might be, 'I already have other investments, and I'm also receiving a government benefit. If I earn any more money, some of that is going to diminish.' We are really stepping outside the sort of advice that someone in a front teller's counter can give. In fact, we are getting right across into what financial planners do as a day-to-day business. We are still only talking about an asset class of something that is still low risk. From an operational point of view the issue that we keep coming back to is that, if training manuals are available to supply this information quickly at the start, then the right referrals can be made before advice is given. Therefore, no advice is given and there is no impost on the organisation, apart from making a mere referral. If there is, however, a sale made as a result of those brief inquiries, the issue then is that these people need to be trained to tier 2 level because, if they ask one or two questions, that has put them into that group of people, which we do not feel is necessarily appropriate.

Senator CONROY—ASIC appeared before the committee a couple of weeks ago at our last public hearing, and we had a discussion on PS146. A number of courses have been approved or accredited by registered training organisations. ASIC made the point to us that this included basic banking products that catered for the specific needs of small ADIs. Are you aware of those courses?

Mr Sams—Yes.

Senator CONROY—Do you think that the standard of training being offered through those courses is too high? Do you think that the specific training for even the basic product is too high?

Mr Sams—In terms of too high, I have to look at our distribution channel.

Senator CONROY—To me it sounds like there is something in between where you are at the moment and being able to give a full run-down of the stock market and knowing what happened on Wall Street overnight, which, as the ABA have suggested, seemed to be necessary under this tier 2 training scheme. I got the impression from ASIC that there seemed to be something in between.

Mr Sams—At the end of the day there are some core competencies and things that all of those courses try to engender in people. Looking at our distribution channels, we have to look at how you can actually do this as well. We have a branch network. We also have a mini-

branch/agency network out in our rural areas. One of the issues in relation to that is that this extra level of training is going to be fairly prohibitive on us. The main reason for that is that we do experience high levels of rotation of staff because, essentially, these people are facilitated by host businesses—newsagencies and pharmacies in the main. They are doing two jobs: they are dispensing cough lollies and they are also doing transactional business for members as well.

Senator CONROY—Sure. Should people who live in rural areas get less skilled assistance than people who live in cities?

Mr Sams—I believe that if people are trained through our manuals—this is a broad-brush approach across our own people, which includes our mini-branch people—then, yes, they are still able to identify those basic needs and refer them on, without actually having to offer financial product advice.

Senator MURRAY—My understanding of the ABA's proposition, to which you largely agree, is that prior to this act you could have divided the products into the three tiers being discussed and training was being provided in all of those areas. Now with this act and ASIC, additional competency and capability levels have been established and training is required for tiers 1 and 2, and I clearly understood you to say that in tier 3 you do training anyway in product knowledge and in relation to these manuals. The banks then say that to do tiers 1 and 2 there is an implementation cost, a training cost that is ongoing, a compliance cost and a monitoring cost. Their proposition seems to be that somehow, if they added on that same range into tier 3, there would be a very significant increase in administrative and compliance activity costs. They gave the example of the Bendigo Bank, and they said that it would cost them $1 million a year, which, if you wanted to extrapolate further, would be tens of millions of dollars for the banking industry.

Mr Larkey—I think the credit unions had a figure of $3 million.

Mr Venga—I think it was the Bendigo Bank.

Senator CONROY—Three million down; $1 million ongoing.

Mr Larkey—The credit unions do give a figure in the millions, too.

Senator MURRAY—That is broadly my summation of it. I cannot easily see how, if you are providing implementation, training, compliance and monitoring costs for tiers 1 and 2, jumping them on to tier 3 would add very significantly to costs. That I would need explained. I also wonder whether perhaps what you are arguing for is that, if you are already providing basic core competency training for tier 3, the act should say that if you are providing that—if you can prove you are providing that—you do not need to bother with what is required in tiers 1 and 2. That may be an alternative route to go down.

Mr Larkey—I agree with what you are saying, and that is an approach we would prefer. With a prescriptive one system suits all—and its historic origin is that it has not been tailored—if we were to add as necessary to the manuals it would be a less costly approach than having to comply with something which is going to be introduced by registered training organisations. That is another bureaucracy. There is a booming industry in training organisations and they point to this legislation and say, 'The fees are this.' They are marketing. In my own office I get

emails from training organisations. They are flogging training to us and by and large we do not need it. We think that we train ourselves very well, but we do use outside trainers.

I think it can be the manuals that we have. If someone wants to review those manuals, we do not really want to send out another group of hired consultants or public servants. In our arrangements—and we are unique in this as ADIs—APRA come to us every year. They have focused very heavily, as you know, on ADIs since their inception, and before them other regulatory authorities. I see no reason why, whilst it is not a prudential issue, they could not satisfy themselves that manuals are kept and maintained and tick a box in their audit certificate.

Senator MURRAY—At that tier 3 basic product level.

Mr Larkey—Yes.

Senator MURRAY—It seems to me that the act has two main consumer protection devices. One is to ask for, require or ensure competency in the provision of advice, and the other is to ensure proper disclosure relative to that advice. That seems to be the two things. The only difficulty I have with the propositions I am putting is that I have not been able to get my mind around the exact additional costs and consequence of doing it ASIC's way, rather than doing it the way you and the ABA are proposing—that is all. If you were able to persuade me, for instance, and the committee, that the costs and difficulties were such that it would be far better to accept existing manuals, systems and so on at the basic level, which could be ticked off through an ASIC process, that may be one way to address the issue—if you are telling us that there are real costs. When I tried to get the ABA representative to extrapolate the Bendigo figures to the whole of the banking sector, he baulked. I can understand that because it is a difficult thing to make up, but at the heart of his argument was that, it seemed to me, they did not want unnecessary cost, unnecessary compliance, unnecessary administrative procedures, unnecessary bureaucratic procedure. If that is the case, it needs to be more than anecdotal.

Mr Venga—I think it is true to say that we do not have a problem with the training burden insofar as we do it in-house. The problem of cost really comes from the registered training organisations and their assessment. The assessment that we are required to do in tier 2 has to be assessed and literally ticked off by an external organisation. The other way of doing it would be that you could have course work assessed and then ticked off by a RTO, and I think Derek may be able to shed some light on that. It is hard to get RTOs to do it that way, there is not much in it for them to look at your course work, assess it and say, 'These things fall short of what we want—take it away.' They do not want to do that; they basically want to run the course because that is where the money is. Our course is basically there. We are happy to have in-house training—even if it is beefed up to make sure that at a certain threshold the teller steps back and says, 'You have reached a point where I can't help you, you will have to see a financial planner, or we will refer you to an adviser,' but if we have to train people, especially in the agencies and the newsagents, and have them assessed by an external RTO, it gets very costly and frankly I cannot see how societies would continue having these agencies. We have made that point on a number of occasions—it is quite serious.

Senator CONROY—What sorts of products do the newsagents and these other agencies sell? Can they open and close accounts?

Mr Sams—They can open and close accounts, carry out transactions and manage term deposits.

Senator CONROY—When a person walks up to the counter, other than somebody who actually says, 'Give me some financial advice,' in what way are you affected? I do not understand why someone who is standing there selling newspapers one minute is going to be in a position to do anything other than say, 'I will make an appointment for someone to come and see you.' They are not genuinely going to enter into a discussion with somebody in amongst selling the newspapers. Realistically there should be virtually zero impact because your training manual should say, 'Do not do anything other than these three things. If the customer asks you any other questions you are not qualified under any objective—

Mr Larkey—I do not disagree with what you are saying, but human nature being what it is—and I think there was a comment from that end of the table that country people should not get lesser service—if a person is the local representative of the building society and everyone in the town knows that, then they are going to have conversations with them. They are going to discuss things and they are going to think that that person in town probably knows more about finance than—

Senator CONROY—Why on earth would you even try to suggest that a 22-year-old selling newspapers on a Saturday morning should be doing anything other than saying, 'We will get someone to come and see you'?

Mr Venga—Yes, that is true. Could I give an example where it might occur?

Senator CONROY—Please, you have more practical experience.

Mr Venga—One example may be a person in the country coming to a rural agency and saying, 'I want a passbook account because that is what my father had, it is what my grandfather had,' and so on. Might not that person at the counter say, 'Do you need a cheque facility, because passbook accounts do not come with cheque facilities? Do you need a chequebook?'

Senator CONROY—None of that yet has crossed out of the asset class we are talking about.

Mr Venga—This is a non-cash payment facility which is attached to any sort of a deposit product. I think it is remiss of the counter staff not to ask that simple question.

Senator CONROY—Sure, but are you saying that if they say, 'Do you need a cheque account?' that pushes them outside—

Mr Venga—I think it might.

Senator CONROY—That is not my reading of it.

Mr Venga—Policy statement 146 says that even the giving of factual advice may constitute financial product advice in certain circumstances.

Senator CONROY—You are offering a payment facility not financial advice.

Mr Venga—It is still subject to the same rules. There is no difference. That is the worry about it. You can give financial product advice about payment facilities as much as you can about any other product. This is the issue; it is so simple. Another simple example is when you have someone who comes in and wants to open a simple savings account. I do not think it is wrong for a teller, having noticed that the person has a loan account, to say, 'Do you want an offset facility attached to that because you can reduce your interest?'

Senator CONROY—I don't want a 22-year-old selling newspapers talking to me about my—

Mr Venga—Maybe it is not in an agency situation but certainly a branch—

Senator CONROY—mortgage account. I am going to start suing you for—

Mr Venga—No, the branch teller would know that when looking at the screen. I am not talking about an agency situation. But there are occasions when you have to ask some questions to get a handle on what exactly is required, whether they know what they want. I am not talking about $200,000 deposits; I am talking about small transactions. I think not enough emphasis has been placed—

Senator CONROY—One of the suggestions the committee kicked around was to have a dollar level—in other words, incorporate a small transaction. That was one of the issues that we kicked around at one point—whether or not you could get a dollar level. You are talking about small transactions, and the committee looked at the small transaction issue.

Mr Venga—We do not subscribe to the view that the dollar level will solve all the problems. ASIC has put that up as one possibility.

Mr Larkey—It just makes it more complicated.

Mr Venga—It is very arbitrary. We already have the silly distinction of two years, as opposed to whatever. To put up another threshold would make it more difficult to administer.

Mr Larkey—It makes a simple business unnecessarily complicated.

Senator CONROY—Coming back to the 22-year-old in the newsagency in Toowoomba, if they start giving me financial advice, I will sue them.

Mr Venga—They would not.

Senator CONROY—If they want to tell me how to open and close an account, I am cool. We are trying to move up and down a spectrum; we are trying to find a point at which you are crossing the line. We may not have found the most perfect point yet—we have had just a blanket attempt to argue about expanding the number of products included or excluded or about changing the definition of advice. Advice is advice; this is a bill about advice.

Mr Larkey—That is right.

Senator CONROY—And then we tried to put in a couple of products that are exempted from the higher level. It is possible to argue that a cheque facility should have been included. Again, I am not sure about the Bpay facility. As to offsetting my mortgage, seriously, a 20-year-old—

Mr Venga—I am not talking about that person. These are the kinds of simple questions that someone in a branch should be able to ask a person to get a maximum benefit.

Mr Larkey—There are some very intelligent 22-year-olds.

Mr Venga—This is what our training manuals would involve.

Senator CONROY—In between selling the news and the glue, they can tell you about offsetting your mortgage.

Mr Venga—This is what their training would have them do—to make sure the person gets a product that is useable in some way. Someone might decide to write cheques every month for his health insurance, for example, whilst it may be easier or cheaper to do it with direct debit. Would suggesting that amount to advice? Probably. Is it right that the—

Senator CONROY—Do you have legal advice on that? I would be interested if you got legal advice other than just an assertion.

Mr Venga—By ASIC's definition, it could well be advice. Once you start saying, 'Have you thought of this?' you are literally pushing a person to a product. You are politely recommending it or suggesting it. It is in 146.

Mr Larkey—No, I am not sure it is 146.

Mr Venga—It is in the other one—I can give you the name if you want it. It could well be these things—it is as simple as that—and that is what we are worried about. These people should not have to be trained to a higher tier 2 level and undergo the cost of being trained by an RTO et cetera.

Senator CONROY—I think Mr Larkey made the point earlier that no-one has come and looked at your manuals.

Mr Larkey—No, not that I am aware of.

Senator CONROY—Have ASIC sat down and said, 'Here's what we think the minimal level of training is and let's have a look and see how close they are?' Has there been any attempt to integrate—to take Senator Murray's point—what ASIC thinks the minimal level is at the moment and where the institutions are at?

Mr Larkey—No.

Senator CONROY—Maybe there is a huge gulf; maybe it is a relatively small gulf that could be bridged.

Mr Larkey—No. They pulled the one they had for financial advisers off the shelf years ago and that is it.

Mr Venga—That is the benchmark.

Senator MURRAY—That is not very good consultation.

Senator CONROY—The bill is quite specific. The bill says 'financial advice'. They are just saying that all of this is financial advice. When we made amendments, we put in a product class that seeks to differentiate, when the whole purpose of the bill was to regulate the giving of financial advice.

Senator MURRAY—But, in writing a PS, you would surely have to look at whatever is current—

Senator CONROY—I agree. I am saying that maybe there is a small gulf that we can bridge, rather than a huge gulf that will undermine the intent of the legislation.

Mr Larkey—I do not know if you have asked ASIC that question, but I certainly—

Senator CONROY—I promise you I will ask them next.

Mr Larkey—I have been around for a long time, and I am sure that none of the societies have been requested to get into consultation with anyone in relation to the manuals that currently apply to our banking business. You might be right, Senator Murray, that that is not good consultation. In terms of this area, until it becomes an issue—as it is now—it tends not to be looked at very closely. This goes back to putting a round peg, banking**,** into a square hole. That is part of what we are trying to solve.

Senator CONROY—I want to move on to a slightly different area in your submission. You also seek in your submission that:

... agents in a society who provide financial product advice for basic deposit products and related non-cash payment facilities—

I do not think that non-cash payment facilities falls in basic product, but you are obviously concerned that it does.

Mr Larkey—It does.

Senator CONROY—To continue:

are not required to be made authorised representatives of a society.

Mr Venga—That is an incidental request. We asked for it because, looking at the context of usage—and I am not talking about 22-year-old people—

Senator CONROY—Just because someone has owned a newsagency for 40 years and is 60, I do not think they are qualified to give me a mortgage offset account. I have to tell you, I may have picked on the 22-year-old, but I will grab the 60-year-old owner if you like.

Mr Venga—Fair enough, but Derek will tell you that, even with these community branches, there are people there who do this every day. But, as a result of section 911B, you can only provide financial services if you fall into certain categories. One of the categories, if you are not an employee, is where you have to be an authorised representative. In the case of your community branch, for example, you would have to have an authorised representative if they are providing financial services.

My point is that, in the circumstances given in the examples, as we have said, these things are bound to happen where people are asking for a totally inappropriate product. They are not considering things that are cheaper—direct debit or Bpay—as opposed to cheque accounts. Some of the products may have higher transaction fees, different rules et cetera, and you help them on these little things. This is financial product advice and, because of that, they have to be made authorised representatives for two reasons: (1), because they are taken to be giving financial product advice; and (2), because section 911B puts them in that category. Once you are an authorised representative, you have all the more obligations—monitoring them, putting in returns, et cetera—and it seems a huge burden to place on something that is really for the community's good.

Do not forget, at the end of the day, even if a person did not have to be trained to PS146 tier 2—let us say they were not even giving financial product advice so there was no chance of it happening—ASIC would still require you to have in place procedures to monitor that they never do that. In a rural context, it is very hard. When your supervisor might be 500 kilometres away, how could you possibly do that?

Senator CONROY—Haven't you got compliance systems that do that for you?

Mr Venga—We hope we do but, at the end of the day, it is an impossible situation.

Senator CONROY—The only way this is going to crop up is if someone walks out of the newsagency and then phones ASIC and says, 'This newsagent just sold me a portfolio of Enron and World.com.'

Mr Venga—They cannot do that. We are not in that business anyway. We have simple, basic products to do with—

Senator CONROY—Like cheque accounts.

Mr Venga—non-cash payment facilities.

Senator CONROY—I know you are concerned that payment facilities fall outside 'basic product'. I defined them in my head as bells and whistles of a—

Mr Venga—But they can still be subject to—

Senator CONROY—I appreciate that there is probably a legal issue there that we can try and work our way through that could probably deal with a lot of your concerns, for those agencies in particular. I am keen, like Grant and Andrew and everyone else, to make sure that agencies are not disrupted. As I said, in my head they were bells and whistles to a basic product, and there should be a way for us to work through that issue without compromise.

Mr Sams—The provision of service is an issue there, though, because under any of those types of arrangements mutual benefit is the key driver. Obviously you have host business owners who now—if we are going to be giving advice—will have to have people being taken out of these places so that they are not selling papers for a period of time, regularly or irregularly depending on how their competence stacks up, if they are continuing education. From that point of view the relationship will start to become a little heavy for some of these business owners to cop. Yes, you have your core transactional stuff which does not impose any monumental impost, but then providing the service in those centres—either having to take it back to a call centre or a referral—will withdraw some of those things.

Senator CONROY—This concept of providing a service sounds dangerously like giving financial advice, and that is where the nub of our problem is. Your definition of service sounds—honestly—dangerously close to giving financial advice. Opening and closing an account is giving a service, but starting to go beyond that is giving something else.

Mr Sams—To a certain degree; but people still ask for advice all the time: 'Should I close that account?' Again, you are still going to be giving somebody advice in some way, shape or form, even if they are taking their money elsewhere to a product you have not even recommended. I keep coming back to the fact that if we have these frontline people with the appropriate querying techniques through the organisation's own training regime, they can put this business in the right place at the right time when it has to happen. Again, they are not the appropriate people to be talking about $300,000 investments into managed funds. But we have to train them so that they are not doing those sorts of things, not training them to take those things on. That is not what the 146 training regime does.

Mr BYRNE—You make a distinction between general and personal advice. If someone walks into the bank—we will change to the teller again—and they say, 'What do I need to do? I want to open an account. Do you think that is the best thing?' According to your submission, they are providing personal advice, are they not, because they have to take into consideration the objectives, the financial situation and the needs of the client?

Mr Venga—Not necessarily. It is difficult to understand the whole concept. It is interesting that the act distinguishes between general advice and personal advice but there is nothing in 146 that draws that distinction. I am almost inclined to say that if, for example, tier 2 training was not required for general advice, then it might overcome some of our issues—because I think a lot of the things that might happen presently is general advice, not personal advice. I do not think you will find a branch teller asking someone about their financial objectives, needs or situation. I do not think that they would do that. That is for a financial planner; that is for someone who has been trained to tier 1. But what they might ask might get towards general advice on the basis that they will ask a few questions here and there and, while it might be a nuisance, they could disclaim and say, at the end of the day, 'Look, I have not taken your entire circumstances into consideration'—which is what general advice requires anyway.

Mr BYRNE—They have to provide a rider, don't they?

Mr Venga—That is right: the disclaimer or the rider saying, 'I have not taken your personal circumstances into account.'

Mr BYRNE—But if they are going in there and you have built up a relationship with the person, particularly in rural branches—

Mr Venga—It is not helpful to have that.

Mr BYRNE—It would have to be pretty difficult, because you are going to reach a trigger point very quickly, are you not? Then you have a different situation: all of a sudden you are providing personal advice. There is no point, particularly if you have the sort of individualised relationships that people in rural branches have, in turning around to say, 'Sorry, Fred. Just hang on for a second, while I go and find you someone else.' In those sorts of circumstances some of those people would regard that as being a breach of this other person's relationship.

Mr Venga—I agree.

Mr BYRNE—If that is the case—and say that these regulations continue—what will you be doing in those circumstances?

Mr Larkey—I suppose it depends on the viability of the branch or agency. In some cases they may make a decision to close the branch or agency. On other occasions they may decide, 'We can afford to provide people of that calibre and of that training to do that, and it is in the interests of the building society to do so.' The interests of the building society are the interests of the members but, in the end, we cannot run at a loss; and so it would be a decision as to the viability. Is that branch or agency arrangement, or community bank, able to sustain a person with a higher level of training? Is there enough business to justify them? In our submission we are saying this, and I think some societies are on the public record, particularly societies in Tasmania, that they are actually going to terminate all their agency arrangements, because some of them are very tiny.

Mr BYRNE—Wouldn't it be more functional, particularly in a rural branch, if you did have someone at the front who was a generalist, a one-stop shop? Doesn't that become more economically viable in those circumstances? Instead of having to employ someone else that has the specialist knowledge, why wouldn't you just train that particular individual so that it is a generalist one-stop shop?

Mr Larkey—We were discussing this with Derek.

Mr Sams—At the end of the day these people tend to move around a lot. So on top of that you actually find you have higher retraining costs and replacement costs in those particular people. You tend to find also that, once people achieve higher levels of training they also broaden their employment opportunity horizons, and so you are continually trying to fill those slots. The issue that comes from that is that once you start providing a service it is very hard—and in our culture we do not want to ever stop doing it—because there is no resource to go in and backfill it. For that reason things have been kept fairly simple so that we can replace the service. Even if the host business has to move on or sever the relationship for whatever reason, we are always looking for ways we can replace that rather than withdraw the service totally. At

always looking for ways we can replace that rather than withdraw the service totally. At the end of the day you have members assigned to that particular area and when you withdraw service they then perceive that the service is not being provided by their area but is being provided centrally.

Mr BYRNE—But the feasibility argument is that if you had two people but you could have only one person performing that service, why wouldn't you have one appropriately trained person performing that service in a rural branch? Isn't that then an economic argument to ensure that the person at the front counter does have the requisite training?

Mr Sams—Are we still talking about the same thing? In most rural branches we have, we are talking about agencies—we call them mini branches. Essentially they are a part of another host business, and usually a part-time person or two part-time people are employed by the host provider.

Mr BYRNE—Again, feasibly, it would be a part-time person or whoever, and that person, particularly in rural areas—where you establish a relationship with a particular individual and where relationships are very important—can provide the sort of one-stop shop of advice rather than saying, 'Hang on a second, Fred. We have just crossed over the line here. I had better go and make an appointment.' Having lived in a rural area myself, I do not think that goes down very well. Consequently, why wouldn't you in a certain set of circumstances be looking at just providing that person with the appropriate training? Would you concede that that is something you should be looking at?

Mr Sams—It could be something more to be looked at. But the other issue is then that, once you are providing advice, those people go on holidays and go and do other things, and all of a sudden you create a position where you have to go and provide relief for it, or else business comes to a grinding halt.

Mr BYRNE—That happens anyway. But if another person does that anyway, that person is going to go on leave. That does not really matter. You are right, but it is a bit like a doctor. Do you have two doctors? If you have a doctor who does everything and that person goes on leave, so be it.

Mr Sams—But they get a locum in to look after the cases whilst they are away.

Mr BYRNE—Yes; but financial advice can wait for two or three weeks, unless there is something urgent. I just put the case as an alternative viewpoint. You have acknowledged that there could be some thought given to it. Thanks.

CHAIRMAN—Thank you, Mr Larkey and your colleagues, for appearing before the committee.

[12.13 p.m.]

BROOKES, Mr Nicholas, Chief Executive Officer, Corporate Superannuation Association

CERCHE, Mr Mark Nicholas, Chairman, Corporate Superannuation Association

CHAIRMAN—Welcome. We have before us your submission, which we have numbered 29. Are there any errors, omissions or amendments that you wish to make to that submission before proceeding?

Mr Cerche—No.

CHAIRMAN—I invite you to make some opening remarks to introduce your submission and the issues that you wish to address, at the conclusion of which we will have some questions.

Mr Cerche—This is the second time we have had the privilege of appearing before this committee, and we do appreciate the opportunity. At the time we last met, the FSR legislation had been passed and the regulations were being formulated. Since that time there has been significant activity in the formulation of the regulations which affect corporate superannuation in particular. The committee will be aware that, as part of the political process in enacting this legislation, there was an agreement that the regulations would exempt non-public-offer funds from the licensing requirements of the legislation, and there were very good reasons for that.

The regulations have an impact on that obligation, if many others have been lost along the way. The regulations have, in their evolutionary form, considerably impacted on the ability of not-for-profit, unlicensed superannuation providers to continue their activities. That is very unfortunate, because it is our submission that the corporate governance model and the outstanding record of this type of superannuation fund should be encouraged, not discouraged, by regulation. The facts seem to be that in the corporate superannuation model there has been insignificant failure in the system and there have been returns significantly above those which obtain in the for-profit sector. Remarkably, the failures that have occurred have almost been exclusively within the licensed, publicly offered superannuation products and not in the corporate structures.

We saw APRA come out this last week and indicate that there are some small corporate funds which have not complied with the regulations and are at risk. The details of that are not publicly known, but there are obviously cases where small corporate funds have not complied with the existing rules and may, therefore, have got themselves into difficulty. The part of the industry which I represent through my organisation is at the larger end of the market. We have 50 members in our association and we have 85 per cent of the funds under management represented by our membership.

Turning specifically to the regulations, the main problem that we have is that we are not licensed to provide, and do not provide, financial advice. We have never been able to do that and have never sought to do that. What we have sought to do is deliver effectively and efficiently the employers' promise to provide superannuation. This promise is in history and goes far beyond the legislative interferences of the last few years and it is typically in excess of

the SG obligation which employers have in this country. Our employers, on average, contribute 12 per cent of payroll to superannuation. Many of them contribute considerably more. They offer defined benefits superannuations, in the form of lifetime pensions, and lump sums and hybrid arrangements. But they are essentially employers offering a structured investment to their employees on a discretionary basis.

The legislation which has come forward with the exemptions which are currently available almost enables us to do it. That is not where we want to be. We want to provide information to our members. We do not want to provide them with financial advice—we are not skilled to. But the regulations have been formulated in such a way and come from such a direction that it makes it almost impossible for us to provide advice to our members about where their money is invested without their consent. It is a strange situation where we cannot tell our members what their money is earning, on the basis that that could conceivably be financial advice. Ridiculous! But this is what is happening.

With product disclosure regulations, a public disclosure statement is an exempt document, provided that it does not contain personal advice. Those regulations go on to say what is not financial product advice. One such thing is general information about the fund. That provision in the regulations was excluded recently, without any fanfare, after there had been huge public consultation about that very provision—because that provision enabled an employer sponsor to say to the members, 'We have a corporate fund. If you want any information about it, you are a member of it and you are going to get something from the trustee about it. As soon as the contributions are received, you will get all the information; but, if you want to find out about it, go and see HR or the administrator. Go and see somebody and you can get the information you want about where your superannuation moneys are going.' That exemption has gone now. The question arises: can a corporate sponsor still do that? The answer, in my opinion, is yes, but it is not without doubt. Why is there doubt? There should not be doubt. It should be very clear what we can do and what we cannot do. Last week in the High Court I heard Justice Hayne criticise daisy chain drafting. We have a classic example of daisy chain drafting in this sort of regulation. I think it should be fixed up.

Our submission in relation to this legislative and regulatory framework is threefold. If you are going to pass laws, at least make them available to us to see. It is very difficult to get consolidated copies of these regulations in any way, shape or form. I spent yesterday downloading a copy of them and having them bound up—and I was going to thunder them on the desk, but I will not; they are very heavy—then at 9.14 this morning my secretary sent me some more which came out yesterday. It is terrific. That is the process that people who are keen to comply with the law need to go through. How do we stop that? I do not know.

In my opinion, the regulations need to be very clear about what people can and cannot do. It is very clear that you cannot give personal advice; we do not want to do that but we do want to give information. Where is the line? It has been suggested to me that, if a fund administrator provided a computer program which allowed a person to work out compound interest on $5 invested at seven per cent over the next 30 years, it is financial advice. That is clearly not financial advice—it is information—but ASIC take the view that it is financial advice. Why? How? I do not know. It is beyond me.

We ask two things of the committee. The first is to make sure that when regulations are passed after a consultation process that they are not changed without a similar process. That

seems to be happening. The second is that we want clear rules as to what we can do and what we cannot do. We are recognised as being exempt from licensing. That was part of a political process. We want to be able to provide information to our members, but the regulations have been chopped and changed to such an extent that we are not sure that we can anymore. If we are going to have the exemption from licensing, we have to be able to provide information—which is not financial advice—and we have to be able to point to a provision in the regulation that says we can do that, because it is so prescriptive now.

Finally, I want to talk about how the regulations are misconceived insofar as they apply to superannuation. They have been tacked on to managed investment scheme arrangements. A managed investment scheme arrangement typically involves a discretionary investor coming to a product seller and buying something and putting down a cheque. They will not take a small cheque, and so it is usually a big cheque. I am telling you nothing you do not know, but the rules are that that goes into an account and, as soon as an interest is created and a piece of paper given to the investor, the money is invested. Usually that is after the end of a cooling-off period and it is all linked into that. When you have a transaction involving $100,000 or $10,000 or $5,000, that makes a lot of sense. People are being informed that the cheque has been sent and received and that an interest has been created.

Superannuation in this country simply does not work in that way; it works in quite a different way. I am talking about the mass of superannuation. I am not talking about individual self-employed people who make a yearly contribution; I am talking about the Australians who get superannuated through corporate and industry type arrangements, through employer sponsors. In both cases, employer sponsors are involved. Typically it is a payroll interface arrangement.

Senator MURRAY—It is involuntary, with no choice, you are saying.

Mr Cerche—Correct. From the payroll, the money goes to the superannuation fund and is invested. The administration for the next little while matches up money received against the employees on the payroll and raises reconciliations. This is not as easy as it sounds, because corporate funds are run a lot better than industry funds, where the process is not as sophisticated. If we take a typical superannuation fund in the corporate arrangement, the trustee is expecting to receive a contribution in respect of all the members who are employed by this employer. A cheque comes in and there is a reconciliation process which may take 10 days to do, to resolve issues and conflicts. For example, someone gets a pay increase and therefore some money is received that does not have a home until it is tracked down. If there has been a significant change in the payroll system, this matching-up takes a considerable amount of time. But under the rules, is that money capable of being invested straightaway or does it sit in an account? Bear in mind that there is no cooling-off period; there is no facility to take the money out in this type of arrangement, whereas the typical discretionary investor has the 14-day cooling-off period.

Equally, with a checking facility available on the Internet, is it necessary for confirmation of the receipt to be issued to the member? Has anybody thought of the cost of that? If you have a fund of 300,000 members, typically you would have an Internet facility, but not necessarily an Internet facility that is capable of doing what a confirmation note would do. Is it necessary to send 300,000 letters, at a cost of $300,000 twice a month? The answer is no. It is necessary to say that the money has not been received, not that the money has been received. These are things which cause us concern and cost. Every dollar that we spend is not put in superannuation

savings for our members. Bear in mind that our only interest is that. We are not for profit. We are not carrying on business to make money for anybody other than our members. We are in fact the members. We are a mutual group of people; we work together for our own betterment. We have little risk, because we have no financial incentive to cut corners on governance; we have no financial incentive to steal from ourselves. I think that is all. Have I missed anything?

Mr Brooks—Not yet. Better give them a breather, I think.

CHAIRMAN—Are there any questions?

Senator MURRAY—It is less a question than an observation. It seems to me that the proposition put to the committee is that, if a payment is made as a result of a statute, it is involuntary and the investment of that money is out of the hands of the investor. There is no choice attached to it; therefore the regime should not apply. There is no financial advice. That would seem to me to be a straightforward proposition, which I would accept. If the law and the regulations do not subscribe to that, then they need to—that is all. Whether it is a corporate superannuation fund or an industry fund or any other fund is, to me, irrelevant to that principle. You only want consumer protection if the consumer is capable of being misled into making a decision which is not in their interest. This is not the case.

Mr Cerche—I agree with all you have said and would cheer loudly, except that I would have to say that some corporate funds and industry funds do provide flexibility for a member to make a choice. Having heard for some six years now that choice is good in superannuation, funds have anticipated that by offering different investment options. This is where we get into an issue. Typically a fund would say, 'You've got three options—your cash secure, your balanced and your growth—and you can choose between those. Here is the information about each of them. This one has had a three per cent compound return with very little volatility; this other one has had a five to six per cent return with more volatility; and that other one has had an 11 per cent return with much more volatility. Bear in mind that, in the last little while, we have had a very good share market run and history tells us that things correct themselves. Be aware, beware of risk.' We do that, and that is not advice, but ASIC would argue that it is. It is not; it is information.

Senator MURRAY—Let us deal with that separately. I think my first observation applies where you are not offered choice. As soon as you offer choice, the consumer is being asked to make a decision and wants to know that they are being properly advised and that full disclosure is available. It seems to me that, if the people providing that advice have no internal incentives which could distort the information they are providing, and if those people making that information available have made it in as broad a case as possible, it is possible, don't you think, that the committee should consider whether attached to that information should be the note, 'If you require independent advice on this matter, you should consult a financial planner'? That mechanism is used very often in legal matters or real estate matters.

Mr Cerche—Typically we do that.

Senator MURRAY—Yes. They say, 'We advise you to take independent legal advice, or independent financial advice.' Surely that is the mechanism if you go into the next stage, which we have just discussed.

Mr Cerche—Typically we do that voluntarily.

Senator MURRAY—But is it in your documentation?

Mr Cerche—Oh yes. Our key feature statements prescribed in the publicly offered statements have those disclosure requirements in them, and typically they gravitate down, and there is no objection to that being prescribed, because it happens.

Senator MURRAY—In this choice circumstance you have outlined to us, have you ever in your experience had complaints from employees who have made one of those choices that they felt they had been wrongly advised or should have gone into another type, and that they have chosen wrongly?

Mr Cerche—I suspect there may be some this year.

Senator MURRAY—You mean the growth people want to go back into the cash area.

Mr Cerche—Yes. They wanted to do so a year ago. The answer to that is no, there is no selling and there is no compulsion and no force. Our experience is quite interesting. Members do not like choice. We offer it, and 80 per cent go into the trustee choice—

Senator CONROY—The default choice.

Mr Cerche—The default choice. With those who choose, one would think that if they can get it 50 per cent wrong each time, they do.

Senator MURRAY—Which might be why they need advice.

Mr Cerche—Indeed; or why they should not be offered choice. There are two things there.

Senator MURRAY—Your messages are not subtle, Mr Cerche.

Mr Cerche—As long as they are clear! The information coming back to us is that there is a concern that people are electing against themselves. Those who elect—and there are very few of them—elect on the basis of very short-term thinking, usually with outstandingly unsuccessful results. This has been exacerbated in the last little while, and a four per cent drop in this morning's market is not going to help. People do have to think about these things and choice is a very dangerous thing when it is sold.

Senator CONROY—We have three positions in terms of these super funds. The first is just the basic administration: 'Here's how you sign up; you have signed a contract, you work for this firm and you are in this fund,' which, as Senator Murray says, just should not be covered by FSR. It is a mandated thing: 'That is the corporate or industry fund or whatever, and you are in it.' The second is the soliciting for discretionary income, when funds go around and actually try to encourage people to put into super. I do not know if corporate funds still do that. I know the industry funds do; I used to work in one, as you would be well aware. I think at that point the person does need to be trained; I would agree that I should be trained if I was doing it now, because I would be making a proposition to somebody about the opportunity cost and saying,

'You are best off in the long term by putting more of your discretionary income than the mandated minimum into this fund.' Would you be comfortable with that?

Mr Cerche—There are a couple of points there. A lot of the more significant funds require the employee to make a contribution, typically of five per cent. And that is the promise: 'If you pay five per cent, we will pay you a pension of 60 per cent of salary.' That is fine. As far as discretionary saving is concerned, it is usually offered but our experience is that it is not taken up very much. Certainly, those who do take it up are at the higher end of the socioeconomic scale and they typically save to offset their surcharge offset account in a tax-effective way: they do not save for superannuation; they save to minimise adverse taxes. So it is really of no interest: we are not interested in funds under management; they do not concern us except for critical size.

Senator CONROY—So you say, 'We have this facility; do you want to put more in the account?'

Mr Cerche—We say, 'Take some advice.'

Senator CONROY—That is probably different from having an officer who goes around encouraging the members on the floor to put money in.

Mr Cerche—That would be financial advice; we do not do that.

Senator CONROY—That would be right. So you say: 'Here is the super fund you have got, and here are the facilities. You can include more if you want; it is up to you. We are not giving you any advice. Go and get some advice about whether you should put in.'

Mr Cerche—In fact we do the opposite. We say, 'These are the facilities; if you want to use them, get some advice.'

Senator CONROY—So that comfortably falls within giving financial advice and should be subject to the provisions of the act?

Mr Cerche—Agreed.

Senator CONROY—The investment choice issue, which you were discussing earlier, falls somewhere in between those two positions. If it is an investment choice purely around the nine per cent mandated minimum, I am trying to think whether or not that would fall within the category of giving financial advice. Again, because there is no compulsion and it is all disclosed, if you say, 'Look, it is up to you which one you want to put it in. We do not care; we are just providing you a menu,' I am not sure that falls within giving financial advice either.

Mr Cerche—Hopefully not. We have been doing it for years in breach of the law, if it does. We do not have any financial interest in the outcome, and so there is no incentive for us to push any particular option. We may be seen as paternalistic but we need to be. It is wrong for people—

Senator MURRAY—That is the essence of the trustee relationship.

Mr Cerche—Exactly. We sometimes feel hamstrung in warning people, because it might be considered as advice. And it is going to be an increasingly onerous obligation to make sure that we do not transgress the law by offering some gratuitous advice—and it is gratuitous—by saying, 'Look, the equities are at an all-time low and economic growth seems to be good, and so you might think it is time to get yourself some financial advice.' Is that financial advice itself? ASIC would argue that it is, and that you would need a licence for that sort of stuff, because it is important. We would say that it is not; it is simply reminding people that they should check and giving them some information around which they can make appropriate inquiries. A lot of our members do not have the facility, the educational skills or the interest to get to that level of sophistication.

Senator MURRAY—To Senator Conroy's question, you are adding a further criterion: if the persons offering the service have no financial interest in the service, they cannot therefore be classified as providing advice—because advice has attached to it the consequences of profit. I do not know whether the act has ever tried to cross that point.

Senator CONROY—They probably would not have contemplated that one; it is a slightly newer strain.

Senator MURRAY—It is; but that is the essence of what you have said: if you do not have a financial interest you offer advice dispassionately, objectively.

Mr Cerche—We do not seek that facility, because we are not capable of giving it. We think that if people do give financial advice they should be skilled. We do not seek to do that because, ever since Hedley Byrne v Heller, volunteers can be sued for negligent advice. We tend to be very conservative in that, and we tend to warn rather than advise. We have no interest in a monetary sense in the outcome but we do, as representatives of the members, have some concerns on their behalf if we think they are exposed, and we would like to think that we could bring that to their attention—and we do, anyway. The reality of it is that if we were concerned about something we would take some sort of action to protect the members. Whether that constitutes financial advice or not would be worked out another day.

We would argue that we have a fiduciary duty to our members—the law imposes that upon us—but we have no financial interest in profiting from the members; in fact we are precluded from that. We are in fact the members and we are trying, collectively, to run an efficient superannuation arrangement for them and for us, within the confines of the law, without exposing ourselves to breaches of the law, because we are typically good corporate citizens. We are confronted with laws which are indeterminate in application. We are deemed to be carrying on a business, even though we do not make profit. In fact, the whole law is structured in such a way that it takes three levels of deeming to catch the typical superannuation fund, and that was what it was there for in the first place. It is silly—daisy chain drafting, in other words. That is a very nice expression; I must use it.

CHAIRMAN—As there are no further questions, we thank you for appearing before the committee today and for your answers to our questions.

[12.44 p.m.]

AGLAND, Mr Reece Graeme, General Counsel, National Institute of Accountants

ORD, Mr Gavan Russell, Technical Policy Manager, National Institute of Accountants

CHAIRMAN—Welcome. We have before us your submissions, which we have numbered 16 and 16A. Are there any errors, omissions or amendments you wish to make to that submission before proceeding?

Mr Ord—Yes. We have an additional submission we would like to table.

CHAIRMAN—We will receive that and distribute it to the members of the committee. If you wish to make an opening statement, please proceed; and then we will move to questions.

Mr Ord—The National Institute of Accountants is a professional accounting body which represents 12,000 members. Our members work in all spheres of the accounting profession, including public practice, and therefore we welcome the opportunity to present our evidence on behalf of our members to this joint committee. The issue of the FSRA regulations is causing great concern to our members. The NIA has developed its opinion that the current regulation affecting accountants, regulation 7.1.29, is unworkable and is in need of amendments and clarification through an ASIC policy statement. We have developed this position after significant member concerns were expressed to us. You will also hear evidence later today from two other professional bodies, the Taxation Institute of Australia and Mr Peter Davis, and you will see that our positions are quite similar. Therefore this submission and the other submissions reflect industry-wide concerns about the regulation.

Our concern—and the NIA would appreciate the support of this committee—is that we wish to ensure that the sector of our membership which offers traditional accounting services—that is, they do not sell financial products—is not inadvertently caught up in a licensing regime when it begins for accountants on 11 March 2004. There are three main points underneath that: we have an overriding concern with the definition of financial services advice; stemming from that is the unworkable nature of the current regulation 7.1.29; and, finally, the failure to date of ASIC to provide clear guidance as to how it will, as the regulator, enforce 7.1.29.

In relation to the legislation, the NIA supports the need for the legislation to license people who sell financial products. This includes people who derive income from advising clients on financial products that they should invest in. The concern the NIA has is with the inclusion, in the definition of financial service advice, of advice that is only of a very general sense, advice on financial products. The difference occurs between an adviser who gains a commission from recommending a certain financial product—who we think should be licensed—and an adviser who is providing general advice on a range of issues, which includes advice that relates to financial products in general.

An example that may help demonstrate this is when, providing advice to a client in relation to setting up a business, an accountant will provide a client with a range of information on tax issues, business structures, managing risks and the various forms of regulation affecting a client.

On the face of it—and this has always been the case in the past—this has not been considered financial product advice. However, in providing advice in relation to business risk, it will inevitably require a decision on the type of insurance and other mechanisms to manage risk. The accountant is not actually telling the client to buy a particular insurance from a particular insurance company; they are telling the client that they need insurance, such as key person insurance. But this is a financial product, and financial product advice.

The accountant is also likely to advise clients on how to manage cash flow. This will touch on advice relating to a financial product. They are not telling the person which product to actually buy; they are telling the person that they need to manage the cash flow and these are the options they can consider. Again, this is considered financial product advice, and so the accountant needs to be licensed. We believe it is important that business people have access to this type of advice. The current regime will mean, over time, that there will be lots of people outside the system—lots of accountants who will choose either to be outside the system or to come in under the system, possibly unnecessarily.

Regulation 7.1.29 sets out a number of circumstances under which accountants are exempted from the licensing regime. The regulation covers many circumstances where accountants provide to their clients advice that would otherwise be, as I said before, considered financial services advice. However, the regulation is ineffective. Subregulation 2 says:

> Subregulation 1 applies only if the service does not involve the recognised accountant making a recommendation, providing a statement of opinion or giving a report of either of those things that:
>
> (a) is intended to influence a person in making a decision in relation to a financial product, a class of financial products or an interest in a particular financial product or an interest in a class of financial products, or could reasonably be regarded as intended to influence a person in that way.

Accountants provide generalist advice on a range of things, and it is quite clear that that influences how people make their decisions. Therefore, subregulation 2 makes regulation 7.1.29 ineffective in a practical sense. It is nigh on impossible to provide the sort of advice set out in subregulation 1 without having an influence on a client making a decision in relation to a particular product or class of products. Even where the adviser has not recommended or even suggested to invest in a particular product, their advice will influence the client in making a decision. As I said before, subregulation 2 is ineffective.

The NIA is of the opinion—and I have said this before—that 7.1.29 is ineffective and unworkable. The NIA supports the intention as set out in the submission of the Institute of Chartered Accountants and the CPA, and we encourage the committee to look upon that submission favourably. The NIA agrees with our colleagues in the other two bodies, and we recommend that the activity set out in subregulation 1—that is, the exemption from the licensing regime—exist, provided that it is provided as part of the normal activities of an accountant and is a necessary part of the activities where such advice is only part of the overall advice that an accountant is required to provide. This should bring accountants in line with the treatment of solicitors under section 766B of the act—by which, somehow, solicitors got out of the act at the very last minute, which is still to be explained to us in a suitable manner.

The proposed exemption for accountants under the regulation should not include those accountants for whom providing financial product advice is a substantial part of their work or where they receive commission or income from a third party for providing that advice.

Removing the current subregulation 2 and replacing it with the subregulation suggested by the other two bodies would make the regulation workable for accountants, although we still consider it to be bad law.

The third point we made is that ASIC have not been willing to date to assist us accountants in understanding how they will enforce the regulation. As a regulator, it is important for ASIC to be more forthcoming in providing advice to accountants, other than telling accountants that they need to seek their own external legal advice. We believe it is unconscionable for ASIC to act in such a manner. However, ASIC have recently come back to us and said in a letter that they are willing to work with us to provide something which is more workable. How can ASIC provide something more workable? They need to provide a policy statement on how they will interpret the regulation and they need to provide clear examples in that policy statement as to how they will enforce the regulations. ASIC again have come back to us and said:

We have found that in some instances examples cause more questions than they resolve …

Once again, that is unacceptable to us. It is good that examples raise questions. This position is diametrically opposed to that of the ATO, another agency under the Treasury portfolio which has no trouble issuing examples of how they interpret the law in their tax rulings.

Senator CONROY—Is it possible to get a copy of that letter, if it is not confidential?

Mr Ord—Yes. We call on the committee to support us and the other bodies in trying to make a more workable situation for accountants and we hope to continue to work with ASIC to meet that aim.

CHAIRMAN—Thank you very much. We will now have questions.

Senator CONROY—The legislation talks about financial advice. Do you understand that ASIC are not in a position to regulate or policy-statement their way out of financial advice? They cannot pass a regulation or put out a policy statement that goes against legal advice as to what financial advice is. I am sure that your own organisation, the other institute and the CPA have also sought and received legal advice, which they tabled at this committee, which basically says, 'This, this and this all constitute legal advice.' A lot of it was defined by CPA or ICA as legal advice. They said, 'This work is financial advice.' ASIC cannot write a note that exempts financial advice.

Mr Ord—Yes.

Senator CONROY—Do we understand that and agree?

Mr Ord—Yes.

Senator CONROY—In your submission to the committee, you raised the issue of ASIC's response to questions from accountants, including yourselves, about the failure to provide those guidelines. Maybe this letter supersedes that. Do you think the letter from ASIC will go some way towards assisting you to have a clearer indication of what ASIC want?

Mr Agland—Yes, we do believe it will. Our initial response from ASIC was that there was no-one at ASIC to tell us whom to talk to; and then, when we found the right person, we wrote to them. Sometimes they responded; sometimes they did not. We sent them a letter recently, on 2 July, to which we actually got a prompt reply. That is the letter that is going to be tabled.

Senator CONROY—Who was that from?

Mr Agland—That was from Pauline Vamos.

Senator CONROY—So Ms Vamos is now the definite contact?

Mr Agland—Yes, she is the definite contact. She has not always responded to our previous correspondence—which is something we have found quite annoying, to say the least. What we want from ASIC is basically to sit down and get a feeling from them, in relation to certain activities of accountants, as to whether they are going to step down and say, 'No, this is financial planning advice. You have to get a licence. You cannot do this.'

Senator CONROY—Again, I come back to the fact that ASIC cannot exempt certain activities from the law that the law has defined as financial planning activities. Your own legal advice has set out a whole string of things where you have said, 'We do this,' and they have said, 'This is financial advice.' ASIC cannot overturn the interpretation of the law—which is possibly why they keep sending you off to see a lawyer. If your own lawyers are telling you that most of the work you do is financial advice, ASIC cannot change this.

Mr Agland—No. But we are saying in relation to the regulation—

Senator CONROY—But a regulation cannot be inconsistent with the law.

Mr Agland—We are not asking it to be inconsistent with the law; we are asking whether there are areas where ASIC do not see a problem with accountants giving this kind of advice, because the regulations say, 'No, that is really just accounting advice.' That is what we are asking them.

Senator CONROY—So you are still trying to get this delineation between accounting advice—to use your phrase—and financial advice.

Mr Agland—Yes. We are trying to find some sort of understanding there, because there are certain activities that accountants do that are really just process work in relation to legislation, where they have to physically do certain things on behalf of their client. We do not believe this to be giving financial product advice but we want to make sure that ASIC are in agreement with us that that is not the case.

Mr Ord—ASIC have, to date, not told us what they are going to do with the regulation. That is the problem. That is what we are seeking now. We are saying it is bad law but we can at least live with the law, if they were clearer in how they are going to interpret it. To date, they have not issued a policy statement or indicated that they are going to do this. They have an existing policy statement 115 on incident advice exemption. Let us use that as a basis, work from that and see what we can do with the new regulation. We have accountants calling us all the time saying, 'Should I be licensed?' This is because they have contacted ASIC and ASIC have said,

'Go and get your own legal advice.' Why should a person who is going to be regulated have to bear the cost? Why can't ASIC assist the general public in their interpretation of the act?

Senator MURRAY—With the tax analogy you used, you are asking for the equivalent of a tax ruling—an industry ruling, if you like.

Mr Agland—Yes. If that were possible, it would be very helpful.

Senator CONROY—Unfortunately, it leads to a lot of problems in the tax industry.

Mr Ord—It does. The use of examples of any tax rulings is seen as a positive by the officials in the industry.

Senator CONROY—In your submission, you claimed that the educational requirements for an FSR licence do not take into account that the educational experience of accountants is a lower standard than is required by the accounting profession. Can you clarify that for us?

Mr Agland—PS146 is quite useful, if you are selling product or you are giving advice in relation to certain products. The problem with that is that some of our members and some of their clients have been told, 'No; accountants cannot give any of that sort of advice. You have to have done PS146.' If the accountant is giving advice in relation to business advice, some of that will involve financial product advice but it also involves a whole raft of other types of advice. Someone who has merely done the requirements of PS146 cannot provide all those other sorts of advice.

We are addressing those circumstances where people who have merely done PS146 are saying, 'Now you can come to us, and we will give you all these other services.' We are saying, 'Hang on! No, an accountant can do that. They have had the previous experience. They have done the appropriate courses in relation to that.' The PS146 requirements really only relate to certain classes of products, but not to more general advice that would have to be given. It was said in relation to that, not in relation to merely giving advice on certain products.

Mr Ord—PS146 requirements are equivalent to a certificate 3 level. The minimum requirement at our professional level is a degree with a major in accounting, which is a very broad area. People who have done these three units of a certificate 3 are now coming out and telling people, 'You cannot see your accountant. I am licensed to give advice. Your accountant is not.' But the accountant has a degree or equivalent qualification, plus years of experience in giving that advice. The person that is a 22-year-old Toowoomba newsagent who has done their PS146 is able to do it.

Senator CONROY—I am glad you said that. Do you think there is any work that an accountant does that they should be licensed for?

Mr Agland—Yes. There are lots of areas where there should be a licence. If they are telling the client, 'You should invest in this sort of product or that sort of product,' then they definitely should be licensed. We do not have a problem with that. We have a problem where, if you are giving a whole range of advice, part of that is merely talking about shares or insurance and you are not giving them complete advice about insurance but are telling them, 'Yes, you need to look at this. Go and see someone.' We do not think they need to be licensed to do that.

However, if they say, 'You need to get insurance—and, by the way, here is this or that product,' that is clearly stepping over the line. That is not traditional accounting type work. That is actually giving them advice that we would consider more as being financial planning advice, and then they should be licensed. But where they are just giving a whole range of advice, we do not believe they need to be licensed. There are definite points where they will be stepping over the line and they should be licensed, and we do not have a problem with that.

Senator CONROY—And 7.1.29 is not explicit enough?

Mr Agland—Because of that restriction, as we were saying, if you give advice on planning a business and someone comes to you and says, 'I want to set up a business,' they will go to their accountant. They will not go to a financial planner to do that. In giving that business advice, they will have to tell them about the various structures that can be used—for instance, a company. If they are going to use a company, the accountant will have to tell them about shares. They are not issuing them shares. They are merely telling them that, if they are going to set up a company, they need to have shares. They will tell them that they need to manage business risk: that will involve insurance; that will involve other financial products. Again, they are not telling them, 'Go out and get this product or that product.' They are saying, 'If you are going to run a business, you need to look at these issues.' Where they will be stepping over the line is if they say to that client, 'Here is this product.' Then we tick the 'no' box: 'You have stepped over the line; you should be licensed.'

Senator CONROY—Asset class, from what you have said, seems to constitute accounting advice.

Mr Agland—Yes.

Senator CONROY—Where I have probably been in greyer area is whether or not recommending a particular asset class is financial advice, even if there is no financial inducement or financial benefit, when they say, 'I think you should put it into super or shares directly or managed investment.' Do you have a line there? I am not trying to put you on the carpet.

Mr Agland—This is what we want to do with ASIC. We want to sit down with them and some practitioners and say, 'Here are all these things that accountants do. We consider that these things need a licence.' And we want to make sure that they agree with us. There will be areas where we will think that they do not need a licence but where ASIC will take a different view. We need to know that they have that view; that is why we want to sit down with them and say, 'This is what we're doing.'

Senator CONROY—To some degree, while it seems to be slow and tortuous, that does seem to be taking place, although your letter indicates that it may need speeding up in getting to the pointy end of what is in and what is out. That seems to be where it is slowly dragging itself to.

Mr Agland—Yes. When we did the original submission, we had had only very sporadic contact from ASIC. We are quite happy with the letter that they gave. We do think this is the beginning of something that we can work with them on, and it will provide some sort of solace to our members that, yes, they can give the advice that they have always been able to give.

CHAIRMAN—Is the issue the requirement to be licensed, or is it the fact that the requirements you have to meet to obtain the licence in terms of the qualifications and training are not consistent with the training that you have received as accountants? Is there a significant difference between the training that is required for the licence and the training you have received as accountants? Or is there a large degree of overlap?

Mr Agland—There are certain degrees of overlap. These people have already expended time and money getting their degrees to become professional accountants. They know the areas in which they give advice. If they have go off and do another course like PS146, that is a cost to them and it is a cost to their clients. If the education that they are getting from PS146 is no greater than what they have already received, what is the point in making them jump through that hoop?

It is the same thing with being licensed. There are a lot of requirements for the licence. It is not an easy process, no matter what ASIC tell us. To date, there have been 34 licences granted, which suggests that a lot of people are trying to figure out what they are meant to do. Accountants are already busy doing a whole bunch of other things. They have to keep up to date with GST. They have to keep up to date with various sorts of legislation already. A lot of them feel, 'I've done this. Why do I now have to go ahead and jump through some more hoops that really aren't going to give me any more skills and won't be any more help to my clients?'

By being members of one of the professional accountants, they already have to have insurance. They have to have a CPE. They are covered by a code of conduct and quality assurance. These are a lot of the things that the licensing requirements are trying to get at. We are saying, 'They've already got these. Why do you have to now go through the expense of being licensed, on top of that?' Those safeguards are there already for accountants.

CHAIRMAN—If there were a way in which ASIC could deem that the qualifications that accountants have are adequate to meet PS146 and therefore they could grant you a licence, would that solve the problem? Or is the issue of the licence itself a problem?

Mr Ord—It is the issue of the licence itself. As I said before, only 34 licences have been granted. That really means that everyone becomes an authorised representative of a licence holder. Many accountants, many of our members, express to us—contrary to what people say—that they do not want to become financial planners; they do not want to become authorised representatives. Why? Because they are then stuck with selling certain products and they believe that it is impairing their independence to give advice. As was said by the Financial Planners Association, if you become an agent of a licence holder, you have to meet certain criteria. You have to sell a certain number of products each year to maintain your agent status. They do not want to say to clients who come through the door, 'Here is your tax return and, by the way, buy this insurance.' They think that will impair their independence. The problem comes back to this: why should accountants be licensed? No-one has been able to explain to us what real benefit there is to the consumer. In fact, there is an increased cost to the consumer for accountants to be licensed. All the protection that the licensing regime is meant to bring in is already there for accountants and members of professional bodies.

CHAIRMAN—Do you believe the problem can be fixed through the regulations or the policy statement, rather than needing to go back to the legislation?

Mr Agland—We think that, if the regulation is further improved, it will allay a lot of the fears that accountants have out there. That is a very important thing for it to do. It is not going to solve everything, but it is going to give some comfort to them about the work that they are currently doing and it will let them know that ASIC is not going to knock them over the head on 12 March and say, 'You can't do this anymore.'

CHAIRMAN—I have one more question regarding the particular issue of the establishing and administering of self-managed super funds that you have addressed in your submission. I think we have had a letter or two about it as well. Other institutions are going around telling clients of accountants that the accountant can no longer do this work. Even looking at the issues that you have raised today, it does not seem to me that there is any way in which you are excluded from doing that work.

Mr Agland—No. We agree that, if you look at the regulation even as it is, that sort of work is not excluded. We want ASIC to say yes and to say to these people, 'You can't keep saying this.' We need a public statement out there to say that the people who are saying this are wrong. That is what we need in relation to those sorts of super questions. We know what the regulation is, but organisations are still going around to clients and accountants and saying no. It is scaring them and it is scaring their clients away.

CHAIRMAN—Is it something that ought to go to the ACCC, then?

Mr Agland—That is another possibility. We think ASIC, as the regulator, should be able to make a public statement to say that accountants can do this. It is clearly within the act. We just need ASIC to make some public statements so that people have comfort in what they are doing.

CHAIRMAN—As there are no further questions, we thank you very much for appearing before the committee and answering our questions.

Proceedings suspended from 1.13 p.m. to 2.00 p.m.

LEVY, Mr Gilson John, Senior Vice-President and Treasurer, Taxation Institute of Australia

CHAIRMAN—Welcome. We have before us your submission which we have numbered 27. Are there any additions or alterations you need to make to that?

Mr Levy—No.

CHAIRMAN—I ask you to make an opening statement and then we will proceed to questions.

Mr Levy—Following on from the NIA, I think our views are much the same and I suspect we are going to have similar views to the CPAs and ICAAs. So, rather than reiterate those, I would like to focus on regulation 7.1.29, subregulations (1) and (2) and reiterate that I do not think they work. I think, in a sense, I am sympathetic to Senator Conroy's view that maybe ASIC cannot do anything about that. What I would like to focus on is why they do not work and how they might be improved.

If you have a look under 7.1.29(2), accountants are broadly exempt if they advise, provided they do not make a recommendation or provide an opinion. That is under subregulation (2). Under subregulation (1)—and there are a whole bunch of paragraphs which I will not go through—they can 'advise' on the preparation or auditing of financial statements, they can 'advise' on the processes of structuring a superannuation fund or they can 'advise' on business planning. There are two issues that come out to me on that. Firstly, does it leave the accountant in a lame position, where they can advise on business planning without making a recommendation? I am a bit confused at 'advising on the preparation or auditing'. Can they only advise on auditing, or can they audit? I think right through that paragraph 'advising' can create some confusion, not only for accountants but for lawyers just trying to interpret it. But let me show that by way of some simple examples, and these examples come from day-to-day practice.

Client A asks for advice on how to structure a new business to be owned by two adult children. I have just thrown in some numbers which are not that relevant but you will see my point. Profit is not that high, $100,000 a year on a turnover of $500,000, growing to $1 million with a profit of, say, half a million dollars. That client goes to an accountant and asks for some recommendation on the best structure they can use to carry on that business from both a prudential asset protection and taxation point of view. The obvious examples that come to mind are you use a company, a unit trust or a discretionary trust. The recommendation that the accountant would make that has experience in this area could be any one of those, but he might suggest a discretionary trust for reasons that small business concessions for taxation purposes are available. But he might also suggest a unit trust because you can still access discount capital gains. He will go through and explain the basic differences in tax rates, the basic differences in asset protection, the basic differences in asset allocation between those three alternatives. The way this reads you cannot do that, I do not think, because you cannot recommend between any one of those three alternatives. I am not sure what he can do. He can perhaps explain that there are three structures and then go to a financial planner and get some advice. That is ridiculous because I suspect that the financial planner would not really know about that.

That was example one. Example two—and I reiterate: these are real life—is a client who holds public company shares in her own name and seeks advice on asset protection, discount capital gains et cetera. The asset protection advice would be to transfer those public company shares to a family trust. There would be taxation issues, depending on who the beneficiaries are, whether the dividends are franked et cetera, but it would be simple, straightforward advice that most accountants would give in their sleep, if I can put it that way. It seems they cannot do it. They can say, 'You can hold it in a trust, or you can hold it in your own name, and you will still get discount capital gain, but I cannot tell you that—I am not licensed to do so.'

Example three is a private company owned by a husband and wife, and they are selling the shares in that company to another company. The profits are to be repatriated before the sale date. In other words, the sale will take the company shares up to the balance date. 'The profit you have earned up to the balance date is yours, and we will take the company over from there.' It happens that the shares on issue in the company do not add up properly because the purchaser only wants 75 per cent of the company and the numbers on issue do not divide well by three-quarters. The recommendation is to issue two extra shares to the husband and wife to make the numbers right so that the public company can acquire the appropriate number of shares—they own 25 per cent and the balance is 75 per cent. Maybe I have that back-to-front: they own 75 per cent and the remainder is 25 per cent.

The other recommendation to repatriate the dividend is to issue a dividend access share so that they can pay the dividends out again on an asset allocation basis to a family trust. You cannot do it; you cannot give the advice, and yet we are talking about shares. That takes me to the next level. That is the problem with 7.1.29(2) about making a recommendation. There should be something done about that—being able to make a recommendation or give an opinion—otherwise the accountant is a lame duck.

Senator CONROY—They are only a lame duck if they do not have it.

Mr Levy—Of course. The point that I am making is that it seems anomalous to me that the accountant who has been experienced in this for a long period of time and that is his business would then have to refer on to a financial planner to make that recommendation. It seems to me that we have apples and pears. We have got the wrong people giving the wrong advice. The next issue is a financial dealing. In those circumstances accountants would normally process the application for shares as in my third example: issue two shares. It is a relatively simple technique following the memorandum and articles, holding an appropriate meeting and issuing the shares. Similarly, in the example with the public company shares, it would be transferred to a discretionary trust. Similarly, in my first example, when you are recommending the structures, the client would normally go through that process and say, 'I think I agree with you; a unit trust is appropriate.' It is normal for the accountant to then put the process in place to issue the units in a unit trust. They do not prepare trust deeds, but the actual physical process of issuing the units in a unit trust is relatively straightforward. That is another problem with the financial dealing following from those three examples. To put it as simply as I can, you cannot give the advice and you cannot do anything.

There is another amazing anomaly in section 76B, subsection (5) of the act: registered tax agents seem to be excluded. If you happen to be a registered tax agent and an accountant you are okay. I will go one step further: you are excluded if you happen to be a registered tax agent but not a qualified accountant—under the act you can be a registered tax agent without being a

qualified accountant. The exclusion seems to be that if you are not giving financial product advice, if it is advice given by a registered tax agent given the ordinary course of activities of such an agent, that is reasonably regarded as a necessary part of those activities. So we have another amazing anomaly that people that may have been tax agents registered since the year dot can do all this; the accountant who has been practising in this area for a long time but is not licensed cannot.

The idea of licensing to give financial advice is a different skill set from the skill sets that I have mentioned. I have no issue with the discussion previously with the NIA people. I am referring to the accountant that is not licensed who happens not to be a registered tax agent, not somebody who has taken the appropriate postgraduate education to advise on asset allocation, investments and so on. Of course they should be licensed. That is what it is all about. I think there are problems with the way it is drafted at the moment. Reiterating Senator Conroy's comments, it is a drafting problem. ASIC may be able to interpret it broadly, but they may not; they may be constrained. Our thoughts would be along the lines of getting rid of the words 'provide a recommendation or opinion' in 7.1.29(2) and perhaps thinking about doing something about getting rid of the word 'advising' in 7.1.29(1) where there are these strange words to the effect that 'a qualified accountant is taken not to provide financial service when advising on the preparation of or auditing of financial statements'.

I do not know what that means. Does that mean that you can advise on the auditing of financial statements or that you can audit financial statements? I think the professions, generally, have interpreted that you can audit financial statements, but why have that word in there? Accountants should just be allowed to prepare or audit financial statements. The same thing pops up again—it goes back to my earlier point about advising on financial structures. Going back to my first example, I can advise on a financial structure of unit trust, discretionary trust or company but it is odd that you cannot say anything else. Have I made that clear enough? I do not wish to expand any further. I think Peter Davis is going to talk about anomalies in the superannuation area so I may as well let him do that.

CHAIRMAN—Was there any consultation with the Taxation Institute of Australia in the drafting of the regulations by Treasury or by ASIC?

Mr Levy—Not that I am aware but I will take that question on notice.

Senator CONROY—Were there consultations about the actual legislation itself? I am coming back to this issue as to whether it is a legislative issue or a regulatory issue.

Mr Levy—I would have to come back to you on that; I am not sure.

Senator CONROY—I appreciate your point about the tax agent as an anomaly. I think that was a concession because it was a reasonably well understood menu of work that people were not trying to capture. You may say, 'No, there are a whole heap of things they do or don't do.' I would be interested if you had a definition, though you may talk tax agents out of an exemption!

Mr Levy—It is increasingly difficult to become a registered tax agent, particularly in recent years, but there are a lot of registered tax agents that have been around for a long time. If you are asking me for a definition—

Senator CONROY—No, what I am saying is that there was a reasonably well defined menu of work and people were reasonably comfortable saying, 'Yes, exempt that because that is not financial advice per se, that is something different.'

Mr Levy—I would answer that a registered tax agent would be somebody that would come into a client's mind as somebody who could advise on structuring for taxation purposes, which is exactly my first example. It would be perhaps unusual for somebody to select other than a registered tax agent to seek that sort of advice although most people practising as chartered accountants et cetera have the double registration so it is not going to affect them. But somebody who practises in the tax area would be somebody who you would expect to be able to make a recommendation. Again, there could be anomalies in that—people acting as registered tax agents and basically limiting their work to individual tax returns and so on. The qualified accountant is best equipped, without exception, to provide the sort of advice that I just alluded to in those examples. Somebody who is not qualified as an accountant, as a financial planner, I suspect cannot be qualified in that area because it is not part of the necessary study to get that qualification. They do touch on it—I know a little bit about the Securities Institute course and so on where they cover these areas but they are covered in a fairly cursory manner.

Senator CONROY—Have you been here most of the morning, Mr Levy?

Mr Levy—No, I got here at about 11 a.m.

Senator CONROY—You have heard a fair bit of the discussion?

Mr Levy—I heard the NIA.

Senator CONROY—In terms of progressing with ASIC, do you have a definition of what you would deem to be accounting work as opposed to financial advice? Are you qualified enough to take a stab at that? If we were trying to progress the discussions between the industry and ASIC, the committee can help in a way. I know those discussions have been going on for two years but I was wondering whether you had a solution for us. I have had a menu of work of about 50 things and I have sat there going, 'Oh my God, my head hurts.'

Mr Levy—I do not have a considered solution to the matter. I am aware of the anomalies. I would reiterate my point: if you can allow the accountant to provide a recommendation or opinion in connection with business structure—the exact wording is, 'provide a recommendation or opinion'—then that, I think, solves quite a lot of problems.

Senator CONROY—So it is a very simple thing to solve the problem you have highlighted.

Mr Levy—From the research I have done, I think that would help dramatically. Others might have a further view, but I think that would be a pretty decent step forward. Then I would have thought getting rid of that word 'advising' in front of every subregulation in 7.1.29(1) might be useful.

Senator CONROY—It is a bill about financial advice. If you take out every 'advise', there would be nothing left.

Mr Levy—You cannot take it out everywhere but you could certainly improve it when you talk about advising on the preparation of auditing financial statements. Why can't an accountant just prepare an audit? There needs to be some work in that area.

Senator MURRAY—My observation is that all you are asking for really is certainty and sensibility, I suppose. You have not asked for the act to be reconstituted or redirected.

Mr Levy—No. It is the regulation that is part of the issue. Coming back to previous submissions, if ASIC was prepared to put an interpretation on the words 'advising on the preparation of auditing', they could say, 'That means you can advise on auditing, you can advise on preparation and you can also do it. That is the way we read it.' It could be read that way, so there is not really an issue there. But I do think the regulation needs to be attended to in relation to providing a recommendation or opinion.

Senator MURRAY—Have you made these points to them?

Mr Levy—I have not personally made these points to ASIC, but the Taxation Institute have.

CHAIRMAN—You have not had a reaction?

Mr Levy—No. We are the same as everybody.

Senator MURRAY—In terms of consultation, has someone from ASIC physically gone and sat down with someone from the Taxation Institute of Australia and discussed the regulations?

Mr Levy—No.

CHAIRMAN—What you have done is reinforce what we heard before lunch, and perhaps that is why there are not so many detailed questions, because a lot of the issues were explored then. Your additional evidence certainly has been very valuable to the committee. Thank you very much.

[2.17 p.m.]

BOWLER, Ms Kathryn Laurayne, Manager, Financial Planning, CPA Australia

REILLY, Mr Keith, Technical Adviser, The Institute of Chartered Accountants in Australia

CHAIRMAN—Welcome. We have before us your submission, which we have numbered 12. Are there any alterations or amendments you need to make to the submission?

Mr Reilly—No.

CHAIRMAN—Can I ask you to proceed with your opening statement and then we will follow with questions.

Mr Reilly—Thank you, Mr Chairman. I will be very brief because a number of the issues have already been raised earlier today. We represent some 135,000 members, and I think it is interesting to put that in perspective. We believe about 4,000 are licensed either as dealers or as proper authority holders. We have a further 20,000 on top of that who are in public practice, so offering their services to the public at large. The remaining members are either in government or working in companies in industry and commerce.

Our concern for some time has been that we are seeking clarity first of all in the legislation to know who has to be licensed and who does not need to be licensed. Secondly, we are really looking at the intent of the legislation, which goes back to the Wallis report. We want to ensure that that clarity is there both within the legislation and the regulations and within any ASIC policy statements or guidelines. I guess that is where we are really coming from. We have appreciated the support we have received from this committee. Previously we have had discussions with ASIC, with Treasury and with government direct. We see the intent of the legislation as being one where licensing applies where you are involved in the financial planning industry as such because, as you have heard this morning with PS146, it is very much a better financial planning type educational regime.

We appreciated the support of the then minister, who said in parliament that the intent of the legislation was to 'reflect the fact that, for the activities for which accountants are traditionally trained, it should not give rise to an obligation to be licensed' and that the regulations and ASIC policy papers 'will, where necessary, clarify that the FSR regime will not adversely impact on the accounting profession'. I would put in at the end that we will not go into a licensing regime which, according to the financial planning regime, is fairly strongly structured. We are appreciative of the fact that the legislation does not come into place until March 2004. That has given us a fair amount of time to go around and talk to our members. Kathy, in particular, has been doing a road show around Australia, and you can see the obvious results of that so far. I have limited my attendances a little less than that, I must admit.

What we are looking for from the committee today is what a number of groups that have already given evidence have asked for; that is, support from the committee to go back certainly to Treasury—maybe even back to parliament; I am not sure—to look at the regulations. We

were very supportive of the amendment that was made in parliament to section 766(5). That brought in lawyers who were granted an exemption; tax agents who were granted an exemption; and also the third part which, subject to the scrutiny of parliament, allowed the regulations to provide exemptions. We were supportive and worked closely with Treasury on regulation 7.1.29, and so we can be partially held to blame for what that says. But, again, that was done fairly quickly; it was a very quick process. It was designed to reflect the intent of the financial services regime that licensing applied where you were effectively giving financial product advice that led to recommendations and a product being purchased or sold. That is where we were looking at.

So the list of activities in 7.1.29 was designed to say that, if you were doing an audit, you did not have to become licensed and pick up all of the financial planning type requirements—the educational requirements, the experience and the competence. Senator Murray and Mr Griffith may well argue to the contrary at times when looking at public accounts inquiries, but auditors have to have competence in terms of auditing; they are not required also to have competence in terms of financial planning per se. That is what we are looking for from the committee today.

I also draw attention to the fact that the term 'recognised accountant' does not pick up some of the overseas organisations that have members practising in Australia. In particular, I think the New Zealand Institute of Chartered Accountants has made a separate submission to the committee; it has also been dealing with ASIC. I suppose the challenge from ASIC's point of view—Senator Conroy made it fairly clear—is that ASIC is in the position of having to provide interpretation of the legislation and the regulations as it sees them today. I have some sympathy with ASIC having a degree of difficulty in giving clarity but, at the end of the day, someone has to do that. We are working with ASIC so that we will arrive at some type of industry guide—best practice guide or code, call it what you may—which will list the sorts of activities that either do or do not require licensing. Already we have picked up some that it appears perhaps do require licensing; but it was not, we believe, the intent of the legislation to do that. So we are happy to work with ASIC there.

What is a little disturbing though, having just seen the document tabled today, is the statement in the last paragraph of ASIC's response to the NIA. That statement seems to be quite contrary to what we believe is the intent of the legislation. It says:

> Most accountants would be either advising or dealing in financial products or both. Their license would cover these services ...

I read that as ASIC basically saying that accountants need to be licensed. I think we have a problem with that because the licensing mechanism is not designed to pick up the competencies that accountants provide—or lawyers, by way of example. We believe that the statement 'for most accountants the cost would be minimal' is factually incorrect. Kath, you might like to pick that one up very quickly.

Ms Bowler—Certainly CPA Australia is exploring the option of obtaining our own licence. In that process we have looked at the possibility of a limited licence where no product advice is given, and you are looking in the realms of $12,000 to $15,000 per annum per adviser. The fact is that no-one else will give our members a licence, because they are not selling product and making money for them. Most licence holders run at a loss; they are a loss leader and make their money through the product. If we were to establish this, it would be simply as a service to

our members. But we would have to have fairly strong compliance measures, because we could not afford it if ASIC came and revoked our licence. So we certainly would disagree that the cost is minimal.

Senator MURRAY—How do you arrive at that $12,000 to $15,000?

Ms Bowler—Many months of costings of the staff, the annual compliance, the audits and the research that you would have to have in place.

Senator MURRAY—Is that for anyone who would want to be licensed?

Ms Bowler—For licence holders who were giving financial product advice, the cost probably would be double that.

Senator MURRAY—You are saying that, if 150,000 accountants had to be licensed on a broad determination, you would multiply that by $24,000? Surely not.

Ms Bowler—Certainly our professional organisation would not look at putting compliance measures in place at a lesser cost than $12,000 per adviser, because we do not believe that we could expose our brand—

Senator MURRAY—You have come back from the doubling of it.

Ms Bowler—But there would be a doubling. If you were giving financial product advice, they would need additional training. There you are talking about 30 to 40 hours per year, per adviser; and you are looking at two compliance audits per year, per adviser, as well as spot audits, research and software.

Senator MURRAY—But we need to understand the industry cost. I think this is the first time we have ever heard of costings for implementation.

Ms Bowler—To have a fully authorised representative, we are looking at costs of around $25,000 to $30,000 per annum on a cost recovery basis. Largely, your cost is eaten up, as I said, by compliance, software and research. Just to give you an idea: to outsource, you need the software because that puts in a lot of the mechanical compliance checks. If you are running a licence not just in the one office, you need to have compliance checks in place—

Senator MURRAY—Are you both accountants?

Ms Bowler—I have a financial planning background.

Senator MURRAY—So you are good with maths. Does that come to $3.6 billion: $24,000 x 150,000?

Mr Reilly—I would have to defer to you on that one, Senator Murray.

Senator MURRAY—It seems an awfully big figure. I gather that it is either $360 million or $3.6 billion, one of the two.

Ms Bowler—No-one will license our members—

Senator MURRAY—Has anyone got a calculator?

Mr Reilly—Kathy is a financial adviser and I am not registered.

CHAIRMAN—It was 150,000.

Senator MURRAY—I am not joking about this. I want to know whether you have arrived at credible figures, and then I want to be able to extrapolate from them.

Ms Bowler—As I have said, we are exploring our options. These are draft papers. I am simply giving you information that we are testing.

CHAIRMAN—It is $3¾ billion.

Senator MURRAY—It is, yes.

Ms Bowler—An authorised representative pays $25,000-plus.

CHAIRMAN—That is if they are fully licensed to do everything.

Ms Bowler—Fully licensed.

CHAIRMAN—But you are talking about the limited one of $12,000.

Ms Bowler—No-one gives a restricted licence. We have looked at the possibility of a restricted licence and what we could cut back on, and we believe that the cost would be around $10,000 to $12,000 per annum. That is a cost recovery only and, as you can imagine—

Senator MURRAY—For the purposes of the record, you are telling us—I appreciate that it is a rough estimate at this stage—that, if it varied between $12,000 and $24,000 per accountant, and if every member of a notional 150,000 accountants had to be licensed in one or other of those forms, the price would be between $1.8 billion and $3.6 billion to the industry. Is that what are you saying?

Ms Bowler—Yes. I am also saying that the professional association has not even made a decision as to whether it would be prepared to take that risk on. If it does not, there are no other alternatives for these people in the marketplace. You can imagine this is a fairly major decision for the organisation to consider. Because of the way this industry is structured, it is the licence holder that bears the risk of the authorised representatives.

CHAIRMAN—So you are contemplating that the chartered institute, for instance—

Ms Bowler—CPA.

Mr Reilly—We are not joined on this one.

CHAIRMAN—the CPA, becomes the licence holder—

Ms Bowler—It would set up a completely separate subsidiary, which would be the licence holder.

CHAIRMAN—And then every single accountant would be a licensed representative.

Ms Bowler—They would have the choice of then joining and paying that fee. It would not be a compulsory thing by any stretch.

CHAIRMAN—That is the way it would operate.

Senator MURRAY—And the fee would be $12,000.

Ms Bowler—That is the fee that we are currently testing.

Mr BYRNE—That is a licence fee, is it?

Ms Bowler—That is an authorised representative. They would become an authorised representative and they would not be able to give any specific product recommendations.

Mr BYRNE—And that excludes training and arranging the other software and staffing issues.

Ms Bowler—That includes training. They probably would not get access to the software because you do not need the software, depending on the—

Mr BYRNE—Are you saying that they would need 30 to 40 hours each year as part of—

Ms Bowler—Full licence holders would. If you were on a restricted licence you could cut that back, and that is why the cost is only $12,000.

Mr BYRNE—And no exemption to reduce that cost has been mooted with any of these people in light of the qualifications of an accountant? Have you had discussions about that?

Ms Bowler—We are dealing with them on the basis of separate issues. Once we work out what is in and what is out, we want to help our members if they are caught in the regime. We do not believe that our members who are undertaking traditional accounting activities should be caught in the regime, and we will continue to lobby on this. The intention of 7.1.29 we agree with; we just believe that there is a drafting issue. If we go down this path, it is not our intention that the activities in 7.1.29 be covered by any of the licensing opportunities we are looking at.

Mr Reilly—CPA Australia has been doing the work in terms of setting up a licence to perhaps overcome some of the issues connected with what exactly the legislation requires. Let us take the ASIC statement that most accountants would either be advising or dealing with financial products. If we exclude those who are already licensed and who are giving financial product recommendation so that this is purely to cover a licensing regime for financial advice, they are the sorts of costs you are looking at. In previous evidence it has given to this

committee, in statements or in discussions with us, I do not believe that ASIC has taken the view previously that accountants generally need to be licensed. ASIC is certainly not geared up with its licensing regime to be able to suddenly license a whole stack of accountants and, you would argue, a whole stack of lawyers as well—because the distinction between accountants and lawyers in some of the interpretations is not all that clear.

I suppose we are saying that we do not see licensing as a credible alternative. However, we believe that the intent of the legislation generally was not to capture our particular members who are providing what we call 'traditional accounting advice'. We would be more than happy to work with the committee, as we are working with Treasury now, in refining some amendments to the regulations. What we are really looking for from this committee is support to say that we are on the right track.

Senator MURRAY—If that is the case, why would Pauline Vamos, the director of licensing and business operations for ASIC, say that for most accountants the cost would be minimal?

Ms Bowler—I will have to talk to Pauline about that, and I do have regular conversations with her. 'Minimal' certainly does not describe the cost we have come up with.

Senator MURRAY—If she is correct—I am not saying she is or is not—in saying that most accountants would be either advising or dealing in financial products, or both, the consequence is that most would have to be licensed. If she is correct—I am not saying she is or is not—that for most the cost would be minimal, then it is a question of the agro arising from having to learn and go through the whole thing. However, if she is incorrect on either of those things, you have a very high cost and compliance consequence.

Ms Bowler—I certainly believe that she is correct in her first statement, as the reg 7.1.29 currently stands.

CHAIRMAN—Accountants are caught?

Ms Bowler—Yes; and that is why we need to fix the regulation. In relation to her second comment, obviously we are doing a fair amount of work into the cost. We would never set this up to issue licences to 12,000 CPA members; that is not the intention. But it is the intention for those practitioner members who want to go beyond traditional accounting activities but perhaps not the whole way to financial product advice. We are not viewing this as a solution to FSR. We believe that 7.1.29 needs to be amended so that our members who are giving accounting advice can continue to do so. Our membership is wide and broad, and we have members who are in financial planning and those who are moving into it. We need to support our 3,000 members who are going into financial planning. We have a lot of members who are making a career change into financial planning, but we still have a significant number of members who are outside of the regime and want to stay there.

CHAIRMAN—But if 7.1.29 is not changed, then all of your members would have to go down this path of the $12,000.

Mr Reilly—Let me try and answer that one.

Ms Bowler—I do not think we would offer that solution. If you said that all our members had to be licensed, we would not put that up as a viable solution. I do not think there is a solution.

Mr Reilly—The way I take it is that the intent of 7.1.29 is quite clear in the same way that the intent of section 766(5)(a), (b) and (c) was quite clear. So we have been saying to our members that we believe that the regulations, with some finetuning and some commonsense interpretation, will not require them to be licensed. But there are other people and legal opinions that say, 'We are not sure you are correct.' It is in the market's best interests to have clarity as to just who has to be licensed and who does not. At the end of the day, ASIC can issue policy statements, and we can agree or disagree with them. However, it is not the way it should be done, and that is why we want to work closely with ASIC. To be fair to ASIC, they are probably bound by the way they are reading the particular terms there. Treasury were quite clear when we speaking to them very late last year that they were happy to go back and look at any anomalies, intended or otherwise, and we think that is the right way to approach it. So we are saying that licensing per se is not really the answer to the issues we have looked at.

In the same way, in the evidence given earlier about superannuation and trustees of superannuation funds the question was asked: why you would require them to be licensed? They are simply acting as trustees and they are getting independent licence advice in terms of strategy and choice, and that is fine; that is the way it should be. But if the trustee is purely acting as the representative of the employees or the employers, then licensing does not really make any sense. So what we are seeking is clarity in the legislation and that the intent of the legislation is reflected in the actual application.

Ms Bowler—I have had several meetings with Treasury, and we are basically working through each part of 7.1.29(1) to identify in more detail the activities conducted by accountants and then to try to identify if accountants give specific product recommendations. You have already had examples of that. When they set up a company, there will be a specific product recommendation, whether they are giving a class of product recommendation—a good example of that is insurance, when they are telling them they need directors and officers insurance—or whether they are dealing, and the example you had of that is when they transfer shares from one party to another. Treasury have advised that, once we can work through these examples in more detail, they would be prepared to perhaps work up some alternative wording for the regulation. I have also had meetings with ASIC in which they have advised that they are going to remain silent on the regulation, because they know that it needs to be amended and they would rather comment after the amendments than before them. So unlike some of the other bodies, I have had several meetings with ASIC and Treasury on the issue. At this stage, we are being cooperative. We are certainly looking for support from this committee to progress this, because it is such a major concern, as I think you have heard from everybody involved in the accounting profession, that this regulation be fixed so that it is workable.

Senator CONROY—Can I just clarify. I spent two years working on this legislation; I had discussions on it and spoke on it, and its intent was to license financial advice. The legal advice tendered by your organisation, Mr Reilly, made it quite clear that the definition of traditional accounting work incorporated giving financial advice. Therefore, I am at a loss to understand why you think that the intent of parliament was not in some way to license some of the work that accountants do.

Mr Reilly—I would have to go back to the Phillips Fox advice, which I think you are referring to.

Senator CONROY—Yes.

Mr Reilly—My understanding of the Phillips Fox advice was that the wording used in the legislation was not clear; that it could be interpreted either way. Certainly, if you go back to the Wallis committee, their recommendations were quite clear. They said that accountants and lawyers should not be required to be licensed, because they were operating under a separate regime. That is why I have argued, certainly in discussions that I have had with Treasury and with the government at the time, that the intent of the legislation was not to encompass lots of accountants. If it was, then I think we would have gone down the path of looking at a licensing regime and the costs involved. I would like to think that, with the sorts of examples that we had, the costs involved would have been looked at a lot more closely. Again, it is in terms of the accounting activities; it is about the activities that accountants provide and that lawyers provide as well. Where the activity is clearly something for the consumer, that you need consumer protection for—where you are giving product type activity recommendations—and you are involved in that decision process, then you are correct, Senator: licensing certainly was the intent.

Senator CONROY—I am not quite sure that I can agree completely with you. I think the word 'induces' is in the legislation: 'if you give advice that induces the purchase of a product'. You do not actually need to be advising on a product. I think that is quite clear in the legislation. This is not legislation about giving advice about a financial product; it is about inducing people to buy a financial product. The word 'induces' makes it much broader.

Ms Bowler—It is very broad.

Senator CONROY—It was the clear intent of parliament for the word 'induces' to be there.

Ms Bowler—I do not think we disagree that some accountants—I think it is evidenced by our membership—do give financial planning advice and need to be caught by this regime. But some accountants do not give financial planning advice. We are trying to capture the activities of the accountants who should be outside of the regime, rather than focusing on the term 'accountant' or 'financial planner'.

Senator CONROY—You use these words separately. Most people would not necessarily understand the difference between them, but clearly you would. You talk about 'financial planning advice' and 'accounting activity'.

Ms Bowler—Yes.

Senator CONROY—Fundamentally, this is a turf war. Let's not muck around. You are trying to get as much of your activity excluded from the legislation as you can; other organisations want to try and get as much included as they can. I agree that there is financial planning advice and there is accounting activity. We are all trying to get to some sort of agreed definition. I do not agree with your concept of 'traditional accounting activity' because, on your own legal advice, traditional accounting activity covers financial advice. I do not think you will win an

argument that says, 'Right, everything we've always done should be exempted.' That will just not happen.

Ms Bowler—I think we have got there though. With 7.1.29(1), largely the activities described are those we are talking about for which accountants should not have to be licensed. It is the way in which that regulation is drafted and set forth. People who have appeared before have said it is with subregulation (2) that the problem lies.

Senator CONROY—Are you talking about your proposed amendment or the one that exists at the moment?

Ms Bowler—No. The activities listed in regulation 1 we have not really touched in our redraft. We are talking about redrafting in connection with whether it is 'advice on'.

Senator MURRAY—Just to be clear for the *Hansard*: you are referring to pages 7 and 8 of your submission?

Ms Bowler—No. I am referring to regulation 7.1.29(1).

Senator MURRAY—In our papers we have pages 7 and 8, on which your changes are highlighted?

Mr Reilly—Yes, that is correct.

Ms Bowler—Yes. The activities (a) to (h) we have not changed. We are not talking about changing the activities that were agreed upon last year. We are talking about our need to amend the wording. For example, we are not talking about changing 7.1.29(1)(a) 'advising in relation to the preparation or auditing of financial statements'. Potentially, we need to look at the words 'advising in' and then at the wording of regulation 2. The best of the examples is 7.1.29(1)(h), 'advising on business planning, including advice in relation to the establishment, structuring and administration of a business'. We still support the list of activities. It is when you get to regulation 2, which says that you cannot give financial product advice. Setting up a company is giving financial product advice, which negates all these lists in (1). Largely, I think we have the activities and we are not disagreeing with them.

Mr Reilly—Senator Conroy, perhaps I can come back to you about 'a turf war'—and I emphasise the word 'turf'. 'Advising on business planning, including advice in relation to the establishment, structuring and administration of a business' is financial advice. There are no two ways about it. That is what the client comes to the accountant for. He says to the accountant, 'Can you give me advice, financial advice, on business planning?'

If the client goes to see a licensed financial planner then the client is saying something quite different to the financial planner. The client is saying either, 'Structure me a financial plan,' or 'I have a financial plan. I now want to put products in there; please help me out along the way.' These sorts of things—such as advising on business planning—are not done by licensed financial planners. They are quite properly done by accountants. In the same way, you would go to a legal adviser, a lawyer, to get advice.

In terms of part of the establishment structure and administration of the business there would be some legal advice that would be sought there too, which again would be financial advice. In relation to 766A(5)(b)(i), which gives the exemption for lawyers, even the lawyers are saying, 'We can give advice in terms of legal advice, but can we give legal advice in terms of structuring a business?' We would argue that of course you can; but there is some argument that because it involves a financial product you may have to be licensed. That is the issue.

Senator CONROY—I will run down the list, (a) to (l).

Mr Reilly—Those are simply by way of example.

Senator CONROY—I understand that. No-one is being bound by this discussion. This is for my clarification and that of the newer members on the committee. This may help to understand the rationale behind this because it is the key part of the argument. The first paragraph says:

(a) advising in relation to the preparation or auditing of financial statements;

I am not sure that anyone would argue with you that this is traditional work and I do not think a financial planner would want, or be qualified, to do it.

Mr Reilly—I will give you a real life example that has been raised by our members. If you were the auditor of a major bank—banks were mentioned this morning—the bank would say to you, 'We're going to restructure part of our business; we're going to buy something. Can you give us financial advice about the impact of that in terms of your audit?' There is no doubt that in the past that is exactly what the auditor was required to do. We want to make sure that the auditor is not in some way being seen as giving financial advice that is caught by the FSR regime.

Senator CONROY—So economic restructure there would have an impact on the accounts. That may be hairier in terms of financial advice. I am just working through this in my mind.

Mr Reilly—Yes.

Senator CONROY—The next part says:

(b) advising or acting in the capacity of a controller, administrator, receiver, manager, liquidator or trustee in bankruptcy in relation to the administration (including the disposal) of an entity or estate;

If Mr Breakspear were sitting here would he argue that that would be work that he would want to do?

Ms Bowler—No.

Mr Reilly—No. Both of those activities require separate government registration, anyway.

Senator CONROY—The next paragraph says:

(c) advising on the financing of the acquisition of assets that are not financial products (for example, advising on the advantages and disadvantages of financing alternatives such as leasing and hire purchase);

Can you talk about that?

Ms Bowler—Potentially that is something that could be done but I think it is quite clearly excluded by the definition of what is not a financial product.

Mr Reilly—We struggle a little with what an asset would be if it is not a financial product. These are by way of example.

Senator CONROY—I am, like you, struggling to understand how that could possibly not be financial advice. The next paragraph says:

(d) advising on the processes for the establishment, structuring and operation of a superannuation fund within the meaning of the SIS Act;

Would financial planners say that is their work?

Ms Bowler—More often, no.

Mr Reilly—What the superannuation fund invests in clearly is—

Senator CONROY—It is a different issue entirely. The next paragraph says:

(e) advising on debt management, including factoring, defeasance and the sale of debts;

To me, that would fall inside financial advice.

Ms Bowler—Again, that is not a financial product so we are not worried about that one.

Senator CONROY—Managing debt is financial advice.

Mr Reilly—Yes.

Ms Bowler—Managing debt?

Senator CONROY—Advising on debt management.

Ms Bowler—Credit facilities.

Senator CONROY—Most ordinary people would think helping to manage a credit card, or anything above a credit card, would be financial advice.

Mr Reilly—Yes, except that (1) is saying that this is a circumstance in which a recognised accountant is not providing a financial service.

Senator CONROY—I was trying to avoid getting an interpretation of what the hell that means because that can mean anything to all of us.

Mr Reilly—I thought that meant that if you were doing these things you weren't covered by the regime. That was the intent that I inferred.

Senator CONROY—I am sure that is the intent you worked on. Maybe other committee members would have a different view but I think advising on debt management is a very broad financial advice issue. That is a purely personal, non-expert view. That is why I am trying to understand where the differences are. The next paragraph says:

(f) advising on taxation issues, including in relation to the taxation implications of financial products;

I think we canvassed that one earlier. We heard about the taxation exemption.

Ms Bowler—Financial planners cannot do it.

Mr Reilly—In paragraph (f) you need to be careful with the term 'registered tax agent' because you are only required to be a registered tax agent when you are involved in the preparation of a tax return.

Senator MURRAY—And the lodgment.

Mr Reilly—And the lodgment, yes.

Senator MURRAY—In fact the key thing is the lodgment, not the preparation.

Senator CONROY—Going to (g), I have to say that I cannot understand how that is not financial advice.

Mr BYRNE—Paragraph (g) is standard bread-and-butter financial planning advice.

Mr Reilly—Hedging in terms of the business.

Mr BYRNE—Hedging, but risk management.

Senator CONROY—Why would an accountant be any better in terms of hedging than anybody else? Where would an accountant—and I have not done three years of an accountant's course or any of your training courses—do a hedging course?

Mr Reilly—Where do we run a hedging course?

Ms Bowler—That is not hedging, but this is the one that has come up, actually, through the road show that I am conducting. We have a situation here where, if an accountant gives advice on insurance and a class of insurance—for example, you need directors and officers insurance—that is a financial product. If they do not give that advice, they are negligent and can be sued, so they are damned if they do and damned if they do not.

Senator CONROY—Sure. Let us take Pasminco as an example, or we could take the federal Treasury in its capacity to run a hedge book as well. Let us stay with Pasminco for simplicity. Hedging is an extraordinarily complex financial advice issue, and I would not have thought your members would have wanted to buy into a hedging-style debate, given how complex, costly and dangerous it can be.

Ms Bowler—Some of the accountants—and I will have to take this one on notice—who are advising in rural areas with farming crops, which is how I think hedging may have begun, may give some advice on forward contracts for their crops.

Senator CONROY—I am not saying that they do not do it, but why would that not make that financial advice?

Ms Bowler—It is something that accountants and financial planners would do.

Mr Reilly—I guess what we are saying is that there is a cover—

Ms Bowler—There is an overlap, yes, and that would definitely be one.

Mr Reilly—If you are looking at the way companies operate, companies operate in a risk environment as part of their economic model; therefore they will use a range of different advisers to assist them. The typical small business uses an accountant to provide taxation services, accounting services and maybe some auditing services as well. The accountant is the first port of call for most issues that are raised, and managing risk is part and parcel of what accountants are involved in day in and day out. We have our own ethical rules that state that, if you are not competent to give that advice, do not give it. There may well be examples in complex hedging issues where that would be referred back to an expert in hedging. I question today whether those experts are necessarily licensed and, if they are required to be licensed—

Senator CONROY—Whether they would still be around.

Mr Reilly—whether 146 has anything to do with hedging. I suspect it does not.

Senator MURRAY—Let us ask a question related to past events, I think in the 1980s. Let us assume a bank offers customers a foreign currency debt arrangement.

Mr Reilly—Swiss.

Senator MURRAY—Swiss would be a good trigger. They offer that, and the farmer goes to his accountant and says, 'Accountant, should I take up this Swiss hedging deal from the banks?' The accountant says, 'That is a good idea.' And this did occur. Surely that is giving financial advice.

Ms Bowler—Yes.

Mr Reilly—Let us go back to that particular example because I had a number of members in the mid 1980s who suddenly wanted to know about the Swiss franc and foreign currency, and particularly from rural industries. They raised it because a particular group were doing a sweep around Australia, particularly in the rural areas, converting Australian dollar loans into Swiss francs. Our members were saying, 'Yes, that is fine, but there are risks involved in doing that. As well as the interest rate differential'—and it was positive in terms of the Swiss franc loans—'there is a risk of currency moving.' Therefore, my members were going back to the businesses that were asking the questions and saying, 'Make sure that you are aware that it is not the interest rate by itself now that you are going to have to manage; it is also the foreign exchange

risk that you are going to have to manage.' I think history proves that the foreign exchange risk was in fact not managed at all well.

Senator MURRAY—In those circumstances I have no problem with the accountant giving the advice but I would expect the accountant to be licensed. That is all. I think that is the point that Senator Conroy is making. In the interpretation of that line, particularly with the use of that as an example, I think you really do walk on thorns.

Senator CONROY—I am just trying to understand someone who has a three- or four-year accounting degree.

Mr Reilly—I understand. In the three- or four-year accounting degree, the CPA qualification and in the institute's CA program, those types of risks are explored in some depth, so we would argue that our members are appropriately qualified to give that broad advice in terms of picking the specific product. I think you have been looking at something quite different. In terms of broad advice, I would agree with you; our members certainly would have done that in the past and would expect to continue to be able to do it. That may well beg the question of whether we then enter into a licensing regime.

Senator CONROY—Paragraph (h) of regulation 7.1.29 says:

(h) advising on business planning, including advice in relation to the establishment ..

I do not know enough about that to make any sort of judgment.

Ms Bowler—That is not something that our financial planner would normally do. My background is in financial planning.

Senator MURRAY—As you know from my background, I have been heavily involved in this, and I would agree that this is the work of a typical accountant.

Mr Reilly—In terms of business planning, Senator Murray, I would also argue that that has to take into account the risk management process, because in going through and advising on business planning you have to take into account that, if you go into a partnership, there are certain advantages but there are also certain risks. If you go into a company—

Senator MURRAY—But you are doing that in the generic sense—what gearing you can cope with, what amount of debt or equity you need to raise et cetera.

Mr BYRNE—In terms of business planning and the one previously, isn't part of risk management taking up various insurance products?

Ms Bowler—Yes, this is the one that is causing a lot of concern for our members in that they do not believe they should have to be licensed to give advice in relation to insurance when, if they do not give that advice, they could be found negligent and sued. There is also a concern about compulsory insurance. When I got legal opinion, I got a page and a half saying that potentially it depends on which state you are in and that sometimes you can give advice but sometimes you cannot, which is clearly unacceptable. Our members have to be able to give

advice that when a business is set up, a range of compulsory insurance is needed. They should not have to be licensed to say that, because they are negligent if they don't.

Mr Reilly—I will draw the distinction there—that is, I expect our members would advise on whether or not you need insurance and then in terms of which insurance policy you pick. That is the financial product and hence, Senator Conroy, I am heading back towards financial product, where I am a lot more comfortable. That is clearly a licensing issue. Having said that, the client may well come back to the accountant and say, 'Okay, I've had these three policies; can you do an analysis of each of them?' Is that factual advice? I would argue it could be but, at the end of the day, the client is effectively going to say, 'I can add up the pluses and minuses as well as you can; which one should I take?' More importantly, if they are recommended a particular insurance policy, the accountant might say, 'Do you realise that doesn't cover this, that or another risk along the way?' These are the sorts of things that happen day in and day out.

Ms Bowler—These are the sorts of things on which we are working with Treasury to say, 'In relation to that risk management, our accountants give class of product advice without being licensed; whereas when they are setting up a business they will give specific product advice because a company is a specific product.' We are trying to work with Treasury with each one of these to identify whether it is a class or a specific product for which we need to get an exemption.

Mr BYRNE—In most circumstances the person will rely on the accountant's advice. They will ask, 'Which one do you think is the best product for me?'

Ms Bowler—They will need to be licensed to comment on a specific product, not that there are many around—AMP or GIO et cetera insurance. That is where you need to be licensed, but they should be able to comment that they need a particular type of insurance.

Mr BYRNE—So what would happen in that case? You would refer them to a financial planner?

Ms Bowler—Yes.

Mr BYRNE—In every case.

Ms Bowler—Or an insurance analyst.

Mr Reilly—An insurance analyst, who one would argue needs to be licensed. At the end of the day, it might be just the choice of terms—that is, 'I can't give you the recommendation that you should take this policy over that policy.' It will be, 'You need to go and assess that and make a decision; I've told you what areas it covers or doesn't cover.' So, in terms of the use of words, it can sometimes be quite important under the current legislation. ASIC, in one of their policy guides, have actually said that you should use a disclaimer, so I have been promoting to my members: 'By the way'—at the bottom—'I am not giving you specific financial advice or'—as I call it—'a financial product recommendation. If that is what you are after, go and see a licensed financial planner.' I think that is good; it makes it quite clear. But ASIC have also reminded me that you cannot use that to say, 'Buy Newscorp shares, sell NAB shares; and, by the way, I don't think this is financial product advice, but, if you want that, go and see someone else.' I think you have to use a bit of commonsense in that area.

Senator CONROY—What about due diligence?

Mr Reilly—The due diligence ends up with a recommendation. You have gone through and done a due diligence exercise, and if you have done the due diligence exercise for, let us say, HIH and FAI, you would have come up with a recommendation.

Senator CONROY—Did you?

Mr Reilly—No.

Senator MURRAY—The point there is that, if you have forced someone to go to a financial planner for due diligence, you would actually be harming the interests of the person. You actually want them to stay with the accountant.

Senator CONROY—The next one I do struggle with—valuing the assets.

Ms Bowler—Again, that is not normally something done by financial planners.

Mr Reilly—This is where you have a business and you want the accountant—

Senator CONROY—Is it something that is necessarily restricted to accountants?

Mr Reilly—Accountants tend to do it because the accountant will be asked, 'I have this business; can you value it for me?' The assets are in there at whatever the Australian accounting standards allow—or the international standards in due course—

Senator CONROY—Let's not go there!

Mr Reilly—Let's not go there. They ask, 'What can I sell it for?' The accountant will say, 'We've totalled up the assets and the liabilities, and this is the value we've arrived at.' Then you may go a step further and say what businesses in this industry are predominantly selling at—whatever that figure is. That is when it starts getting a little bit murky. In terms of the actual accounting advice, I do not think your run-of-the-mill licensed financial planner would want to go in and say, 'I'm now going to value debtors and creditors.'

Senator CONROY—I am not sure that I would exempt valuing of assets from financial advice. I would struggle, irrespective of who was providing it. I am not interested in the camps, the war and the turf; I am interested in the issues that they deal with and the advice that they give.

Senator MURRAY—I would like to put this question to you because it is an important one. If you do not keep it out—if you put it all in one camp or the other—you have this problem. In my wide and long experience, the difficulty is with the valuation of assets which are not readily ascertainable objectively in the market. Take, for instance, shares—you look at the 30 June list and you have got the share price.

Senator CONROY—Yes, look up the newspaper and you have the value.

Senator MURRAY—In nearly all cases the accountant, if they cannot marry assets to some kind of cost measure, historical cost or otherwise, will refer the client to an independent valuer and say, 'Value that building,' or, 'Value that car.'

Senator CONROY—To me it is a value, and that is financial advice.

Senator MURRAY—To me, the experience with accountants and valuers is, traditionally, that they actually lock on very well presently and I would suggest to you that it can be both in here and in the financial area. It does not need to be in one or the other.

Senator CONROY—I think it should be part of a licence. I do not care who does it.

Ms Bowler—Accountants would argue very strongly against that because this is something they do all the time.

Senator CONROY—I am not arguing that it is not traditional work. I am not starting from the point, 'This is my traditional work and therefore it should not be licensed.' I am saying it is the sort of work, I think, which probably requires a certain standard.

Ms Bowler—The training you have to complete is PS146. If I have done all the PS146 training, which I have, I still do not have the skills to value the assets. The only place I can pick that up is in my accounting training.

Senator CONROY—Is that three years at university or the separate courses that you run?

Mr Reilly—Both.

Ms Bowler—It is accounting qualifications that will teach me how to value assets.

Senator MURRAY—Can I make a further intrusion?

Senator CONROY—Please.

Senator MURRAY—Senator Conroy has got something here, if you are looking at acquiring something. It is like an investor going in and wanting to buy something. You have to distinguish—and that is where this is indistinct—between valuations which are of something you own but which need a valuation and valuation of something which you do not own or already have but which you wish to acquire. In the instance I gave it is quite common for the accountant to do the whole job for a business that I own or for assets that I have, but with businesses that I do not own or assets that I do not have they will quite often refer you. I think it is in that category that your classification of it as a financial product is accurate.

Mr Reilly—If I could test that out. We agreed in:

(i) conducting a due diligence on a business ...

I am not too sure there is often a lot of difference between that and:

(j) valuing of assets of, or shares in, a business.

Again the accountant may have simply been providing a set of accounts or financial statements—not doing any audit or verification whatsoever—or simply providing tax information that goes into a tax return. The owner of the business will then say, 'You are my accountant, can you go through and do a'—I would ask him to do a due diligence rather than a valuation but I think they are actually one and the same.

Senator MURRAY—But in that due diligence—and excuse the discourse, Mr Chairman, but I think this is important—invariably, if it is outside a field of expertise, which it often is, the accountant will say, 'I am going to get the valuer to value that building.'

Mr Reilly—And our professional requirements apply there, yes.

Senator MURRAY—It would be improper not to do so.

Mr Reilly—That is correct.

Senator MURRAY—I think Senator Conroy is right: that they would, in that circumstance, go to a licensed person to do that job.

Mr Reilly—Remember, of course, that, if it is property, the proper authority is not someone who is licensed under the financial services regime but is in fact someone who is an expert in the real estate area.

Ms Bowler—But if you are looking at a small business—a takeaway shop, for example—and you want to buy that business, you would take the set of accounts to your accountant to ask, 'Has this takeaway shop, Bill's and Bob's Takeaway Shop Pty Ltd, been valued correctly?' So, as an accountant, you will be valuing the shares, even if there are two shares.

Senator CONROY—I am not arguing that that is not what happens. The argument is: should that be licensed?

Ms Bowler—I would argue that they should not have to be licensed because, by being licensed, they are not going to pick up the skill set they need to perform that task.

Senator CONROY—That is a question of what is required under the licensing regime rather than whether we want the most skilled person in that role.

Ms Bowler—What benefit is there to picking them up under the licensing regime?

CHAIRMAN—We have the licensing regime, and the requirements for training are already there.

Senator CONROY—Please do not misunderstand me: I am not saying that an accountant cannot or should not do this.

Ms Bowler—Yes, I understand that.

Senator CONROY—I am asking whether or not it is financial advice that should be licensed and whether or not that provides additional protection for consumers, as in the accountant's client.

Senator MURRAY—Or investors.

Senator CONROY—Or investors, in that particular case. I guess that is the distinction in my mind, whereas you look at it from a slightly different angle.

Ms Bowler—I understand where you are coming from; but, if you bring that in, you are bringing in all accounting activities, because that is one of the core things they do. By saying you think that should be licensed—

Senator CONROY—I agree, and that is what the Phillips Fox advice said. It said, 'This is financial advice.'

Mr Reilly—I guess, Senator Conroy, where we have a difference of view is that we have probably taken the then minister's words to mean what we thought he meant at the time when he said—

Senator CONROY—I think you are being a bit unkind to Minister Hockey, Mr Reilly.

Mr Reilly—I am sure I am not. The then minister said:

> ... those activities for which accountants are typically trained, will not give rise to an obligation to be licensed ... the regulations and (ASIC) policy papers will, where necessary, clarify the FSR regime will not adversely impact on the accounting profession—

that is, you are required to be licensed. That is what we have taken it to mean. If, on the other hand, the intent of the regime is to capture financial advice very broadly then clearly there should not be any exemptions in there. That really is the issue.

Senator CONROY—I think the poor people behind you just fell over.

Mr Reilly—I know.

Senator CONROY—I can only say that it was always explained to parliament on the basis that this was about licensing financial advice—irrespective of who gave it.

Ms Bowler—Yes.

Mr Reilly—But not expanding the licensing regime to sweep up lawyers, accountants and actuaries.

Senator CONROY—It is not often that we can sweep up lawyers. It is just that we lost.

Ms Bowler—My understanding is that that is the intention. But my understanding is also that these activities were specifically drawn out in this regulation to say, 'These are not financial products that we want you to have to be licensed to do.' It is the drafting of this that means to

say, 'We have drawn out all these activities to say that you do not have to be licensed to do these,' and then with the regulation they have tried to provide a whole list of things that are excluded from the regime.

Senator CONROY—I understand that. But even as we have gone through some of these issues today—and, as I have said, this is not a binding conversation; this is just trying to get to the nub of the issue—you have conceded yourselves that there are very grey areas. If not, they are financial advice and therefore probably should not be on this list.

Ms Bowler—I think they should be and that we need an exemption. This is a list of things that are specifically excluded. There are clearly things on this list that are the provision of financial product advice which we believe accountants should be able to do through an exemption.

Senator CONROY—You have probably just reversed it: I am saying that I think there are some things there that should stay on the list.

Ms Bowler—Yes.

Senator CONROY—But, after my discussions, I am not convinced that all of them should be on this list. I could probably knock two or three of them out and be more comfortable with the other amendments that you are seeking to have clarified, but I would not be comfortable including all on that list. This is a very preliminary discussion and I am not an expert. Andrew has much more experience than I have.

Mr Reilly—I guess, Senator Conroy, where you are heading now is back to the statement I read out from Pauline Vamos. My fear would be that most accountants would be either advising or dealing with financial products, or both.

Senator CONROY—I can only say that your own legal advice told you that from day 1, and this is a bill about licensing financial advice.

Mr Reilly—I would have to go back to look at the legal advice.

Senator CONROY—I think it was pretty straightforward.

Mr Reilly—The legal opinion was quite clear in saying that you need clarification of exactly what was intended.

Ms Bowler—But if you knock off one or two of these you are saying all accountants have to be licensed, because I am guessing the ones you want to knock off.

Senator CONROY—No, I am saying that anyone who gives financial advice should be licensed, and if accountants happen to give financial advice—

Senator MURRAY—I want to challenge that proposition, Ms Bowler. Let us take a simple example which may be quite frequent because there are hundreds and thousands of them out there, and that is your example of someone who comes in and says, 'I want to buy a takeaway

shop.' It would seem to me that if you took the due diligence clause, for example, to do due diligence you go along and ascertain that the shelves were bought when they were bought and they actually exist and check the stock. That is what you do with due diligence. You go and feel the cloth and you kick the tyres. That is the expression. Then the client says, 'And is this worth what they say it is worth?' The accountant is competent to do the goodwill calculations. Based on the declared profits and the tax returns put in, you can do multiples, and that is the value based on standard accounting assessment. I do not think you need to be licensed to do that. But is it worth that money in terms of the going rate for takeaway shops? I would suggest to you that the accountant is not competent to answer that question and would say, 'I think you should go to a business broker who is experienced in that field, or I will ask the business broker for you and they will give advice on that.'

I think there are a number of steps there on which I would argue you are being overbroad and a little overdifficult, if I might say so. My experience of accountants is that they are pretty savvy. When they do not know or are a bit nervous, they send you off to a business broker, real estate broker, a lawyer or whoever. They do not give you advice when they are not comfortable with it. But if you want to ask them about multiples, earnings and cash flows, kick the tyres, they are very good at that. So I would suggest to you that some of the fears you are expressing in terms of definitions are not well founded. Providing ASIC itself has a view of certainty and a practical view of these things, I think it could work.

Ms Bowler—The regulation as it currently stands?

Senator MURRAY—We are talking about a climate and a culture you want to sit this within. I do not think it is easy to pop something in one field or another. I think due diligence belongs in here and may belong in financial licensing, but I think evaluating a business or business shares can belong in here, and in requiring to be licensed it depends on the circumstances.

Mr Reilly—Senator Murray, I would agree with your proposition that the accountant is ideally placed to do all of that work, and the accountant can even go one step further in terms of research from the Australian Bureau of Statistics which actually has the profitability of different businesses and all that sort of stuff. At the end of the day the client has to make the decision whether it is worth the money or not. You will arrive at a goodwill figure and the client ultimately has to make that call. You would expect, if the client is going to say, 'I'm going to pay an enormous amount of goodwill for this,' that the accountant would say, 'Why, when there are other similar businesses around?' The client might say, 'I know the area is going to be redeveloped and that is the reason I'm going to do it. I don't want to run it as a takeaway business.' I think that is the decision the client makes, and I think you are quite correct about the accountant. Certainly when I was practising as an accountant we would at the end of the day, after having kicked the tyres and arrived at particular numbers and saying, 'This is where we think the net assets of that business are,' then send them back to a business broker when appropriate.

Senator MURRAY—The point I am getting to is this. If it is accounting advice which is based on standard accounting assessments of multiples, values or whatever, it is very clear to me. There is a long precedent in the history and I understand that. If it is financial advice—'Is this thing worth what they are being asked for in the market?'—that person either needs to be licensed or they need to send to somebody who is licensed. That is all.

Mr Reilly—Or the client makes their own decision.

Senator MURRAY—Or they say to the client, 'I can't tell you that. Based on a profitability of $10,000 a year, the earnings multiple in this thing should be five times. That thing should be worth $50,000 and he is asking $70,000. It is up to you.' That is really what you are saying.

Mr Reilly—That discussion is without necessarily looking at what the precise words say here.

Senator MURRAY—That is right. And that is why I suggest to you that, whilst your alarm is evident, I wonder if it it is realistic to believe that the regulator will not develop a convention and a culture which is reasonable. Why, given the precedents, would they be unreasonable about this? Why, given the precedents, would they say to you, 'Look, we are going to enforce this so toughly that you have got to impose $3.6 billion worth of costs on your industry'? I struggle to—

Mr Reilly—I would agree with you, Senator Murray. I guess I am just referring to this statement here from ASIC. That is where I do have an alarm bell ringing: I need to be able to advise our members—given that 11 March 2004 is not that far away—that, if we are going to a licensing regime, we need to rethink how a licensing regime would work. Our view, at this stage, is that we do not believe a licensing regime is necessary to cover the sorts of activities that accountants are properly trained to undertake.

Senator MURRAY—Which the committee would agree with you on. I think we are arguing about whether you have to be so tight as to what is in one box or another?

Mr Reilly—I think our members are very conscious of the fact that, if they breach the legislation, the regulations, they are up for some fairly horrendous penalties. For instance, they have no insurance cover, to start off with. We may well argue what PI cover you have today, but let us not go down there—as Senator Conroy would no doubt say. Therefore, they are looking for clarity. What we have been doing and what our colleagues at the NIA have been doing is talking to our members so that we can arrive at a list of activities and say, with a degree of confidence, yes or no. With the 'maybe' category, I guess we do need the support of this committee to encourage us and to encourage Treasury and ASIC to talk to each other.

Ms Bowler—But there are clearly some examples of financial products, and the best one is setting up a business: that is an activity we believe accountants should be able to do without being licensed. Because the definition of financial product is so wide, that activity is a financial product. We do not believe you should, as an accountant, have to be licensed to give advice in relation to that financial product. That is why we think we need an exemption.

Senator MURRAY—That is a reasonable proposition, because setting up a business is a mechanical exercise.

Ms Bowler—Yes.

Senator CONROY—I have one final point, if everyone else has finished their questions.

Senator MURRAY—I am sorry to have interrupted.

Senator CONROY—I was going to say, for the record, I think that Mr Reilly's name is Keith and not Kevin.

CHAIRMAN—I made that point.

Senator MURRAY—Through the chair, could you take on notice to give us a sum as to how the $12,000 and $24,000 are arrived at?

Mr Reilly—We would be delighted to.

Senator MURRAY—You can see the importance of it, if it is multiplied out.

Mr Reilly—We did a rough calculation which we gave to the predecessor of this committee when we were looking at the audit requirements for small business and we arrived at a particular number.

Senator CONROY—A very low number, from recollection.

Mr Reilly—I think it was around the $15,000 to $25,000 mark again, so it is a popular sort of number. But we can take that on notice.

Senator MURRAY—We would really like to know whether your $12,000 and $24,000 are genuine figures, and what that encompasses.

Ms Bowler—I will need to speak to my organisation about releasing it, but I should be able to.

Mr Reilly—We will take it on notice.

Senator MURRAY—Give us what you can.

Ms Bowler—Yes.

Mr Reilly—Thank you.

CHAIRMAN—As there are no further questions, we thank both of you for appearing before the committee and for the detailed discussion that you gave.

[3.19 p.m.]

DAVIS, Mr Peter (Private capacity)

CHAIRMAN—Welcome. Do you have any comments to make on the capacity in which you appear?

Mr Davis—I am a public practitioner: I am an accountant and tax agent and I run my own business. I am speaking as an individual and not on behalf of any professional body.

CHAIRMAN—The committee has before it your submission, which we have numbered 11. Are there any omissions, additions or alterations you need to make to it, before we proceed?

Mr Davis—I would like to submit some additional attachments which are just bits and pieces. There are copies for each committee member.

CHAIRMAN—Thank you. The committee will receive those.

Mr Davis—I would like to have some discussions about those, and also about some of our earlier discussions. Although there are some practical examples which our predecessors have talked about, I think you should come back to the real world or what happens in practice, with respect.

Senator CONROY—Did you say that the committee should come back to the real world?

Mr Davis—No, I said that everybody should understand what happens in practice rather than what is—

Senator CONROY—Absolutely. We are digging away, hopefully trying to get towards what actually happens in practice.

Mr Davis—We should discuss it, Senator.

CHAIRMAN—Do you wish to make an opening statement?

Mr Davis—I would like to explain some of these additions that I gave you to supplement my original submission and to offer substantiation for some of my comments in my original letter, if that is acceptable to the committee. I am new to all this, so if I do it the wrong way I seek the committee's indulgence.

CHAIRMAN—You are free to tell us whatever you choose to tell us.

Mr Davis—That might be dangerous, Senator.

Senator CONROY—Just as long as you know you have *Hansard* privilege. We cannot sue you for it.

Mr Davis—Thank you, Senator. Others may wish to. Going to my submission, I also take great exception to what ASIC are doing—or not doing. I personally spent many hours and months on this subject. I found it by chance when I read some excepts of legislation in the tax newsletter that I get. I got into it and read it and I thought we were in the dog box, as accountants and tax agents. I pursued it diligently on my own behalf through representations to many of my colleagues and to my professional bodies, and through different parliamentarians whom I have asked for help. Some have helped and some have not; some do not even want to reply.

Referring to my submission and the article marked A, a practical example which has happened only in the last 10 days is that an elderly gentlemen wanted to transfer his NRMA—now called IAG—shares to his grandchild and to hold them in trust. He said to me, 'Please help me do the paperwork.' He was not asking for advice. He told me what he wanted; he came to me and said, 'You have been my accountant for years; help me.' I said, 'I can't help you. I can't even touch it. I am involved in dealing in shares and transferring shares. I can't do a thing.' I will not tell you the abuse I copped over the phone from my client—the sort of abuse that we cop quite regularly because of the tax act and everything else—but he was indignant. Because he pays me a couple of hundred dollars a year to do his tax returns and to help him, he thought he could pay me to help him sit down and fill in a very simple, off-market share transfer from a buyer and a seller. Senator Murray, you will understand this, as you seem to have a lot of business sense: there is no stamp duty anymore; you can just chuff it off to a share registry and say, 'Hey, Freddy, put these into the grandson's name; the grandad is in trustee for it.' But I cannot touch that. He has not a clue what the hell you guys are doing. He does not care. He just cares that I cannot help him and he is left out there in the real, hard world with no-one to go to. I say, 'Go and see and financial planner.' He says, 'It's got nothing to do with financial planning. How do I get help?' That is a real, down-to-earth, simple, silly little thing that happened in the last week.

CHAIRMAN—What is the basis for your saying that you cannot do that particular task? It is purely an administrative task. You are not advising.

Mr Davis—That is my understanding, from my inquiries. You may be right, Senator, but I am not prepared to take the risk. I cannot get any advice from ASIC—I will lead on to them in a minute. I have classic examples in my diary notes.

CHAIRMAN—The second point is that we are still in the transition period, and so you actually can still help.

Mr Davis—I am trying to do the right thing from a professional angle; I am trying to start off. I know I have two years in which I can carry on and do what I like and, at the end of the two years leeway, I am cut off. There is no point in my leading my clients down a crooked path and saying, 'Yes, I can help you,' and then after 18 months that right disappears and I cannot touch it. If I try to educate myself and my staff—I have four qualified accountants—and do it the right way, at least I am attempting to carry on my business in the spirit of the legislation. I cannot get answers to that, so I made an educated decision. You may be quite right.

Attachment B, which is a recent copy of ASIC'S 'Frequently asked questions', says in relation to accountants providing financial services, 'Do I need a licence?' Whatever number of hours ASIC had to pay for for attachments B and C they are not the worth the paper they are

printed on. From a practical point of view as a practising accountant, they tell you absolutely nothing. I do not know why they did it. Attachment D is a copy of an article—I have only met my learned colleague Ms Bowler today, who is quoted in this article—which tends to infer that all accountants should be registered financial planners. I do not have the time for it. I get up at four or five every morning to do compliance work and tax work. I go home at six at night. I have obligations under my professional bodies to do a minimum of 80 CPE hours per two years. I am regularly doing 100 hours a year, at my cost, which is a cost on my business and which is eventually reflected in the fees I charge. I do not charge like the big firms in the city, which charge umpteen hundred dollars an hour to large businesses. I try to make an honest day's living, and I am certainly not rich.

No-one has the time to do the financial planning and the heaps and heaps of product disclosure statements as well as all the other work that one would have to do as a financial planner. I might as well go now and tell my wife that we will sell our house, pay back the bank mortgages and live on the beach. I struggle to run a small business. I spent years at university. I had years at tech and college studying, and further years as an apprentice getting my tax licence. I did it the hard way. I spent 30 years in commerce, and I got bored. I do not know why. I should go back to commerce, with all the changes in the tax legislation. I got bored so I decided I would help people, and then the tax legislation changed. I spent 2½ years doing an apprenticeship under accounting firms so that I could apply for my tax agents licence to help people. And now we have this act coming in, which basically says that I have to do more training. I cannot do any more. I cannot afford to pay another four or five staff to understand the specifics of doing financial planning legislation and produce all the stuff from a computer system just to give somebody advice. I have learned today, after talking to my colleague here, that it is different from what I read and that maybe that was not the intention; but that is the way it was written.

Page E is a copy of an article which again substantiates that 7.1.29 is a problem. I think we are onto page F. There is also a letter which was tendered today by my colleagues from the National Institute of Accountants. I only became aware today of their attending this committee hearing. I am horrified but not surprised that Pauline Vamos would say that. At the top of page F is a diary note entry that on 24 April I attended a meeting in ASIC's offices where they talked about the Financial Services Reform Act. I have quoted in my submission—and I will stand by this; I have witnesses that I could drag in if the committee does not believe me—that Pauline Vamos turned around and said that 'ASIC are taking a harder line', that 'They want to be less helpful', that 'They don't want to help', that 'They have no staff available' and that 'ASIC is not trying to help you'. That meeting went on to other things. In relation to page I which talks about accountants and everything else, she says that 'There is no early answer or advice to be given' and that 'Clear guidance may or may not provide any commentary' to tell us what we can do. For a person who is obviously a director of a department or section to come out and state that I find absolutely horrifying and disgusting. They are paid to give advice; they are paid to administer an act that parliamentarians have enacted, and she says that in an opening statement to 60 industry people—lawyers, accountants and superannuation specialists. I think you should take it away from ASIC but I do not know to whom you would give it.

Then, when I see the letter here today from my colleagues from the National Institute of Accountants, which says that we are all caught—we all understood that we probably were caught somewhere—it is just ludicrous. That is my opinion as a public practitioner in the real, hard world.

I will now go on to item J in the attachment submitted today. Again, it is alluded to in my letter but it is not specific so I will give you the specifics. Back on 19 February, and I assume this is before I stumbled onto all these problems, there was a PowerPoint presentation from a gentleman called Rod Jackson, Associate Director, Sealcorp Holdings. That is a wholly owned subsidiary of the St George Bank. He is going around and telling people like me in public hearings that we cannot do any administration work for self-managed super funds for any of our clients. We cannot touch anything, we cannot do one bit of work—that is, 'You have to send all your clients to us.' Some of my bigger clients have told me, 'If we have to go to him, we will take our tax work to him or some big firm and we will not need you any more.' This is not fair. I struggle to do my work and provide a service to my clients.

I will go on to the regulations. You were talking about 7.1.29. Again, I can only talk passionately from my experience. I personally paid a solicitor for some verbal advice because I was not prepared to pay thousands of dollars for written advice. I have spoken to many lawyers in my accounting bodies and around town. Their interpretation of the advice—and it may be a silly way to interpret it, because I am not a lawyer—is that I can tell you to jump off the Harbour Bridge or I can tell you to walk across Macquarie Street but I cannot make you do it, I cannot undertake the work. Again I know from talking with my colleagues in the lunch break that there are moves afoot to get more specific, but the way this is written now I cannot do any work. I personally sent a letter to Pauline Vamos before that meeting and said, 'I want you to discuss this in front of all of us and tell us.' The answer was, 'A clerk can do clerical work.' I said, 'You are telling me I can have one of my secretaries who has not got any obligation to be licensed to do this work.' I, a highly trained person, have to have a licence but I cannot touch the work. That is ludicrous. A secretary would not have a clue how to do some of the work that we as accountants and tax agents have to do—with respect to secretaries in general. They would not have the foggiest idea. They are not even trained for it.

The other day I had to set up a self-managed super fund for one of my clients. He came to me with a specific task and said, 'I want to do this, this and this.' He knew what he wanted to do. He said, 'Fix it.' Sure, I do not make my own self-managed super funds. I ring up a shelf company provider—presumably you people understand what I am saying to you—and say, 'I want a trustee for a self-managed super fund.' I have to do the share transfers, so I am in breach of part of this regulation. Who is going to do it? Are you going to send my client to a financial planner who will not have a clue what I am talking about? I am sorry, gentlemen, that I talk with this much passion about this.

Senator Conroy was talking today with my colleagues about (1)(a), advising in relation to the preparation or auditing of financial statements. It does not tell me that I can do the work. If you read the regulation it says 'advice', I think, not 'advising'. It does not let me do the work. Part of doing the auditing of financial accounts for a self-managed small super fund—mum and dad small businesses and super funds—is that we have to calculate a thing called the members' balances, what is preserved and unpreserved. No-one tells me I can do all this. Nothing is written there. I only have a small amount of money invested in my business, only $500,000, which I have struggled over the last five years to accumulate and borrow from banks and financial institutions. Why is the government taking all my business away from me? I do not think it is fair, gentlemen. I cannot talk with any more passion than I have. I am quite happy to answer questions.

CHAIRMAN—Thank you, Mr Davis. The evidence you have given has reinforced the concerns that have been expressed by other representatives of the profession earlier in the day.

Senator CONROY—I do not think anyone is trying to argue that they support taking business away from you. The intent of this legislation—and I can only go on what was put to me by the minister in his speeches and those sorts of things—is about providing a sufficient level of trained advice to people. It is still possible for you to do all of the work you currently do; there is not a restraint on trade issue. The question is whether people are qualified to give financial advice. You made the point that you did not have the time to do any more training or you should not have to do any more training. Was that the point you were making?

Mr Davis—I am doing 100 hours a year. I have an obligation under my professional public practice certificate to do a minimum of 80 hours every two years and I am doing 100 hours a year now. I do not mind having some licence as long as it is a reasonable type of licence. You have just reminded me about something Senator Murray said about the fees. I will give you some examples of the fees and you will probably be horrified. To qualify for PS146 and to comply with all the regulations, the documentation, the quality control, ISO standards and all the things I will have to put into my office is costly, and I have to put that cost into my office fees. Who is going to pay for all that? It will be the customer, the consumer, the client. They object to paying for lots of things to do with the compliance costs now. It is a necessary burden that will be borne across the whole platform of fees.

I do not mind another licence, but give me a way to get it, or give me—like my learned colleague Ms Bowler said—some sort of an interim thing, which still accepts the effort that I have had to go to professionally over many, many years and gives me some sorts of restrictions. I do not mind that, but do not put onerous obligations on me to comply with huge quality assurance standards. I already have to do that under my accounting bodies. Every accounting body—the National Institute of Accountants, the CPAs and the Institute of Chartered Accountants—has quality assurance standards that we have to comply with. People come out from our own institute and check that we are complying with things for certain standards. I do not know how we will get the time to do something else with the tax work that we do.

Senator CONROY—The good news is, as Senator Murray said, that there is a two-year transitional phase which is—

Mr Davis—What worries me is what is at the end of that.

Senator CONROY—At the end of the transition is the implementation of the act. The other good news is that part of this committee's role is to see how it is being implemented and to try to work with industry, the regulators and the parliament to ensure that there is a sensible, smooth transition. One of the constant arguments is recognition of past experience. That is a constant argument, and not just in this industry. That is one of the issues I am sure we will be discussing in this committee and discussing with ASIC when ASIC appear before us again. We have already talked to ASIC a couple of times. Part of why we are going around is to get practical hard-headed, real world experience like yours. Then we go back and sit down with ASIC and say, 'Take us through what's happening. If you have not had a chance to read Mr Davis's transcript from the hearing, these are the problems he is encountering. This is not quite what the parliament intended.' In other words, we can work with ASIC and draw on your experience. The purpose of this committee is to try to get this real world experience.

Mr Davis—Another example is on ASIC's web site—and I have not looked for six or eight weeks because it has been a waste of time. It says that if you want to register to get involved in forums or attend hearings and make submissions fill in this email thing and chuff it back. It is like going into a big black hole. It is a disaster. You ring ASIC and say, 'I want to talk to someone about the Financial Services Reform Act', and 10 weeks later you are still waiting for some character to ring you back. It never happens. They are not the right body for the job—with respect.

Senator CONROY—I have no responsibility for ASIC.

Mr Davis—I did not say you did; I am giving you my practical opinion.

Senator CONROY—However, the point was made earlier by some of your other colleagues that they welcome the increase in funding, and many of us around this table have campaigned for more funding for ASIC.

Mr Davis—That might help.

Senator CONROY—Specifically for FSR because this is an enormous—

Mr Davis—That might help my learned colleague to get some more staff to do her job—with respect.

Senator CONROY—I think that is what your colleagues indicated earlier, that there are now more resources and staffing to try to resolve some of these issues. This was always the danger, that the intent of this could become as big a debacle as BAS was for the tax office.

Mr Davis—No comment.

Senator CONROY—I am sure you can talk even longer on that for us.

Mr Davis—No comment.

Senator CONROY—Part of why we are doing this is to try to ensure that those cries for help are heard. Then we can go back into the parliament and argue for more resources because FSR is expanding and even though ASIC have got extra funding they need more. That is part of why we are having this hearing and part of why you are with us today.

Mr Davis—But cohesion and clear responses rather than saying, 'I am not here to help you; I won't do this'—everything negative—would be a far more cooperative approach.

Senator CONROY—I am sure we will draw to Ms Vamos's attention your evidence in the *Hansard* and ask her about it.

Mr Davis—I may not be very popular. But to reply, if I may, Senator—

Senator CONROY—Get your licence application in quickly!

Mr Davis—I cannot apply for a licence; I do not qualify. When you look at a licence, there is so much paper and so much regulation to go through that it really is a pain in the neck. It is not worth the hassle—honestly. You asked about learning to qualify as a financial planner. I made my own inquiries—and I have some of my notes here—from providers. Recently, when I was in Queensland, I went to see a couple of training providers. It would cost me to the tune of somewhere between $5,000 and $7,000 in courses, which I could not do quickly and easily, just in an attempt to get the necessary passes to qualify to apply for a PS146.

Senator MURRAY—Just for the record, let me take you through that. I assume that involves an opportunity cost—in other words, you are away from your business. If your standard charge, for example—and I do not expect you to give it—

Mr Davis—No, it is only fees for the courses.

Senator MURRAY—Let me just go through it and pick up the kinds of costs that would be involved. If you are away from your business, you cannot charge whatever you normally charge per hour, because that hour is spent somewhere else. Correct?

Mr Davis—Correct.

Senator MURRAY—You have the travel costs. So, if you have to drive or fly, there is that cost.

Mr Davis—Correct.

Senator MURRAY—There would be the cost of overnight accommodation, food et cetera.

Mr Davis—Correct.

Senator MURRAY—Then there is the course cost itself.

Mr Davis—Correct.

Senator MURRAY—In arriving at your $7,000, did you say?

Mr Davis—Between $5,000 and $7,000. I do not have an exact cost.

Senator MURRAY—But you only gave us the cost of the fees to attend the course?

Mr Davis—Correct.

Senator MURRAY—On that basis, it would sound as though we are starting to get towards Ms Bowler's $12,000 estimate.

Mr Davis—Very quickly. Who runs my business when I am not there, when my clients say that they want to see me? I just do not go to sleep at night; I ring my clients back.

Senator MURRAY—How do you explain the view that Ms Vamos has that, for most accountants, the cost would be minimal? I do not want to verbal her, but as I read this letter she seems to imply that there are different types of licences and you can either be an authorised representative or a licensee and it will all be cheap.

Mr Davis—I cannot explain it. Again, I would concur with the previous witnesses from the Institute of Chartered Accountants and CPA Australia that there must be some glaring misunderstanding, or maybe she just does not understand the real world.

Senator MURRAY—As far as I understand it, you get no credit in the licensing process for past experience, past qualifications and present professional education—or do you?

Mr Davis—I do not know the honest answer to that. I have not spent a lot of time looking at it. I have discounted the fact that I do not qualify, and I really have not decided to spend a week doing nothing and trying to work out how to get into the system. I can go to certain training providers and they can do what is called an assessment of my knowledge—and I have to pay fees for this—and that will tell them in what subjects I may be eligible for an exemption.

Senator MURRAY—So you do get a credit?

Mr Davis—I may get a credit; I do not know. I do not want to talk hypothetically about it, because I do not know and I do not want to give the wrong answer. Possibly I will get some credits for my knowledge and my training. In my particular case, I have nothing to do with financial planning, I am not a member of any financial planning group, I do not get commissions from anybody and I do not want commissions from anybody because I do not want to be beholden to any financial planning group. If I do not like you as a financial planner and I want to go to this or that person and say, 'You have stuffed up something for my client,' I want the opportunity to do that, because I care about my client. I am not worried about my commission. I get no commissions from lease brokers or anybody else. I want to be a free agent. I care about my client. I want to be able to look after my client's interests as best as I humanly can. As has been stated by earlier witnesses—Mr Breakspear and other colleagues—if you are not writing buckets and buckets of business for the particular people you are associated with, they basically say, 'We don't want you.' It is a catch-22.

Senator MURRAY—You know where I am going with this. I just want to establish that if you cannot get credits for existing experience, education or professional re-education, which in your case you say is 100 hours a year, the cost cannot be minimal because you have to go through the course structure.

Mr Davis—You are correct. Each year my own training is going to seminars, professional conferences and to all things on taxation matters. I think there are things in PS146 about getting licenses which mean you have to do things specifically on financial planning matters. We have tax on one side and we have financial planning on another to qualify for the licensing regime, and the two are not meshing together because they conflict. Also, if you qualify for that, as my learned colleagues before me stated, you have to do 40 or 60 hours a year CPE—continuing professional education—in that particular subject and discipline. It is a can of worms, and we need some practical help from your committee and from parliament to do something—have joint meetings—to change 7.1.29. I am not going to stop making up self-regulated small superannuation funds for mum and dad. I will continue to do so until the two years are up but,

by hook or by crook, there had better be some changes before then, because most accountants are going to continue, and they are just going to say, 'Bad luck.' That is what they do.

How is a client going to go to a financial planner to set up a superannuation fund? As my colleague said earlier, they come to me and say, 'I'm setting up a business; what insurance do I need?' And I say, 'You need public liability and directors' and officers' insurance.' We do all these things. That is what we tell these guys to do every day of the week. We do their yearly affairs. 'Have you got this paid up; have you go this done?' 'No.' 'Well, you miserable good-for-nothing, go and do it because you're going to be in the dogbox.'

Senator MURRAY—Plus, with self-managed superannuation funds, the returns are through the ATO, anyway, and you are automatically logged with them for your electronic registration and everything else.

Mr Davis—Correct. But I have to audit a self-managed super fund. I have to do the work and everything else.

Senator MURRAY—Primarily that is an accounting task.

Mr Davis—I am not here for a turf war.

Senator MURRAY—As a question rather than a statement, when your client delivers the sets of accounts and the transactions that relate to a self-managed superannuation fund, your primary task is to verify that the assets are indeed what they say they are and that the transactions that have occurred have occurred. So, if they say that during the year they bought and sold a share certificate, you have to see the share certificate. That is the sort of work that accountants do in that respect. To me, that is primarily an audit, not a financial task.

Mr Davis—I agree with you. But, as part of doing the audit and producing the annual accounts for a small self-managed super fund, we will calculate, compute and list in part of our accounting and tax packages the member's balances, how much they have in the—

Senator MURRAY—But that is a mathematical and accounting effort; that is not a financial effort.

Mr Davis—I agree. We are not at loggerheads; we are on the same side of the fence.

Senator MURRAY—I am just making sure it is on the record.

Mr Davis—Yes, but we agree. Under 7.1.29, I have been told—subject to someone telling me that I do not know what I am talking about—I can give advice. I can tell you that I can check all those things but I am not allowed to undertake the work.

Senator MURRAY—And you just want clarity that you can?

Mr Davis—Yes, Senator, to make it more specific, in black and white. I think most of the accounting bodies would like it the same way, because there are no longer enough hours in the day to do everything.

CHAIRMAN—Thank you very much, Mr Davis, for your evidence to the committee and the answers to our questions. We will certainly take up the issues you have raised with us.

[3.52 p.m.]

LYNCH, Dr David Joseph, Director of Policy, International Banks and Securities Association of Australia

CHAIRMAN—I welcome Dr Lynch. We have before us your submission which is numbered 19. Are there any alterations or amendments you need to make to that submission?

Dr Lynch—No. I might note that IBSA represents investment banks operating in Australia. We have a good number of foreign and domestic banks amongst our membership.

CHAIRMAN—Thank you. I invite you to make some opening remarks to the committee in relation to your submission, and then we will proceed to questions.

Dr Lynch—Thank you for accepting the submission and for giving us the opportunity to appear before the committee today. I thought it might be useful to briefly address the main issues that we have brought to the committee's attention in our submission as in some cases there have been developments since we prepared that submission.

Turning firstly to the Corporations Act regulations, we raise the issue of overseas providers and note that the law in this area is actually quite complex. I can summarise the position as follows. IBSA agrees with the committee's recommendation in its report on the Financial Services Reform Bill that an equivalent to section 93(5) of the Corporations Law should be retained. For example, this would permit a global investment bank to use a local subsidiary that holds an Australian financial services licence to arrange the provision of its services from overseas to its Australian clients. As we outlined in our submission, the draft regulations issued by Treasury at the beginning of the year would have facilitated this, but the final regulations were amended to limit the exemptions dealing only, so it does not, for example, cover research or advice as financial services. This limitation was unexpected and, we think, needs to be reconsidered. Our members report that the regulations as they stand would impede their business in Australia and potentially limit the delivery of services to their clients here. In short, the regulations should be amended to give effect to the committee's original recommendation as could be met by the draft regulations as originally proposed.

The second area I want to mention is the question of telephone monitoring during takeovers. There have been welcome initiatives through the regulations to address inadequacies in this area of the law. The modifications that have been made through the regulations are entirely consistent with the objectives of the law and do remove significant inefficiencies. However, the regulations cannot overcome all the problems arising from the flaws in the policy setting and the deficiencies in the framework of the law itself. Therefore, we believe the committee's recommendation in its August 2001 report that the provision should be removed from the act—or the bill as it then was—should be taken up.

Secondly, turning to ASIC policies, I want to mention the ASIC policy on the regulation of cross-border financial services. ASIC issued a consultation paper in May outlining proposed principles for cross-border regulation, and a roundtable meeting was held with industry in early June to discuss the proposals in that paper. I attended on behalf of IBSA and we did have a good

interaction and exchange of ideas. The cross-border regulation principles are particularly important to our members in several respects, most notably, that under section 911A(2)(h) of the act the overseas offices of investment banks can provide financial services to wholesale clients in Australia without the need to hold an Australian financial services licence provided they are regulated instead by an approved regulator overseas. This is relevant to some investment banks and securities companies that may want to operate in Australia's branches, as well as those that provide from overseas.

There are key issues that arise from ASIC's proposed regulation. Who will ASIC recognise as an approved overseas regulator? What range of activities will ASIC recognise as being regulated? As well as that there is an issue on the timeliness of ASIC's conclusions in that area. There are tax issues which run off that too because the definitions in the Financial Service Reform Act are used in tax law that is currently in place and the transitional provisions there may not be recognised in the tax law. The ATO is currently looking at that issue.

As it stands, these issues are not resolved and the answers to these questions will require a pragmatic approach by ASIC that looks at the substance of issues rather than the precise detail in every case. Our main response to ASIC has been, firstly, that there is a need to differentiate between retail and wholesale clients in the application of the principles and indeed in their design and, secondly, that there is a need to differentiate between exemptions that are given under the act and an act of regulation, which affects the design and implementation of policy. The object is to ensure that financial services are provided to wholesale clients on an efficient and secure basis. We think that is possible within a reasonable setting within the ASIC policy framework.

My closing comments note that with the Financial Services Reform Act we have found that, where consultation was weakest, or where there was a late inclusion in the bill, regulations and sometimes ASIC policy statements or class orders have been effective in giving relief to unintended outcomes. I also note that in the course of our dealings with tax the tax board has developed a process or a protocol, if you like, for consultation on the design of tax law. There may be scope some time in the future when this is bedded down to see whether there are some lessons from that process that could be applied to the development of financial services regulation and legislation generally. The other point is to note that the Financial Services Reform Act is a huge body of work and we fully expected that there would be issues arising in bedding down the act. We are not entirely surprised that there are issues that need to be addressed through regulations and ASIC policy statements on an ongoing basis. We are quite happy to work with Treasury and ASIC to try to secure the policy outcomes that are set out in the bill, within the framework.

Mr GRIFFIN—How have you found your dealings with ASIC and Treasury so far? Have you been able to proceed with some of these issues?

Dr Lynch—ASIC face a problem that we also face in the industry; that is, there is an awful lot to do in a short period of time. There are questions of priority over which we may differ; for example, within IBSA there are 38 members and over 30 of them are foreign owned. This question of overseas providers and the ability to provide services efficiently into the market in Australia on a secure basis has a high priority from our perspective. On the other hand, I do not think it is given the same priority by ASIC. In terms of dealing with ASIC, the quality of the people is good but there are issues and prioritisation of issues that we would differ on.

Senator WONG—In terms of your submission, your concern is subparagraph (3) of the revised regulation (n). Can you cast some light on why that was narrowed from the second draft?

Dr Lynch—I can try and surmise what might have been done. During the consultation process, which was quite useful, we took away from that that the regulations would be implemented to cover financial services generally, not just dealing. There is a trade-off in the final regulations that is significant, which is that in the original regulations there were conditions on the provision of the service within Australia, which effectively meant that the provider in Australia stood in the shoes of the overseas provider where there were any acts or omissions which would cause loss to investors. That went when it was narrowed to dealing, so there was a trade-off there. Our feeling was that it is difficult to manage these processes, but, from speaking with Treasury, they had taken soundings and they had looked at submissions they had received. Many of our members did not make submissions because we said to them, 'This issue will be resolved. This is not an issue in terms of the regulations.' Had they, for example, offered up what the final regulations are for consultation, they would have received significant feedback to suggest that they should not amend what they were proposing originally.

CHAIRMAN—In relation to the telephone monitoring of takeovers, you will probably recall that the committee recommended against that being part of the legislation. Now that it is in there, are there any additional measures or regulations that could be initiated to at least make it work in a rational way?

Dr Lynch—In fairness, Treasury have used the regulations reasonably effectively and have eliminated many of the core design problems in the sense that the persons or entities that need to be recognised as wholesale investors largely are. We are now left with the residual of the legislation which leaves an imbalance between the costs and benefits. There are still costs involved in applying the legislation. For example, one of the effects has been—and this is feedback from our members—that they will actively try to limit the amount of telephone contact that their advisers will have with retail shareholders during a takeover bid because of the requirement to record in every instance. Similarly, they will try to use other media in connection with that—for example, they will produce documentation which will give a single telephone number, maybe as a warning to the fact that, for example, the advice given through that number will be recorded. Again, that creates cost. Similarly, if you have foreign companies involved in a takeover, they may not have an office in Australia and in some cases they have had to establish a facility to record telephone conversations for that reason. So there are costs there.

There are still issues with the design of the law. Again, ASIC has been helpful by giving one of our members a 'no action' letter in respect of some aspects of the way the law operates. That is simply by way of a couple of points to address. As an illustration there is a requirement in the law to mark the medium through which the information recordings are stored, and it is not possible to do that on the computer systems which banks use for recording purposes. So ASIC has been willing to look at that and take a sensible approach to the application of the law. But there are problems. Even if you were to design and write the law to do what it does currently you would have a different set of provisions. I think they would be designed with a bit more cohesion and would be more cost effective.

There was a matter that I think the law was trying to address which was a question of takeovers and telephone schemes—in other words, an effort to contact retail shareholders as a

group, which would involve hundreds of thousands of telephone calls. Many of the issues that we are seeing as practical operational issues deal with single calls which may not even be in connection ultimately with the takeover bid.

CHAIRMAN—You raised the issue of internal consistency. Are ASIC being cooperative in that area, or is it beyond their scope to deal with those inconsistencies?

Dr Lynch—We have mentioned the issue more in the context of the terms of reference of the committee in looking at how the regulations fitted with the law. There were probably two points there. One is that there is a fair amount of detail in some parts of the law that is supplemented by detail in the regulations.

CHAIRMAN—How has that come about? If the legislation is already detailed, how is it that ASIC have layered on top of that another lot of detailed regulations? Have you discussed with ASIC why they regard the legislation as inadequate on its own, if it is detailed?

Dr Lynch—When the legislation was written, it was contemplated that some ASIC issues would have to be dealt with through regulation, partly because over time those issues may change and could need to be modified. Also I think there were some areas where they needed to take additional soundings and required some flexibility in how the law might be applied. The issue of regulations really drives all Treasury's intentions in the design of the law and how the law stands alongside the regulations. ASIC then, if you like, have an overlay of policy statements that sit over that which give guidance on their administration of the law. There is a trade-off in the act, as the act sets out to provide a harmonised regime. To provide a harmonised regime requires you to be able to differentiate across different products within the act, and that is quite difficult to do. The alternative is different acts for different areas but, ultimately, whichever way you go at this you do end up with a complex mix of legislation. To some degree, that is unavoidable.

There are some areas, though, where it could simply have been better drafted. From the point of view of people dealing with the law, it could have been simply easier to understand. Those drafting issues are difficult to deal with at this point, because you are looking at some sort of law simplification process. I would not like to open that up because, whenever you go towards simplification, there are policy issues that inevitably get wrapped up in it and you are into reform again.

Mr BYRNE—On that point, overseas providers may provide financial services to wholesale clients without being licensed, provided they have been regulated by a regulator approved by ASIC. Could you give an example of some of those financial services to wholesale clients that the international banks would be offering?

Dr Lynch—There are several areas. One is dealing, and I will raise that. There is an issue there because dealing is permitted now. It may be where a bank deals its global book or its regional book for products offshore and will deal with Australian clients through that location. Quite often that is because those banks have IT and operational infrastructure in those locations and they decide to limit the places from which they will conduct that type of business to two, three or maybe four centres. In some cases, we are actually trying to attract some of those businesses here, so some of our banks do conduct currency trading, for example, from Australia. It is that type of business. The issue with dealing is that dealing is facilitated but

market making is not, and it becomes difficult to tell under the law when you move from being a dealer to being a market maker, what sort of regularity of trading and what pattern of trading would tip the balance. That is not clear, so people would feel uncomfortable relying on an exemption that just had dealing, even if you were a dealer, to classify it that way.

The other areas might be things like advice. The best analysts will tend to be in the relevant locations to the businesses they are providing advice on. If you want to provide that advice to your clients in Australia, be they fund managers or banks or whatever, then that will tend to come through the offshore locations. Also, when you are at the point of dealing, there is a question as to whether there is ever any advice in the dealings. Again, people would feel comfortable if there was an exemption that covered the full range. I think it is important to note in this context that you are looking at agencies providing services that are regulated in accordance with reasonably strict criteria from either the FSA in the UK or the SEC in the US or, within the region, from MAS in Singapore, for example. Clearly, if you were operating from other regimes that were considered not as secure then the likelihood of the exemption being given would have to be questioned.

Mr BYRNE—Your frustration is that it is taking ASIC some time before they complete that list of organisations that they approve?

Dr Lynch—We had hoped that they might, for example, give a list which covered the main jurisdictions, because it can actually cover off on many of the problem areas fairly quickly, and then a list would be there which providers could look to, along with a broad range of services. They have not decided that they will do that, and I suspect they may not. One of the difficulties with looking at the detail of the law is that the regulatory system here is quite different to those in other jurisdictions, so you are not going to get symmetry or a mirror effect. I will give an example. The insider trading laws in Australia, as introduced through the act, cover all OTC transactions. That is typically not the case in most other jurisdictions. So if the expectation in looking at similar regulatory regimes was that you would have precisely the same outcomes, you would never get anybody to recognise that. There needs to be a pragmatic approach which looks at the substance of the regulation and, to some degree, the quality of the regulation as well as the specific design of it.

Mr BYRNE—You are talking about the finalisation of business structure reviews. What exactly does that mean?

Dr Lynch—This is in the context of banks?

Mr BYRNE—Yes, of waiting for the approval.

Dr Lynch—If a bank is providing service into Australia from an offshore office, and that turns out that it needs to be licensed, they may simply review doing the business at all because the licensing costs in a global context would be significant. They may, instead, need to look at alternative mechanisms. We have a number of members who are looking at, for example, moving their business, or some of their businesses, to branch structures in Australia. The benefit from that is there are operational efficiencies because you integrate better in the global network of the operation. You could not make that decision reliably until you knew which regulators would be recognised for the purposes of the exemption in the act for which the relief is relevant. So it is a timing issue.

At the other end, there are some very practical cuts to these. The thin capitalisation law requires entities to have a minimum level of capital or a maximum level of debt, whichever way you want to look at it. Financial institutions tend to be very highly geared, so there are specific reliefs given within the thin capitalisation act to allow entities to operate with what is a practical level of capital for them. That hinges on the definition of financial entity, and the question of what is a financial entity and how exempt entities might be treated has a bearing on the amount of capital that banks would need to hold at the end of this year. To introduce capital into Australia takes several months because you need to get authorisations from head office. To restructure operations requires head office approvals too, because the restructure fits within the context of the global operations.

To be honest, sometimes we have found that, in trying to deal with these issues, operations in Australia are not that significant on a global scale and to get the attention you require, to get decisions made, can take a period of time. The Financial Corporations (Transfer of Assets and Liabilities) Act was extended recently to allow merchant banks and some bank subsidiaries to transfer to being ADI branches. Just to illustrate: in that there was a one-year extension—effectively, a two-year extension, but it runs to June next year—because it was realised that it will take that long to get the decision process made and get the licence, in that case from APRA. A similar scenario would apply here. Obviously it cannot take a year because it would be too long in some cases. But it is difficult to come to conclusions without firmer guidance in the near future.

Mr BYRNE—Do you have any rough time line, from having approached ASIC, as to when they might complete this process?

Dr Lynch—No. One of the ways that they may want to deal with this to cut the issue. If you are looking at an exemption that really only favours the wholesale market, you can come to a conclusion on that because the range of regulatory issues and the range of provisions in the act that apply will be relatively narrow. Whereas, if you are talking about retail business, there is a much wider range of issues in terms of disclosures, investors having appropriate redress and being able to understand the regulatory regime which you might be relying one. So you could actually adopt a streamlined approach. They have not indicated that they will do that, but they have not indicated that they will not either.

CHAIRMAN—Are there any other questions?

Senator MURRAY—I have just one, and it arises from my ignorance. Some of the issues that concern you relate to overseas persons providing financial services. Where do those overseas persons principally come from, in dealing with Australia? Is it Singapore, London, or where?

Dr Lynch—London and New York are the main bases. In terms of branching into Australia, I suspect that London would be the main place to do it. The reason is that it has a good network of tax treaties, and the regulation in London facilitates branching within the EU network; so, if you were branching to Australia from London, that would be easier to do. Plus, the regulatory structure in the UK is better understood here than in other places. But in some cases we know of business done out of Tokyo, Singapore and Hong Kong as well.

Senator MURRAY—You mentioned how small we are, relative to the global spread of this kind of business, which I easily understand. Broadly speaking, Australia is one per cent of the world's economy. Would we be one per cent of the business out of London in this field? Or would it be more, or less? Give me a feeling for what you mean by how small or big we are.

Dr Lynch—In terms of the operations of our banks, we could look at, say, balance sheet size. I can do this for ADI, but it is a bit more difficult for some securities companies, because you do not have comparable information. Of our biggest banks, one like Deutsche Bank might be five or six per cent of the global balance sheet. We have many operations here which would be less than one per cent of the global balance sheet of the bank.

Senator MURRAY—I am really trying to get a relationship. Of this kind of business, if we are one per cent of the world's economy, what are we as a percentage of this sort of financial services and trade?

Dr Lynch—It is more than one per cent, for a couple of reasons. Some of the businesses that are dealt in Australia would be in relation to commodities where Australia, as part of the global economy, is bigger.

Senator MURRAY—So when you say that we are small, we might be five per cent rather than one per cent?

Dr Lynch—Yes.

Senator MURRAY—Okay. That is what I wanted to get at.

Dr Lynch—And again, when you look at the trading in the Australian dollar as a proportion of currencies, I cannot recall the precise BIS bank financial services figures, but I think it was around eight or nine per cent. I am open to correction on that, but, again, more than half the trading in Australian dollars is conducted offshore, primarily in New York and London.

Senator MURRAY—Yes. My memory is that we have been between the sixth and the fourth most traded currency in the world.

Dr Lynch—With the EU collapsing the pound and the deutschmark, that becomes more concentrated.

CHAIRMAN—As there are no further questions, we thank you, Dr Lynch, for appearing before the committee and for giving your evidence and answering our questions.

Committee adjourned at 4.18 p.m.