



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

ECONOMICS LEGISLATION COMMITTEE

ESTIMATES

(Budget Estimates)

THURSDAY, 4 JUNE 2009

CANBERRA

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SENATE ECONOMICS
LEGISLATION COMMITTEE
Thursday, 4 June 2009

Members: Senator Hurley (*Chair*), Senator Eggleston (*Deputy Chair*), Senators Cameron, Joyce, Pratt and Xenophon

Participating members: Senators Abetz, Adams, Back, Barnett, Bernardi, Bilyk, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, Cash, Colbeck, Jacinta Collins, Coonan, Cormann, Crossin, Farrell, Feeney, Ferguson, Fielding, Fierravanti-Wells, Fifield, Fisher, Forshaw, Furner, Hanson-Young, Heffernan, Humphries, Hutchins, Johnston, Kroger, Ludlam, Lundy, Ian Macdonald, McEwen, McGauran, McLucas, Marshall, Mason, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Ronaldson, Ryan, Scullion, Siewert, Sterle, Troeth, Trood, Williams and Wortley

Senators in attendance: Senators Abetz, Barnett, Bernardi, Bushby, Cameron, Coonan, Eggleston, Fisher, Heffernan, Hurley, Joyce, Ludlam, Macdonald, Pratt, Ronaldson, Sterle, Williams and Xenophon

Committee met at 9.00 am

DEPARTMENT OF THE TREASURY

Consideration resumed from 3 June 2009

In Attendance

Senator Conroy, Minister representing the Treasurer, and Senator Sherry, Minister for Superannuation and Corporate Law

Department of the Treasury

Dr Ken Henry, Secretary

Mr Richard Murray, Executive Director, Policy Coordination and Governance

Outcome 1—Sound macroeconomic environment

Output Group 1.1 Macroeconomic group

Dr David Gruen, Executive Director

Mr Mike Callaghan, Prime Minister's Special Envoy

Mr Tony McDonald, General Manager, Macroeconomic Policy Division

Dr Steven Morling, General Manager, Domestic Economy Division

Mr Adam McKissack, Principal Adviser, Forecasting, Domestic Economy Division

Mr Kevin Playford, Manager, International Finance Division

Mr Mike Kooymans, Manager, International Finance Division

Mr Bill Brummitt, General Manager, International Economy Division

Outcome 2—Effective government spending arrangements

Output group 2.1 Fiscal group

Mr Nigel Ray, Executive Director

Ms Peta Furnell, General Manager, Social Policy Division

Mr Paul McBride, Manager, Social Policy Division
Mr Peter Robinson, Principal Adviser, Social Policy Division
Mr Steve French, General Manager, Industry, Environment and Defence Division
Mr Geoff Francis, Principal Adviser, Industry, Environment and Defence Division
Ms Meghan Quinn, Manager, Industry, Environment and Defence Division
Mr Kurt Hockey, Manager, Industry, Environment and Defence Division
Ms Natalie Horvat, Manager, Industry, Environment and Defence Division
Ms Penny Sirault, Manager, Industry, Environment and Defence Division
Ms Jan Harris, General Manager, Budget Policy Division
Ms Luise McCullough, Principal Adviser, Budget Policy Division
Mr Jason Allford, Principal Adviser, Budget Policy Division
Ms Michelle Stone, Manager, Budget Policy Division
Ms Sue Vroombout, General Manager, Commonwealth-State Relations Division
Mr Tony Webster, Manager, Commonwealth-State Relations Division
Ms Deidre Gerathy, General Manager, Corporate Services Group
Mr Rob Donnelly, General Manager, Financial and Facilities Management Division

Outcome 3—Effective taxation and retirement income arrangements

Output group 3.1 Revenue group

Mr David Parker, Executive Director
Ms Christine Barron, General Manager, Indirect Tax Division
Mr Michael Willcock, General Manager, Personal and Retirement Income Division
Mr Mark O'Connor, Principal Adviser, Personal and Retirement Income Division
Mr Tony Coles, Manager, Personal and Retirement Income Division
Mr Chris Leggett, Senior Adviser, Personal and Retirement Income Division
Mr Nigel Murray, Manager, Personal and Retirement Income Division
Mr Paul McCullough, General Manager, Business Tax Division
Mr Rob Heferen, General Manager, Australia's Future Tax System
Mr John Lonsdale, Adviser, Australia's Future Tax System
Mr Jonathan Rollings, Acting General Manager, Tax Design Division
Mr Haydn Daw, Acting General Manager, Indirect Tax and Treaties Division
Mr Greg Wood, Indirect Tax and Treaties Division
Ms Maryanne Mrakovcic, General Manager, Tax Analysis Division
Mr Phil Gallagher, Manager, Tax Analysis Division
Mr Colin Brown, Manager, Tax Analysis Division
Mr Damien White, Manager, Tax Analysis Division
Mr Marty Robinson, Tax Analysis Division

Outcome 4—Well-functioning markets

Output group 4.1 Markets group

Mr Jim Murphy, Executive Director
Mr Geoff Miller, General Manager, Corporations and Financial Services Division
Ms Marian Kljakovic, Manager, Corporations and Financial Services Division
Mr Mark Sewell, Manager, Corporations and Financial Services Division
Ms Alix Gallo, Manager, Corporations and Financial Services Division
Mr Bede Fraser, Manager, Corporations and Financial Services Division

Ms Kate Preston, Manager, Corporations and Financial Services Division
Mr Patrick Colmer, General Manager, Foreign Investment and Trade Policy Division
Mr Godwin Grech, Principal Adviser, Financial Systems Division
Mr David Martine, General Manager, Financial Systems Division
Ms Kerstin Wijeyewardene, Manager, Financial Systems Division
Ms Vicki Wilkinson, Manager, Financial Systems Division
Mr Roger Brake, Manager, Financial Systems Division
Mr Trevor King, Manager, Financial Systems Division
Ms Jacky Rowbotham, Senior Adviser, Financial Systems Division
Ms HK Holdaway, General Manager, Competition and Consumer Policy Division
Mr Brad Archer, Manager, Competition and Consumer Policy Division
Mr James Chisholm, Manager, Competition and Consumer Policy Division
Mr Paul Madden, Executive Director, Standard Business Reporting Management Group
Mr Peter Martin, Australian Government Actuary

Australian Bureau of Statistics

Mr Peter Harper, Acting Australian Statistician
Mr Ian Ewing, Deputy Australian Statistician, Macroeconomics and Integration Division
Mr Garth Bode, First Assistant Statistician, Social Statistics Group
Mr Paul Lowe, Assistant Statistician, Population Census Branch
Ms Heather Jones, Acting Assistant Statistician, Human Resources Branch
Mr Debra Foggin, Chief Financial Officer

Australian Office of Financial Management

Mr Neil Hyden, Chief Executive Officer
Mr Michael Bath, Director, Financial Risk
Mr Pat Raccosta, Chief Financial Officer
Mr Gerald Dodgson, Head of Treasury Services

Australian Prudential Regulation Authority

Dr John Laker, Chairman
Mr John Trowbridge, APRA Member
Mr Brandon Khoo, Executive General Manager, Specialised Institutions
Mr Charles Littrell, Executive General Manager, Policy, Research and Statistics
Mr Senthamangalam Venkatramani, General Manager, Central Region

Australian Taxation Office

Mr Michael D'Ascenzo, Commissioner of Taxation
Mr David Butler, Second Commissioner
Ms Jennie Granger, Second Commissioner
Mr Mark Konza, Deputy Commissioner, Small and Medium Enterprises
Ms Raelene Vivian, Chief Operating Officer
Mr Neil Olesen, Deputy Commissioner, Superannuation
Mr Greg Burgoyne, Chief Finance Officer
Sally Druhan, Assistant Commissioner, ATO Finance

Productivity Commission

Mr Gary Banks AO, Chairman
Mr Bernie Wonder, Head of Office

Dr Michael Kirby, First Assistant Commissioner
Mr Terry O'Brien, First Assistant Commissioner
Dr Ralph Lattimore, Assistant Commissioner
Mr Paul Gretton, Assistant Commissioner

Australian Securities and Investment Commission

Mr Tony D'Aloisio, Chairman
Ms Belinda Gibson, Commissioner
Mr Michael Dwyer, Commissioner

CHAIR (Senator Hurley)—I declare open this public hearing of the Senate Economics Legislation Committee. The Senate has referred to the committee the particulars of proposed expenditure for 2009-10 and related documents for the Innovation, Industry, Science and Research, Resources, Energy and Tourism and Treasury portfolios. The committee must report to the Senate on 25 June 2009 and has set 31 July 2009 as the date by which answers to questions on notice are to be returned.

Under standing order 26 the committee must take all evidence in public session. This includes answers to questions on notice. Officers and senators are familiar with the rules of the Senate governing estimates hearings. If you need assistance, the secretariat has copies of the rules. I particularly draw the attention of witnesses to an order of the Senate of 13 May 2009, specifying the process by which a claim of public interest immunity should be raised and which I now incorporate in *Hansard*.

The document read as follows—

Order of the Senate—Public interest immunity claims

That the Senate—

- (a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;
- (b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;
- (c) orders that the following operate as an order of continuing effect:
 - (1) If:
 - (a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and
 - (b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.
 - (2) If, after receiving the officer's statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.
 - (3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide

to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.

- (4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.
- (5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.
- (6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.
- (7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).
- (8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

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

(Agreed to 13 May 2009.)

(Extract, Journals of the Senate, 13 May 2009, p.1941)

The committee will begin today's proceedings with the markets group of Treasury and will then follow the order as set out in the circulated program. I welcome Senator Sherry, representing the Treasurer and officers of the department. Minister or officers, would you like to make an opening statement?

Senator Sherry—One issue I was going to raise, Chair, I notice you have got markets group for six hours on the indicative agenda. We are happy obviously for six hours if that is the committee's wish but it would be a world record length of time for markets group. My office has spoken to both APRA and ASIC and put them on standby. If the committee does proceed for a shorter period than six hours, we will have APRA and ASIC on stand-by to bring them on a little earlier, if that is the committee's will.

CHAIR—Thank you, Minister, that might be useful. We will see how we go.

Senator CAMERON—After last night you might be here for eight hours.

Senator JOYCE—Markets group, are we in a recession?

Mr Murphy—No.

Senator JOYCE—We are not in a recession?

Mr Murphy—That is what the national accounts demonstrate.

Senator JOYCE—Will we go into recession?

Mr Murphy—At the present time, from all the indicators, it seems that the stimulus packages which the government put in place and the other measures which the government has taken have steered Australia clear of a recession at the present time.

Senator JOYCE—So, the stimulus package is the key mechanism that we are not in a recession?

Mr Murphy—I think, yes, the stimulus packages—if you compare us with countries overseas—demonstrate that the actions that the government have taken have been effective.

Senator JOYCE—Can you just tell me what was the trade balance in the quarterly figures?

Mr Murphy—I have not got that with me. We can get that for you, Senator.

Senator Sherry—We can get the figure but this is not the area for the trade balance. That is a Treasury rather than a markets group area.

Senator JOYCE—Because it is the fact that the pre 31 March shipping figures, which deal with contractual obligations made at a time when there was a more robust payment for resources, are the absolutely overwhelming mechanism that has determined the current figures that have come out. I want to know what is the connection between a stimulus package and the capacity to get coal onto a ship and send it over to Asia?

Mr Murphy—I think I would be better off taking that on notice, Senator.

Senator JOYCE—Do you acknowledge that by a factor of 400 per cent the overwhelming figure in the quarterly figures was the turnaround in trade?

Mr Murphy—Right—so?

Senator JOYCE—So, how does the stimulus package, which you just told me is the mechanism—

Mr Murphy—The stimulus package is addressed to a whole economy response. With the interconnections and linkages within an economy, you cannot just drag out and say that the state of economy is determined by one particular factor. Australia's exports have been significant. Yes, if you talk about coal, we have had a major boost to Australia in terms of trade through our mineral exports.

Senator JOYCE—You just told me the reason we are not in recession just before, and I quote you, is because of the stimulus package.

Mr Murphy—Well, it is. Before the global financial crisis, Australia was progressing with record turns of trade largely due to our mining and commodity exports. Subsequent to the global financial crisis, of course there has been a decline in demand from, for instance, China. The initial stimulus package, which was there to keep spending, keep the economy moving, especially at the retail area in the retail sector, is also going to have flow-on and spill over effects into the rest of the economy. To say that the stimulus packages do not have any effect on trade I think is not correct.

Senator JOYCE—Can you please explain to me how a \$900 cheque in the mail puts one tonne of coal on a ship going to China?

Senator Sherry—Hang on, before we go any further. This is not a markets group responsibility, Senator Joyce, and these issues were canvassed extensively yesterday in front of the appropriate group, the macro policy group with Dr Henry, Dr Gruen and others. This is the markets area. If want to ask questions about markets matters, there is six hours available to do that minus 10 minutes, but it is not macro we are dealing with his this morning.

Senator JOYCE—Thank you, Minister. I asked the question whether we are in recession and I asked what is the mechanisms of why we are not in recession. I was given the answer that it was because of the stimulus package. I am now drilling down, because that is to do with the markets, into the details of the stimulus package. We have clearly defined it has got nothing to do with the stimulus package. It has got everything to do with exports which are not, in any way, shape or form, related to the stimulus package. I just want to clear the air of that because there seems to be some misconception out there that the trade figures have some relationship to a \$900 cheque in the mail. It has got absolutely nothing to do with it.

Senator Sherry—Markets group have nothing to do with the \$900 stimulus cheque. They have nothing to do with transport coal costs, nor do they deal with macroeconomic issues that were extensively canvassed yesterday. But in deference to yourself, we will take the question on notice.

Senator JOYCE—The minister has just told me that a \$900 cheque has nothing to do with the markets group. Did the \$900 cheque have nothing to do with any form of stimulus in the economy?

Senator Sherry—It is who is responsible for the area and markets group are not responsible for the area so we will take that question on notice.

Senator JOYCE—You will take it notice whether it had any effect?

Senator Sherry—We will take it on notice, yes.

Senator JOYCE—I imagine it will be very hard to determine whether it had any effect so I can understand why you would take it on notice.

Senator Sherry—Just so I can indicate, I am taking it on notice because you are asking the questions in the inappropriate area and you are starting to repeat questions yesterday which are the responsibility of the macro group. You might want to pad out estimates because you are not sufficiently prepared for the markets group to ask a range of questions, of which I could think of many.

Senator JOYCE—I have got some.

Senator Sherry—Good, as I say, matters that relate to macroeconomic issues were dealt with yesterday. I could just foreshadow that we will be taking on notice any further questions about that area.

Senator JOYCE—I understand absolutely why you would want to avoid the area. It is quite evident that with the lack of imports the Australian economy is actually factoring in a recession. If the stimulus package was working they would be purchasing capital imports but they are certainly not.

Senator CAMERON—Is that a question?

Senator Sherry—I am happy to respond to a relevant question, Senator.

Senator JOYCE—Can you explain why Australia has the highest level of food inflation in the western world?

Senator Sherry—Really, Senator. The markets group do not have oversight of inflation, particularly food inflation. We will have to take it on notice. The officers are not here for those particular issues because they do not deal with those issues.

Senator JOYCE—Outcome 1 is ‘Informed decisions on the development and implementation of policies to improve the wellbeing of the Australian people’. Do you think food inflation will have anything to do with the wellbeing of the Australia people?

Senator Sherry—We do not have officers here who can answer questions about food inflation in the markets division. I do understand that sometimes it is difficult at estimates to identify areas for questioning. There are difficulties, but we just do not have the personnel here. They are in the Macro and other areas of Treasury, so we will have to take it on notice.

Senator JOYCE—Do you believe the current retail environment is working effectively?

Senator Sherry—In a competitive sense?

Senator JOYCE—Yes.

Senator Sherry—There may be some response we can give you. When you say retail, what areas of retail do you mean?

Senator JOYCE—Retail of food—

Senator Sherry—Shopping?

Senator JOYCE—Shopping.

Senator Sherry—Do you have any comments on that?

Mr Murphy—Generally the economy seems to be holding up. Most people can purchase goods they wish to buy and suppliers are providing the goods that people wish to buy. You would have to say on general observation that the retail sector is progressing reasonably well at the moment, in a global financial crisis—I think that has got to be said. Obviously there are going to be strains on the economy given the downturns overseas.

Senator JOYCE—Do you believe the competitive pressures in the retail sector of the market are evident and working on behalf of consumers’ interests?

Senator Sherry—If you have issues around the operation of markets as distinct from outcomes, we may be able to help you, but, as to observations about the issues you are going to, we will take it on notice because it is not the appropriate area.

Senator JOYCE—Do you think a question to be asked on the retail sector would be inside the scope of outcome 1, ‘Informed decisions on the development and implementation of policies to improve the wellbeing of the Australian people, including by achieving strong, sustainable economic growth’? Do you see that as being within that scope or, if not, can you explain why it is not?

Senator Sherry—I have already explained, and we will take your question on notice. I am not going to repeat myself.

Senator JOYCE—You will take a question on notice on why the outcome is relevant is not.

Senator Sherry—Yes, we will take it on notice.

Senator JOYCE—You will take that on notice as well? Can you answer questions about fuel or are you going to take them on notice as well?

Senator Sherry—We are taking it on notice.

Senator JOYCE—You are taking questions on fuel on notice as well?

Senator Sherry—Yes.

Senator JOYCE—This is the Markets Group and you are going to take questions on the retail sector on notice because you cannot answer them; you are going to take questions on fuel on notice because you cannot answer them; you are going to take questions on the recession on notice because you cannot answer them.

Senator Sherry—Which particular area of fuel do you want to go to?

Senator JOYCE—Competitive stresses in the fuel market.

Senator Sherry—If you want responses to questions you have to be a little more specific than saying ‘fuel’.

Senator JOYCE—You just told me you will take it on notice before you had even heard the question.

Senator Sherry—No, you had ceased your question—if you would just stop for a moment and recall what you asked about. You concluded your question. I want to clarify this for the officers: what areas of fuel do you want to go to?

Senator JOYCE—I want to talk about the current competitive stresses in the market. Do you believe that they are evident? Do you feel the current Mobil-Caltex merger is going to exacerbate—

Senator Sherry—We can, I think, deal with those issues for you.

Senator JOYCE—You can deal with those issues?

Senator Sherry—Yes, I think we can.

Senator JOYCE—Hallelujah! We have got a question you can answer.

CHAIR—No, Senator.

Senator Sherry—It is a matter of asking the question in the appropriate area.

CHAIR—We have an appropriate question to answer, so please go ahead.

Mr Murphy—In the matter of fuel, as you know, we went through the government’s initiative in some length a little time ago. The Australian prices of unleaded petrol, diesel and LPG are largely following international benchmarks—we know that. Fuels are internationally traded commodities and the prices are determined by global supply and demand factors. In addition to the international prices, fuel prices in Australia also reflect changes in the exchange rate of the Australian dollar.

The ACCC, as part of its responsibilities for competition, monitors the retail prices of fuel. You noted that there is currently a question about a Caltex-Mobil merger. I think you could say that that is very much on the radar screen of the ACCC. There has been some question about whether consumers have benefited from the tie-up between the grocery retailers and the petrol companies. I think, from the analysis so far, consumers have benefited. That is basically where we are on fuel. It obviously was a major concern to people some time ago, but it seems that as fuel prices have moderated it is not at the moment an area where consumers feel under stress.

Senator JOYCE—In your knowledge of markets, do competitive pressures increase or decrease with the number of participants in the market?

Mr Murphy—In terms of competition, you only need two participants to have a competitive market to benefit consumers. It is not a given that the more competitors the more competitive outcome you will get. It may be; it would just depend on the market.

Senator JOYCE—Do you agree or disagree that with the centralisation of the market, if you get down to the position of two competitors, the capacity for cartel like arrangements increases or decreases or that implicit knowledge by each of the other's operation increases or decreases in such a way that you can implicitly collude without explicitly colluding?

Mr Murphy—There are a couple of points on that. Provisions of the Trade Practices Act 1974 go into price fixing and into cartels. They have been strengthened by this government moving to actual criminal sanctions for cartels. As we have seen, there has been a lot of press about the Visy case. As you can see—

Senator JOYCE—In the Visy market, how many competitors were there?

Mr Murphy—Can I just answer the question? In terms of competition, as I said, it depends on the nature of the market. Also, the number of competitors can be one factor in determining a competitive market. Oftentimes I think people misunderstand competition by thinking that a trade practices act or competition policy is there to provide solely a support for market players. The competition policy is there primarily to ensure that there is a competitive market for consumers. A competitive market for consumers may come from a smaller number of competitors than a larger number of competitors. It all depends on the market.

Senator JOYCE—In the Visy case, how many major players were there in that market?

Mr Murphy—Principally there were just the two.

Senator JOYCE—Two?

Mr Murphy—There were other small ones, but principally there were two.

Senator JOYCE—I am going to get to the relevance of the Trade Practices Act in maintaining a competitive market. Did two players make it easier or harder for Visy and Amcor to come to an arrangement? Would it have been more difficult had there been multiple players?

Mr Murphy—You might be better off addressing that to Graeme Samuel and his experience, but I would not have said so. When you had clear prohibitions in terms of the conduct that was engaged in, I do not see how it makes it easier for two people to collude than

for 100. There are clear prohibitions in the law against that activity. I do not see that that is the answer.

Senator JOYCE—Your statement there, Mr Murphy, is that you believe that it would be no harder for two people to collude in the market than for 100? Do you stand by that statement?

Mr Murphy—If you have it in an area where there is clear prohibition, where it is an illegal activity, one would have thought that just the same prohibition applies for two as it does for a multiple number of people.

Senator JOYCE—You do not honestly believe that, do you? It is far easier for two people to collude. They do not even have to do it explicitly. They do it implicitly through knowledge of each other's business.

Senator Sherry—You implied that the witness was not giving a correct answer. He is giving the correct answer to—

Senator JOYCE—He stands by the answer then?

Senator Sherry—your question.

Senator JOYCE—He stands by the answer that it is as easy for a hundred people to collude as it is for a market of two to collude?

Mr Murphy—No. If they have the intention, they will collude. But I am saying this is such a strong prohibition and the consequences are so serious that it is not common conduct.

Senator JOYCE—So you are saying the competitive pressure in the market is brought about by the Trade Practices Act, and that ipso facto stands in spot for the other 98 competitors if there are only two in the market?

Mr Murphy—I am sorry—

Senator JOYCE—You are saying that the Trade Practices Act is basically the only inhibitor for collusion?

Mr Murphy—There is competition in itself. We would only be minded to collude if we thought we were going to do better out of it by colluding than we would be if we did not. Realistically the competition rules as set out in the Trade Practices Act are the principal regulatory tool to ensure competition in the economy. There will be competition just by its nature. People wish to compete and to do the best they can.

Senator Sherry—Can I just make an observation as well. Different markets have different numbers of participants and there are a range of characteristics that will influence the number of participants in a market. For example, if you look at the airline sector, there are two dominant airlines in Australia—Virgin and Qantas, and their subsidiaries. The argument would be: could you have 100 airlines? I doubt very much you could because there is a series of factors around capital investment, I suspect, and other factors that mean the economy of scale required to operate an airline means you do not get 100 airlines in the Australian market. We have got two; we have always seemed to have had two, certainly for the last 70 to 80 years. From market to market you are going to have different factors that will impact on the number of participants in a particular market.

Senator JOYCE—There obviously are also factors there, Minister, with the extent of capital itself being an inhibitor to entry and exit.

Senator Sherry—Sure.

Senator JOYCE—Not everyone can run out and buy a 747.

Senator Sherry—Yes, exactly.

Senator JOYCE—Do you believe the ACCC is currently effective in its capacity to deal with collusion and distorting effects in the marketplace?

Mr Murphy—Yes.

Senator JOYCE—You think they are?

Mr Murphy—Yes.

Senator JOYCE—Do you acknowledge that Australia has the highest form of food inflation in the Western world and the most centralised retail market in the Western world? Doesn't this run counter to what you—

Senator Sherry—The issue of food inflation is not an issue for these witnesses. We can take the question on notice to get the detail. You assert things, Senator.

Senator JOYCE—That is not—

Senator Sherry—You asked, 'Do you acknowledge that Australia has the highest level of food inflation?'

Senator JOYCE—Do they?

Senator Sherry—I do not know that there would be an officer here who can provide us with that factual information.

Senator JOYCE—You can take it on notice. I will close with: does Australia have the highest form of food inflation in the Western world?

Mr Holdaway—Unfortunately, as the minister suggested, we cannot actually provide that as a fact. But certainly there was an extensive report done by the ACCC on food inflation within Australia as part of the grocery inquiry. The report suggested that huge components of the inflation in food prices could be attributed to the drought that Australia has experienced. In fact, a lot of other things, such as international factors, prices of fuel and prices of input actually contributed to that as well.

Senator JOYCE—That would suggest that the farm gate price of food has also gone up, but has the farm gate price of food gone up in any way, shape or form to the margin that the shelf price of food has gone up?

Mr Holdaway—I would have to take that particular question on notice. I do not know the exact detail about that.

Senator JOYCE—You can check the assertion I am making here: that the farm gate price of food has not gone up, even marginally, to the extent that the shelf price has gone up, which means there is a capacity in the market to gouge, which is brought about by the overcentralisation of the retail market. Is the ACCC able to deal with this issue?

Mr Holdaway—Once again, I will have to take you back to the conclusions of the report, which clearly showed that the contribution to the food price inflation, which was attributable to the profit increase of retailers, was marginal. Once again, I am happy to put in writing what that proportion was, but it clearly showed that the food price inflation was as a result of a lot of external factors.

Senator JOYCE—If it is not the farm gate, where are the external factors that push up the price of food or are we now in a position where we are importing food?

Senator Sherry—There may be some information that the officers can give you, but you are mixing issues. I do not know whether or not you read earlier the overview of the outcome, but in this—

Senator JOYCE—I have the outcome right here.

Senator Sherry—Have you read the output?

Senator JOYCE—No. Do you want me to read it out to you? I read it out before.

Senator Sherry—You read it out but you did not read out the output. The first one is Output 4.1.1: ‘Foreign investment, trade policy and administration’. The second one is Output 4.1.2: ‘Financial system and corporate governance policy advice’. The third one is Output 4.1.3: ‘Competition and consumer policy’.

Senator JOYCE—Sorry, can you read that one out again?

Senator Sherry—Competition and consumer policy.

Senator JOYCE—What are we talking about at the moment?

Senator Sherry—I just want to clarify: are we going to jump right through this? We are still limited in what we can give you on some of the data you are seeking. The fourth one is Output 4.1.4: ‘Actuarial services’. The administered items are the HIH Claims Support Scheme, the Housing Loan Insurance Company, payments in respect of insurance claims, and standard business reporting.

Senator JOYCE—We have six hours to deal with it. I am dealing with competition policy.

Senator Sherry—Can I just get some clarification here. Are we going to proceed in some order here or are we jumping from one area to another?

Senator JOYCE—What is the issue with that? What is the problem? Are you not prepared for it?

Senator Sherry—We are well prepared for what is appropriate for this area.

Senator JOYCE—This is appropriate. It is an outcome. I am asking the questions; I need the answers.

CHAIR—Senator Joyce, I think we do tend to jump in the economic committee generally. Certainly I understand there are more senators due later. I would like to proceed in an orderly fashion but I am just unsure where we are going at the moment. I understand Senator Ludlam has questions on the foreign investment area. I think Senator Joyce has had nearly half an hour. I will just ask him to wind up.

Senator JOYCE—Sorry, can I continue on?

CHAIR—Just for a short time on a couple of questions and then I will go to Senator Ludlam.

Senator JOYCE—We will go to foreign investment, but I will come back to the ACCC. I will help you out.

Senator Sherry—Can I just remind you, Senator, this is not the ACCC. The ACCC was scheduled for questions—

Senator JOYCE—I am asking you questions about—

Senator Sherry—of competition policy.

Senator JOYCE—It is an output; it is an outcome. I am allowed to ask questions of you, Minister, and you are supposed to answer.

CHAIR—Senator Joyce, would you like to ask your questions. You have got a couple of minutes.

Senator JOYCE—Regarding foreign investment, is the market group comfortable with the advent of foreign wealth funds? What are your views on it?

Mr Colmer—The experience that we have had with sovereign wealth funds goes back many years. There has been some very recent attention on sovereign wealth funds. Our experience over quite a few years has been that, generally speaking, we have not identified any problems with sovereign wealth funds in the way that they operate in Australia.

Senator JOYCE—What is the capacity for dispute resolution mechanisms to operate when we start dealing with the government of another country as the intrinsic owner, especially of an asset in situ in Australia? Does this go to another level than would otherwise be able to be dealt with dealing with a corporate entity in Australia?

Mr Colmer—Senator, I think that is to a very large extent a hypothetical question, because, frankly, we have no experience in—

Senator JOYCE—We have no experience in it?

Mr Colmer—needing to pursue such a dispute that I am aware of. Generally speaking, the sovereign wealth funds have their own corporate identity. Generally speaking, they have a variety of structures through which they may make their investments. It varies quite significantly between funds, between countries and between types of investments, but generally speaking there is a legal entity interspersed between a foreign government and an investment, and those legal entities are subject to the law in the same way as other legal entities.

Senator JOYCE—What capacity does Australia have to create disaggregation of vertical integration in sovereign wealth funds when it becomes apparent that their capacity to deal across our nation's borders is an inhibitor on competition, an inhibitor on price and an inhibitor on the return that is sought by the Australian people?

Mr Colmer—I am not sure that I actually understand your question, Senator. It seems to be throwing a lot of—

Senator JOYCE—What do you mean you do not understand it?

Senator Sherry—Should that be a surprise to you that he does not understand it—

Senator JOYCE—No, it is not a surprise to me that he cannot answer it.

Senator Sherry—given the gobbledegook in your question—

Senator JOYCE—It surprises me greatly that he does not understand it.

Senator Sherry—which was a range of assertions, answers, bundled up and claimed to be a question. It was just gobbledegook, Senator.

Senator JOYCE—No.

Senator Sherry—It should come as no surprise to you given the lack of preparation that—

Senator JOYCE—What is so confusing about the words ‘vertical integration’?

Senator Sherry—That was not the only reference you made in the question. It was the broadest range of gobbledegook I have heard at a Senate estimates for a long time, Senator Joyce.

CHAIR—Senator Joyce, this is your last question, so would you like to rephrase it for Mr Colmer?

Senator JOYCE—I will make it really simple for the minister: do you have the capacity within Australian domestic policy to break up a vertically integrated company if it is in a sovereign wealth fund? Are you still with me, Minister, on this one or is it getting too complicated for you?

CHAIR—Senator Joyce, that is not necessary.

Senator JOYCE—Do you have the capacity to break up a vertically integrated company that goes across our nation’s borders as would be seen in a sovereign wealth fund where the purchaser of the minerals is also the seller of the minerals and the owner of the minerals in the ground in Australia?

Mr Colmer—Senator, I think you are confusing a number of different issues. Vertical integration in the resources area is something that we see; it is something that is not—

Senator JOYCE—Do you have the capacity to break them up?

Senator Sherry—Hang on. Look, Chair; he has asked a question, a gobbledegook question, and—

Senator JOYCE—No, you are just using that as a mechanism to avoid an answer.

Senator Sherry—as the officer attempts to answer, the senator cuts him off as he is trying to give an answer. He has only given one line so far to a ten line—

Senator JOYCE—You are the one doing the talking.

Senator Sherry—gobbledegook question from Senator Joyce. I just ask that there is a bit more tolerance, Chair, for the witness to give as comprehensive an answer as he is able to.

CHAIR—I agree, Minister. Mr Colmer, would you like to continue?

Mr Colmer—Yes. The issues around vertical integration are not something that are a specific issue for sovereign wealth funds; there are a number of private companies that have

vertically integrated operations. In answer to your question I would make the observation that the Australian foreign investment system is a pre-establishment system. The only capacity that the foreign investment system has is to deal with a proposal prior to the investment, because we afford full national treatment to foreign investors once they are established in Australia. The answer to your question is that we have exactly the same law applying to sovereign wealth funds operating in Australia as we have to any other companies operating in Australia.

Senator JOYCE—The question is very succinct. Do you have the capacity to break them up—

CHAIR—Senator Joyce, it is Senator Ludlam's call.

Senator JOYCE—yes or no?

CHAIR—No.

Senator JOYCE—Is that the answer—'no'? Thank you.

CHAIR—Senator Ludlam.

Senator LUDLAM—I have a couple of questions for the Foreign Investment Review Board and I gather they are not here this morning, but is somebody able to take some questions on their behalf?

Mr Colmer—I can probably handle those, Senator.

Senator LUDLAM—I am really after, I suppose, just some principles and then I would like to go to one specific case about proposed investments by entities that are wholly owned by foreign governments in Australian resources.

Mr Colmer—Yes.

Senator LUDLAM—I gather there are six guidelines, including an investor's operations being independent from the relevant foreign government. Can you just tell us how the FIRB assesses independence in the case of an entity that is wholly owned by a foreign government?

Mr Colmer—Senator, before answering that specific question, it needs to be borne in mind that those principles that were announced by the Treasurer last February are guidelines, they are not a check list whereby every item needs to be ticked off. The reality is that any government-owned entity will not be totally independent from the government. The questions that we look at are: what is the governance of the entity, how does it operate, and can we see that it is operating independently and without direct and continuing government control, because any government entity will have a relationship with its government.

Senator LUDLAM—Did you actually send people to these countries? The ones that I am interested in that I am going to ask you about in a second are Chinese. Does FIRB actually send investigators? How do you ascertain the degree of independence in these sorts of structures?

Mr Colmer—The degree of independence is a difficult question. In significant cases we do meet with companies, we do meet with other parties. We do not go to China to investigate every Chinese investment. We would never be in the country if we had to go all around the world. We have 700 applications from a variety of countries. At the end of the day, the principles are essentially a balancing act and we need to look at the materiality of any

problems that emerge. I guess the easiest way to answer your question is that bearing in mind that government entities are related to governments, we have not to date taken the view that any particular company has such overriding government control that it has been a problem.

Senator LUDLAM—An application has never been knocked back on the grounds that it was too close to the parent government. Is that what you mean?

Mr Colmer—Yes.

Senator Sherry—Can I just mention, Senator, in this context of sovereign wealth funds, arguably Australia's Future Fund is a sovereign wealth fund. It is there for the purpose of providing investments. When the Future Fund and its Board of Guardians choose to invest overseas, as I am sure they do, the degree to which Australia's Future Fund is examined by foreign governments for investments they may choose to make, acquisitions they may choose to make, is a not dissimilar issue.

Senator LUDLAM—Would the Future Fund be permitted to buy 51 per cent or a greater than half share of a mining company in China?

Senator Sherry—That is an issue you would have to put to the Future Fund.

Senator LUDLAM—I guess so. It is a little bit tangential to where I was going, but thank you.

Senator Sherry—I accept it is tangential, but it is relevant.

Senator LUDLAM—Sure.

Senator Sherry—Because we are invariably dealing around the world with a range of government created instrumentalities for various purposes but that are effectively owned by the government. There are many such entities. China is not alone in having such an entity. For example, the Norwegian government has one of the world's largest sovereign wealth funds based on their oil investments. There would certainly be at least 10 to 15 major classified wealth funds for a range of purposes that I can think of around the world that are very substantial in size.

Senator LUDLAM—I am just trying to get a sense of the way in which these things are assessed by the Foreign Investment Review Board. Your second guideline, as you put it, is that the investor should be subject to and adhere to the law and observe common standards of business behaviour. In terms of adhering to the law, is that domestic law or the law everywhere in which that entity operates?

Mr Colmer—It is both, Senator. Clearly we seek to discover whether there is any evidence of illegal activity but actually that criterion is much more about how does the foreign investor operate in Australia, what are the arrangements for governance and do they actually understand and operate within the Australian system? That is, of course, the key issue that we are looking at.

Senator LUDLAM—We have come to the specific one that I am interested in and I realise you probably will not be able to disclose too much of the actual thinking of the board at this time. Can you confirm for us whether the board is assessing the case of Lynas Corporation Limited, which has proposed mining operations at Mt Weld in WA, and China Nonferrous

Metal Mining Group—CNMC—which has proposed to take a 51 per cent stake in Lynas? Are you familiar with that, for example?

Mr Colmer—I am a little familiar with it. At this stage, I am not sure that it is even a formal case. I could be wrong there, but we are aware of the proposal.

Senator LUDLAM—Could you take on notice for us, if that is something that you are aware of at the moment, whether the board is assessing that proposed investment?

Mr Colmer—The board itself has not had a look at that case as yet.

Senator LUDLAM—Can you just step me through your process? When a proposed investment like this is on the table, at what point does the board get involved and how is its advice rendered to government?

Mr Colmer—The way that the system works is that applications for foreign investment approval are, in the first instance, assessed by Treasury in my division. My division provides secretariat services to the board as well as advice to the minister. Under the legislation, the Foreign Acquisitions and Takeovers Act, the Treasurer is the minister who is required to make a decision on each case. The Treasurer does that with a combination of advice from the Foreign Investment Review Board and the Treasury as his department. It varies depending on the nature of the case and the size and similar sorts of things, but typically we consult confidentially with other relevant government departments, we do our own analysis of the particular issues that might arise in a particular case, and then depending on the significance of the case and what sort of issues might appear, the Foreign Investment Review Board will have a varying degree of involvement. The Foreign Investment Review Board itself does not look at the routine cases; it only looks at the more significant cases and that provides advice to the minister via the department.

Senator LUDLAM—Is the board able to call in particular cases? Who is choosing the significant ones that they will assess or do you refer them along to them?

Mr Colmer—The board is informed of all cases and is perfectly able to ask to look at any of the cases if it wishes to.

Senator LUDLAM—Or you can refer them?

Mr Colmer—Generally we refer them and the board will certainly tell us if there are particular cases in which they have an interest.

Senator LUDLAM—What happens then? What sort of process of consultation or examination do they go through?

Mr Colmer—The board generally meets monthly but the individual members have a weekly phone conversation with officers of the division, usually myself. In those meetings and phone discussions we will talk through the details of particular cases, we will provide draft advice that the board will consider and make comment on, and, if there are particularly significant cases, we have teleconferences. It is really a consultation process I guess between the department and the board to some extent and then the board can provide its advice to the minister.

Senator LUDLAM—When you said draft advice before, you meant draft advice to the Treasurer.

Mr Colmer—That is right. The department provides the advice at a formal level.

Senator LUDLAM—What happens then? When there is advice and it has been through that process for the more significant cases, the board has had a role and the advice is drafted and sent to the Treasurer?

Mr Colmer—That is right.

Senator LUDLAM—Is the Treasurer then free to entirely disregard that advice or is he bound by the advice coming from the department?

Mr Colmer—It is advice, Senator; the Treasurer can take his own view based on that advice if he chooses.

Senator LUDLAM—In past practice, how reliably does the Treasurer follow the guidance of your department or the board in the cases when it is involved?

Mr Colmer—I cannot really say, Senator. Firstly, that is a question which goes very much to the relationship between the department, the board and the minister, but, secondly, we do not actually keep data on that.

Senator LUDLAM—Is that not something you would be interested to know, whether your advice is being routinely disregarded? It would be a bit of a waste of time—

Mr Colmer—I think that is a fairly large leap to suggest that the advice is routinely disregarded.

Senator LUDLAM—But you do not know if you are not keeping the data.

Mr Colmer—I think we would know if it was routinely disregarded, Senator.

Senator LUDLAM—It is kind of curious to me that you would not be tracking how often your advice is being accepted. Maybe routinely is strong language but do you have any idea at all how often your advice is disregarded?

Mr Colmer—Yes, I do.

Senator LUDLAM—Is the advice that you produce disclosed to the public, or is it confidential?

Mr Colmer—No, it is kept in confidence. You need to understand, Senator, that we deal with a lot of things which are very market sensitive, so, we need to deal with them in the strictest confidence.

Senator LUDLAM—Sure. In terms of the six guidelines, do they just apply to the FIRB's deliberations or are they right through the department in all of your thinking around foreign investment?

Mr Colmer—Those six guidelines are specifically designed for the assessment of proposals under the Foreign Acquisitions and Takeovers Act.

Senator LUDLAM—So, everybody would have regard to those. I have referred this one myself in a letter a week or two ago, the case of Lynas and the CNMC, to the Foreign

Investment Review Board. Is that case under active consideration by your department? You said before you do not think it has been referred to the board yet.

Mr Colmer—I am not entirely sure where its status is in the system but we are aware of it. It has been in the press and we are aware of your letter.

Senator LUDLAM—One of the reasons that I have referred that and that I am interested in it and that it has picked up some press is that CNMC, the Chinese group, operates the largest nickel in Burma in active partnership with the Burmese military government and is seeking more acquisitions in Burma. I am just wondering whether that would set a red flashing light, at least on the second of your criteria of observing common standards of business behaviour. Would investments under one of the world's worst military regimes qualify as breaching that second criteria?

Mr Colmer—The relationship between Burma and Australia is primarily one for the Department of Foreign Affairs and Trade and we are discussing that issue with the department. We have sought advice from them. My understanding is that Australia has no sanctions on investment to and from Burma.

Senator LUDLAM—That is correct.

Mr Colmer—The position, as I understand it from the basis of the information that we have, is that the Chinese company is operating in Burma. That in itself does not tell us anything except that it is operating in Burma. The fact that a company may be operating in Burma—I believe we have an embassy in Burma.

Senator LUDLAM—Yes we do.

Mr Colmer—It does not seem, of itself, to be a relevant consideration. If there is information about its operations in Burma or anywhere else that are relevant to the way that it operates in Australia, then that would be something that we may be interested in.

Senator LUDLAM—I have no further questions. Thanks.

Senator CAMERON—Could Treasury outline how the planned changes announced by government will cover excessive executive termination payments?

Mr Miller—In regard to termination benefits, the government announced on 18 March 2009 that it is going to amend the Corporations Act to strengthen the regime around that. Essentially two main things are going to happen. Firstly, the threshold will drop from what could be up to seven times the director's annual salary down to one times the director's annual salary before the point at which the company needs to take that termination payment to the shareholders for a vote. The other thing that is going to happen is that it will not be just the directors of the company; this will apply to all the members of the company who are reported in the directors report, which is a wider group. It includes directors and, I think, the top five or a number of executives in the company. So it is a broader group that this will apply to.

Senator CAMERON—Is this the first time that senior executive termination payments and not just directors' payments will be subject to a binding vote by shareholders?

Mr Miller—I will just get someone who has more of the technical detail for you.

Mr Fraser—Yes, this will be the first time, although the current provisions would also pick up the chief executive officer if they were also a director of the company.

Senator CAMERON—Golden handshakes are often seen as payments for failure. Can Treasury explain how the proposed changes can prevent large termination payments going to failed executives?

Mr Miller—I think the issue is that it will now be up to the shareholders to decide whether those executives deserve that excessive golden handshake. That is the method that this provision will apply. If the shareholders believe that that executive has done everything he or she should have done and is deserving of that excessive benefit, they can vote for that.

Senator CAMERON—What is the penalty if directors ignore these new laws?

Mr Fraser—As part of the draft provisions, the penalty regimes have been substantially increased. They have actually been increased by a factor of six. For natural persons, the penalties have been increased from 25 penalty units to 180 penalty units and for body corporates they have increased from 150 penalty units to 900 penalty units. The existing criminal sanctions have remained in place, so there is also an option for six months imprisonment.

Senator CAMERON—What is the quantum of a penalty unit?

Mr Fraser—It is \$110 per penalty unit.

Senator CAMERON—Could Treasury outline the new planned consumer protection and redress mechanisms being introduced through the Consumer Credit Regulation 1995?

Mr Miller—Yes. That is a fairly broad question. The Uniform Consumer Credit Code provisions that are currently sitting in the states and territories are going to be brought up into the federal sphere. This is going to be done in two phases. The first phase is to actually bring all those provisions up into the federal sphere, with some minor amendments that were already contemplated by the states and territories at the time that we were negotiating to bring up. Adding to that, we are also putting in, in that first phase, a licensing arrangement over the new arrangements that will be in the Commonwealth sphere. Those licensing arrangements, in particular, have an additional responsible lending test that has not been in the previous law. That is essentially the first phase—that is, bring up all the uniform consumer credit code from the states and territories, put on a licensing system and put on responsible lending. That is pretty much the first phase of this.

The second phase, which is about 12 months later, is to have a look at a broader set of improvements to that system. There are questions of what to do about business lending. At the moment it is more about individual lending than business lending; we have to have that consideration about business lending. There are a number of other matters that have been announced by government that we will look at in that second phase. In other words, we are trying to take the basic package from the states and territories, trying to not put in too many extra changes so that the transition to the federal sphere is not too burdensome on business. But we do need to put at least a registration system over the top of that and put in some responsible lending tests. The rest of the improvements to the new uniform code will come in that second phase.

Senator CAMERON—Could Treasury outline how Australia is implementing a world-leading responsible lending obligation?

Mr Miller—There are two basic elements to the responsible lending that we are introducing. The first is to ensure that the consumer's capacity to repay is tested and the second is to ensure that, when they are provided with a credit product to get into, it is not unsuitable for them. There are these two elements: firstly, the product cannot be unsuitable for the consumer and, secondly, they have to have a capacity to repay that. This will be a requirement placed on not just the lenders but also other people in the chain who provide advice on consumer credit.

Senator CAMERON—Can I move to the regulation of trustee companies. Is it true there are currently 10 private licensed trustee companies operating in Australia?

Mr Miller—Sorry, could you—

Senator CAMERON—There are 10 private licensed trustee companies?

Mr Miller—Yes, that is correct.

Senator CAMERON—Is it true that the members of the Trustee Corporations Association of Australia—that is the sector's peak body—have approximately \$510 billion of assets under management?

Mr Miller—I believe so.

Senator CAMERON—With companies that have \$510 billion in assets, is it true that to date they have not been nationally regulated and in fact they are currently regulated at the state and territory level?

Mr Miller—That is correct.

Senator CAMERON—Surely state regulation could result in multiple, often contradictory state based regulations and these companies then facing significant red tape?

Mr Miller—Indeed that is correct, and that is why the federal government has sought now to bring them into the federal sphere. Like most of these measures, it is about getting rid of red tape and overlapping requirements in multiple states and territories and having just one national system. Generally this will be far better for those various companies and corporations that it affects.

Senator CAMERON—Who currently monitors these trustee companies?

Mr Miller—The states and territories monitor these through their state and territory provisions.

Senator CAMERON—Are these companies required to be licensed under the current arrangements?

Mr Sewell—The system is that the so-called traditional activities of the trustee companies—that is wills, probate, that sort of thing—are regulated through the states. Where they manage broader trust assets, that is done through the Commonwealth, through ASIC.

Senator CAMERON—Under the new regime will licensing be required?

Mr Sewell—Yes, for the traditional activities.

Senator CAMERON—Who will have oversight of the newly licensed trustee companies and what enforcement powers will they have to ensure compliance?

Mr Sewell—These will be regulated under ASIC where they will be required to have an Australian financial services licence, and the normal ASIC regulatory powers would apply to the financial products.

Senator CAMERON—Is it the view that this will provide great protection to consumers?

Mr Sewell—Yes.

Senator CAMERON—Will the trustee companies under the new laws be subject to new obligations?

Mr Sewell—There will be different obligations arising from the uniform national regulation.

Senator CAMERON—What about dispute resolution mechanisms and the like?

Mr Sewell—Yes, in that case, under the Australian financial services licence arrangements, the trustee companies will be required to have both an internal and an external dispute resolution process which is the standard requirement under the Australian financial services licence. If a client has a complaint about a decision of the trustee company, in the first instance they can take it to the established process internally within the trustee company. If they have further concerns beyond that then they can go to an established external dispute resolution mechanism.

Senator CAMERON—So, court action could be a last resort?

Mr Sewell—That would remain open, yes, in a separate sort of avenue.

Senator CAMERON—Are you aware of what consultation has taken place in the lead-up to this legislation?

Mr Sewell—In the recent phase the government put the exposure draft out to the public for about a four-week period of consultation. There were discussions held with the trustee companies and with the states and territories and also with Philanthropy Australia. Meetings were held the week before last. There was also extensive discussion with the Trustee Corporations Association of Australia in the preparation of the draft legislation.

Senator CAMERON—Can I move on to promissory notes. Why was there a need for a change to the regulation on promissory notes? Could you just outline that?

Mr Miller—Essentially there were two regimes within the Corporations Act that applied to these promissory notes or debentures. There was one regime depending that applied for under \$50,000 and another regime that applied for over \$50,000. The purpose of what we are doing here is harmonising the two regimes so there is only one regime that will apply to promissory notes.

Senator CAMERON—What is the linkage of this in the Westpoint collapse; was that a factor in relation to moving down this line?

Mr Miller—The fact that it was not harmonised I do not believe was a problem. Certainly the misuse of promissory notes was an issue. Some have said that it was because there was

not any regulation over that. That is not quite true because, as I mentioned, there is a regime for promissory notes even now. Even before we harmonise it, there is a regime for under \$50,000 and another one for over \$50,000. So, there was a regime applying. I suppose the argument is that by harmonising it, it makes it perhaps easier for the regulator to ensure that those regimes are being followed.

Senator CAMERON—Thank you.

Senator Sherry—Chair, could I just add one other point. Obviously the issue of single standard national regulation I think is important in the context of efficiency of markets. The other point I would make about these areas is they have been subject to examination and reviews; I can think of about three of them over the last decade or so. The government felt that, given the recommendations of the various reviews of the last decade, it was time to move to a single national standard in financial services for these areas. The government decided it was an appropriate time to do so, particularly given some of the lessons or observations about what occurred in the US market around subprime. One of the issues in the US market was the state regulation supervision of mortgage brokers who distributed mortgages and I think those issues have become well known. In the case of the areas you have touched on, mortgage broking is an area that for the first time in Australia will be properly licensed and done so nationally. In addition to the need for national single standards, some of the events in the US have, I think, taught or indicated important lessons in a number of areas about supervision of some areas of market to address some areas of possible weakness; not that we have experienced anything like the sort of events of the US.

CHAIR—Minister, I think there is starting to be some criticism in some of the press about perhaps the dangers of over-regulation and the costs of doing that. Will this add much cost to doing business in this area?

Senator Sherry—I think there are two issues here. I would make the observation that currently in this area they are dealing with six states, two territories and in some cases they are also partly supervised, licensed or regulated by the federal jurisdiction as well, so you are dealing with nine sets of rules, conceivably, depending on the area. If you are a national provider operating in a particular area and you are subject to nine different sets of rules, it does impose a cost. The total number of pages of regulation currently contained in the states is approximately 4,200, certainly over 4,000 pages of regulation. As a consequence of the new national regulation, we will be seeing 300 to 350 pages of regulation. To that extent you have got significant reduction but also a significant simplification. I think that is important. I noticed there have been some claimed issues around, for example, responsible lending. Certainly in this area there have been the draft bills released, a consultation period occurring, and where there are legitimate concerns we will certainly be taking them into account when we finalise the final bill for presentation to the parliament.

Senator CAMERON—We are talking about harmonising state to federal, but G20 is talking about global harmonisation and more regulation to avoid another global financial crisis. Quite frankly, I would like more regulation if it stops a global financial crisis, if it stops throwing people out of work. Would there be a potential for more legislation for us to meet our international obligations arising from the G20, for instance?

Mr Murphy—There have been a number of proposals put the G20. The G20 countries are primarily looking at existing regulatory regimes and potentially new regulatory measures to largely go to manage systemic risk in the financial system and also towards trying to ensure stability of financial institutions. At the present time I would say that the Australian regulatory financial system is very well regulated and we have largely the tools and the measures that are needed to ensure that. I think the Prime Minister and the Treasurer made it very clear that they want Australia to play a major role in the development of new measures. The G20 has put out a list of recommendations, they are reporting back to the Financial Stability Board and that is work in progress. The measures that we are taking on a domestic front in Australia I see as largely completing the picture of a national regulatory regime: you have got national markets; you want national regulation. There are significant benefits for business would come through having a national consumer law and national credit laws.

Senator Sherry—Just to add to that, in this context of international regulation and supervision, realistically, and it is not a criticism of the states, but frankly these international catastrophes—I was going to say difficulties—that have occurred in the US, Europe and the UK do impact on Australia. You would have to ask the question: what capacity and abilities do state governments have to exercise supervision in their areas of current jurisdiction, where they are affected by international events? As I say, it is not a criticism of states; the reality for states is that it is very difficult, if not impossible, for state governments to deal with these issues. It is still difficult for national governments, but I think national governments have a greater ability to deal with these issues than state governments. As I say, it is not a criticism of state governments; the world has changed in the last 100 years and the government has taken the view that it is time to complete the move to single standard national regulation. Increasingly, there will be a need, as has been highlighted by G20 in the agenda they have set, for international coordination as well as improved national regulation.

Senator CAMERON—One thing I am always a bit concerned about is us saying, ‘We have got good financial regulations here and maybe we are international best practice.’ I am always worried that we may be getting a bit complacent in terms of our regulation because we had a better system than other countries, but a lot of these unforeseen circumstances that are coming through could mean that we may still need to address regulation. I do not know if all of the implications of the global financial crisis have actually been effectively analysed and we really know what is happening.

Mr Murphy—Yes, there is still analysis going on. The G20 moved quickly to recommend ways to improve national regulation of markets. As well as that, there are international standards and codes which apply to the various banking, insurance and securities markets, which Australia adheres to and meets. A few years back the IMF had the Financial Sector Assessment Program. They assessed us against those standards and codes and we had a clean bill of health on that. You are right, Senator: the global financial crisis is breathtaking in its impact. It has brought into question a lot of the current regulatory tools that are used, whether they need to be enhanced and whether there need to be possibly new measures taken, and that is what we are working on internationally and domestically. I do not think our regulators or Treasury as a policy department are sitting on our hands congratulating ourselves on how we have weathered this financial crisis.

Senator CAMERON—I am not saying that.

Mr Murphy—I think it does bring into focus the need to continually be assessing whether you have got the right regulatory arrangements. The market develops in different ways. You could say to us, ‘Why haven’t we had some of these measures earlier?’ You would say, ‘Well, sometimes the market develops in a certain way which was not predicted or forecast when regulation was developed in a previous time.’ Costs of regulation are also another issue. It is little benefit to the consumer or to the community if you impose such costs that they are disproportionate to the risk that is actually involved in the system. I think in this area there will be continual work over the next few years to try to place the international financial system in a better position so it does not fall prey to another financial crisis of this magnitude.

Senator CAMERON—It is a question of balance, really; it is about the operation in the market being balanced by appropriate regulation, proper regulation and modern regulation?

Mr Murphy—Yes.

Senator CAMERON—We can be confident that there is no complacency in Treasury on these issues?

Mr Murphy—Yes, and the regulators. Other people have said that we have first-class regulators. They stand tall in comparison with their international peers.

Senator Sherry—I might say, because I am sure the officers are too modest to mention it themselves, that everyone has been working extraordinarily hard—frankly working their guts out—on these issues over the last year, given the events.

Senator ABETZ—Like they did with Fuelwatch!

Senator Sherry—That is another good example. It is a pity that it did not happen, Senator Abetz.

Senator CAMERON—Like they did with HIH.

Senator Sherry—But you are right, Senator Abetz: there are officers, certainly in the areas that I deal with, who are putting in very long hours.

Senator ABETZ—They do.

Senator Sherry—Yes, they do, and we have dealt with that issue before, but it should not go unacknowledged.

Senator CAMERON—I thought we were on a serious issue here. I thought you would be interested.

Senator ABETZ—When the union official becomes the boss, 37 hours straight is nothing abnormal. That is what happens.

CHAIR—We have a point of order.

Senator CAMERON—Happy being a union official, mate—

CHAIR—Senator Cameron, we have a point of order. Senator Sterle.

Senator STERLE—Madam Chair, I think this is a very important issue. I was listening to the minister's answer before the rude and smart interjections coming from across the table. I would ask that the minister be able to give his answer in peace.

Senator CAMERON—From the economic incompetents over there.

CHAIR—Senator Cameron!

Senator ABETZ—He is such an intellectual giant.

CHAIR—This has deteriorated.

Members of the committee interjecting—

CHAIR—We are not making any progress. From the chair I am quite happy—

Members of the committee interjecting—

CHAIR—Senator Sterle and Senator Bushby, we are making no progress here whatsoever. We are about to go to morning tea, I am quite happy to go early if we have no more questions or if we are not prepared to allow the minister—

Senator Sherry—I was just going to conclude my remark, Chair—

CHAIR—Thank you, Minister.

Senator Sherry—and make a further remark that might be of interest to opposition senators. I do want to put on the record that this period of the last year to 18 months has been extraordinarily difficult. There have been a massive range of issues that, frankly, just about no-one in the world had been able to foreshadow. I want to put on the record the very hard work and diligence of the officers in having to deal with advice to government and grapple with these issues. It has not been an easy time. I just want to put on the record the extraordinarily hard work and dedication of all the officers in whatever policy area, whether we agree with the policy outcomes or not.

The only other issue I will mention because Senator Coonan and opposition senators were not here earlier. We scheduled six hours for this program, which would be an Australian record if we went for that long, but we have put APRA and ASIC on notice. We are in your hands, but if we finish earlier we can bring APRA and ASIC on early.

Senator COONAN—Thank you for that, Minister Sherry. When I looked at the program this morning I must say I did think it was a bit ambitious.

Senator BUSHBY—And the Productivity Commission? They are in between.

Senator Sherry—On the PC, I will have to check. In your hands we can juggle it.

CHAIR—Thank you. Senator Eggleston.

Senator EGGLESTON—I would just like to ask some questions about ABIP, or Ruddbank.

Senator Sherry—Sorry, I did not hear that.

Senator EGGLESTON—ABIP, or Ruddbank, as it is more commonly known. First of all, what modelling, analysis or advice did you provide to the government regarding ABIP in its structure?

Mr Martine—We engaged in quite detailed discussions with both the major banks and the foreign banks in the development of ABIP. In the course of that we also provided a series of advice to government. As we have discussed previously, I think, in the Senate inquiry committee in its deliberations, Treasury undertook some modelling on the employment effects of the whole commercial property sector, and that formed part of the advice that we provided to government.

Senator EGGLESTON—Why did you construct the agency in such a way that it was exempt from the Trade Practices Act and apparently not have a great deal of consultation with the ACCC about this?

Mr Martine—The issue around the Trade Practices Act exemption is really to provide certainty for all the shareholders participating in ABIP that, in particular, in ABIP providing lending, third parties would not consider that the four banks and the Commonwealth government as joint shareholders were acting in an inappropriate way. The important thing to keep in mind is that ABIP is filling a market gap. If one thinks through the competition aspects of ABIP's operations, it will fill a market gap pricing above market. It is not as if ABIP will be in the market trying to undercut any other lenders. The exemption provides an exemption only if the directors of ABIP are acting in accordance with the objectives of ABIP. For example, it does not allow banks to collude on setting prices or anything like that. In fact, the directors of ABIP, while they come from the four major banks, are required under Corporations Law to act solely in the best interests of ABIP, not in the best interests of Westpac, NAB, Commonwealth Bank or ANZ.

Senator EGGLESTON—That is all very well, but, in the course of the inquiry you referred to, we heard that the four major banks who are on the board of ABIP actually control or are responsible for 63 per cent of the Australian commercial property market. There does seem to be potential for a conflict of interest there. It is very hard to understand why, as a precautionary measure if nothing else, the decisions of the ABIP board should not be subject to the Trade Practices Act so that there is certainty that there is no improper use of market power or collusion between the banks.

Mr Martine—Senator, just thinking through the operations of ABIP, it is hard to envisage a situation where in fact the shareholders of ABIP are acting in collusion. If a major bank is already in a syndicate, that major bank's exposure needs to be maintained. The situation where ABIP will look to provide lending is where a non-major-bank participant may be withdrawing from that syndicate. It could be a foreign bank or it could be a second tier bank such as one of the regional banks. The purpose of ABIP is then to provide that lending to fill that gap. It is in no way colluding jointly between the majors.

Senator EGGLESTON—Are you saying that if a major bank had an interest in a particular property then ABIP would not consider providing refinancing to that property?

Mr Martine—No, actually the reverse, Senator. Let us take this example. If the National Australia Bank are the lead bank in a syndicate and there are two foreign banks in the syndicate as well, the syndicate comes up for refinancing, one of the foreign banks withdraws and the borrower seeks to find alternative sources of financing but is unable to do that, that syndicate would be potentially eligible for ABIP lending subject to the board's consideration.

The point I was making is that the National Australia Bank, because they are in the syndicate, must maintain at least their current exposure to the syndicate. That is an important feature of the ABIP legislation because it provides a safeguard to ensure that if the National Australia Bank are quite prepared, in this example, to continue their exposure to that particular loan then that particular loan is on fully commercial terms. The National Australia Bank, in that example, cannot cut back their lending in proportional terms to that syndicate.

Senator EGGLESTON—Some people might regard that as a half full, half empty sort of situation because it could be interpreted equally, I suppose, so that the investment of the National Australia Bank, in that example, is being protected by ABIP. That is where questions about conflict of interest have arisen.

Mr Martine—The other important feature of ABIP is the unanimous decision making of the board. The other three major banks in that situation, if they felt that ABIP was simply being asked to prop up the bank that was already in there—in this example, the National Australia Bank—would not want to be exposing their money which they have put into ABIP to the risk of a loss in that syndicate. Because all decisions have to be unanimous, then in that sort of situation you would quite understandably see the other shareholders, which could include the Commonwealth representative as well, saying no. Because all decisions have to be unanimous, that is the other key feature of the important safeguards in the legislation.

Senator EGGLESTON—Again, some people are of the view that the banks might see it as in their own interests to ensure that, in this case, the National Bank's investment was protected because they might find themselves in the same situation. Again, that raises the issue of exemption from the Trade Practices Act, ACCC, section 16 and so on.

Mr Martine—Senator, I do not think the situation you are describing is really a Trade Practices Act issue. What it really relates to is the lending criteria that the board will use to make decisions. ABIP will, as I indicated, price slightly above market. The lending criteria will be quite conservative. As I outlined, one would expect that the other banks would not be willing to risk their contributions to ABIP, and they are all contributing \$500 million; likewise the Commonwealth chair of ABIP, based on the recommendations of the ABIP management on loan applications. The chair will get some independent advice as well and they will form their own view. All it needs is one director or the chair to reject a loan and the loan does not proceed. It will not actually be the major bank that is in the syndicate making the recommendation to the board; it will be the independent ABIP staff who will assess the application and make a recommendation. If they feel that the major bank that is involved is really just trying to protect their interests and it is not fully commercial, then they would not be recommending to the board to approve the loan.

Senator EGGLESTON—It sounds fine in theory, but there has been that criticism made to this committee during its hearings. You talked about advice, and I noticed that there was a plan to appoint an advisory panel to advise the chairman. How much progress have you made on that?

Mr R Murray—I think it was two Fridays ago that we finalised our arrangements for a request for tender and that went out in a public advertisement in the *Financial Review*. I think that closes on the third week of this month. We have already had quite a few inquiries. It is

quite a detailed process. We would hope that once we get those tenders in we could set up a panel and that would be operational, hopefully, by about the beginning of August. It may take a little longer than that because these are quite convoluted processes under the government's procurement guidelines, but we are hoping that that panel will be fully operational by early August or some time around then.

We are not sure how many would be on that panel—it could be three or four—and we are not quite sure what sort of composition, because we are getting interest from some big investment-advising companies, both consultancy companies and investment banking companies. We are also getting some interest from boutiques as well and from quite specialist outfits such as insurance. This is a panel similar to the Treasury's legal panel. It will not be just about ABIP. There have been various other operations in relation to financial markets and foreign investment issues where we need advice. We want to have this as a more general panel that will be able to advise us on a whole range of issues, and that is how we have set it out in the request for tender.

CHAIR—The committee will suspend for a short break and continue this line of questioning after the break.

Proceedings suspended from 10.31 am to 10.46 am

CHAIR—The committee will recommence with questions from Senator Eggleston.

Senator EGGLESTON—We were talking about the proposed advisory panel to ABIP and you mentioned interested parties. Do you envisage the advisory panel being composed of Australian entities or might there be non-Australian entities on it?

Mr R Murray—Senator, you asked me this question before. We do not know yet. This will be a panel that we can call on determined on merit. They have been asked as part of the request for tender to address various criteria and attributes that we are looking for, and we will need to make an assessment on that on merit. Some of these may be Australian, some of them may be foreign or some of them may be Australian partnerships of worldwide consultancies. So the answer is that we do not know yet but there will not be an Australian/foreign criteria; it is a merit based process.

Senator EGGLESTON—I understand Credit Suisse, as a specific example, gave advice about the setting up of ABIP; is that not the case?

Mr R Murray—That is correct.

Senator EGGLESTON—Might they be considered for the advisory panel?

Mr R Murray—If they put in a tender, yes, they will be.

Senator EGGLESTON—Thank you very much. I just want to ask you a question about the scope of ABIP. The wording of the bill in proposed section 7(2), dealing with the objects of ABIP, says:

... provide financing in other areas of commercial lending through financing arrangements of a kind agreed to by the members of ABIP Limited ...

What we were led to understand when this was set up was that this agency was being established to refinance commercial property which was in jeopardy because of the

withdrawal of foreign banks but that money or financing would only be provided to commercially viable propositions. I just wondered whether the breadth of clause 7(2) is not such that other kinds of ventures could be considered to be within the ambit of ABIP.

Mr Martine—Senator, in the debate in the senate several weeks ago, Senator Fielding tabled an amendment which the government has agreed to which effectively requires that decision to be a disallowable instrument for parliament to consider.

Senator EGGLESTON—Thank you. What has happened with the foreign banks that were the object of this agency being set up? Have more foreign banks left Australia or have in fact no more left or withdrawn from the commercial property market in Australia? It is a bit misleading to say ‘left’; I think it is all about activity in the commercial property market.

Mr Martine—That is correct, Senator, and that is a very important point that when one uses language around foreign banks withdrawing, it is withdrawing from syndicated loans. It is not a discussion about a foreign bank’s presence, that is there on a Friday and come the Monday they have left; it is all about syndicated loans and their withdrawing of finance. The key issue to note, and as the government has outlined in its statements about ABIP, is that ABIP is a temporary contingency measure in the event that foreign banks withdraw financing from syndicated loans in the commercial property sector. The purpose of ABIP is therefore to guard against that eventuality. Commercial property is a highly leveraged sector and the foreign banks have quite a large exposure to that. If you look at the aggregate data up to this point—recognising that data is only backward looking; it does not really tell you anything forward looking—then it is correct to say that the aggregate data for foreign bank lending in total, because we do not have a lot of disaggregation, is probably best described as reasonably flat. That is probably the best way to describe it. In our consideration of the rationale for ABIP—and there has been some commentary since the announcement as well—there have been a range of independent market analysts such as the Merrill Lynchs and Goldman Sachs of the world et cetera that have made a very similar point to the one the government has made and that is that there is a serious risk that during the course of 2009 and 2010, as the syndicated loans come up for refinancing, foreign banks will seek to reduce their exposures. We have actually seen it a little bit in some of our second-tier banks. Here in Australia, Suncorp has come out recently, and it was reported in the press, saying that they are treating their commercial property exposures as non-core activity, with a view to winding it down over time. It is that sort of similar issue. The risk and the concern that we have, and as emphasised by the market analysts, is for during the course of 2009 and 2010, which is one the reasons why ABIP was established for that two-year period.

Senator EGGLESTON—Thank you. There is a view, of course, that by establishing ABIP you might in fact encourage the very thing that you are seeking to prevent—that is, the withdrawal of these banks from activity in the commercial property market. I suppose we will have to wait and see what happens there.

Mr Martine—Senator, just on that point, because I think it is an important one, there are a couple of key factors—and I think we had this discussion at our Senate inquiry in Sydney—that we would consider as quite important and that counter that view. Firstly, measure like ABIP, and there are other measures that have been announced as well, very much go to the heart of stability and stabilising the financial system. One of the key factors for financial

institutions in making decisions on where they operate is a very stable financial system. In a sense, ABIP itself, which will provide some confidence and stability in the financial system, will actually, if anything, encourage those participants to stay.

The other important point to note is that ABIP will have very conservative lending criteria. It will only make commercial loans. Banks are in the business of lending; they lend to make money. For a foreign bank to be withdrawing from a syndicate in the expectation that ABIP will step in, must mean that if ABIP ultimately does step in because it is fully commercial that they are withdrawing their financing for reasons that have absolutely nothing to do with the commerciality of operations in Australia. That could very well be because their head operations offshore have been semi-nationalised and they are under pressure from foreign governments to say, 'We want you to concentrate on your home market, not the other side of the world.' There are a series of banks in the UK and Europe to which their governments have contributed significant amounts of capital.

Mr R Murray—Senator, if I could just add one or two points to that. We have also made a couple of other points in relation to this sort of moral hazard type question, both in our submission and in our evidence to the committee's hearing in Sydney. Because ABIP is a lender of last recourse and will be pricing slightly above the market, there are clear incentives here for the property owners to try to keep their syndicates together. Also, because the four major banks will be taking on more exposure—and given the situation they are in at the moment, they do not really want to take on more commercial property exposure—again, there will be major incentives there for them to keep the syndicates together. Do we have any evidence that they are the incentives that are actually working?

We are already, behind the scenes, seeing one or two projects—I think at least one of them was a redevelopment project so it was an existing property and they were undertaking some redevelopment—where they have had some problems. Certainly there were frantic efforts by both the owners and the Australian bank partners in that syndicate to keep the syndicates together.

I would like to make another point about market stability. As the financial crisis unfolded, particularly through October and November last year, people were fairly cautious about what would be the flow-on from the industrial countries to the emerging markets in developing countries and to the commodity countries like Australia and Canada. It became pretty clear that it meant a significant flow of capital out of those countries, out of their equity markets and out of their debt markets, back to the home countries—like back to the US and back to Europe—back into safe havens and safe securities like US treasuries and back to the home headquarters of the financial institutions. How did that manifest itself in Australia? We had a precipitous fall in the Australian dollar from 95c to 65c in a matter of about two or three months and, of course, the equity market fell quite dramatically. A lot of that is now stabilising and that is good, but the clear risks are still there and that is what we are concerned about. We were concerned about that in November in relation to the commercial property market. We were concerned about that in January when the Prime Minister announced the initiative, and we continue to be concerned about those risks.

Senator EGGLESTON—Thank you. Have you had any approaches from members of Austcorp, who are developing the Vision tower in Brisbane?

Mr Martine—Senator, are you talking about approaches to Treasury?

Senator EGGLESTON—Treasury, with a view to—

Mr Martine—Senator, we have not had direct approaches to us. The other thing to note is ABIP itself, which will be a company governed by corporations law, has not yet been established.

Senator EGGLESTON—Yes, but the developers of Vision tower have not approached Treasury officials or the government about support?

Mr Martine—Not that I am aware of.

Senator EGGLESTON—Has anyone from Treasury met a Mr Lee Bermingham, Mr Warwick Powell or a Ms Catherine Bermingham?

Mr Richard Murray—No. I have never heard of them, Senator.

Mr Martine—If there were any meetings with them then it would be one of the three of us who would have met with them and the names certainly do not ring a bell.

Senator EGGLESTON—Thank you.

CHAIR—Thank you. Senator Coonan.

Senator COONAN—I do not want to spend much time on Ruddbank because it has been the subject of quite an exhaustive inquiry, as I understand it. Can anyone tell me what the amount of risk premium there would be in the pricing for Ruddbank? I have seen reports that it could be about three per cent. I am not sure about it and that is why I am asking. I asked AOFM the other night and they did not know.

Mr Brake—These things obviously vary over time but that order of magnitude is what we understand would broadly be the current market spread between, say, the bank bill swap rate and lending to the commercial property sector. Obviously, it depends a bit on the particular type and quality of the asset but it is in that order of magnitude.

Senator COONAN—That accords with what I thought I would get from you. Secondly, without talking about the model of Ruddbank or any criticisms of it, what happens in other jurisdictions? Are there in place vehicles of last resort for particular purposes of which you are aware?

Mr Richard Murray—Senator, I—

Senator COONAN—I am thinking of the UK because I think—

Mr Richard Murray—I am not across the UK but some of my colleagues might be. In the United States—and I was on the board of the International Monetary Fund, as Australia's representative, until the end of October—it was a pretty nasty situation. It illustrated to us back here the pivotal link between the real economy and the financial sector of the commercial property market. The housing market was in freefall and that was impacting on the banks, as you know. As that then manifested itself it started to raise issues about the commercial property market and, importantly, the commercial mortgage backed security market, which is huge in the United States. That is where the Federal Reserve stepped in. I cannot tell you exactly what the Fed instrument is, but certainly the Fed stepped in in a

demonstrative way in the commercial mortgage backed security market. It was not only in the residential mortgaged backed security notes but the commercial mortgaged backed security market. On top of that, they then also intervened in the commercial paper market. Commercial paper is short-term debt, sometimes by the banks but also by industrials, commercial property developers and commercial property owners. Again, that was a pretty important instrument. It was not so much about monetary policy liquidity, if you like—sort of demand management in the economy—but it was really trying to prop up markets that were totally dislocated and almost frozen, if not frozen.

Senator COONAN—Yes. This is just a comment and I am not expecting you to really answer this—there might be a question in it somewhere and then I will get onto a different topic—but it seems to me that the debate about the value of having such a facility really has got derailed in this country by the particular model and perhaps the scope and the way it was defined rather than whether there may not be some reason, particularly in this kind of market, to have one. I am just very interested in how it has been approached elsewhere.

Mr Richard Murray—I am not an expert in monetary policy; that is for the macro group.

Senator COONAN—Yes, I understand that.

Mr Richard Murray—Certainly the Reserve Bank, prior to this crisis, did have a wider suite of securities that they would take into their repurchase arrangements, and they widened those and they linked them to the maturities of those. The details of that I cannot tell you off the top of my head, but certainly our central bank took similar action but not to the same extent as the Fed in terms of trying to make sure that dislocating markets in fact had adequate liquidity.

Senator COONAN—I want to leave that. As it is expressed in the budget papers under the statement of risks, I just want to go to the guarantee of deposits in ADIs and wholesale guarantees. You probably will not need the page but it is on page 8-27. That is all reasonably straightforward. Do you have a current figure for the total contingent liabilities as a result of the two types of guarantees or is the most recent figure in the papers?

Mr Martine—Senator, as outlined in the statement of risks, and perhaps if we treat each in turn—

Senator COONAN—Take it separately, page 8-27.

Mr Martine—If we look at the Financial Claims Scheme on page 8-27 it says:
As at 31 March 2009, deposits eligible for coverage under the Financial Claims Scheme were estimated to be approximately \$650 billion.

Senator COONAN—Yes.

Mr Martine—That is not the potential contingent liability that may eventuate. As noted in the text, the contingent liability is unquantifiable.

Senator COONAN—It is a coverage issue.

Mr Martine—In a sense, they are the deposits that are covered but one needs to then think through the probability of a collapse of a financial institution. Then, even if you consider that that may eventuate—and we would argue that the likelihood of that is very, very small given

our strong financial system and our very robust prudential framework—you then need to think through some other important safeguards. One in particular I will mention is the fact that all ADIs are required under the Banking Act to hold sufficient assets to cover their deposit liabilities.

So if, for example, there was a collapse of a bank and the appropriate action was that the institution be wound up then while amounts might be paid out under the Financial Claims Scheme upfront, because the whole purpose of that is to ensure that depositors can get their money quickly, the assets, as required under the Banking Act, will more than offset the deposit liability. So if that was the course of action that was decided, APRA would step in—and the institution would be wound up and over time the assets would be extinguished. They would all come back to the government. In that situation I would argue that the actual contingent liability if it eventuated, whilst it is unquantifiable, if you had to try to quantify it, would be incredibly small.

Senator COONAN—Because of the capital adequacy and liquidity requirements?

Mr Martine—That is right. And the other important feature announced by the government at the time was that if there is a shortfall then the government of the day has the option to introduce a levy on the rest of the industry to make up that difference. So while \$650 million looks like a large number, that is essentially just the deposits that are covered. If you then think through the probability of it happening and these other safeguards, et cetera, the actual exposure to the Commonwealth if all of that panned out would be very small.

Senator COONAN—The very unfortunate HIH collapse I think meant that we thought through fairly carefully what was necessary to improve that. So I understand that.

Mr Martine—What we just talked about was the free guarantee up to a \$1 million. Perhaps I can give you some numbers here, Senator, to assist about the guarantee about \$1 million and for wholesale funding. As at 28 May 2009, the guaranteed liabilities amount to \$133 million.

Senator COONAN—That is on the deposits?

Mr Martine—That is made up of deposits above \$1 million of \$24.7 million, short-term wholesale funding of \$15.9 million and long-term wholesale funding of \$93 million. If I have got my maths right, that all adds up to \$133.7 million.

Senator COONAN—What are you doing about actually unwinding these and returning to a situation where there are not these guarantees being called on?

Mr Martine—As part of the announcement, the government indicated that the large deposit guarantee would be in place for three years and the wholesale funding guarantee would be in place until market conditions normalise. It also gave a role to the Council of Financial Regulators, which is chaired by the Governor of the Reserve Bank and has the head of Treasury, ASIC and APRA on it, to monitor the operations of the guarantee. So it is something we are keeping a close eye on. There have been a very limited number of issuances outside of the guarantee. They have been reported in the press over the past few weeks. They have mostly been domestically. I think each of the four major banks has issued one domestic issuance without the guarantee, and I think one did an offshore one recently.

Senator COONAN—There were some comments attributed to Mr Mike Smith from ANZ that six months on his view of the scheme was not as positive. He said:

“This is a drug we have to get off,” he told the Australian Financial Review recently.

After almost \$90 billion of issuance since the insurance policy came into effect last December, banks are itching to wean themselves off the guarantee and stand on their own feet.

Is that a view that accords with Treasury’s?

Mr Murphy—I think the guarantees for depositors gave security to people and stability to the system. The wholesale funding guarantees have proved successful in enabling Australian financial institutions to get access to much needed funds offshore. As Mr Martine has mentioned, that government said in terms of wholesale funding that when markets normalise it would look at when it should remove the wholesale funding guarantee. Mr Smith, as the head of the ANZ, is very well regarded. I think he was thinking out loud to some extent saying, ‘Well, it would be a good day when we could remove ourselves from the guarantee.’ By accessing fundraising through the wholesale guarantee, Mr Smith’s institution pays a fee of 70 basis points on its fundraising. Obviously when he can get to a situation where he can raise funds without the guarantee, it will be cheaper for him. At the moment we would say that the banks are not in a position where they could operate without the government guarantee.

The other issue is that virtually every other sophisticated economy has also got a guarantee in place. It may be that we will need to have a synchronised removal of the guarantees worldwide. That is something that is on the G20 agenda and will be discussed. I think the sentiments are correct but at the same time it has been very successful. We are at a point in time now where we can look back and say, ‘Yes, having the guarantee in place for the financial institutions has done the job it needed to do,’ but I think it is a little premature to be thinking about exiting at this time.

Senator COONAN—The sense of what you say is, of course, that while there are signs of stability it is probably not quite there. The second part of what you have said is that there is some consciousness that goes beyond a domestic market, and that impacts, of course, on the global financial market, where it has to be integrated in some way.

Mr Murphy—That is right. I suppose a third limb to that is that there is no prohibition on Mr Smith or his institution raising funds without the government guarantee.

Senator COONAN—No. In fact, the spread seems to be a bit wider now with unguaranteed funds.

Mr Murphy—A number of institutions have tested the water and raised small non-guaranteed amounts, and I think that is a very good thing because they continually go out and test the market. When they find that prices are dropping, there is an inducement to say, ‘We no longer need the guarantee.’ The government’s thinking back in October was that there would not be a dramatic removal; it would just fall out of use—it would no longer be needed. The other point to raise is that Mr Smith is talking from the point of view of his institution, which you would expect to see of a major bank. It may be that the second-tier banks will need the guarantee longer than, say, the majors. The government has to take account of these other issues.

Senator COONAN—Yes. I am not suggesting in this line of questioning that there are not some very positive features of this. I am also interested, and you would have addressed this, in knowing from your experience the downsides of it—the issues with crowding out and the impact on raising funds?

Mr Murphy—I do not think there is any particular downside to it. In terms of the wholesale guarantee, Australian banks raise substantial funding from overseas markets. That is the way it has developed over the past decade. Without the guarantee, foreign markets would largely have been closed. I think it has been a very successful policy intervention.

Senator COONAN—Are there any anticompetitive issues?

Mr Murphy—The competitive issues which have arisen are that by pricing the guarantee it is more expensive for the second tier under the government's regime. We have to take account of the actual risks that the government assumes by having a guarantee, but I think, more importantly, the second-tier banks, as well as raising their funds through deposits, also had access to the securitisation markets, and that has largely been closed. For instance, for one of the second-tier banks, 25 per cent of their funding was coming from the securitisation markets, which are now closed. So they now either have to get more deposits in or they have to get wholesale funds. Even the second-tier banks, which in some public statements have criticised the guarantee arrangements, have largely financed themselves well from the guarantee. It has been a success for them as well. I do not think that the guarantee has caused competitive issues to arise. Competition issues have arisen because of the global financial crisis. It is just much harder—

Senator COONAN—Of access to capital more broadly, I think.

Mr Murphy—Yes, access to capital. If you think about it in terms of risk, the major banks could always access the capital. It is when they have accessed what they need that the second-tier banks come along. The mortgagor originators, what we call fringe players, were providing great competition—RAMS of the world. Given that the money is a lot less available and is much more costly, there is a cascading down and it will be more difficult to provide a competitive stimulus from those smaller entities. I do not think it is the guarantee that has caused competition issues, which we are very sensitive to and looking at; it is more the global financial crisis and the drying up of liquidity.

Senator COONAN—Right.

Mr Martine—Just following on from Mr Murphy, we certainly should not underestimate the importance of the free guarantee up to \$1 million for some of these smaller institutions. Some of them over the period have experienced incredibly large deposit growth, which has traditionally been a major source of their financing. Looking back pre-GFC, quite a number of those institutions did not source much in the way of their funding offshore in the wholesale markets. They had a little bit but not a significant amount.

Senator COONAN—It was mainly access to domestic deposits.

Mr Martine—Yes, it was mostly domestic deposits, and for them it was mostly deposits less than \$1 million. The guarantee and the way it works in the Financial Claims Scheme is that that has actually been provided free.

Senator COONAN—What has happened to the so-called frozen funds—the disaffected investors who have not been able to access—

Mr Murphy—To some extent there has been a winding down of some of those funds. Hardship provisions have been introduced so people can get access to their money. Some of the mortgage funds are now talking to their investors about how they can manage the funds and return the capital to the investors or, alternatively, restructure businesses to make them more viable in what could be the new world in terms of financing. I think sometimes everyone is looking back and thinking, ‘We’ll get through this global financial crisis and then we can return to the way our financial system was two or three years ago when we had various competitive pressures and various entities.’ We are not certain that it will return to that. There may be a new norm.

Senator COONAN—As they call it, the new normal.

Mr Murphy—It could be, yes.

Senator COONAN—Do you have a figure of the total amount still frozen in non-guaranteed ADIs?

Mr Murphy—We used to have one.

Senator COONAN—I know it moves around a bit.

Mr Murphy—We will have to take it on notice. We do not have the figures here. I think what has been extremely important is that none of the mortgage funds have collapsed, and that was the policy concern. Even City Pacific Ltd is still being managed and the principals of the fund are talking to their investors. I do not want to say it is remarkable but it is a very, very good result that there has not been a collapse of any of these institutions with the effect of the investors losing their funds.

Senator COONAN—It is never good to have an institution collapsing. Are there any new mortgage products or any new funding arrangements coming on the market that you are aware of? I heard the other day about a no-commissions product for funding.

Mr Murphy—I have just got some figures. At the moment we have more than 120 mortgage providers with more than 2,000 mortgage products. That is a good thing, but you will always have competitiveness coming forward. If there are new products that can be developed by the institutions it is always a good thing.

Senator COONAN—This one was a model where they stripped a lot of the fees out.

Mr Murphy—That may be the competitive edge that comes. I do not subscribe to the view that the big four move together all the time. I think there will be a break-out in competition. There is some, but one would hope that when things stabilise a bit better and there are sure sources of funds for the majors then you might find some more competition emerging.

Senator BARNETT—I have some questions regarding GROCERYchoice. Ms Holdaway, can you advise how many hits there have been on the website per month since its inception? I am happy for you to table a document if you have that available.

Ms Holdaway—I do have some basic information available, if you would just bear with me. These are counts of what we call page views. Since the inception in the period leading up to 25 August—

Senator BARNETT—From when to when?

Ms Holdaway—This was when it was first launched by the ACCC.

Senator BARNETT—We will find that date. You can confirm that on notice, if you like.

Ms Holdaway—Sure, will do. At the initial stage there were around 3.15 million page views.

Senator BARNETT—Per month?

Ms Holdaway—For that whole period, from start till the end of August. In November 2008 there were—

Senator BARNETT—Sorry, let us get this clear. There were 3.15 million page views were from when to when? From inception to?

Ms Holdaway—To 25 August 2008.

Senator BARNETT—Do you have a monthly breakdown, please?

Ms Holdaway—I do not have that on me, Senator. I can take that on notice.

Senator BARNETT—Thank you.

Ms Holdaway—We do have some gaps, therefore, I will provide monthly hits to you. We have some figures for November, December, January and onwards.

Senator BARNETT—November, December and January. Okay. Let's go from November.

Ms Holdaway—For November it was 113,030, December was 105,872, January 2009 was 104,757, February was 63,993, March was 54,366, April was 60,698 and May was 697,466. But may I just add—

Senator BARNETT—That does not make sense for May, does it?

Ms Holdaway—There are issues with the actual methodology of counting the page views. This is probably the best methodology we can come up with.

Senator BARNETT—But you have 10 times the number in May compared to the previous three months.

Ms Holdaway—Yes, that is right. That was as a result of some work that was being done through the website, and that may have affected the high page views for that month.

Senator BARNETT—Going back to October, I have 104,000 hits in October 2008. Does that correlate with your figures?

Ms Holdaway—For some reason I do not have figures for that particular month.

Senator BARNETT—You can get them on notice. These are page views rather than hits on the website?

Ms Holdaway—That is correct.

Senator BARNETT—What we need to break that down into is entry to the website and then page views. Page views is one thing; hits on the website is another.

Ms Holdaway—The hits are actually greater in number because it will count the number of file loads that you have as a page is entered. I have been informed that the page views is actually a better representation of how many users you might have of the site.

Senator BARNETT—Can you on notice let us know those figures?

Ms Holdaway—I can.

Senator BARNETT—What about downloads, can you advise on notice the downloads?

Ms Holdaway—We will try our best. I do understand there are some complications but we will try our best to provide those figures.

Senator BARNETT—Your reason for the ten times higher figure in May is that there was special work being done on the website at the time?

Ms Holdaway—Yes.

Senator BARNETT—Presumably that was by CHOICE?

Ms Holdaway—That is correct. Once again, we will take it on notice to provide the closest figure possible around the actual visitors, but we have been informed that the number of visitors has remained consistent throughout the period.

Senator BARNETT—There has been a considerable drop obviously this year from January, February, March and April. A huge drop—

Ms Holdaway—It has been consistent—

Senator BARNETT—from November, December and January. Nevertheless, that is fine. Can you tell us about the funds expended to date? We know it is a \$13 million website but, for the funds expended to date, can you provide that figure to us and give us a breakdown as to where those funds have been expended?

Ms Holdaway—Yes, of course. I will try my best. There was \$12.9 million allocated to the GROCERYchoice website over four years in the 2008-09 budget. Of that amount, approximately just over \$9 million was actually transferred from the ACCC to Treasury when the functions were transferred from the ACCC and Treasury for the website, at which point—

Senator BARNETT—Do you have a date for that?

Ms Holdaway—The approval took place on 5 November 2008 and the transfer took place on 5 January 2009.

Senator BARNETT—That is when the ACCC said that they did not wish to pursue it further and they transferred it back to Treasury?

Ms Holdaway—It was actually obviously the decision by the government to explore different options that would provide better value for money services for the consumer for the same amount. It was at the time that the decision was made by the government; 5 November was really the critical date at which the decision was made by the government for that function to be transferred from the ACCC to Treasury in order for us to be able to explore the outsourcing option.

Senator BARNETT—Which ultimately went to CHOICE?

Ms Holdaway—Yes.

Senator BARNETT—So \$9 million was transferred. Before that, can you advise the costs incurred since inception?

Ms Holdaway—I will have to take that on notice. I will have to seek that information from the ACCC, which was responsible for administering the funds. I do recall that we had extensive information available on that about exactly how it was expended. Most of it was really through IT, and the ACCC also used outsourcing, as well as through collection of data for the purpose of providing that data from the website.

Senator BARNETT—That is exactly right. In regard to the data collection company, there would have been an outsource arrangement agreement with that company to provide the data to the ACCC. I would like to know the cost incurred for that agreement. Do you have that with you?

Ms Holdaway—The figures I have here are not what the ACCC has actually incurred. I think it is probably best to take that on notice.

Senator BARNETT—You are Treasury; you provide your figures to us that you have in front of you and then we can take on notice further information vis-a-vis the ACCC. What information do you have regarding costs incurred?

Ms Holdaway—In terms of Retail Facts the arrangements were that, as the GROCERYchoice website is actually being managed by CHOICE, Treasury would continue with the subcontract with Retail Facts, as you have stated. The cost for the January 2009 survey was \$208,019. Did you want the whole breakdown or did you want the total? With Retail Facts, we are looking at a total of about \$900,000.

Senator BARNETT—To date?

Ms Holdaway—Yes, to date, since Treasury has taken on the responsibility.

Senator BARNETT—So from 5 January Treasury has taken on that responsibility. They have continued to outsource this work to Retail Facts, the data collection company, and the first survey—for January was it—was \$208,019?

Ms Holdaway—That is right.

Senator BARNETT—And was there then a further survey in February?

Ms Holdaway—There was.

Senator BARNETT—And what was that?

Ms Holdaway—It was substantially cut down to \$169,390 and that figure remained right up until May 2009.

Senator BARNETT—And that is a monthly figure?

Ms Holdaway—That is correct.

Senator BARNETT—\$169,319 or 90?

Ms Holdaway—390.

Senator BARNETT—So that is per month in February, March, April and May. That is how much they are receiving and that total amount is about \$900,000 to date?

Ms Holdaway—That is correct.

Senator BARNETT—What were the figures before Treasury took it over? You do not have those?

Ms Holdaway—No, I do not, but it would have been somewhere along those lines. It may have been slightly higher to begin with. I will have to get that for you.

Senator BARNETT—Fine. Let us just go back. What costs were incurred prior to Treasury taking it over? You said there was \$9 million transferred from ACCC to Treasury on 5 January. How much—

Ms Holdaway—The rest. From the \$12—

Senator BARNETT—So \$3.9 million has been expended to date and effectively that money has gone to Treasury and they have expended it as they have seen appropriate. Is that correct?

Ms Holdaway—No, around \$9 million was transferred to Treasury and it is within that bucket of funds that these costs have been incurred, and obviously there has been a contract with CHOICE. Prior to that, the ACCC have expended the difference between \$12.9 million and \$9.3 million.

Senator BARNETT—So the difference between \$12.9 million and \$9.3 million which is \$3.6 million. Is that right?

Ms Holdaway—Yes.

Senator BARNETT—So that is how much has been expended to date. That money has gone to ACCC; they have done their work.

Ms Holdaway—That has been expended.

Senator BARNETT—And they have transferred it back.

Ms Holdaway—That is correct.

Senator BARNETT—And you do not have a breakdown of that \$3.6 million but you could take that on notice?

Ms Holdaway—Yes.

Senator BARNETT—Are there any other costs since Treasury took over in January, and in particular the costs to CHOICE?

Ms Holdaway—Yes.

Senator BARNETT—Can we go through those please?

Ms Holdaway—Sure. As announced by the government, the government has entered into a contract with CHOICE for CHOICE to manage the GROCERYchoice website. The cost of that contract is \$8 million.

Senator BARNETT—Give us a breakdown, if you could?

Ms Holdaway—This \$8 million has an extensive contract supporting it. It is not paid out in total up front. It is linked to specific milestones. On top of that, it is also linked to key performance indicators. As CHOICE goes through and delivers on those milestones and can also provide a full report on how the key performance indicators are achieved, then specific payments will be released for that, and for that payment to be received CHOICE is required to provide full financial reports of how the money has been spent in order to achieve—

Senator BARNETT—I am sure they would. How much has been expended to date—transferred to CHOICE?

Ms Holdaway—Yes. So far \$3 million has been paid.

Senator BARNETT—In one lump sum?

Ms Holdaway—No, in stages.

Senator BARNETT—Can you break it down please?

Ms Holdaway—There was an amount paid for the execution of the contract, and in coming up with this payment schedule we looked at where the front load of the costs will be for CHOICE to be able to—

Senator BARNETT—Understood.

Ms Holdaway—So there was a payment made of \$1 million at the execution of the contract.

Senator BARNETT—Which was which date?

Ms Holdaway—The actual specific date? I might have to take that on notice. Actually, it was execution, so that should be quite easy enough. That was 19 December 2008. It was shortly after that. The payment was not made exactly on the date when the contract was signed but it was shortly after that.

Then when the website was reskinned as a part of this contract, with CHOICE actually taking over, \$1 million was actually paid then, which was invoiced on 30 January, so the payment would have actually been made around there, perhaps some time in February. Then there was also a \$1 million payment made in April as part of the contract's requirement that CHOICE put in place specification documents and actually issues for tender. Part of this requirement was that there will be a revamped website with more useful information for consumers and a more user-friendly website whereby consumers can interact. That has been achieved and the payment has been made.

Senator BARNETT—When are the next payments due? You have got an \$8 million contract.

Ms Holdaway—The payments will be due some time in June. There will then be other payments—

Senator BARNETT—That is another \$1 million payment in June?

Ms Holdaway—Yes, that is correct, and there will be payments due in July.

Senator BARNETT—Another million?

Ms Holdaway—That is right. Then October, \$500,000; on 10 January, another \$500,000; on 10 May, another \$500,000. These are the current schedules that are subject to change.

Senator BARNETT—Absolutely.

Ms Holdaway—10 August, \$500,000; 10 November, \$750,000; and the final payment—the contract ends in March 2011—of \$250,000.

Senator BARNETT—All that information is very much appreciated. Do you have the contract?

Ms Holdaway—Yes.

Senator BARNETT—Do you have a copy?

Ms Holdaway—Yes, I do.

Senator BARNETT—Can you please table a copy?

Mr Murphy—I think, Senator, I could take that on notice. I am not sure whether the contract with CHOICE has confidential requirements in it.

Senator BARNETT—Mr Murphy, excuse me, I have asked for the agreement to be tabled and you need a reason which is in the public interest for that to be denied.

Senator Sherry—We have given the reason.

Senator BARNETT—There is no reason that is legitimate, Minister, and I would ask for the agreement to be tabled, taking it on notice.

CHAIR—Take it on notice.

Senator JOYCE—It is always the same: either take it on notice or gobbledegook. That is generally what the minister does.

Senator Sherry—If I can be of further assistance, Senator, I just indicate: you may not be aware, the ACCC are not appearing today, and Monday week I think, whatever the date is—

Senator BARNETT—I am aware of that, yes.

Senator Sherry—If we can provide the contract we will, but we need to determine whether there are confidential clauses in it, so we will take it on notice.

Mr Murphy—I am quite happy to provide it but not—

Senator BARNETT—Minister and Mr Murphy, there may be KPIs in it, there may be benchmarks in it, there may be financial figures in it. I put it to you that none of those points that you are referring to are legitimate reasons to deny this committee that document.

Mr Murphy—We will take this on notice. We will review the document and, as I say—

Senator BARNETT—We would like it today. Can we get it?

Senator Sherry—No.

Senator BARNETT—The agreement is here, is it not, in this room?

Ms Holdaway—Sorry, Senator, I do not have it on me. I thought I did but I do not have it on me.

Senator BARNETT—There are officers here who can review that—

Senator Sherry—No, Senator Barnett. We will take it on notice and check the information. I am not going to give any misleading undertaking.

Senator BARNETT—You knew this was a topic today and you would be prepared for this topic. You would be well aware that this question would be asked and that we would require it.

Senator Sherry—We are taking it on notice.

Senator JOYCE—This is democracy in action!

Senator BARNETT—I consider that obfuscation of the first order. Can we go to any other agreements that you had with other third parties outside of GROCERYchoice?

Ms Holdaway—There are also subcontracts with an IT provider, which the ACCC had originally used as part of the GROCERYchoice website. That was to allow for transition from the ACCC running the website to CHOICE being able to run it through their own system.

Senator BARNETT—What is the name of the provider and what was the cost of that service?

Ms Holdaway—The name of the provider is Getronics.

Senator BARNETT—And the cost?

Ms Holdaway—In total it is around \$440,000.

Senator BARNETT—\$440,000 to transfer—

Ms Holdaway—This is to actually host the website, Senator, and also to assist CHOICE with the actual reskinning of the website. It is not just for transfer; it is actually to host for a period of time.

Senator BARNETT—For what period of time?

Ms Holdaway—This was actually leading up to the July period. The actual website is currently being hosted by Getronics on their hardware and in the meantime CHOICE has been developing their IT system and their website in order to then physically move, if you like, the hosting of the website to ensure that there is absolutely no—

Senator BARNETT—The \$440,000 is for the hosting by Getronics on their hard drive?

Ms Holdaway—That is right, but with full access for CHOICE. It is just really a space.

Senator BARNETT—But it is funding to Getronics?

Ms Holdaway—It was a payment to Getronics but under instructions by CHOICE and with us monitoring.

Senator BARNETT—And that is to July 2009?

Ms Holdaway—Yes, that is right.

Senator BARNETT—And then there is an understanding that CHOICE would then take it over?

Ms Holdaway—It has already taken over.

Senator BARNETT—They would then host it?

Ms Holdaway—This is the IT component of the actual hard space.

Senator BARNETT—That is right, but CHOICE would then on its website host it post July 2009. Is that the understanding?

Ms Holdaway—I do not know the exact details, but CHOICE will be responsible for the space and how they actually determine that will be up to them.

Senator BARNETT—Likewise, with regard to IT and that agreement, I assume there is an agreement between Getronics and the government?

Ms Holdaway—Yes.

Senator BARNETT—If you could please provide that as well and I presume your answer will be to take it on notice.

Ms Holdaway—Yes.

Senator BARNETT—Let us go back to the agreement with the CHOICE organisation and could you, to start with, advise the committee of the KPIs?

Ms Holdaway—The KPIs are built around the objectives of the website to ensure that consumers are well informed of the grocery prices and to ensure that it provides the ability for consumers to make their own choices about their purchasing behaviour. Therefore, it is built around the reliability of the website. Reliability includes providing up-to-date information but also ensures that the website does not falter where it is not accessible for an extensive period. It has got a number of KPIs built around it.

Senator BARNETT—We will have a look at those. You mentioned milestones as well. We will get those, all being well, when you table that document. Is it correct that Minister Bowen or his chief of staff are soon to host and chair a meeting of key stakeholders to try and broker or force a deal with the key stakeholders and the government?

Ms Holdaway—I think that is a question Mr Bowen would need to answer.

Senator Sherry—I would have to take that on notice.

Senator BARNETT—If an agreement is not made with the key stakeholders, as in the major chains and the independents, will the government close the website?

Senator Sherry—Again, I will have to take that on notice.

Senator BARNETT—If one of those three, and specifically the independents, do not deal, will the government close the website?

Senator Sherry—Again, I would have to take that on notice.

Senator BARNETT—Finally, can you advise specifically the reasons for the transfer from the ACCC to CHOICE?

Ms Holdaway—Yes, of course. I think I mentioned just previously that this was really an opportunity for government to be able to provide more for the same. There were some issues around whether the ACCC, as the regulator of the TPA, could actually enter into space of, for example, providing special prices, given that there are obviously consumer protection issues

and, as the regulator of those, would there be actual conflict of interest in pursuing that type of information. Yet I think we were getting a lot of feedback from consumers that it is exactly that kind of information that would be useful and that there is a lot of interest in finding out more about the specials and a smarter way of shopping, if you like, to get the best value for money.

Senator BARNETT—I am happy for you to take on notice to provide further and better particulars regarding those reasons, if you are happy to do that.

Ms Holdaway—Of course.

Senator BARNETT—Thank you very much. Did the ACCC ask the government to be relieved of its responsibility in terms of operating the website?

Ms Holdaway—The answer is no. I have to obviously think about that—

Senator BARNETT—Are you sure?

Ms Holdaway—because there were a number of discussions being held, particularly with this opportunity presenting itself at the time. The sequence of events was not such that the ACCC had formally—

Senator BARNETT—All right, I accept your answer there. Why was CHOICE chosen as the operator of the website rather than another operator?

Ms Holdaway—Obviously, with the contract amount being above \$80,000, all departments are subject to the Commonwealth procurement guidelines. Under that, there is actually a clause whereby if there is an advantageous opportunity that is unsolicited that has been presented to the government, that direct sourcing is actually an allowable option. It was done on that basis. CHOICE had approached the government with a proposal, which at the time represented much better value for money than what the ACCC had been able to do. Not just that, it was able to do a lot of other services the ACCC had limitations on.

Senator BARNETT—Some people would say that is a breach of the protocol regarding the AusTender approach.

Ms Holdaway—As I said, it was in line with the procurement guidelines and we had followed all the requirements under that. This is actually under condition 8.65(c) of the mandatory procurement procedures and it was within those conditions that the contract was actually awarded to CHOICE.

Senator BARNETT—Thank you for that. We will pursue this in other avenues. I know the ACCC is coming up shortly, and I thank the indulgence of the committee.

CHAIR—Thank you. Senator Abetz.

Senator ABETZ—Thank you, Chair. I have got a few questions on OzCar and can I start by thanking Minister Bowen and his staff for providing a private briefing to me, which I think will somewhat curtail estimates hearings. Can I put on record my appreciation for that. Can I also ask whether all questions on notice in this area of OzCar have been responded to?

Mr Grech—The questions that I took on notice—and there were not many—from the last committee hearing on this issue of OzCar, I have responded to, yes.

Senator ABETZ—Then chances are the problem is in my office rather than in Mr Bowen's office. That is why I did not seek to make an allegation about lateness and that is why I in fact asked a neutral question as to where they were. Thank you for that.

Senator Sherry—Do you want to us follow up specifically?

Senator ABETZ—No, I will go through the secretariat of the committee. That is fine, thank you. For what it is worth, my staff have just emailed saying there are some on costs that we have not got yet, but rather than delay the committee here, we will try and sort it out with the secretariat. Just as a mistake can happen in my office. I accept that something may have happened elsewhere.

Mr Grech—For the record, Senator, I definitely prepared the responses to the questions. Whether they are stuck in a particular minister's office or your office, I do not know.

Senator ABETZ—That is fine, thanks for that. As I understand it, OzCar, or the structure, was initially set up as a \$2 billion mechanism, if I can call it that, and now it is going to be considerably less, about a third, a quarter of the size?

Mr Grech—You are correct, Senator. When the scheme was initially launched and announced on 5 December last year by both the Prime Minister and the Treasurer, the expectation at that time was that the facility would need to be in the order of A\$2 billion. Over the last six months there has been a reduction in, if you like, the degree of market failure and we are now looking at a facility which at most will be \$850 million but I suspect will be somewhat less than \$850 million.

Senator ABETZ—As I understand it, we had private sector involvement in relation to this with Credit Suisse et cetera, who were going to bear the costs of running the show and the trust, as I understand it. I dare say costings would have been undertaken initially on a vehicle or mechanism dealing with \$2 billion. Did we do any analysis as to where the break-even point would be? Either yes or no on that one? If the size is now going to be below that break-even point, will there be any costs that might be borne by the Australian taxpayer?

Mr Grech—Senator, the original fee arrangements, which related or which will relate to not only Credit Suisse but there are a number—

Senator ABETZ—We went through them last year.

Mr Grech—That is right. To get to the guts of your question, because the facility will be considerably smaller than the original estimate there will be, if you like, a fixed pool of costs that will need to be covered by what will be a smaller pool of income-generating securities over the 12 months in which the facility is intended to operate. That may be a convoluted response, but basically what it means is that the risk of loss from the facility is obviously higher the smaller the facility is, compared to where we were even in February.

Senator ABETZ—What is the break-even point?

Mr Grech—That is a fair point. Based on the latest information I have been given by Credit Suisse, who are acting for the Commonwealth as project managers, there are a lot of ifs and assumptions, but they believe that if the facility is anywhere south of \$350 to \$400 million and if the facility operates for 12 months the probability of loss will exceed 50 per cent.

Senator ABETZ—So, there is a chance of a loss, and without going into all the detail, if Ford Credit were not in the marketplace at the moment for this vehicle, we would clearly be in a loss situation. Would that loss situation be borne solely or partially by the Australian taxpayer?

Mr Grech—Again, it is a fair question, Senator. You are correct in that if the recent decision to allow Ford Credit to participate in the facility had not been taken, I would go as far as to say that there will not be a need to activate OzCar at all, because the market has actually had a much more positive effect.

The market has worked a lot more effectively than we had anticipated. If you believe in the positive power of the market, as I do, I think that is a good development. In terms of who will incur the losses, the way this arrangement works is that the trustee will basically issue securities to the four major banks, because they agreed to buy these securities, in equal instalments. Those securities will be issued in a guaranteed order—that is, the first \$400 million of securities that will be issued will be Commonwealth guaranteed. So basically if there are any losses on those exposures, the losses will be incurred by the taxpayer.

Senator ABETZ—From the losses of the underwriting?

Mr Grech—The bottom line response to your question, Senator, is that any losses that the facility makes, any losses that OzCar as an SPV makes will be incurred by the taxpayer.

Senator ABETZ—At this stage I suppose everything is crossed fingers, legs—everything is crossed—that it will not make a loss?

Mr Grech—It is a paradoxical thing: the longer the facility operates, the greater the scope to generate income, hence the greater the scope to cover your fixed costs, particularly the initial establishment costs, not necessarily the operating costs. Based on the information from Credit Suisse—and I have no reason to question the accuracy of what they are telling me—if the facility is no smaller than \$350 to \$400 million and if it runs for at least 12 months then we should get to a break-even point, but there are a lot of ifs there.

Senator ABETZ—What are the initial fixed costs? I think you have indicated those to us but for Ford coming onto the horizon, the chances are we would not have ‘started the vehicle,’ but you still would have had all the initial upfront costs. What were they?

Mr Grech—The way the arrangement has been constructed and, again, it is a trust, and the way we—when I say ‘we’ I mean Treasury—negotiated with Credit Suisse and the third party service providers back in November-December was that in the event that the facility had never been activated, we—the taxpayer/government—would not have incurred one cent in costs. So the risk was all on them.

Senator ABETZ—The exposure of the taxpayer is solely in the moneys—

Mr Grech—Through the activation of the facility.

Senator ABETZ—Not the actual bureaucratic administrative costs of setting it up?

Mr Grech—Correct, but once the thing is activated we become liable, in effect, or at least the trust becomes liable for meeting the costs. Through any subsequent losses that the trust

makes in terms of its day-to-day activities, we—the government/the taxpayer—become liable for the losses, courtesy of the guarantee.

Senator ABETZ—You are right, but still no exposure for the initial set-up costs?

Mr Grech—Only to the extent that the initial set-up costs, which basically total just under \$7 million—they are not insignificant—will need to be financed from the income generated by the trust.

Senator ABETZ—Does Credit Suisse have first call on the income to cover those costs?

Mr Grech—Yes, it does.

Senator ABETZ—In a circuitous way—and I think I now understand where we are getting to, Mr Grech—there is exposure to the Australian taxpayer. Rather than hypothesising about it now, we will undoubtedly revisit that particular aspect at another estimates hearing. You indicated that you expected the funds required to be less than \$850 million?

Mr Grech—Yes.

Senator ABETZ—Zero is also less than \$850 million. Can I ask for your best professional judgment—I will not hold you to it—on what you think the figure might be?

Mr Grech—It is a fair question. I must qualify what I am going to say, as I am not in the business of Treasury forecasting.

Senator ABETZ—Very wise. It raises a lot of questions, I can assure you.

Mr Grech—Yes, that is right. First of all, perhaps I should explain where the \$850 million came from and then we can unwind from that. It will not take me very long. The \$850 million, which is actually what is in the budget papers and which is what the Treasurer publicly stated when the OzCar guarantee bill was introduced a couple of weeks ago, represents \$550 million for Ford Credit, \$250 million for Capital Finance, because they were telling us they were going to roll their book into the OzCar facility, and another \$50 million for another industry-captured finance company, whose name I prefer not to publicly disclose because they are still going through their internal processes, but who I am happy to inform the committee about privately. There is no issue from—

Senator ABETZ—There is no need to know on my part.

Mr Grech—Basically three components make up the \$850 million. Since the budget, which obviously was not that long ago, we have been informed by Capital Finance that they are no longer seeking to participate in the SPV. If you are a dealer, a former GE and GMAC dealer that has been financed by Capital Finance, that is actually a good development, because it means that you have now potentially got a long-term relationship with an alternative financier in Capital Finance. What it means is that is \$250 million roughly of business, if you like, that will not be coming through the SPV, which means the SPV will have \$250 million less of securities on which to generate income. The income generating base is smaller. From the \$850 million, you can take \$250 million off now.

Senator ABETZ—\$600 million?

Mr Grech—That is right. The \$550 million for Ford Credit is its maximum credit line. At the moment the Ford Credit book is significantly below \$550 million, but, again, given

commercial sensitivities, I prefer not to disclose the full figure. I think it is safer to assume, based on the information that we have available, that the facility will be no more than \$450 million in aggregate.

Senator ABETZ—We will revisit that next estimates and see how that prognostication works out. We are getting, I dare say, dangerously close to that tipping point, but let us wait and see. Is OzCar up and running?

Mr Grech—The answer is no; OzCar has not been activated.

Senator ABETZ—As a result, nobody has yet received any assistance from OzCar, although undoubtedly the argument will be made out that the fact that this facility was talked about may have been of benefit in the marketplace.

Mr Grech—That is right.

Senator ABETZ—And have a secondary type effect.

Senator Sherry—This is a government that believes in preparation. In a whole range of areas we have had to act decisively.

Senator ABETZ—Minister, we were going really well, because I could say you acted decisively—

Senator Sherry—The evidence was there for all to see yesterday—

Senator ABETZ—with \$2 billion and it has now shrunk. I did not see Chris Bowen issuing a press release, saying, ‘Mum, I’ve shrunk OzCar by three-quarters.’ Anyway, we were making good progress, so let us continue, Mr Grech. My next question is how many financiers need to sign up, and we have been through that and the amounts involved. So no financiers have signed up. We have been through how large we expect OzCar to be.

Did Treasury do any of this modelling that you do not want to get into, Mr Grech, very wisely, but this figure of \$2 billion was announced—I will be careful—as a sizeable sum, and it was all part of taking decisive action to look good, it was a big figure and all the rest. I think it was at the last estimates hearing I found out that it was going to be about \$850 million, and now we know it will be even less than that. Do we say that it was an economic miracle that occurred? How come such a big sum was announced, and now it looks as though about only one-third will be required?

Mr Grech—I entirely understand your question and it is a reasonable question. There was no actual rocket science behind the original \$2 billion estimate. The original \$2 billion estimate was based on the assumption, given the announced departures by both GE and GMAC, and given what we had been told up to that point by the remaining market players who are not that large in number—I am mainly talking about Esanda, St George, Capital Finance, Nissan Finance, BMW, Volkswagen, Toyota Finance, these small industry capture finance companies—that they did not have the scope nor the time to do the due diligence necessary to grow their loan books to accommodate GE and GMAC dealerships. Also noting that, at that time, late November, early December, GE and GMAC were telling the world that, come the end of January, they were out of here. The \$2 billion was basically an aggregation of the outstanding loan book at that time of GE, GMAC and Ford Credit.

Senator ABETZ—Yes, but asking them to be somewhat more orderly in their departure seems to have worked?

Mr Grech—There is no doubt that that definitely helped. You are correct. I and a few others were certainly encouraging relevant people at GE and GMAC to adopt a bit more of an orderly approach, and when they saw that there was this OzCar facility acting as a bit of a backstop which, frankly, would have made their exit cleaner at the appropriate time, they were more responsive to representations to act in an orderly manner.

Mr Murphy—There were also a few pressures coming from other industry players. We met with the industry associations and that sort of made people think a bit more collectively than they would have. The other thing that came into play, especially with GMAC and GE, is that directions were coming from the US, and the local presence was seeking to probably stay here.

Senator ABETZ—Yes, so I understand.

Mr Murphy—So, I thought at the time, with Godwin's work, having a bit of government action or government listening to the industry assisted everyone to step back and work out a solution.

Senator ABETZ—Yes. As I understand it, the special purpose vehicle was originally set up and mooted to be for car dealers. Is that right?

Mr Murphy—Correct.

Senator ABETZ—It now seems its major, overwhelming majority of business will not be for individual car dealers per se but for one credit company, namely, Ford Credit, which sort of changes the basis on which it was set up.

Mr Murphy—The parameters, correct.

Senator ABETZ—One wonders if it were made known to GE and GMAC that OzCar might be able to be used for GE and GMAC like it now appears—and good luck to Ford Credit, and I do not criticise them for this—whether they may have changed their decision making, given what I perceive, possibly incorrectly, as the changed nature of this vehicle?

Mr Grech—To begin with, you are correct. The original intent of OzCar was to support the individual car dealers of departing financiers. With the decision to accommodate Ford Credit, the parameters have indeed changed a little, so that you are effectively now supporting a financier that would otherwise leave leaving stranded dealerships.

Senator ABETZ—Yes.

Mr Grech—In terms of the retrospective—that is, if we had made a similar offer to GE and GMAC, all I can say on that—and I went back to Treasury from PM&C just as this started so I do not know what happened prior to my arrival in Treasury—is that certainly at no point whilst I have been involved with this did either GE or GMAC make any representations to government seeking this type of vehicle. Frankly, even since the decision on Ford Credit, and I have had extensive often daily contact with GMAC at least, they have not told me that, 'Hey, if we have access to this type of arrangement, we would have hung around.'

Senator ABETZ—Reading between the lines, did Ford Credit approach to see if they could, as a body, get into OzCar as opposed to individual dealers?

Mr Grech—The answer to that is yes.

Senator ABETZ—Would that offer be open to GE, GMAC or whomever else in the event they were to change their mind?

Mr Grech—That would then be a policy decision of government, and you can go through the normal processes.

Senator ABETZ—All right, and I accept at this stage, Minister, that that is a hypothetical, but potentially open under the vehicle that has been constructed, given that Ford Credit has the opportunity, but whether it would—I accept that. What is going to happen, then, without saying too much as to what commercial dealings are happening with Ford Credit. As I understand it, OzCar was for a 12-month period?

Mr Grech—That is correct.

Senator ABETZ—So an exit strategy—for individuals you might be able to work with those individual dealerships, but when you have a huge Ford Credit with \$350 million or whatever—

Mr Grech—It is a fair and reasonable question. To begin with, there is nothing under this arrangement that will stop or prevent, preclude any Ford Credit Finance car dealer from trying to get a better deal over the next 12 months from another provider. So there is that competitive tension there. I used this example at the last hearings, so indulge me: if Eric Abetz Motors from Central Tasmania is financed by Ford Credit—

Senator ABETZ—Some people listening into this might actually think I do run a car yard.

Mr Grech—And I am sure it will be a very good car yard, too, Senator. There is nothing to prevent a Ford Credit Finance car dealer, for the period in which Ford Credit has access to OzCar, to shop around and try to get a better deal from Esanda, St George or whomever. At the end of the 12 months—and you are correct that it is a 12-month arrangement—the expectation is that either the debt securitisation market will have improved sufficiently to allow Ford Credit to finance its own activities, or, alternatively, Ford Credit will need to explore other options. What those other options may or may not be, here we are on 4 June; where we may be on 30 June 2010, that is a long way to go, so I will not even bother to speculate.

Senator ABETZ—The 12-month period for which OzCar was set up was not, of course, from the date of the announcement but from, what, the day the legislation gets passed or the day the OzCar vehicle mechanism sends out the first dollar—what is the starting date for the 12 months?

Mr Grech—Clearly the legislation is very important, but in the contractual deeds that have been drafted by an army of lawyers—

Senator ABETZ—So something good has come out of it!

Senator Sherry—I was just going to say, Senator: you know about legal business, not car business.

Mr Grech—The end point is specified as 30 June 2010. So, frankly, for argument's sake, if it were to be activated on 1 August, we effectively do not have a 12-month facility at all. The end point is definite; the start point is not.

Senator ABETZ—Minister, from a policy point of view, has government given any consideration to extending it?

Senator Sherry—I will have to take that on notice.

Senator ABETZ—Thank you. OzCar is a new facility. Suppose I am a car dealer and look up OzCar in the telephone book. There is no such thing. I scratch my head and quite possibly go to my local accountant or lawyer and say, 'How can I get into the OzCar facility? Whom do I ring? Whom do I contact?' Would that be the department at this stage?

Mr Grech—At this stage, yes. The bottom line is, as you referred to earlier, financiers. The way we wanted this arrangement to work is that, once it is activated, we would prefer to have car dealers not to have to interact with the trustee but rather to continue to deal with participating finance companies.

Senator ABETZ—Who would then pass them on to OzCar?

Mr Grech—Exactly. So they would act effectively as an agent. I will use a little hypothetical example—it is much easier.

Senator ABETZ—If I may, I think I understand.

Mr Grech—Okay.

Senator ABETZ—In fact, I did not think of the finance companies in that, so chances are that first contact would have been through their credit company and possibly accountants and lawyers—MPs as well, I suppose?

Mr Grech—I have received a lot of representations from MPs of both sides.

Senator ABETZ—For particular car dealerships in their electorates, no doubt?

Mr Grech—Correct, yes.

Senator ABETZ—Can you give us a brief indication as to how many approaches you have received from finance companies on behalf of car dealers, accountants and, out of interest, MPs?

Mr Grech—Sure. I have received a large number of representations—

Senator ABETZ—When you say 'I', is that you personally?

Mr Grech—Me personally.

Senator ABETZ—Because you are 'OzCar' for the time being?

Mr Grech—Unfortunately, yes. I have received a large number of representations for a small number of dealerships, if that makes any sense.

Senator ABETZ—Right.

Mr Grech—You need to understand, and this goes back to the simple fact, that, of the 450-odd GE and GMAC dealers that were vulnerable when the facility was announced back in

December, as of today there are only about a maximum of 30, mostly GMAC financed, car dealers that have effectively yet to find a home, for want of a better term.

Senator ABETZ—And GMAC were mainly Holden dealers?

Mr Grech—Correct. What I am saying is that an overwhelming majority of affected car dealers have been accommodated by the remaining finance providers.

Senator ABETZ—Right. Have representations been made by members of parliament for individual dealerships?

Mr Grech—I have had some local MPs from both the government and the opposition personally ring me up making representations on behalf of their constituents who happen to be a car dealer who is obviously having difficulty securing alternative finance from GE and GMAC.

Senator ABETZ—I said at the very beginning that, without being too provocative, when OzCar was initially announced, it was done with some fanfare by the Prime Minister and, as I understand it, the industry minister and the Treasurer. Have there been representations from either or all of those three ministerial offices to you?

Senator Sherry—About what?

Senator ABETZ—About dealerships.

Senator Sherry—On behalf of dealers?

Senator ABETZ—Yes. Not finding OzCar in the phone book, you hear the Prime Minister or Treasurer's office making an announcement and you say, 'I will ring up the Prime Minister's office or the Treasurer's office, or Senator Carr's office, to see if they can assist.'

Mr Grech—As you would appreciate, in the normal conduct of my work, I would have a lot of interaction with the Treasurer's office. More specifically, the answer is, yes, I have had representations from the Prime Minister's office and from the Treasurer's office, who have simply been seeking to refer dealership cases that they have become aware of. They have simply referred those people to me to try to help them.

Senator ABETZ—What about Senator Carr's office?

Mr Grech—I have had some engagements with Carr's office, but they have been more seeking information as to how this thing works—

Senator ABETZ—Rather than individual representations?

Mr Grech—Exactly.

Senator ABETZ—When you say 'approaches', were they by phone calls, emails, letters—how were those approaches made?

Mr Grech—Phone calls and the occasional email, when it comes to the Treasurer's office, which is part of the normal way we do business anyway.

Senator ABETZ—And the Prime Minister's office?

Mr Grech—I am going from memory: it was mostly emails.

Senator ABETZ—Are you able to disclose to us who from? Was it the Prime Minister himself, his chief of staff or—

Senator Sherry—We will take that on notice.

Mr Grech—The Prime Minister himself has not made any representations to me on particular car dealers. He is aware that I am the key officer, I suppose, handling this particular issue and he has never made representations for particular car dealers directly to me.

Senator ABETZ—That is the Prime Minister personally, but his office has?

Mr Grech—The Prime Minister's office have certainly made representations which have basically involved their alerting me to a situation confronting particular car dealers.

Senator ABETZ—What about Treasurer Swan? Has he personally made contact with you?

Mr Grech—No. The Treasurer's office will get called up by various dealers and stakeholders, whatever term you want to use, and their instinct, which is quite normal, is to say, 'Godwin is the guy handling this, so talk to him.' And they have given me a heads-up that dealer X is going to call me or that I should call dealer X. That has happened.

Senator ABETZ—Were the dealers on behalf of whom representations were made involved with GMAC?

Mr Grech—Some were. Representations were made on behalf of both GE and GMAC.

Senator ABETZ—How many representations have been made by the Prime Minister's office for dealerships and how many by the Treasurer's office?

Mr Grech—I think there has only been the one case from the PMO.

Senator ABETZ—Just the one case?

Mr Grech—The one case. As to the Treasurer's office, given, as I said earlier, the very large number of GE and GMAC dealers that have found a home—so there is not a very large pool of stressed car dealers out there with respect to wholesale floor plan finance; some may not be happy at the higher interest rate they are being charged, but that is a different issue—from memory, there were two dealerships that the Treasurer's office referred to me for some action.

Senator ABETZ—Was one of those two dealerships the same one as came from the PMO?

Mr Grech—Yes.

Senator ABETZ—How strong were these representations?

Senator Sherry—We will take this on notice. These are correspondences between the office and the officers.

Senator ABETZ—Yes, but we have not identified anybody.

Senator Sherry—We are taking it on notice. You are asking how strong. That can be a whole range of things—

CHAIR—That is a matter of opinion for the public servant.

Senator Sherry—We are taking it on notice.

Senator ABETZ—All right. Did the Treasurer make representations on behalf of Bartons City Holden and John Grant Motors from Ipswich?

Senator Sherry—Again we will take that on notice. There is no response to individuals in that way. There is a possible confidentiality issue, so we will take it on notice.

Senator ABETZ—In that case, Chair, why do we not break for lunch now, and I might revisit this little area after lunch for a brief time.

CHAIR—The committee will adjourn until 1.30 pm.

Proceedings suspended from 12.30 pm to 1.31 pm

CHAIR—The committee will reconvene. Senator Abetz is continuing.

Senator ABETZ—Before lunch we had acknowledged that the Prime Minister's office had made a representation for one dealership and the Treasurer's office had made representations for two dealerships, one of which was the dealership on behalf of which the Prime Minister's office had made a representation. Is that correct?

Mr Grech—That is correct.

Senator ABETZ—I then asked in relation to those representations the strength or otherwise of those representations and the minister intervened.

Senator Sherry—I said we would take it on notice.

Senator ABETZ—You intervened to take it on notice.

CHAIR—The chair intervened on the basis that it asked an opinion of the officer rather than—

Senator ABETZ—Were the representations in the form of seeking information about the special purpose vehicle generally or about assisting a particular car dealership?

Mr Grech—The representations that were made by both the Prime Minister's office and the Treasurer's office were professional and consistent with what I would expect from a relationship between a ministerial staffer and a public servant.

Senator ABETZ—You did not answer the question, which was: was the nature of the inquiry professional and so on, as it may have been in dealing with the issue of how this special purpose vehicle operates or can you assist a particular dealer?

Mr Grech—It is more in the case of the latter, but let me qualify. Essentially what happened is that both offices became aware of a situation facing a particular car dealer. I do not know exactly how the offices became aware of the situation confronting the dealer; that is for them. As you would expect a normal ministerial office to do, they referred it to the relevant part of the bureaucracy to help the particular, in this case, car dealer. Given that I am the public servant dealing with this particular issue—

Senator ABETZ—You had the misfortune of it coming to you.

Mr Grech—I do not know about the first bit, but it came to me.

Senator ABETZ—It came to you. The representations were in the form of providing assistance to a particular car dealer. Did the request from the Prime Minister's office pre-date the request of the Treasurer's office?

Mr Grech—I cannot remember. This goes back two or three months. I would have to take it on notice. Honestly, I cannot remember.

Senator ABETZ—You can take that on notice and let us know when the Prime Minister's office and the Treasurer's office made its representations, particularly with reference to that one car dealership that was in common between the two. You have indicated to us that these representations were to assist a particular car dealership. Were the representations from the Prime Minister's office only a one-off or were there a number of follow up representations?

Mr Grech—Very much a one-off.

Senator ABETZ—The Treasurer's office?

Mr Grech—Similar vein.

Senator ABETZ—Do you know on whose behalf those representations were made?

Mr Grech—Yes, but I am not going to disclose a particular car dealership by name to this committee. I have got to respect the confidences of that particular small business.

Senator ABETZ—Yes, I understand that. Possibly, Minister, you could ask the Prime Minister and the Treasurer whether they made representations on behalf of John Grant Motors to avail themselves of this taxpayer funded OzCar mechanism. Just for the record, it is interesting that there is a company called Miremani Alvi Pty Ltd that has a registered business name of John Grant Motors and also Ipswich Central Motors. I just put that on the record. I also note that in the Prime Minister's declaration of interests, he has a provision of an electorate vehicle supplied by, you guessed it, John Grant of John Grant Motors which includes registration, insurance and RACQ membership. Mr Grech, in those professional representations to which you have referred by the Prime Minister's office was there a declaration that there was at least the possibility of a perception of conflict of interest?

Mr Grech—I am not going to comment on that.

Senator Sherry—I will take it on notice, as you requested.

Senator ABETZ—We all know that the answer is no.

CHAIR—I do not think that is an inference you can make.

Senator Sherry—I do not know how you can draw any conclusion, but I will take that on notice.

Senator ABETZ—I am sure you will. It is your entitlement to take this on notice.

CHAIR—Mr Grech, did opposition members make individual representations on behalf of their electorate businesses?

Senator ABETZ—Yes, they did and he has already said that.

CHAIR—Individual representation?

Mr Grech—There were representations made by government and opposition backbench MPs, particularly since early February, in relation to some car dealerships who had been clearly struggling in securing independent forms of wholesale floor plan finance. Those representations were made by MPs from Victoria, New South Wales and Queensland, and I am not going to disclose who they are.

Senator ABETZ—Minister, can you also take on notice for us whether the standards of ministerial ethics include in paragraph 2.17:

Ministers shall ensure that they do not come under any financial or other obligation to individuals or organisations to the extent that they may appear to be influenced improperly in the performance of their official duties as Minister.

I would have thought that might apply even more so to the Prime Minister. Given that Mr Joel Fitzgibbon has just done the right thing and resigned his ministerial commission—

CHAIR—Can I ask you to get to the question, please?

Senator ABETZ—can I ask whether the same standard is going to be applied by the Prime Minister to himself?

Senator Sherry—There is a distinct difference when a letter—correspondence or communication—is sent to a backbencher’s office and a minister’s office, including the Prime Minister’s office, and then that request is passed on to the appropriate public servant. That is very different.

Senator ABETZ—Other than it has the status of the Prime Minister’s office attached to it.

Senator Sherry—I am sure the Prime Minister receives thousands of letters on a whole range of things, including—

Senator ABETZ—He only responds to some, like people that give him a private car.

Senator Sherry—There are a whole range of references that are referred to me.

CHAIR—Senator Abetz, I think that kind of allegation should be withdrawn.

Senator Sherry—You should withdraw that. You have no basis to make any such claim.

Senator ABETZ—He has a private car.

Senator Sherry—You have no basis to make any such claim.

Senator ABETZ—He has a private car from John Grant Motors. That is undisputed because I have got it in the—

CHAIR—Senator Abetz, I have asked you to withdraw the previous statement.

Senator ABETZ—Sorry. It is undisputed. I have a document for the committee if they want it.

CHAIR—I do not ask you to withdraw the facts. I am asking you to withdraw your allegations.

Senator ABETZ—I do not have to withdraw the facts. What is the allegation?

Senator Sherry—I believe your allegation is wrong and it does not stand the test.

Senator ABETZ—That he made representations on behalf—

CHAIR—Senator Abetz, I have asked you to withdraw.

Senator ABETZ—I asked a question whether the Prime Minister's office made representations for John Grant Motors.

Senator Sherry—And we are taking it on notice.

Senator ABETZ—The official at the table I am sure must know the answer. You are hiding behind taking it on notice, then asserting there is no evidence to support my allegations. Ring the Prime Minister's office now and deny it.

Senator Sherry—Can I respond? The reason was outlined why the identification of a small business that has made a request and information as to how to go about requesting access to the fund. That is confidential. You have named a particular business that may or may not be under some sort of commercial pressure. I do not know the facts, but you have named a particular business. I will take it on notice, but a good reason has been given as to why businesses are not being named.

Senator ABETZ—All I know is that the Prime Minister does not respond to literally thousands and thousands of his fellow Australians who write to him. If it transpires that the Prime Minister's office did not make representations on behalf of John Grant Motors or a company associated with that business empire, then I am willing to come in, correct the record and apologise, but until the Prime Minister, through the minister at the table, who refuses to answer—

Senator Sherry—You have come to the wrong and inaccurate conclusion. A good reason has been given as to why the officer has not responded. He has given the reason in terms of the name of any car dealer. There will be no car dealer that will be named. I also make the point that the requests go to an independent company for assessment.

Senator ABETZ—To allow us to continue, this is a very serious allegation that I have made and I therefore withdraw it. If the allegation is right, will the Prime Minister resign?

Senator Sherry—Don't be stupid, Senator Abetz.

Senator ABETZ—Will the Prime Minister resign? If the allegation is unparliamentary it must be so gross that it would require a resignation. You cannot have it both ways.

CHAIR—I believe Senator Pratt has a question. Senator Pratt now has the call.

Senator BARNETT—Point of order! It is very difficult to hear.

Senator PRATT—Yes, it is.

Senator BARNETT—We have Senator Pratt interrupting Senator Abetz. We have got the minister talking over Senator Abetz and then we have you in there as well.

CHAIR—Senator Pratt has the call.

Senator ABETZ—Oh—

CHAIR—I will come back to you.

Senator ABETZ—Thank you very much. This is Operation Sunlight at its best.

CHAIR—Senator Pratt has a question on this issue.

Senator PRATT—My question is brief. I note that Mr Grech has confirmed that we have had both opposition and government members of the parliament make contact on behalf of local car dealers. I note that, at this stage, he has declined to name them, but I would like to place that request on notice.

Senator Sherry—I will go further. I will ask the officer to name all those members of parliament who have put in requests or referred correspondence.

Senator PRATT—Thank you.

Mr Grech—I am happy to take it on notice. Do you want me to answer it now?

CHAIR—Mr Grech.

Mr Grech—Kay Hull, the member for Riverina, has made representations on behalf of one of her dealers who contacts me almost every week. There was also the member for Dunkley, Mr Billson, who rang me on a couple of occasions in relation to one of his dealers. There was a government back bench MP from Queensland, whose name I do not recall, because he is a new member and I had never heard of him before. That is no disrespect to him in any way, but the other two I remember because they have been around for a while. I think this one was from the class of 2007 and I cannot remember who he was.

Senator ABETZ—There was an unfortunate changeover of members in 2007.

Senator Sherry—Just to complete the response, what the witness has indicated is that there are two Liberal-National Party members—opposition members—who have made a number of contacts on behalf of car dealers, presumably in their electorates—they may or may not be in their electorates—and have made a number of contacts with the officer about how to go about the accessing of assistance under this particular program.

Mr Grech—I would like to make very clear that the representations that have been made have been made to me, so with respect to everyone I think I am best placed to answer for myself. From my perspective, I have regarded all of the representations that have been made, be they from a political office, a MP and on one occasion from the local Catholic priest, as all normal behaviour. It is basically what I would expect from people acting on behalf of, in this case, small businesses that are clearly under stress; they are simply following up with the relevant public servants seeking information or, in some cases, basically putting the car dealer in contact with the public servant, that is myself, to try to facilitate an outcome which is positive for the particular car dealer in a way which does not cut across, from my perspective, any of the professional standards and conduct expected of a professional public servant.

CHAIR—Thank you.

Senator Sherry—Further to that, in taking it on notice we will provide a list of all individuals and organisations who have made requests on behalf of any car dealer in the land, including the Catholic priest, and we will release publicly the names of those individuals and organisations, including all MPs.

Senator ABETZ—Could you include in that list which of those MPs that have made representations have been provided with an electorate vehicle, including registration, insurance and RACQ or similar membership, by the company on whose behalf they have made those representations? That is where the line of professionalism and conflict of interest

is clearly overstepped, unless there was a complete disclosure of that conflict of interest. It will be very interesting to see how many car dealerships had representations made by two members of parliament who just happen to have been the two that announced the OzCar facility, namely the Prime Minister and the Treasurer. Put that on your list as well and I would be much obliged.

Senator Sherry—I reject your claim and assertions.

Senator ABETZ—Are you taking it on notice or not?

Senator Sherry—I am taking that element of it on notice. It would be perfectly natural that any member of the public, including the car dealers who saw the Treasurer and Prime Minister, particularly as the Treasurer and Prime Minister have announced that particular facility, to contact those particular officers no matter where they are from in the country.

Senator ABETZ—In all of Australia the only car dealership is the one that has given the Prime Minister a personal car.

Senator Sherry—Be reasonable, Senator Abetz. Can I finish my answer without interruption?

CHAIR—Yes.

Senator Sherry—Just as it is perfectly reasonable for people to write to the Prime Minister about many things that are then referred on, including in my own area where people write to the Prime Minister about executive pay, short selling, which is a government area where we have direct policy responsibility, it is perfectly reasonable for people to write to the Treasurer of the day and the Prime Minister about particular policy issues and for them to refer them on. It is perfectly reasonable. I reject your claims and your assertions about a conflict of interest. I totally reject them.

CHAIR—You will take it on notice?

Senator Sherry—I will take on notice the specific question.

Senator ABETZ—Thank you very much, and I think you have made a very good point that undoubtedly the Prime Minister who announced this facility may well have received a huge number of representations. Can you then take on notice how many representations the Prime Minister received and which one—because we know it is only one—did he deem appropriate to make representations for? I think you will find surprisingly it might just be John Grant Motors, the same one that gave the Prime Minister a car—

Senator Sherry—The officer has already indicated—

Senator ABETZ—Everybody else who did not give the Prime Minister a car did not have representations made on their behalf—

Senator Sherry—Can I now answer? The officer has indicated there was only one reference from the Prime Minister's office—one. I have taken on notice as to who that is from and we have explained the reasons. The officer has explained the perfectly valid and reasonable commercial considerations as to why no request or reference has been made public, but I will take it on notice.

Senator ABETZ—I think you took on notice the issue as to how many car dealers had two representations made on their behalf and especially how many had representations made on their behalf by both the Prime Minister and the Treasurer, the two top people, or possibly within the top three people of the government's—

CHAIR—We have dealt with that.

Senator ABETZ—I think it is a very important point—

Senator Sherry—I can answer. In terms of the reference to the particular car dealer, John Grant, whom I think you referred to, that issue in terms of the electric car has been declared by the Prime Minister.

Senator ABETZ—I have already disclosed that.

Senator Sherry—Yes. It has been declared in case—

Senator ABETZ—But it was not declared in your representations—

Senator Sherry—Can I finish? I am providing an answer and you keep interrupting in your usual—

Senator ABETZ—I am not sure that is fully correct.

CHAIR—If we could have a short answer I would like to move on, please.

Senator Sherry—The Prime Minister has declared in terms of the electric vehicle provided by John Grant; it has been declared, so there is no issue here at all.

Senator ABETZ—I will move on to another area where I think the Assistant Treasurer hopefully is doing good work. That is in the area of car dealership franchise codes. Is there somebody who is up to date on that? If I can briefly paint the scenario, what we have is car dealers being given a situation of a maximum two- or three-year contract to represent a particular make of vehicle and being required by the manufacturers to engage in providing literally millions of dollars worth of showrooms and upgrades which take sometimes 10-plus or 20 years to actually pay off. If they build these flash showrooms but then only have a two- or three-year contract with the motor vehicle manufacturer, I think that causes them some difficulties. When I say 'I think', I should indicate that it is not my thought, it is the view of the Motor Traders Association of New South Wales, who have written to the Assistant Treasurer, Chris Bowen, about that and—

Senator Sherry—Could I just indicate that franchising comes under the responsibility of Minister Emerson and there are Trade Practices Act issues that would come under the Assistant Treasurer, Mr Bowen, so there may in fact be two ministers who have responsibility.

Senator ABETZ—I think that is right, but in this media story from AAP it appears that the Assistant Treasurer, Chris Bowen, has been written to as the person who oversees competition policy in relation to this matter. I thought we were dealing with competition policy, so it would be an appropriate area to—

Senator Sherry—I just wanted to make it clear that there are two ministers with whom this area could fall. For your information, it is Senator Carr who represents Minister Emerson.

Senator ABETZ—I am more than aware of that as the shadow minister for industry with responsibility for the auto sector, so thank you very much for that—

Senator Sherry—I did not know whether or not you were aware, however, in respect of the issue of franchising. I thought I would provide assistance in that regard.

Senator ABETZ—If all those ministers were to be involved that would be great because, if I might suggest, this is a whole-of-government matter that should be pursued. I understand that Bernie Ripoll, a federal member from Queensland, has chaired a parliamentary inquiry into this. This is very much, unlike the last line of questioning, a very soft line of questioning to ascertain where is the government at in relation to this issue, which if I might say is a very real issue especially in an environment where car sales are shrinking. We know car dealers are doing it tough. To face the extra pressure of some of these manufacturers in the way that I just outlined is a matter I would have thought of concern, irrespective of one's political persuasion. Where are we at with it? Is it under active consideration? What is the answer?

Mr Chisholm—The inquiry to which you are referring was by the Parliamentary Joint Committee on Corporations and Financial Services into franchising. The response to that inquiry is being led by Minister Emerson and the Department of Innovation, Industry, Science and Research because, as Minister Sherry has indicated, Minister Emerson has responsibility for franchising issues. However, there are aspects of the inquiry—

Senator ABETZ—Competition—

Mr Chisholm—that also relate to Minister Bowen's responsibilities, including the enforcement of franchising codes as they fall under the Trade Practices Act. The recommendations from that inquiry are being actively considered by the government at the moment. However, the time frame for response to that inquiry is something that should be directed to Minister Emerson's portfolio.

Senator ABETZ—Could the minister at the table or the secretary be as kind as to take it on notice, and flick it through also to Minister Emerson's office that I was interested from the competition point of view. It looks as though you are on top of it and are working on it, as I am sure Minister Emerson is as well. I wish you well in pursuing an outcome which will assist, so thank you.

Senator Sherry—We will pass it on.

Senator BUSHBY—Firstly, I will deal with GROCERYchoice. Following on from questions of Senator Barnett this morning, at any stage has CHOICE provided a business plan, a project plan or similar documents to the government as to how it intends to approach setting up the GROCERYchoice website and other related matters?

Ms Holdaway—Yes, of course, there have been iterations of documents and discussions.

Senator BUSHBY—They have actually provided submissions to you?

Ms Holdaway—Yes.

Senator BUSHBY—Are they able to be made public?

Ms Holdaway—Once again, we will have to take that on notice.

Senator BUSHBY—What market testing of opportunities for other organisations to provide the service were conducted by the department prior to offering the opportunity to CHOICE?

Ms Holdaway—We certainly carried out and put on file some of the possible options that might be out there in terms of desktop research, but, as I pointed out before, when this proposal was put forward by CHOICE we had to go straight to the procurement guidelines to see what the requirements are in entering into a contract. It was clearly stated there that when you are faced with an unsolicited proposal which is innovative in nature—

Senator BUSHBY—So CHOICE came to you offering—

Ms Holdaway—Yes, that is right. We checked, and it represents good value for money and there is a short time frame within which government can take advantage of that, and it was actually a situation where direct sourcing should be used. Having said that, despite that, as I stated to you, within a very short time frame we did quite a bit of research to look at what other possible organisations might be out there that are in the same stands as CHOICE, who is completely independent and who understands very well Australia's consumers as well as the grocery market which this website was targeting.

Senator BUSHBY—How did you assess the value for money aspect in terms of that unsolicited approach?

Ms Holdaway—Obviously there were already amounts set aside for the ACCC to run this website. We knew what the ACCC was going to be able to deliver for that amount. That was \$12.9 million over four years. The proposal by CHOICE was actually covering a lot more functionalities than what the ACCC could do and also had space for further innovation. While the amount of \$8 million, as I stated, was for the contract after negotiations, the amount represented less than what was being allocated in the budget.

Senator BUSHBY—Potentially the government was going to get more for—

Ms Holdaway—That is right. It was getting more for—

Senator BUSHBY—In that respect what has CHOICE undertaken to provide in respect of the \$8 million that it is being paid?

Ms Holdaway—It is currently running the website. It is now investigating a revamped website that will provide extra information. It will also use the knowledge that it has about consumers, its current membership and engage in dialogue with consumers about what sort of information is needed, what kind of mechanisms are useful for them when they are looking for how to shop and how to get the best out of their shopping. It was really using that tacit knowledge that CHOICE already has because of the role it plays in the Australian market. There were advantages for the GROCERYchoice website in being able to tap into that.

Senator BUSHBY—What you are saying is that it offered over and above what the ACCC offered, that is an understanding of the market and the ability to offer some innovative approaches as a result?

Ms Holdaway—Yes, and consumer confidence. I think we also highlighted before that providing special prices was something that the ACCC felt that they were constrained to do. That was an area that CHOICE was quite active in, could actually provide more information

around special prices and provide a mechanism by which there can be some sort of meaningful comparison of these prices for the benefit of the consumer.

Senator BUSHBY—Which was of course the intention under the ACCC as well. I take your point about the special prices and the ACCC, but one would have hoped that the ACCC also had a pretty good understanding of the market as well. You indicated early on in your answers to Senator Barnett that there were a number of KPIs and milestones that needed to be achieved and that payment will be made on the basis of achievement of those milestones.

Ms Holdaway—That is correct.

Senator BUSHBY—Subsequently you outlined a payment schedule which was based around dates. Presumably, though, for CHOICE to qualify for payment on those dates they must have achieved those milestones?

Ms Holdaway—That is correct.

Senator BUSHBY—Can you outline what those milestones are?

Ms Holdaway—I will have to take that on notice. The detail I do not currently have on me, but they are along the lines—

Senator BUSHBY—That is surprising.

Ms Holdaway—Pardon?

Senator BUSHBY—That is surprising that you do not have that detail with you. I would have thought that in budget estimates where we are discussing issues around payment of government monies that is the kind of detail you would have with you.

Ms Holdaway—I can provide you with a very, very high level detail of those milestones and the KPIs, but I think we have already taken on notice the descriptions of KPIs and milestones previously when Senator Barnett asked those questions.

Senator BUSHBY—I would like you to specifically take on notice what needs to be met and what milestones need to be reached in order for them to qualify for the progress payments.

Senator Sherry—We will take that on notice.

Senator BUSHBY—What quality assurance processes are in place to verify the accuracy of the prices that CHOICE uploads to the site and on the usefulness of the information?

Ms Holdaway—These are done in a number of ways. One way that CHOICE actually achieves that is through ad hoc auditing themselves—testing. Once again, another advantage with CHOICE running the website is that they have an extensive membership and network around Australia where consumers are readily providing that information where they feel that the price provided does not match with what they have actually found. There are those mechanisms. But there are also specific audit mechanisms built in so that the prices provided are actually the prices according to the conditions—

Senator BUSHBY—I acknowledge CHOICE would have a range of options and maybe, as you suggest, even have additional options in terms of finding out the prices around the country. From Treasury's perspective, in return for the money that the taxpayers are paying to

CHOICE, how does Treasury ensure that the prices that CHOICE put up on their website are actually accurate prices?

Ms Holdaway—One of the requirements is around the KPI that CHOICE has to provide us with a full report and an independent quality assurance report that goes with that.

Senator BUSHBY—Who has responsibility for that quality assurance process? Where is the bonus? Do they have to regularly report to you?

Ms Holdaway—Yes, that is correct.

Senator BUSHBY—Will the Auditor-General have any involvement in verifying figures and ensuring that the quality assurance process is above board?

Ms Holdaway—Not as part of the standard process of managing this particular contract.

Senator BUSHBY—But presumably an organisation like the JCPAA could ask him to have a look at it. What degree of instruction or direction does Treasury retain over the way that the site operates?

Ms Holdaway—Extensive. The contract is designed in such a way that Treasury remains the manager of the contract and key activities carried out by CHOICE cannot be done without our prior agreement or without notification.

Senator BUSHBY—If you do not like the new website that they come up with, they have to go back and start again? If they design something and come to you and say, 'This is what we propose as the new website', Treasury has the power of veto and to say, 'That is not up to scratch; it does not meet our requirements.'

Ms Holdaway—Yes, we do but the current working arrangement is such that we work very closely together and there is ongoing discussion between CHOICE and us—

Senator BUSHBY—You mean that you are not likely to be surprised by what they present to you—

Ms Holdaway—You would hope so, yes.

Senator BUSHBY—Who actually retains ownership of the website at the end, or during the course of the contract—

Ms Holdaway—It remains as the property of the government.

Senator BUSHBY—In the process of negotiating the contract did Treasury raise any concerns about the potential for conflicts of interest given that CHOICE is essentially a media business; it has a significant media arm in its business, anyway? Were there discussions about conflict of interest?

Senator Sherry—I do not know that I would accept your description of CHOICE as a media organisation. Predominantly it is a consumer research entity. I actually have visited their headquarters in Sydney—not on this matter, I might say—and they have extensive testing laboratories and they do their own in-house testing in many cases and then publish the results. I would see them as a lot more than just a media organisation.

Senator BUSHBY—They certainly are, but they are very active in the media. They have a media arm in that they publish a regular magazine. I would suggest that they have a

significant potential for conflict. I am not saying that that would actually be realised, but I am just interested in, as part of the process that you have gone through in developing the contract, the degree to which the potential for conflict or the appearance of conflict—and we had a discussion about that earlier—has been considered.

Ms Holdaway—Certainly at the level of risk management there were risk management strategies and papers prepared on that. The thinking done behind that was that legal advice was engaged to ensure that the key risks were identified and appropriate strategies put in place in case those risks become a reality.

Senator BUSHBY—Is Treasury aware of any plans by CHOICE to cross-sell their business products and services via the GROCERYchoice website?

Ms Holdaway—I did not catch that.

Senator BUSHBY—Does the contract contain any limitations on CHOICE being able to cross-sell their other products or business services via the GROCERYchoice website?

Ms Holdaway—Yes, it does. The contract makes it very clear that the GROCERYchoice website and information available on that website obviously has to be free of charge for the Australian people, that there cannot be any links that allow CHOICE to sell some of their other products.

Senator BUSHBY—That is really what I was asking. Has Treasury undertaken any analysis to assess the cost impact of the CHOICE proposals for gathering information for weekly price reporting and so on at the store level for literally thousands of products?

Ms Holdaway—We certainly have not done our own calculations, if that is what you are asking.

Senator BUSHBY—You have not done any assessment or consideration of what it is going to cost at a store level to provide the information that CHOICE will require to be able to provide the website?

Ms Holdaway—There are different ways that store price can be collected. We are aware of the pricing through retail effects and what that costing will look like if the number of products, for example, was increased. There are other mechanisms via which some of those price data can be purchased as well. All of those things are being explored and Treasury is kept informed of that.

Senator BUSHBY—So, it is not yet settled as to the process that CHOICE will use to obtain its official prices from supermarkets that it uses? Is that still being worked through?

Ms Holdaway—Yes.

Senator BUSHBY—Would Treasury accept that, if there are costs imposed at a store level, in terms of providing data, that would inevitably be passed on to consumers?

Ms Holdaway—I do not think we can really accept that on face value. You really have to think about what sorts of costs you are talking about here, in terms of what the retailers might have to incur to provide that data and whether it is actually already part of their normal business process whereby that data is available.

Senator BUSHBY—Let me ask it slightly differently. If an additional cost which a supermarket store does not currently have was imposed through government regulation on to a supermarket store, would you accept that where they could—and competition obviously comes into it—they would pass that cost on to consumers or they would seek to?

Ms Holdaway—Firstly, this is not regulation. It is basically an information website that is going to be made available to consumers. There are no mandatory requirements on anyone.

Senator BUSHBY—If CHOICE approaches a supermarket to obtain prices the supermarket can say no?

Ms Holdaway—Absolutely, because there is no mandatory requirement. This is not a regulation by the government.

Senator BUSHBY—I will move on from there. I think most of these other questions have actually been answered. That is all of my questions for GROCERYchoice. Thank you.

Ms Holdaway—Thank you.

Senator BUSHBY—I want to move on to a couple of quick questions on ABIP. In questioning earlier today I believe Senator Eggleston asked whether Treasury officials had met with a number of individuals. I think there were three individuals named?

Mr Martine—That is correct.

Senator BUSHBY—The answer was ‘no’?

Mr Martine—That is correct.

Senator BUSHBY—The minister has just moved behind. I was going to ask whether the minister had met with those individuals.

CHAIR—I think the minister will take that on notice. I am sure the officers will bring it to his attention.

Senator BUSHBY—Have Treasury officials or any government official met with members from Austcorp, who are the developers of Vision tower in Brisbane?

Mr Martine—No, we have not.

Senator BUSHBY—You have not met with the developers, either?

Mr Martine—No.

Senator BUSHBY—Has the minister met with the developers?

CHAIR—Again, we will take that on notice.

Senator BUSHBY—Have Treasury officials met with, or been in contact with, Urban Analytics Australia Property Advisory Pty Ltd or any of their representatives?

Mr Martine—No.

Senator BUSHBY—Has the minister?

CHAIR—On notice.

Senator BUSHBY—Have officials from ABIP met with, or been in contact with, Urban Analytics Australia Property Advisory Pty Ltd?

Mr Martine—ABIP, as I indicated earlier, does not actually exist yet. Mr Fahour is under contract to Treasury and has been appointed as interim CEO.

Senator BUSHBY—Has Mr Fahour—

Mr Martine—Not that I am aware of, but I can take that on notice.

Senator BUSHBY—Has Mr Fahour met with that company, any of its representatives or any of the three individuals that were mentioned in Senator Eggleston's questioning earlier?

Mr Martine—I can take that on notice.

Senator BUSHBY—Has the Treasurer or his office requested ABIP to meet with Austcorp, Urban Analytics Australia Property Advisory Pty Ltd or anyone else involved with the Vision tower property development?

Mr Martine—No.

Senator BUSHBY—What other projects, if any, are Treasury officials or ABIP personnel considering for funding support from ABIP?

Mr Martine—The consideration of projects or proposals for lending will be a matter for the board of ABIP once ABIP is established. Treasury, in a sense, will not have any role whatsoever and we do not have any role now in assessing proposals for loans.

Senator BUSHBY—My next question is regarding the banking system. I was looking through the *Economist* a couple of weeks ago and I note that there is a report there that there are encouraging signs that the worst of the credit crisis may be over. This is obviously speaking about the US market. They refer to the TED spread, which shows the difference between what banks and the US Treasury pay to borrow money for three months and noted that it continued its steady narrowing, standing at less than 0.6 percentage points on Monday, 18 May. This is its lowest level since August 2007. Is this reflective of the situation facing banks in Australia? Is the cost of borrowing falling here?

Mr Murphy—We can give you some stats on that. The TED is what the fed would use and then there is a Libor rate in the UK.

Senator BUSHBY—Which is also falling steadily.

Mr Murphy—Yes. Credit markets have improved, but it is nowhere near back to where it was pre-GFC. It is still quite expensive for fundraising. If you would like some statistics, we can take that on notice.

Senator BUSHBY—You can take that on notice and provide some statistics.

Mr Murphy—Certainly.

Senator BUSHBY—I am interested to hear how things are going here and the extent to which we are recovering in that respect.

Mr Murphy—You hear them talk about green shoots of recovery. The question with that metaphor is whether it is going to grow into a tree.

Senator BUSHBY—An awful lot of green shoots do not make it.

Mr Murphy—That is right. That is the real thing that people are talking about. There are positive signs, but there is still a long way to go.

Mr Martine—There is this question that was discussed this morning as to whether, in fact, we will ever get back to the spreads that we had pre-GFC. It actually started increasing during the course of 2007 and then they were peaking towards the end of 2008. It is certainly questionable whether we will ever get back to those pre-2007 levels.

Senator BUSHBY—Are you saying it is questionable that we ever will or that we will in the near term?

Mr Martine—One of the explanations of the whole global financial crisis has been this issue of an underpricing of risk. It is an open question, but in that sense there is a debateable point as to whether we will ever get back to those spreads and those really cheap cost of funds.

Senator BUSHBY—For the record, what is the practical impact of that for most Australians?

Mr Murphy—You may pay more for finance. It will have a number of impacts. Firstly, on clear straight through figures you may pay more and, secondly, as we talked about earlier in terms of the market, there might be less competition or less diversity of products offered because there may be fewer players. It is very hard to predict on this. Alternatively, institutions may decide that they can have smaller margins and competition will come that way.

Senator BUSHBY—Hopefully that will eventuate. Moving on from there, but still on banks, the bank switching package announced in February was due to be fully implemented by November 2008. Is that all in place?

Ms Wijeyewardene—The bank switching package has commenced.

Senator BUSHBY—I assume it would have been, given that it was announced over a year ago. That is all in place. I am interested in a couple of things regarding the listing and switching service. Are all banks complying with their requirements under that?

Ms Wijeyewardene—My understanding is that they are.

Senator BUSHBY—Have you had any reports of banks that are not complying with the requirement?

Ms Wijeyewardene—Not that I am aware of, no.

Senator BUSHBY—A single consumer complaints hotline was set up for consumer complaints about all banking products.

Ms Wijeyewardene—That is right.

Senator BUSHBY—How many calls has that received?

Ms Wijeyewardene—I do not have those figures on me. That is something that has gone through ASIC. We can take that on notice.

Senator BUSHBY—I might ask them tonight. You can perhaps take it on notice as well. I guess you probably would not have any idea of the types of issues that are being raised on that hotline?

Ms Wijeyewardene—No, I do not.

Senator BUSHBY—I will pursue that with ASIC. Do you know how many hits the understandingmoney.gov.au website has had or is that a question for ASIC as well?

Ms Wijeyewardene—That is a question for ASIC. It is administered by ASIC.

Senator BUSHBY—I will go through that with them. Has the ASIC-led review been completed?

Ms Wijeyewardene—The ASIC-led review of?

Senator BUSHBY—Entry and exit fees.

Ms Wijeyewardene—I would have to take that on notice. I am not sure.

Senator BUSHBY—I will have an opportunity with ASIC tonight, but if you can take them on notice as well and see what else you may have to add.

Ms Wijeyewardene—Yes.

Senator BUSHBY—What is Treasury's assessment of the success of the package in terms of improving the ease of consumers switching banks? Is there more required?

Ms Wijeyewardene—It is fair to say that this has put in place a formal mechanism and formal requirements on the banks to assist consumers to switch transaction accounts. We have discussed in the past the difficulties of switching accounts due to direct debit and credit arrangements. This basically puts in a more seamless way for those direct debits and credits to be identified and transferred from a losing bank to a receiving bank. It significantly improves the switching environment. As to the amount of usage, I cannot tell you that.

Senator BUSHBY—From my perspective and from submissions that have been made to me in my capacity as a senator I do not argue that giving more information or making it easier for people to make sure that their direct debits and things are transferred across makes it easier, but obviously the biggest stumbling block to this is fees. That is what the review was about. Can you tell me anything about it?

Ms Wijeyewardene—In terms of the fees and switching, my understanding is that most of the banks do not charge for the switching service. I think ANZ could have been charging a small fee, but as far as I am aware they were not charging any fees. In terms of the entry and exit fees, my understanding is that that was not relevant to the transaction accounts.

Senator BUSHBY—That is transaction accounts. I am thinking of home loans and paying those out early. There are often fees for doing so. It is probably not as hot an issue now as it was 12 months ago when interest rates were higher. It is not in the forefront of consumers' minds to the same extent, but interest rates will not stay low forever and at some point they will be high again, at which point if the issue was solved it would be much better for consumers. I am interested in how we better enable consumers to take advantage of interest rate competition when it does exist so that they can move around, which ultimately helps keep interest rates down and keep that margin that we were talking about as small as possible. I am

interested in Treasury's views of whether there is more that can be done in order to increase the ease with which consumers can hold banks to account basically?

Ms Wijeyewardene—One of the things the whole switching and bank fee debate has done is put the spotlight on bank fees. There has been a whole series of different fees that have come under the spotlight. The ABA has done work on particular types of fees. CHOICE has been very active in relation to particular types of fees as well. I think the increase in consumer awareness of fees is one thing that has put pressure on the banks to either reduce fees or remove fees. To the extent that you can make consumers proactive and remove that consumer inertia it has competitive effects. It produces competitive pressures, which in itself does lead to banks either removing or reducing fees in particular areas.

Senator BUSHBY—I will follow that up with ASIC tonight. I will move on from there. The last thing I wanted to ask some questions about was short selling. What stage have the negotiations and consultations with industry reached over the regulations for short selling?

Senator Sherry—All of the formal consultations for the short-selling regulations have been concluded. The policy decisions have been determined. You may be aware that there were a number of strong and divergent views about implementation issues. For example, the declaration of timing and some issues around who would provide the information. There were some issues of very strongly contested views. That is no secret; it has been in the media. They have been concluded.

Senator BUSHBY—To the satisfaction of all parties?

Senator Sherry—We will see when we announce—

Senator BUSHBY—Ultimately government has made a policy decision.

Senator Sherry—The government has made a decision. It goes to the drafters and then they will be publicly released. Whether it is to the satisfaction of all parties, I would hope so, but at the end of the day the government makes the decision. In the meantime, now that the temporary short-selling ban on financials has been lifted by ASIC, ASIC's existing disclosure regime remains in place, of course.

Senator BUSHBY—You may take this on notice. We have gone from a position where there has been a ban to a position where there is no longer a ban but ASIC's disclosure regime applies, which would require an adjustment of those people participating in the market and how they approach to make sure they comply. I do not know whether you are able to give me any indication of when, but new regulations will most likely come into play, and people participating in the market will have to adjust again. Is there going to be a massive shift in what they need to do to comply on each of those occasions?

Senator Sherry—Suffice to say we have borne that issue in mind as part of the development of the final regulations. One of the primary issues that is being considered is the issue around regulation cost, regulatory adjustment. That has been an important consideration.

The other issue that I would indicate, which is relevant in the context that you raise it, is that it has been important because government wants to make sure that we get it absolutely right. Bearing in mind the issues of market cost regulatory supervision—there is a set of other

issues in that space at the moment, not necessarily as a consequence of government—we have consulted as extensively as could reasonably be expected.

Senator BUSHBY—It would seem to have made a lot of sense to have had the regulations in place prior to lifting the ban, in terms of that regulatory adjustment cost. Obviously I understand, as you have said, it has been played out in the media in terms of the difficulties you have had in reaching agreement on some of the terms of those regulations, and obviously there was a desirability in terms of lifting the ban. You are at odds in that sense.

Senator Sherry—ASIC can speak about the lifting of the ban and their reasons. They issued reasons and so on. There is that issue. I accept the regulations going forward are important, but they are very important to get right. There is an existing disclosure regime that ASIC has put in place. Importantly, the passing of the legislation last year, to which you referred, prohibited naked short selling, so it is illegal in Australia.

Senator BUSHBY—That remains so.

Senator Sherry—And will remain so. Secondly—and I think this is often missed—it put beyond any doubt ASIC's powers to regulate and supervise in this area. There was some doubt. The passing of that legislation gave without doubt the power to impose a disclosure regime, which ASIC obviously had done. As I have said, I have outlined the reasons why there has been a very intensive and extensive consultation as to any final regulations that will be put in place, which will obviously have some differences from the temporary regime.

Senator BUSHBY—Let me ask that slightly differently. You just mentioned that the legislation needed to be put in place when it was for two primary reasons. One was so that you could enable the development of the regulations, which has taken a lot longer than was anticipated at the time the legislation went through. The other reason you have put forward in the past, and we discussed in the hearing that we had on the bill itself, was to validate ASIC's power to make rules about this. I doubt this is the reason, but it almost seems that the lifting of the ban was timed to enable ASIC to actually put in place a disclosure regime before the regulations came in just so that you could justify that second limb of your argument as to why the legislation needed to be in place when it was.

Senator Sherry—As I have indicated to you, they have done this publicly and it is very clear in the press release why they lifted the ban. ASIC can outline the reasons for their decision. They are here later on this evening. You can ask them then.

Senator BUSHBY—Australia was one of the last Western jurisdictions to actually lift the ban on Choice—

Senator Sherry—We were not the last, actually. ASIC can clarify this, but I understand, because I actually asked about this, that the Netherlands and Italy—significant, advanced economies—have temporary bans in their systems. As to whether or not they have lifted them yet, they certainly had not lifted them when Australia lifted its temporary ban. What their status is now I do not know. But then again, if there is an implied criticism, just look at the relative strength of the overall Australian economy and financial system compared to every other comparable country in the world.

Senator BUSHBY—Over past estimates we have actually asked questions of Treasury as to their reasoning for that. I recall Dr Gruen going through a number of things, some of which started under the Hawke-Keating years—

Senator Sherry—I am not going to go back that far or even before the last election. Just look at the circumstances of the last 18 months.

Senator BUSHBY—As I say, Dr Gruen gave us a number of reasons. But you have raised it and—

Senator JOYCE—Cabinet strength came from the last 18 months.

Senator Sherry—No, I do not suggest that. What I am suggesting is that you look at the circumstances of the last 18 months with the world financial crisis and its impact on every other comparable economy. This was one important decision. I have absolutely no doubt in my mind that this was one of a number of important decisions that needed to be made in order to cushion and underpin the Australian financial system. I have no doubt about it. And why would you? I have said this publicly on a number of occasions that, when we have seen the carnage that has occurred in many other comparable economies in their financial systems—let alone what is happening now with their economies in deep recessions—why would you take the risk of short selling in these circumstances?

Senator BUSHBY—I do not think I asked that question. Unless you are saying that the risk was that ASIC's powers were going to be challenged by somebody and—

Senator Sherry—There was doubt about ASIC's powers, and we said that at the time. Yes, someone could have challenged ASIC. Someone could have challenged ASIC in the courts.

Senator BUSHBY—In your assessment, is that a reasonably likely thing to happen?

Senator Sherry—It was an issue that was considered. I would suggest to you if ASIC's powers were not clear in those circumstances and someone had challenged it would have created significant uncertainty at a time of general market uncertainty, if not chaos.

Senator BUSHBY—There are a lot of 'ifs' around, and I think the likelihood of somebody challenging a decision of ASIC at that point would probably have been fairly slim. In terms of the delay—

Senator Sherry—Nothing surprises me, frankly, in the financial system anymore given the behaviour of some entities—not in Australia particularly. But nothing surprises me as to some of the approaches of entities, particularly some of those that have been based overseas, given what we have seen in the last 18 months. But I would just say very strongly that we were not prepared to take the risk.

Senator BUSHBY—Coming back to the timing of the lifting of the ban, I note your comments that there were other major Western economies that had not at the time that we had, but most had, including the US and the UK and others.

Senator Sherry—That is correct.

Senator BUSHBY—I understand that ASIC has put out reasons for why they have lifted it, but why the delay to that point? Were you waiting for the regulations and hoping that they would actually be developed before you lifted it?

Senator Sherry—No. ASIC had indicated that the end of May would be the decision point. But as to ASIC's timing, from everything I have seen they have been widely applauded for the timing in terms of the week—

Senator BUSHBY—Bringing it forward a week?

Senator Sherry—Yes, bringing it forward a week. They have been widely applauded for that. But that is an issue for ASIC.

Senator BUSHBY—I may well explore that with ASIC. I recall Mr Murphy sitting before us when we had the hearing into the bill and stating that the intention—and I am not criticising Treasury on this—was to develop regulations over the summer and have them in place by the time we came back to parliament in February. Quite clearly, despite the fact that ASIC may have put down a timetable of when they were likely to do it, when they did that they probably fully anticipated the regulations would be ready to take over at that point. I will leave it at that.

Senator Sherry—We do have a regulatory and a disclosure regime in place. ASIC has put that in place. It remains in place until such time as the new regulations come into force.

Senator BUSHBY—We could argue about this to detail that is probably not relevant to estimates. You could have put an act through as well at the end of last year that clarified the powers of ASIC to undertake what they were doing without leaving the uncertainty about what regulations might be coming as well. We will leave it there. That was a choice of government and this is how it has all ended up.

Senator ABETZ—The Treasurer, Mr Wayne Swan, has just acknowledged to the House of Representatives in question time that he made representations on behalf of John Grant Motors. The Treasurer does not seem to have any compunction about naming this company publicly. Given that the Treasurer has done so, and with that foundation, I now seek to ask Mr Grech: can you confirm that one of the two companies on behalf of whom the Treasurer made representations was John Grant Motors or an associated entity of John Grant Motors, Ipswich Motors?

Mr Grech—No, we will continue to take it on notice.

Senator ABETZ—Why do you need to take that on notice?

Senator Sherry—I have already outlined the reasons.

Senator ABETZ—You outlined a reason of privacy and commercial-in-confidence for a small business. The Treasurer, whom I understand you actually represent here, has already told the world, courtesy of Sky News and question time, that he has made representations on behalf of this company and was willing to name the company. Therefore, that reason of confidentiality for your senior minister seems, with due respect, to have been overridden.

Senator Sherry—I am taking it on notice.

Senator ABETZ—Can we be told the reason? Given that the Treasurer has overruled the reasoning and rationale that you initially provided, do you have another reason that you would seek to offer as to why it is being taken on notice?

Senator Sherry—As I have indicated, I have taken it on notice and I do not have anything further to add.

Senator ABETZ—This is quite bizarre. It is similar to when the Prime Minister was asked about this matter. He had to take on notice whether he had made a representation on behalf of somebody who gave him a car to use for free. It is very unlikely that that is not within the personal knowledge—

Senator Sherry—That is your spin. That is your assertion. That is your editorial.

Senator ABETZ—It is interesting—

Senator Sherry—Can I finish? I do not interrupt you.

Senator ABETZ—Please.

Senator Sherry—You put a question in the form of a range of assertions or an editorial. I do not accept, as I have already said, the basis of your assertions, claims or editorialising. We have taken it on notice and if we can provide further information I am more than happy, as I am always am, to assist you. But we are taking it on notice.

Senator ABETZ—Thank you for that. These are very serious allegations, as you would—

Senator Sherry—Oh—

Senator ABETZ—You demanded that I withdraw before because these were serious allegations. The *Hansard* record will disclose that. These are serious and sensitive allegations. Mr Grech, can I ask you whether the company on whose behalf the Prime Minister made representations was the same one that the Treasurer has just voluntarily named in the House of Representatives—namely, John Grant Motors, associated with Ipswich City Motors?

Mr Grech—We have already indicated we are taking it on notice.

Senator ABETZ—Can you then also take on notice for us the time gap between the Prime Minister's representations for this one motor car dealership that he made and the Treasurer's representations on behalf of both dealerships that he made representations for, but importantly John Grant Motors?

Senator Sherry—I think you asked the witness that earlier. I think my recollection is that we did agree to take it on notice, but if we did not we will take it on notice.

Senator ABETZ—It defies belief that the Treasurer—and this is the minister you are representing here, the head of Treasury—acknowledges that he made representations to his own department on behalf of somebody who could become a beneficiary. And of course—

CHAIR—The minister has indicated—

Senator ABETZ—with money being made available.

Senator Sherry—You continue to make these assertions and claims and to editorialise, but I just do not accept your conclusions. I do not accept them. You have said it a number of times. You have attempted to make your point. We can keep going over the same issues again, but you have made your point. I just do not accept it.

Senator ABETZ—Before, in particular after lunch, you indicated this was a serious allegation that should be withdrawn. I named a company, which you said was highly

inappropriate for me to do, or words to that effect. The Treasurer has now volunteered. The cat is out of the bag. Why don't you just fess up, tell us what it is all about rather than obfuscate by taking these things on notice?

CHAIR—I think we are going around in circles on this one.

Senator ABETZ—Fair enough.

Senator JOYCE—How many deals have actually been rejected on FIRB guidelines or under the discretion of the Treasurer in this term of government?

Mr Colmer—None.

Senator JOYCE—How many were rejected in the last term of government?

Mr Colmer—Let me just clarify that I am talking only about business case deals rather than real estate. There were a number of residential real estate ones.

Senator JOYCE—I am not talking about real estate.

Mr Colmer—There have been none rejected under the current government. There was one rejected under the previous government.

Senator JOYCE—Woodside.

Mr Colmer—Woodside. When we provided an answer to your question on notice last time around there were 16 in total that we had identified as being rejected since 1990.

Senator JOYCE—Mr Costello said that even the Woodside deal was recommended by FIRB to be approved.

Mr Colmer—That is before my time, and I really could not comment on the exact—

Senator Sherry—That was advice to government. Mr Costello is at perfect liberty to say—

Senator JOYCE—I am just saying—

Senator Sherry—But the Public Service are actually precluded and prevented from indicating what the advice is to former ministers.

Senator JOYCE—I did not ask the question. You are answering to what?

Senator Sherry—I am answering your question.

Senator JOYCE—I did not ask one.

Senator Sherry—You said that was advice to government.

Senator JOYCE—I made a statement: Peter Costello has stated that the advice he received—

Senator Sherry—I am not sure you put it in those terms, but anyway.

Senator JOYCE—I did. You can check the *Hansard*. It would seem apparent that the guidelines are not very stringent in regard to deals that are blocked. Are the guidelines that FIRB used public knowledge?

Mr Colmer—I am not entirely sure what you are referring to. The foreign investment regime is defined in the Foreign Acquisitions and Takeovers Act. There is only one criterion

for action under that piece of legislation and that is that the Treasurer, as the responsible minister, believes that a particular transaction is contrary to the national interest.

Senator JOYCE—It would seem apparent that no deals were rejected during this government, no deals were rejected during the last government, except one, and in that one deal the person involved, Peter Costello, said the recommendation he got from FIRB was to approve it. I am just curious as to what the guidelines are that FIRB uses in the assessment of a deal. Do they assess, for instance, vertical integration of entities?

Mr Colmer—I think the best statement around the national interest would be the Treasurer's principles that were released in February last year. There are also statements in the FIRB annual report.

Mr Murphy—There are a couple of fundamental points. Most countries, especially modern governments, welcome foreign investment. That is a starting point. The second point would be that, in determination of the national interest, factored into that as well—and lots of proposals come forward—are the views of the ACCC on competition issues. That gets factored in to government's decision making on what is in the national interest. A lot of proposals are put forward and through discussions with either the Foreign Investment Review Board or discussions with the government they are withdrawn and resubmitted to make them more acceptable in terms of the national interest for the government. The 'national interest' prior to this government has been a term which, to some extent, has been criticised because it was not clear what a government would take into account in terms of the national interest. This government put forward those principles or guidelines to give some guidance to people who are making foreign investment proposals as to the types of things the government would take account of. They do not limit the government in terms of what it can take account of as to what is in the national interest.

Senator JOYCE—Did Treasurer Swan make comments in regard to the Chinalco foray into the Rio-BHP bid, where they attained a blocking interest? Were there any statements made by Treasurer Swan in regard to what his aspiration is as to how much further Chinalco could go?

Mr Colmer—No, I am not aware of any statements.

Senator JOYCE—Mr Murphy, are you aware of any statements?

Mr Murphy—In relation to certain investments, at the moment there are the national interest guidelines and the Treasurer's speech that he gave in July last year where he expressed certain views of the types of things he would take into account in foreign investments of the type he was talking about.

Senator JOYCE—Was one of the concerns he had the purchaser of an asset being also the seller of the asset and the owner of the asset in Australia?

Mr Murphy—That is something that we would take account of, yes.

Senator JOYCE—That was one of the issues?

Mr Murphy—Yes.

Senator JOYCE—Was one of the other issues potential confusions that could arise from diplomatic issues from substantial ownership by a foreign government?

Mr Colmer—I do not think he expressed it in those terms. The basis of the February statement on the principles was that there can be additional concerns that may arise when foreign governments are investing.

Senator JOYCE—In regard to his July speech, do they become guiding principles of FIRB in how they assess current deals?

Mr Colmer—You will find that ministerial speeches generally are an insight into the thinking of the minister. The Treasurer, as the responsible minister, is the one who needs to decide whether or not a proposal is contrary to the national interest.

Mr Murphy—The FIRB makes recommendations. They are the determining body. At the end of the day the government as represented by the Treasurer decides the national interest.

Senator JOYCE—Has FIRB approved the Minmetals bid for OzMinerals?

Mr Colmer—As to the revised Minmetals bid for OzMinerals, it is probably worth noting that we actually do not approve foreign investment proposals.

Senator JOYCE—The deal has been approved by the Treasurer?

Mr Colmer—No, the Treasurer does not actually approve deals either.

Senator JOYCE—The deal has been approved?

Mr Colmer—No. The Treasurer has not raised objections, which is the formulation under the legislation.

Senator JOYCE—And neither have you raised objections?

Mr Colmer—My objections would not really matter. It is the Treasurer's objections that are important.

Senator JOYCE—There is nothing precluding the process?

Mr Colmer—The Minmetals deal is free to proceed.

Senator JOYCE—Who gave that freedom?

Mr Colmer—The Treasurer raised no objections and in doing so the deal is free to proceed.

Senator EGGLESTON—I would like to ask a point of clarification. Does that mean that the mechanism for referral of an issue is the Treasurer objecting to it?

Mr Colmer—If you look at the legislation you will see—

Senator EGGLESTON—I have not seen the legislation.

Mr Colmer—The way the legislation is set up all that it requires at its simplest level is for people who are proposing an investment to make a notification. Under the legislation there is then a statutory period, which is usually 30 days but can be extended, during which the Treasurer may raise objections. If the Treasurer does not raise objections, at the conclusion of that statutory period there is no further capacity for the government to intervene. It is an important distinction. I am not trying to be precious, but the government does not approve

foreign investment proposals. If they are concerned about a foreign investment proposal the minister needs to take a positive step to raise an objection. That is what the legislation does. The minister can object outright or apply conditions to mitigate the national interest in each case.

Senator EGGLESTON—There must be a reporting mechanism. With real estate investment, for example, if somebody from Singapore wants to buy a \$3 million house in Peppermint Grove, that comes to this body, does it not?

Mr Colmer—It comes to us. Real estate cases are overwhelmingly dealt with in the department and we write a letter saying we have no objections. We do not write a letter saying we approve.

Senator EGGLESTON—Who reports that transaction? Is it the real estate agent?

Mr Colmer—We write back to the applicant.

Mr Murphy—How is it coming to our attention?

Mr Colmer—In real estate cases it is usually the real estate agent or the conveyancing lawyer who will fill out the paperwork and send it to us, but it can be the actual individual.

Senator EGGLESTON—What happens in a minerals transaction, which Senator Joyce referred to?

Mr Colmer—That was referred to us by their lawyers.

Senator EGGLESTON—So it is an auto referral. Thank you.

Senator JOYCE—That allows 100 per cent ownership by Minmetals of strategic OzMinerals assets such as the former Century Zinc mine?

Mr Colmer—It allowed Minmetals to purchase the balance of the OzMinerals holdings, with the exception of Prominent Hill.

Senator JOYCE—Is that 100 per cent?

Mr Colmer—That is correct.

Senator JOYCE—Obviously there were no substantial objections that allowed them to go to 100 per cent?

Mr Colmer—That is correct.

Senator JOYCE—I noticed that they did not buy a mine in Indonesia. Was that the Martabe mine?

Mr Colmer—That is correct.

Senator JOYCE—Do you know why?

Mr Colmer—Prior to the Minmetals arrangement, OzMinerals had already embarked on a series of asset sales for individual mines. The negotiations for the sale of that mine in Martabe were already well advanced before the Minmetals proposal surfaced. I believe that is the basic situation.

Senator JOYCE—Are you still processing the Rio-Chinalco decision?

Mr Colmer—The Rio-Chinalco decision is still in train, yes.

Senator JOYCE—How long do you anticipate that will go on for?

Mr Colmer—The statutory deadline for that is 15 June, so that is Monday week.

Senator JOYCE—Generally, after that period how long does the Treasurer have, or is it an unlimited time? Is there a process or is it just that the Treasurer stops it? Is there any statutory guideline of a time for him to object?

Mr Colmer—If the Treasurer is objecting to something he needs to provide that advice to the applicant within 10 days. It also needs to be gazetted.

Senator JOYCE—Is that 10 days from Monday week?

Mr Colmer—That is right; 10 days from Monday week. Usually they are notified much quicker than that. In fact, I cannot recall any that it would have taken 10 days to notify.

Senator JOYCE—You would not recall any at all, because there have hardly been any. Is this the biggest deal that FIRB has ever looked at?

Mr Colmer—It probably is, but I could be wrong. No, it is not. The biggest one was the Rio-Alcan deal of 2007.

Senator JOYCE—With the recommendations on Rio, at the time they were supposed to base their offices in Australia, which they basically reneged on and took them over to St James Square. Do you have any recourse against a company once they are out the door?

Mr Colmer—In actual fact Rio never did undertake to base its offices in Australia. It was BHP that had that condition applied for its dual listed company. The Rio dual listed company merger never had formal conditions applied to it. Rio made a series of undertakings to the government in 1995, rather than formal conditions under the act, and they did not include having their headquarters in Australia.

CHAIR—As it is 3.00 pm the committee will adjourn. That will see the end of Treasury's evidence to the estimates committee. I thank Treasury officers for being flexible over the last few days in answering questions. We will resume at 3.15 pm with APRA.

Proceedings suspended from 3.00 pm to 3.16 pm

Australian Prudential Regulation Authority

CHAIR—We welcome the Australian Prudential Regulation Authority. Dr Laker, welcome back and I believe that you have a short opening statement.

Dr Laker—Yes, thank you, Chair. My opening statement to the committee today need not take long. This is not because the end of the global financial crisis is in sight; few are willing to make that call. APRA-regulated financial institutions continue to face a testing environment, but since we last met that environment has been less susceptible to the bouts of severe global financial turbulence that we witnessed in the second half of 2008. As a consequence, APRA's supervisory priorities and its prudential policy agenda remain much the same as outlined to the committee in February. Since that meeting, conditions in global credit markets have improved further, as the range of financial policy actions taken by governments, including the Australian government, have gained traction. Spreads have reduced

considerably, funding markets are reopening to higher rated borrowers and investor confidence in banking institutions has begun to revive; nonetheless, sentiment remains fragile. Australian banks have raised over \$80 billion of longer term wholesale funding under the Australian government's guarantee arrangements. Encouragingly, some of our major banks recently have raised term wholesale funds, domestically and offshore, without recourse to the guarantee. Global equity markets, which had plumbed new depths earlier this year, also have enjoyed an improving tone over recent months.

These positive market developments are seen as a reflection of signs that the global economy, which had been contracting sharply, might be stabilising. Over the December and March quarters of 2008-09, the declines in output of some of our major trading partners, particularly Japan and the United Kingdom, were dramatic. More recently, however, the Reserve Bank of Australia and others have commented that the global economy might have reached a turning point in response to substantial economic policy stimuli.

The Australian economy has felt the chill winds from abroad. In contrast to global outcomes, however, the most recent data show that domestic economic activity expanded over the March quarter and Australia is expected to fare better than most other advanced countries. Nonetheless, with all the uncertainties around and a global deleveraging process still running its course, the environment for APRA-regulated financial institutions will continue to require very close and careful management on their part and intense supervisory oversight on ours.

Let me emphasise that nothing in recent global and domestic developments has diminished APRA's confidence in the fundamental strength of the Australian financial system. In brief, our main priorities for our authorised deposit-taking institutions—banks, building societies and credit unions—remain credit quality and capital strength. Since last September, our larger banks have raised over \$20 billion in equity—a strong vote of investor support. With the life insurance industry, we are continuing our focus on capital adequacy and its sensitivity to market volatility. The succession of adverse weather events is an important topic in our dealings with the general insurance industry. With the superannuation industry, we have recently updated our prudential guidance on conflicts of interest, the use of reserves and the valuation of unlisted assets. We are continuing to review the financial position of defined benefit superannuation funds.

APRA's prudential policy agenda continues to be shaped by the initiatives of the Financial Stability Forum, now the Financial Stability Board, and the G20 action plan. At the April meeting of the G20, these initiatives received strong endorsement by the leaders of the G20 in their declaration *Strengthening the financial system*. This declaration confirmed the principles of strengthening transparency and accountability, enhancing sound regulation, promoting integrity in financial markets and reinforcing international cooperation.

Our involvement in global reform will intensify as a result of our recent invitation to join the Basel Committee on Banking Supervision, the global standard-setting body for banking regulation. This is a welcome development, ensuring that APRA now has a seat at each of the major international forums for prudential regulation. The Basel committee is developing enhancements to the Basel II framework that would improve its coverage of risks, strengthen the quality and consistency of capital in banking systems and address the complex issue of procyclicality.

Last week APRA delivered on a major reform initiative when it released a consultation package on remuneration for APRA-regulated institutions. These proposals give effect to the Financial Stability Forum's tough new principles on pay and compensation and they respond to the Prime Minister's request that APRA consider the linkages between remuneration practices and the capital adequacy requirements of regulated institutions. As I foreshadowed to this committee, APRA's proposals do not address the absolute level of remuneration; that was never our intention. They address the need to realign remuneration incentives with good stewardship of institutions.

APRA is taking a principles based approach in this area. It is requiring boards of regulated institutions to align their remuneration arrangements with the long-term financial soundness of the institution and its risk management framework. In addition, it is proposing that regulated institutions have a board remuneration committee, comprising only independent directors with the appropriate experience and expertise, to minimise any potential for conflicts of interest.

Subject to the consultation process, APRA intends to implement its proposals on remuneration through extensions to its existing governance standards and through a prudential practice guide. Within this framework, boards will be able to design remuneration arrangements that suit the structure of their own institution. That is what 'principles based' means. However, where these arrangements are likely to encourage excessive risk-taking, we in APRA will respond—and that response can include the imposition of higher capital requirements as a buffer against risks.

My fellow executive member Mr Trowbridge, on my left, has had carriage of the remuneration issue in APRA and will be happy to take the committee's questions on this issue. My colleagues and I are also ready to take any other questions that the committee may have. Thank you.

CHAIR—Thank you.

Senator BUSHBY—Thank you for your report, Dr Laker. There is a lot of good news in there. I am particularly pleased to hear that you got a seat on that international board, which is a good thing. I think it puts Australia in a good position to ensure that we are well protected into the future in terms of these prudential issues. I asked a question of Treasury earlier regarding the cost of borrowing for banks. Looking through the *Economist* a week or two ago, I noted an article saying that the TED spread, which shows the difference between what banks and the US Treasury pay to borrow money, for three months, has continued its steadily narrowing path, standing at less than 0.6 of a percentage point on Monday, 18 May. It noted that was the lowest level since August 2007, which predated the collapse of Lehman Brothers but obviously was still well into the period of credit issues. Is that an indication of how things are panning out in Australia?

Dr Laker—You would find comparable evidence in the spread between the issue of bank bonds of longer term maturities and Commonwealth government securities. If I remember the figures, that spread increased to around 210 basis points. At the moment it is down to 170 basis points or thereabouts. However, that compares with the spread of about 50 basis points before this crisis started.

The developments in global credit markets over the last few months have been encouraging, but that is a reminder that we have a long way to go to get back to the spreads that applied before the crisis. Perhaps we will not see spreads that low again, because during that period risk was not being properly priced into markets. There is still a substantial degree of risk aversion or fear of risk in the marketplace, although I think that is being whittled away slowly by signs of improvement in global economies and by the actions that governments have taken to support banking systems.

Senator BUSHBY—So the 170 basis points still has a way to go to get back to where it probably should be with a proper assessment of risk.

Dr Laker—It is not for us in APRA to judge where that might be.

Senator BUSHBY—That is right.

Dr Laker—But it is an indication that a considerable retreat from risk started in August 2007.

Senator BUSHBY—That answer is entirely consistent with the one provided by Treasury earlier. They also mentioned that competition can have an impact on that spread and positive competitive forces can lead to banks perhaps taking a smaller margin and choosing to do so to gain business. Do you think anything regulatory can be done to assist and promote competition? I know that is a big question.

Dr Laker—That is a long and large question. At the moment I would say that, in the short term, what will be most conducive to competition over time in the Australian banking system is that we have robust financial institutions that, if they need to grow their balance sheets over time, are capable of competing and of accessing capital markets. That has been our preoccupation really since the beginning of the global financial crisis. So our preoccupation at the moment is and has been stability, which provides a foundation over time for competition.

Senator BUSHBY—Yes. In your assessment, is there still stability in the regulated banks in Australia at the moment? I think we had a discussion at a past estimates hearing about international rankings of Australian banks. How are we currently standing with our major banks?

Dr Laker—According to any international criteria, our banks stand very strongly. If we take the rating agencies themselves, I think at last count ours were four of only 11 remaining institutions that were AA rated or above. The indications from the rating agencies are that we would maintain AA ratings, barring extreme circumstances; that is what the rating agencies have voted for strongly. Our banks continue to generate good, solid profitability. In many cases it is not the level of profitability that they enjoyed before their impaired assets started to build up but, in the current environment, the returns on equity for those institutions are the envy of most banks internationally and their access to capital has been, I think, well received. They have been able to raise funds, which often are at modest discounts and oversubscribed, which is a good vote of investor support. The general phrase I have used about our banking system—I talk more broadly than just banks here—is that it has been and is, generally speaking, ‘well managed, well capitalised and profitable’. From our point of view, as a prudential regulator, we would much rather be in that position than in the position of many of our peers.

Senator BUSHBY—Absolutely. I am not discounting the job that you do, but I imagine that makes your job far easier than its equivalent in some comparable nations around the world.

Dr Laker—I am sure it does.

Senator BUSHBY—You have mentioned the impaired assets of our banks—and there are some as is inherent in your statement. How is that situation tracking? I think we also discussed this in past estimates, but it probably would be useful to see how that is playing through in terms of percentages. How is that looking?

Dr Laker—I think I could give you the details. Our non-performing asset ratio might have risen to about one per cent of total assets. At the peak in 1991-92, it was about six per cent, so it is well under. Within that, I suppose the major component to have seen impaired assets rise has been business lending. In the early stages of the crisis, that was attributable to some high-profile corporates, whose business models were exposed by the crisis. We would acknowledge that the impaired asset movements now are more reflective of a broader based decline in credit quality in some areas. But these figures are coming off a low base and, as I say, they still remain low compared with previously.

Senator BUSHBY—You have mentioned that it peaked at one per cent. Has it peaked?

Dr Laker—I am not in the forecasting business and I would not want to make a forecast.

Senator BUSHBY—What is the most recent trend?

Dr Laker—The trend is upwards and we are monitoring it closely. Looking ahead, the major influence on the trend will be the change in the level of unemployment in the community.

Senator BUSHBY—And its impact on people's ability to repay—

Dr Laker—That will have an impact on residential housing exposures. Looking ahead, it will also be determined by the strength of the economy, which will have an impact on business lending and commercial property lending. So, looking ahead, the extent to which it changes will depend really on what happens to the economy as it evolves. However, there is an expectation that these numbers will continue to drift up and, as I say, that will depend particularly on unemployment.

Senator BUSHBY—You mentioned in your responses how we are faring better than comparable nations in terms of our banking system and also with the level of impaired assets compared with what they were in, I think, 1991. At the risk of asking you to blow your own trumpet, what reason do you suggest is different now, firstly, as to overseas and, secondly, as to the situation in the early nineties? What has led to our being able to withstand this, given that the shock in a lot of ways is probably much worse now than it was in the early nineties? Given that we are all experiencing the same influence of what happened internationally, why are we faring better now than we did then and than other overseas nations?

Dr Laker—Much of the shock in the early nineties was associated with commercial property exposures and our banks have retreated from that area, although not completely. If I were to give you a quick answer about what is different over time and from other countries, I think what has distinguished Australia and its banking system is that we have had a virtually

uninterrupted period of strong economic growth—16 to 17 years—which apparently started to tail off only late last year. That really has provided substantial business opportunities in Australia to grow balance sheets. Our banks have not been tempted to join the complex credit derivatives and other markets to pursue income, because they had opportunities for sound income in Australia. I think the experiences of the early nineties were fairly scarifying for some institutions and we saw, over time, a much greater commitment to and investment in risk management systems. The regulatory framework has improved considerably in that time. We introduced the Basel II framework at the beginning of 2008. Before that, APRA had tightened up some of its prudential requirements, particularly in the area of housing lending. A number of factors, I think, coalesced to give you that outcome. Also, irrespective of the regulatory arrangements, we have been very active as a frontline supervisor in the trenches with our institutions.

Senator BUSHBY—Forgive me, but I cannot recall the name of the global banking regulation body.

Dr Laker—The Basel Committee on Banking Supervision.

Senator BUSHBY—Do you think with our membership of the Basel committee, rather than getting a lot back, we might be giving a lot to the others in terms of how we have approached things?

Dr Laker—Modesty limits my answer, but—

Senator BUSHBY—As I said, I am asking you to blow your own trumpet.

Senator Sherry—Do not let modesty prevent you.

Dr Laker—It might come to haunt me when I go to my first meeting of the Basel committee. I think it is fair to say that, even though we have not been a member of the Basel committee, we have been active in the work that the committee has done through various outreach and liaison programs. To the credit of APRA—and, before that, the Reserve Bank—I think we have been able to influence important elements of debate, such as exposures to housing and how you should take them into account in your capital requirements, without being at the table; so we are respected for what we have done. We have provided and are currently providing staff to the Basel committee and some of its working groups. As I say, we have provided considerable intellectual input into a lot of the debate that has been going on.

Senator BUSHBY—Is that just since the financial crisis, or have you been doing that for a longer period?

Dr Laker—No, before that.

Senator BUSHBY—From how far back has that been occurring?

Dr Laker—I think it really has been from the time that bank supervision became a specialist function within the Reserve Bank.

Senator BUSHBY—When would that have been?

Dr Laker—In the mid-1980s. It is a large global effort that everybody feels they have influenced. But I think it is a fair to say that some very smart and committed people of ours

have worked on that task for a long period of time and the work has been and is taken notice of.

Senator BUSHBY—For how long has APRA been in existence in its present form?

Dr Laker—Almost 11 years.

Senator BUSHBY—Effectively, you have been involved in that from day one then.

Dr Laker—When APRA was established, one of its important priorities was to develop the potential of the integrated regulator, so a lot of work was done to harmonise requirements across industries. Through most of APRA's early history, the Basel II framework was being developed globally and we were certainly taking part in that development but, as I say, not sitting at that table. So we need to wait and see. It is a much-enlarged body now and we are not the only ones who have been invited, so it is not a reward for hard work. It is a G20 body now and it is a larger gathering. They have a tremendous agenda with quite a lot of work to get through, and we are going to put our shoulder to that wheel.

Senator BUSHBY—How often are they likely to meet?

Dr Laker—I think that body meets on a quarterly schedule, but it may meet more frequently, depending on the reform agenda.

Senator BUSHBY—Does it impose additional resource requirements on APRA?

Dr Laker—We take part in a number of the subcommittees and in a particular liaison group that is designed to try to bring the work of the Basel committee to a wider audience. There is some substitution and we will not need to be on that anymore, but it will be an additional demand on our resources, yes.

Senator BUSHBY—Will you be able to meet that from the resources that you have?

Dr Laker—Yes, but we will need to manage them carefully.

Senator BUSHBY—I will touch quickly on executive remuneration. Just before we start, I must admit and put on the table that I have not read your consultation paper in detail. As a result, could you explain to me the fundamentals of the recommendations that the consultation paper contains?

Dr Laker—If you do not mind, I will defer to the two experts with me, both of whom were closely involved in the development of that paper. Just before John starts, I would say that this is one area of work where we were only one of three countries that were contributing—at least initially with the pen—to the drafting of the Financial Stability Forum's principles, which were published in April. That was a tremendous acknowledgement that we had something to say in this area, and we said it; so we were able to help shape the development of those principles.

Mr Trowbridge—I think the most important framework to describe is that, because we are a prudential regulator and we supervise institutions, we can set up a situation where they are required to tell us what they are doing and we reserve the right to persuade them or, otherwise, to impose sanctions on them if they do not do things in a sound way. That is very different from all the other remuneration arrangements that have been used around the world to try to control, limit or otherwise manage executive remuneration. They have relied on

disclosure; the ASX already does that. The Corporations Law requires that companies disclose what they do. The act of disclosure is designed to create a form of accountability, and we have non-binding shareholder votes for listed companies too. Generally that does not work very well. Today many of the disclosures, with the way they are done, are very legalistic, so it is quite hard to make a lot of sense of them.

Of course, we are restricted to APRA-regulated institutions, but APRA can look deeply, if you like, at the remuneration structures. We have said that there needs to be a remuneration committee with a properly prepared remuneration policy. Many companies do that already, but they will be required to make those available to us, if we want to see them. We will be able to examine them to see whether we think that the incentives built into the remuneration system are encouraging excessive risk-taking or otherwise prejudicing the soundness of the institution. That is the direction in which we are heading.

Senator BUSHBY—Is that the fundamental deciding factor: whether, in terms of its viability, it is in the interests of the institution?

Mr Trowbridge—Yes, that is right. We are a risk-oriented institution. We want to see a supervisor and we want to see institutions minimise their risk. We already do that: they have to have proper governance arrangements, certain capital, risk management and so forth. If you like, this is another governance and risk management tool that we will use.

Senator BUSHBY—I guess the key to that is that your consultation paper, if adopted, will only apply, as you have said, to companies that fall within your prudential regulation area.

Mr Trowbridge—That is correct.

Senator BUSHBY—On the whole, they are ones where risk is a big issue. If you are a company out there making widgets, risky behaviour may deliver big returns for shareholders; however, that is not something that with new regulation you want to build into the companies.

Mr Trowbridge—We cannot do anything outside of that. But one of the things we are trying to encourage companies to do is to avoid the ‘big-risk and big pay-off’ outcome; we do not want to see that. We want to see institutions that are stable over time. In a non-financial institution where the public do not have a great interest in the outcome, if people want to take high risks and have either high rewards or go broke, they can do so; however, in the financial sector, we do not want that.

Senator BUSHBY—I understand what you are saying. Obviously, in terms of risk-taking and its potential consequences, for Australians in the institutions that you regulate there are consequences that do not exist for a lot of other companies. But the concern about executive remuneration is not just about the potential consequences of risk being taken in those companies; it is about the size of executive pay packets. This is probably a question more for the minister than for APRA. Will this just be a suite of measures to—

Senator Sherry—APRA have their set of responsibilities, as they have outlined. But, firstly, there have been some announcements, which I think we did discuss at previous estimates; I would have to double-check that. The government has announced policy and has released a draft bill on termination payments—so-called ‘golden parachutes’. That is one side

of the equation. The other side of the equation, which is other issues relating to start-up and ongoing pay et cetera, is currently before the Productivity Commission and Professor Fels.

Senator BUSHBY—I am sure that we will ask him about that at a later stage.

Senator Sherry—They are the processes.

Senator CAMERON—We have golden parachutes but, about 12 months ago, I noticed the start of the ‘golden hello’. Is that side of the equation being addressed as well?

Mr Trowbridge—It is covered in our prudential practice guide, because we do not want to see large incentive payments linked to the risks taken by the institution. We do not want to see someone given a big payment up-front and then given carte blanche to do what they want, including perhaps even engineering their own retirement or taking big risks. We want to see those sorts of payments structured in such a way that, if the outcomes for the institution are good, the employee or the executive can get good remuneration; but, if not, they would have a lower incentive payment.

Senator CAMERON—But the areas of your responsibility are the areas that were setting the culture throughout the whole economy. Isn't that true?

Mr Trowbridge—I think so. The nature of our work will probably change the nature of disclosures. Even though the law on disclosures will not change, it is quite likely that there will be an influence through what the financial sector companies now need to do to manage their remuneration. If I could encapsulate it in one phrase, it would be that we will be concentrating on ‘substance over form’ all the time whereas, at the moment, it is possible to concentrate on form because it is simply disclosures under a legal regime. So we will be looking at the substance.

The question you have asked is an interesting one: will the concentration that APRA introduces change the culture of boards and companies around remuneration; and, if it does that in the financial sector, will it spill over into other parts of the community? Obviously, we do not know yet. What we require is entirely consistent, for example, with what the AICD, the Australian Institute of Company Directors, has been advocating as guidelines anyway; but they have no jurisdiction in the way that we do.

It is also clear that many boards welcome this. We usually find that institutions do not want to embrace our new standards; they regard them as a burden. But this is an exception and it does look like many companies are very interested in conforming. The boards are very interested in working with the sorts of things that we have put forward, and we do expect some change in remuneration culture around this. But, having said that, we must recognise that at the moment we are in poor economic times and pressure for high remuneration is not on. So we have it in our minds that we need to be ready for the next boom. It is not so much what is going to happen this year and next year but what will happen the next time things boom. We want to be kerbing excessive risk-taking, once there is high confidence.

Senator CAMERON—You may not want to go where I want to take you here, but you did comment that, if companies outside of your jurisdiction want to take high risks and provide high remuneration, basically that is okay. It is not really okay for workers who end up being the victims of this high-risk taking. That is not what you meant, is it?

Mr Trowbridge—I did not mean that; I meant that some others may choose to do that. But boards, at large, are under pressure already to revise their remuneration arrangements or, if they seem unreasonable, to make them more reasonable. I think we are adding a serious voice to that, which will certainly have an effect in the financial sector; but what kind of effect it will have across the rest of the community remains to be seen.

Senator Sherry—APRA has significant authority, if you like, directly through another mechanism. In terms of non-financial institutions, when the PC—including Professor Fels—finishes its conclusion, there may or may not be amendments to the Corporations Act. It would have to be a direct change through the Corporations Act.

Senator BUSHBY—Moving on to superannuation issues, I understand that in the US rule 22c-1 of the Investment Company Act 1940 requires all mutual funds to unit price on a daily basis. Are you aware that, in other jurisdictions, there is a requirement for all super funds to unit price on a daily basis?

Mr Venkatramani—In Australia, in respect of unit pricing and the associated issue of crediting rates, trustees, as part of the risk management processes, are required to consider the pace with which members get in, get out and switch. In other words, we have said that you need to have an alignment between the way you distribute your earnings, which is what unit pricing and crediting rates do, and the frequency with which you do it. Therefore, APRA has been agnostic about whether unit pricing or crediting rates should be used, other than saying, ‘Please align your processes with the on-and-off movements that take place.’ So we have not been prescriptive about what people should do, other than to have risk management processes whereby trustees must recognise what is happening within the fund in terms of member characteristics: age, state, demography, on-and-off movements and other things.

Senator BUSHBY—I understand that, Mr Venkatramani. I have written here that in February you made a statement similar to the one that you have just made—and I will get onto that in a moment. However, there are other nations around the world in which there is a mandatory requirement to unit price on a daily basis. Even though we in Australia do not—

Mr Littrell—Perhaps I could respond. The Investment Company Act 1940 in the US refers to public mutual funds, which are like unit trusts in Australia; so it does not necessarily bind on private investment vehicles or pension funds.

Senator BUSHBY—Are there other nations in the world where there is a requirement for them to do that?

Mr Littrell—I have not conducted a comprehensive survey.

Senator BUSHBY—Could you take it on notice to see whether you can find out, within reason, without having to travel the world to do so?

Mr Littrell—Yes.

Senator BUSHBY—I will come back to Mr Venkatramani’s comments about making trustees aware of the matters that you have just mentioned. What does APRA do to ensure that funds that do not regularly unit price are aware of that higher duty in respect of disclosure and valuations, which you have just mentioned?

Mr Venkatramani—During our prudential reviews and other specialist reviews, including market risk reviews, we look at member movements and associated processes to ensure that there is what you would broadly call ‘equitable treatment’ between people who come into the fund, people who stay in it and people who leave it. At the last ASFA conference, our deputy chair, Ross Jones, presented on enhancing member equity and one of the issues specifically covered was this. So we have provided guidance in general; we look at it when we review individual funds, and the fund’s practices, where they require improvement, are picked up as part of review findings, which we follow up on.

Senator BUSHBY—As part of that review, what sorts of things do you look for to ensure that they are acting upon that higher duty?

Mr Venkatramani—Essentially, they would be dependent on the benefit payments made during the year, the number of requests for internal switching, the number of requests for rollovers to other funds and, in that process, how members’ entitlements are determined, including the associated issue of valuation of assets.

Senator BUSHBY—I would like an update on this: what is the total loss or gain attributable to Australia’s superannuation funds to date for the last four quarters and for the most recent financial year? I am happy for you to take that on notice.

Senator Sherry—Do you want that in monetary or percentage terms, or both?

Senator BUSHBY—Both, if you can. Where is APRA currently at in terms of the reporting of performance of particular funds? I understand that some work is being done on that at the moment.

Mr Littrell—Yes. We put out a discussion paper on this issue late in 2008, subsequent to a ministerial request in July 2008. The consultation on that closed in February. We received 11 submissions from various parties. As a consequence, we have done some internal work and also have spoken to some external parties on where we are going. It is likely that we will release the next round of that material very shortly. That remains subject to internal approval, but my expectation is that release will be within the next month.

Senator BUSHBY—You have referred to the ‘next round of material’. I am not asking necessarily about the content, but what do you mean by that? Is it further consultation or a draft?

Mr Littrell—At this point we have probably achieved what we can from consultation, so I expect we will be coming out with the final version.

Senator BUSHBY—So it will be a final version.

Mr Littrell—Yes.

Senator BUSHBY—It will not be a draft exposure for final comment or anything like that?

Mr Littrell—No. We had quite extensive comments in the initial round.

Senator BUSHBY—As part of that, will you look into the performance of particular investment options or products within funds or just an aggregate of the performance of each fund?

Mr Littrell—This publication will focus on fund-level performance.

Senator BUSHBY—Does APRA consider that reporting an aggregate or fund-level performance provides a sufficiently sophisticated tool for consumers to fully understand the potential suitability to themselves of particular options within a fund?

Mr Littrell—I suppose that one always would rather have more data than less and we are separately, at this point in time, consulting on an expansion of our superannuation statistics, which will include more investment option material. Having said that, the core issue in the Superannuation Industry (Supervision) Act is trustee behaviour and, in this case particularly, the requirement for trustees to form an investment strategy for the fund and to maximise or look after the interests of members. So the whole-of-fund performance does not suggest which investment option a member should take; however, if it is run over a sufficient period, it does allow members and other observers to identify trustee ability to maximise member interest.

Senator BUSHBY—I will move on to statistics in a minute. In answer to one of my questions on notice, APRA stated that it did not collect data on fees charged to members, and that superannuation funds report to APRA at the whole-of-fund level. Do you not think it would be better to equip consumers with meaningful information so that they could compare the actual fees and administration costs as well as the performance of different products within a fund?

Mr Littrell—This has been an area of considerable focus by and of some frustration for APRA over many years. In our view, the important number for a super fund, or for any investment option within the fund, is the net return—that is, the actual money that ends up in the account. It would be useful, for many reasons, to disaggregate that into the gross return and then subtract the various expenses and taxes associated with that fund. Our experience over many years of deepening our collections has been that a truly comparable fee and tax collection—remembering that taxes also are quite substantial—is probably beyond us at this point. With the expense of ensuring that detail of collection is true and comparable versus the relatively straightforward collection of net returns, that has not really struck us as prudentially necessary.

Senator BUSHBY—Is that the expense for APRA or the expense that you would impose—

Mr Littrell—There would be much more expense on the industry, which flows through to members, than for APRA. You have to say, ‘Okay, what expenses are the trustee charging, what expenses are the platform charging, what expenses are the financial planners charging and what expenses are the several levels of investment manager charging?’ It is possible to do all that, but it is costly. From APRA’s point of view, our main focus is on ensuring that the trustee is doing their job properly; it is not necessary to know that detail.

Senator BUSHBY—But, as soon as you start gathering any comparison information across different funds and publishing that information, you are putting people in competitive positions where, if you do not give them all the information, they cannot make proper, fully informed decisions. I know that you have to strike a balance between cost and what is reasonable. But, if you make a decision to put something out there, you need to make sure

that, when you do so, it has sufficient information for people to make a properly informed decision; otherwise, it can be misleading.

Mr Littrell—I am sorry; I have to dispute that. It is not misleading; it is incomplete. The number that is produced is correct.

Senator BUSHBY—Technically it is incomplete but, for the layman looking at it and trying to work out where they should go, it can be misleading. Of course, it is incomplete.

Mr Littrell—Okay. Not only for members but also, more importantly, for other trustees and the broader professional industry, the publication that we are putting out—again, it is not meant to be financial advice; it is not saying, ‘Go and talk to this firm about this investment option’—will give a strong sense of which sorts of trustees are successful in generating good net returns.

Senator BUSHBY—However, despite the best intentions and reasons that APRA has for putting it together, it will be used by individual funds that appear to have performed well to try to sell at a deeper level. I understand your point and we will move on. In relation to default funds specified in modern awards, is APRA aware of whether any of these funds in the last six months has increased the administration fees it charges to its members; and, if so, to what extent?

Mr Littrell—We will have to take that on notice.

Senator BUSHBY—You have mentioned a statistics review and that you have released a discussion paper on your plans to upgrade the existing database on which APRA bases its quarterly statistics. To what extent has APRA decided to probe in terms of the information on net returns that it will collect from funds? Where do you look to obtain sufficient information to enable APRA to report on the performance of actual products within a fund?

Mr Littrell—That is subject to consultation. But one of the aspirations of the expanded collection is that at least we will be able to detail the default option returns as well as the whole-of-fund return.

Senator BUSHBY—I think that is important.

Mr Littrell—Yes. There is a very high correlation between the default return and the general fund performance. To some extent, we are inviting industry to make a case: is it worth the cost for all concerned to do more fund options than just the default option? In the past, industry has suggested that we should collect a lot of fund option material and publish it. We say, ‘Okay, we can do that, but it’s costly; you tell us whether it is worthwhile.’

Senator Sherry—That is a really important point. A fund may have 10 or 100 options and some of them have 200 or 300. There is a useful debate around whether having those options with their long-term performance is superior—for a whole range of reasons that people could debate and analyse—to a default option; therefore, why are those options there, if they are not in the best interests of the member? That is a really interesting debate to be had.

Senator BUSHBY—If they went down to the level where you could compare, I think everybody would agree that that would be useful.

CHAIR—Senator Bushby—

Senator BUSHBY—Okay. We will not have that debate. In terms of the consultation paper, what other information would you like to get out of it; what are you looking to achieve?

Mr Littrell—This is the first renovation of this collection since 2003, and the industry has moved a long way since then. For example, we are looking at collecting material on subfunds; currently we do not hold that. Essentially, that is a hole on our prudential radar whereby we do not know which subfunds might be underfunded. In our current collection there is some fuzziness in hybrid funds—the split between defined benefit and defined contribution—which we would really like to sharpen up. The largest other issue is that we are proposing to switch the balance sheet collection from something that, frankly, is obsolete to something that is more modern in terms of asset class breakdown. There are many other issues.

Senator BUSHBY—In answers to questions on notice, you noted that funds currently do not report separately the super guarantee proportion of employment contributions. Is that something that you will be looking to get?

Mr Littrell—I will have to take that on notice.

Senator BUSHBY—It would be useful in comparing specifically the performance of that part of super contributions made by law. Given that people making voluntary contributions are far more likely to be informed, it is quite important to be able to examine how that default option is performing.

Mr Littrell—Was that a question or a statement?

Senator BUSHBY—It was only a statement.

Senator JOYCE—I imagine that Senator Macdonald will be touching on Storm, so I will truncate and leave those questions out.

Senator Sherry—Storm is actually for ASIC. I do not know whether there would be any direct issues for APRA.

Senator JOYCE—I believe that BankWest has something to do with APRA. Is the current movement of deposit funds from BankWest, after its association with the CBA, of any concern to APRA?

Dr Laker—I would preface anything I say by saying that, unless we have this discussion in camera, I cannot talk about our dealings with individual institutions—

Senator JOYCE—We will go to something more macro then. Where is bad debt globally at the moment and what is the associated cost? You have said that we do not have an extensive association with derivative products at the moment but, quite obviously, especially in eastern European countries and in England, there is still a collapse of access to liquidity. What mechanisms do we have in Australia to shield us from that?

Dr Laker—Perhaps I could clarify. First of all, our banks have exposures to derivatives, which is part and parcel of their banking operation, but they had only limited exposure to the complex financial instruments associated with subprimes. That is the point I made. Our banking institutions have three main sources of funds. One is retail deposits. They have grown very strongly, particularly since the introduction of the deposit guarantee.

Senator JOYCE—Can I interrupt quickly, not to interfere but to elucidate? What proportion of the bank deposit funding is retail deposits?

Dr Laker—I will take that on notice to give you the exact numbers. Retail deposits were in the order of 30 per cent and the rest were wholesale, which were split roughly between offshore and domestic. Retail deposits have become an increasingly important share since the government guarantee arrangements were put in place and, more generally, were a flight into safety in the banking system. But, as I said earlier, our banks have been able to access, on better terms now than before, the short and longer term funding that is available in global credit markets. That is not just Australia; that is a general statement about the improvement that is taking place globally in those sorts of funding markets.

Senator JOYCE—So 35 per cent is wholesale offshore.

Dr Laker—I would not want to lock myself into exact figures.

Senator JOYCE—I will not hold you to it. Is that market tightening, or do you say it is starting to get further liquidity?

Dr Laker—It has been improving steadily for some time but, as I said, the pricing of that longer term funding is still well above where it was two years ago. Some markets, such as the securitisation market, which is an important market to some of our institutions, remain dislocated. So it is not a completely even picture.

Senator JOYCE—The pricing is increasing?

Dr Laker—Improving. The spreads that they pay for risk are coming down bit by bit.

Senator JOYCE—As a rate, is the general pressure on that offshore funding rising? The spreads might be decreasing, but is the overall rate going up?

Dr Laker—I would have to look at the most recent series. The rates have been coming down and the spreads have been coming down as well. More recently, we are seeing competition for funding between governments and banks. I will have to look at a series and get back to you on that.

Senator JOYCE—I am particularly interested in competition between banks and governments. Does this have the capacity to push rates up, or is there evidence of it pushing rates up currently?

Dr Laker—General pricing is not an issue that APRA focuses on. Our banks have been able to access capital markets and to get their funding plans for this year largely finished and make a start on next year. That is the sort of focus we have had. We know that it will become a more competitive market for them, but we do not forecast where markets might go.

Senator JOYCE—You say that, in 1992, non-performing loans were around six per cent.

Dr Laker—Of total assets, yes.

Senator JOYCE—To your knowledge, what proportion of them was in the residential market?

Dr Laker—In the early nineties?

Senator JOYCE—Yes.

Dr Laker—Very little.

Senator JOYCE—So the question now is: what proportion of the banks' books is secured by residential housing blocks?

Dr Laker—Broadly speaking, about half of their balance sheet is exposures to residential property.

Senator JOYCE—Obviously, the residential property market would be affected by employment, wouldn't it?

Dr Laker—Yes.

Senator JOYCE—It would be perceived that, if there were a fallout in employment and a realisation on certain residential property markets, you would have to reassess the whole book. If you have a 50 per cent exposure to residential property markets and the realisation on forced sales starts bringing about a reassessment of security held by the bank, you would have to go through the whole book, wouldn't you?

Dr Laker—We have been subjecting our banking system to that kind of stress test for some years: 'If certain things happen, what happens to your book?' As I say, we have been doing and continue to do that work with the banks. Banks themselves look at what impact, say, a substantial increase in unemployment or a significant reduction in house prices would have on their profitability and capital. That is the sort of work that they do.

Senator JOYCE—I will try to cut through the gobbledegook for the minister at the table. Quite obviously, we had an extensive outpouring of funds, with the prospect of people buying 'McMansions'—that is the derogatory term; I do not know what the proper term is—based on two-income households and a prospect of capital growth. With a possible correction in or pressures coming on to the labour market, which is becoming more evident—we have seen this all the way through our discussions with Treasury—1½ people will not be able to pay for a place in the same way that two people could, and one person certainly will not be able to pay for a place in the way that two people could. If a bank has provided finance on the basis of two people servicing a debt and then only one of them has a job, is there a tipping point in unemployment where a bell starts to ring for you and you say, 'Well, we're going to have to go back and reassess that book'?

Dr Laker—It is an issue that has been on our mind for some time, well before the global financial crisis struck. In 2005-06 we looked at all of our major institutions and how they assessed the ability of borrowers to pay debt under different circumstances. We looked at what allowances they made for dual incomes and for increases in interest rates. We have been through that process thoroughly. We learned a lot and went back to some institutions, requiring them to stiffen up that process. But it is not a one-dimensional issue. The other important element that needs to be taken into account is that the debt servicing burden on households at the moment is much lower than it was three or four years ago because interest rates have come down; so, as a result of monetary policy actions, the monthly payments are much lower now than they were. That is an offset to what might be happening on the unemployment front.

Senator JOYCE—So the countervailing pressures are employment and interest rates. But interest rates going up, in itself, can get you to a form of stagflation, which can exacerbate unemployment. You can end up with a double whammy, can't you?

Dr Laker—I do not know whether we have the time to debate economics, but I would say that clearly we are monitoring the evolution of unemployment and debt burden, as are the institutions themselves. We continually get them to stress those books to see what would happen if things got worse.

Senator JOYCE—Do you have tipping-point figures? You do not have to nominate them; otherwise they will be reported all through the paper. Do you have tipping-point figures in your own mind for where unemployment gets to before it becomes a concern for the valuation of the residential book?

Mr Littrell—The phrase 'tipping point' assumes that there is some point at which there is a sharp break. There is not a tipping point associated with unemployment; it just does not work that way for unemployment. If you have double the unemployment, you will have double the default. There are other risks that you run into—in particular, falls in house prices will create tipping points—but unemployment per se is not one of them.

Senator JOYCE—Shouldn't there be a point where the residential stock that is coming on to the market has to bring about a revaluation of the book? Obviously, with the security requirements of the bank, a revaluation of the book down by a certain degree will require a whole new restructure for what they are doing and it will mean that they have to access capital or deleverage.

Mr Littrell—Yes. Essentially, the balance of new stock, new household formation and forced sales versus non-forced buyers determines the direction of house prices.

Senator JOYCE—From what you perceive at the moment, is real estate stock clearing?

Mr Littrell—As a general observation, yes.

Senator JOYCE—Relating back to where the United States was, obviously they could not clear their real estate stock; therefore, we had an issue.

Dr Laker—We have not had the excess supply of housing that characterises the US market, particularly the US subprime market.

Senator JOYCE—But the price for our residential real estate is very high compared to around the globe, isn't it?

Mr Littrell—Yes.

Senator JOYCE—Are we about fourth?

Mr Littrell—If you measure prices as the ratio of prices to average income, Australian urban prices are quite high.

Senator JOYCE—Are they amongst the highest in the world?

Mr Littrell—Yes, we would probably be in the top half-a-dozen countries.

Senator JOYCE—Is that a risk? Anything that is high has the capacity to come down. Your countervailing force would be that there is no new product coming onto the market?

Senator CAMERON—Is that part of your scare campaign?

CHAIR—Please ignore the interjection.

Mr Littrell—Could you repeat that question?

Senator JOYCE—With the countervailing force, are you saying that if there is not much real estate stock coming onto the market that keeps the price high?

Mr Littrell—Yes. Also, we still have net household formation, people looking for houses. The geography of most Australian cities is more limited than in many US cities, where there is land as far as you can see. The marginal value of land in most Australian cities is likely to remain reasonably high. In the worst affected US cities the issue is not that the price has fallen; the issue is that the price is zero.

Senator JOYCE—Yes, it is \$1.

Mr Littrell—It is very hard to find an Australian suburb where people will give you a house.

Senator JOYCE—I have seen on the internet that you can buy them for \$1, but they do not look like much. Australia currently has a program of trying to stimulate people's entry into the marketplace. The first home owners grant is part of its stimulus package. Is this package working? Are people taking it up, buying houses and building houses?

Senator Sherry—As we discussed earlier, you are getting into the realms of macroeconomic policy, not APRA.

Senator JOYCE—Are you aware of a government package that encourages people to buy houses or build houses?

Dr Laker—Of course.

Senator JOYCE—Is this bringing new, younger entrants into the market?

Dr Laker—Yes, as intended.

Senator JOYCE—Are they the most likely to default in the time of crisis?

Dr Laker—I would not like to venture an opinion on that. I do know that many first homeowners have been an important source of growth in housing lending in the last period of time. As part of our normal credit risk assessment, we work with the institutions to make sure that there is sound lending in what might be more extreme times. That is part of their credit assessment process and that is part of our oversight.

Senator JOYCE—Are we looking at about 20 per cent? Do they have to produce 20 per cent inclusive of what the government provides them, or 20 per cent on top? What do you see as reasonable?

Dr Laker—The policies that banks and other lenders have on loan-to-valuation ratios vary from one institution to the other. They all have some cap beyond which they are not prepared to provide more lending and want more equity. We have always seen that LVR as an important indication of how much buffer there is and how much skin in the game the borrower has. There is nothing particularly new from a prudential angle in anything that is happening in these markets. That has been our focus from time immemorial.

Senator JOYCE—Is it consistent from prior to the first home owners grants to where it is now?

Dr Laker—There have been first home owners grants in previous episodes. It has been part and parcel of support for the housing industry by governments of all persuasions. It is very hard to generalise where we sit with the demographics, the social backgrounds, professional backgrounds and incomes of the borrowers. As a prudential regulator, we do not drill down to that kind of detail. We look at how banks address those questions in their portfolios.

Senator JOYCE—If the individual is saying, ‘This is my money’, but it is not actually their money, it is the government’s money, and then they are using that as a factoring-up mechanism where they say, ‘Now I can borrow another 80 per cent on top of what the government has given me’, then they are overleveraging themselves and creating an artificial height in the market. Once that scheme is taken away—and we do envisage that scheme, in the future, being taken away—it basically pulls the plug out and creates what could be the instigation of a bubble that will pop.

Dr Laker—Our understanding is that our regulated lenders look for genuine contributions from the borrower in addition to what is provided by government.

Senator JOYCE—Do you know to what extent? Is there any sort of belief in your discussions as to what extent?

Mr Littrell—At this point there is not a uniform industry approach on this. Some lenders require a pattern of savings by the prospective borrower, independent of any parental support or a first home owners grant, because they want to ensure that person knows how to save as well as spend. Others will take the first home owners grant in lieu of personal savings. The trend in the industry has been towards requiring more personal savings history, but there are still lenders who will give credit for the government grant.

Senator JOYCE—Compounding on that from the other side, it would see an immense draw on desired funds internationally. There is about \$4 trillion out there which will be required to be raised in bonds and notes internationally. Am I in the ballpark there?

Dr Laker—I could not give you an answer to that. That is a macro question. It is not one that I am looking at.

Senator JOYCE—Is there a capacity for a crowding out on an international basis to affect the domestic supply of money where people have to find 80 per cent of the money to buy a house? Very rarely do people buy a house with 100 per cent of the funds. There does seem to be a crowding out of access to capital to some extent, through companies such as Suncorp moving towards a deleveraging position. There obviously are stressors in the marketplace. Does this international factor exacerbate what could happen to the domestic residential book that is held by Australian banks?

Dr Laker—That is a very complex macroeconomic question: what are the determinants of interest rates in global markets? Clearly, the broad macroeconomic setting is: the demand by borrowers, whether they be banks or governments; the supply, whether it come from sovereign wealth funds or investors; and what level of risk investors perceive and what

premium they want to pay. Within that there is a range of possible outcomes. It would be very hard for me to forecast. That is not our role.

Senator JOYCE—I will move on. What potential oversight do you have on the operation of sovereign wealth funds in Australia?

Dr Laker—None.

Senator JOYCE—Does that give sovereign wealth funds any form of capacity to operate in a more extensive form than organisations that you do have prudential oversight over?

Dr Laker—We know very little about sovereign wealth funds. We do not meet them and we do not talk with them. I will leave it for others to judge what freedoms they perceive they have. We have a particular focus to look after the beneficiaries of our financial institutions—that is, depositors, policyholders and superannuation fund members. That is our focus.

Senator JOYCE—Thank you.

Senator IAN MACDONALD—I have a question in view of your comments and the minister's comments about Storm, which is why I am here to talk to ASIC tonight. Dr Laker, has the name Storm ever come up in any of your official discussions?

Dr Laker—I would have to go back to the answer I gave earlier. We are not in a position to discuss our dealings with individual institutions. That is the act that I operate under. I could say, in general, that, where there are issues that pertain to any of our regulated institutions and there are question marks about those institutions, in the first instance we would look to the institution to explain, investigate and respond to us if there were issues of a prudential nature. That is the general response we take. I am not in a position to comment on the Storm matter. It has been a matter for ASIC.

Senator IAN MACDONALD—I appreciate it is a matter for ASIC, and that is where most of the questioning goes. Perhaps you have confirmed the issue surrounding Storm—their relationship with banks and various financial institutions which were involved in the Storm issue. I hear what you are saying. I am trying not to directly ask about anything you discussed. Has your board considered reassessing, or relooking at, the way you might do things as a result of anything you might have gleaned from the Storm issue?

Dr Laker—You are talking to two members of the board, and the third one is, unfortunately, absent. We do not have a board as such but we have an executive group. The answer to your question is no. We have a clear demarcation between our responsibilities and ASIC's responsibilities. That particular matter falls squarely into their area of responsibility. As a matter of general principle, if there are issues that ASIC believes need to come to our attention because there are prudential matters, they will do so. Likewise, in our prudential oversight, if we came across matters we thought were germane to what ASIC is charged with doing then we would refer that matter to ASIC. There is no need for us to consider a change in those arrangements. In our view they have worked well and productively.

Senator IAN MACDONALD—I guess that was the question. I think you have answered it. There is nothing that you have learned that would, in any way, let you consider a change in the way you perform your duties or in the rules under which you operate because of anything

you have learned from the way some of the institutions which you do oversee were involved in the matter surrounding the Storm collapse.

Dr Laker—My understanding is that matters are still under investigation with ASIC. That is a question you could put to ASIC. As I say, at this point we have had no direct involvement in those matters.

Senator IAN MACDONALD—If there were, as a result of ASIC's inquiry, suggestions that prudential arrangements should change in relation to some of the banks or lending institutions, ASIC would make that recommendation to you. Is that what you are saying?

Dr Laker—As I say, as a matter of general principle we have a memorandum of understanding with ASIC which encourages us, very strongly, to share information that may be of interest to the mandate of the other side. All I can say is that we would expect to operate within that framework. If there were matters that either side wanted to draw to the other's attention coming out of the global financial crisis, because there is a range of issues that have come up, then we would expect that information to be shared. It is shared and the arrangements work very well.

Senator IAN MACDONALD—If an institution over which you have jurisdiction were to lose a very large sum of money as a result of a transaction or an incident, would that trigger your authority's involvement and interest?

Dr Laker—Yes. That has happened in the past and it certainly triggers our interest, but our focus there is not necessarily just the transaction—I am talking hypothetically here. It is more than that; it is what risk control mechanisms were meant to be in place and how they worked or did not work in a particular case. I would not want to give the impression that we spend a lot of our time chasing particular loss-making transactions down burrows. We would need an army of people to do that, and that is not our role. Materiality is very important. If there were material breaches of risk management systems, yes, we would certainly be active in understanding and investigating to see what the response was.

Senator IAN MACDONALD—If there were losses of a magnitude which could bring into question the whole banking system, that would be something that you would be involved in?

Dr Laker—I would have to give you an extremely loud yes to that one. That is the core of our business. I am charged with informing the minister as well. The act makes it very clear. If there were threats to the solvency of any regulated institution, the minister would hear APRA very loudly and so would the institution.

Senator IAN MACDONALD—When would the public become aware? At what stage do your investigations become available to parliament and the people?

Dr Laker—I cannot give you a black and white answer to that. I can tell you what the elements of our approach are. We are charged under the APRA Act with maintaining the confidentiality of our dealings with regulated institutions. There is a quite severe penalty on me or anybody else who breaches that, and I rather like my freedom. Our dealings are confidential. We are also aware that listed companies are subject to a continuous disclosure regime. In many countries around the globe, the dealings with a prudential regulator are protected by law, in any event, so we are not the only one that has that framework.

There is a question of how you balance the ‘working behind the scenes’ approach we have always taken as a prudential regulator with the market conduct and disclosure requirements for listed companies. I might say that not many of our companies are listed companies. We would work that situation through, depending on the circumstances. As I said, it is very hard to be black and white about that. We would account to the minister, as I am charged with doing under the act, and we would judge each set of circumstances as they arise. There is no simple recipe book.

Clearly, if there were concerns in the public about the solvency of an institution, in the past APRA, and before that the Reserve Bank, has issued press releases and given indications of the strength of institutions. We are very mindful in trying to resolve a problem behind the scenes that the depositors, the policyholders or the members whose interests we are acting on behalf of are not left unduly alarmed. We have got to get all of that balance right.

Senator IAN MACDONALD—Thank you for that. Thank you, Chair and Senator Eggleston, for allowing me to push in.

Senator EGGLESTON—I noticed that APRA publishes performance or league tables. Where else in the world does the prudential regulator publish investment performance statistics for the individual firms that it regulates?

Dr Laker—Are you referring to the superannuation industry?

Senator EGGLESTON—We are talking about superannuation, yes.

Mr Littrell—We have not done a comprehensive survey. The FSA puts out some of our material on an online website in the UK. The format that they use in their web is slightly different, but that is accessible information. Other than that, we would have to have a look around. It varies a bit by industry. Globally, there tends to be more information disclosed on banking than on super.

Mr Venkatramani—This industry has, with some assistance from APRA and other entities, become increasingly sophisticated and refined. There has been consolidation and there has been a huge amount of competition. The industry itself, from time to time, publishes its data—sometimes selectively when they do well. Given all of that and the increasing stake that the Australian public has in super, it is entirely appropriate that the available information is shared. As noted earlier, if the available information can be improved then it should be improved. I think that point has to be understood and made.

Senator EGGLESTON—Thank you. Is there any additional funding provided to APRA to facilitate the publication of superannuation fund trustee level data?

Mr Littrell—What has been published has already been collected. We had funding from previous years to collect the data. This is essentially electronic reordering of the data and, as things go, it is not very expensive.

Senator EGGLESTON—It is not very expensive, so it is not very difficult to publish that sort of superannuation fund trustee level data.

Mr Littrell—Yes. In fact, we have published it internally for years.

Senator EGGLESTON—You have published it internally?

Mr Littrell—Yes.

Senator Sherry—Not even I can get my hands on it. I would dearly love to see it, as I am sure the public would as well.

Senator EGGLESTON—Is that going to be made public completely? Is that what we are working towards? Would the minister like to see all this data made public?

Mr Littrell—We are currently responding to the minister's request, as we noted earlier with Senator Bushby. At this point the final version of what becomes available online has yet to be approved by the executive group of APRA, so I am a bit constrained in saying what would be in it. But there is an intention to make a lot more material available publicly online than currently exists.

Senator EGGLESTON—Would it be terribly costly to introduce a fast-tracking system and perhaps make the superannuation fund performance statistics available at an investment option level so that people could pick and choose a bit?

Mr Littrell—That is more expensive because we do not currently collect that data. The expense in a statistical collection is essentially the work that people providing the data have to incur to provide it to APRA. APRA does have some expenses but they are minor in the scheme of things. But, given that we do not collect the investment option level data now, we would have to levy that requirement on industry and they would have to organise their reporting systems in a way to deliver it. We are in fact currently consulting as a separate matter on an expansion of the superannuation collection which would address, among several other issues, that question.

Senator EGGLESTON—Would you think that was a good option to go down that pathway?

Senator Sherry—I certainly do. We just had a discussion earlier. I think publication of what is currently available is important. I think there are 13,000 to 14,000 investment options. I think the long-term results would be quite interesting if only because of the earlier issue I mentioned. Some funds have five, 10, 100, 200 investment options. Whether in fact some of these more exotic investment options—if I can use that phrase—in the long-term actually are performing in a superior way to, say, a default investment option would be an interesting debate in itself. I just take a general view that the more information that is out there on our superannuation system, the better. It is not in the APRA area particularly, but, for example, we cannot get disaggregated data on contributions over and above the compulsory superannuation in any great detail. There are some private sector surveys that are done but we cannot get accurate data on that. That is not a criticism of APRA. But the more information there is out there to have an informed debate, the better our system will be.

Senator EGGLESTON—I think Senator Bushby asked you about unit pricing. I understand most retail funds revalue their units every day. Some industry funds will do this only over a three-year cycle. Is this a matter of prudential concern?

Senator Sherry—I am not being critical, but you may have had a bit of a double-up here with Senator Bushby. Whoever has assisted you, the questions are remarkably similar. They follow a similar track. We are happy to answer again but—

Senator BUSHBY—I am—

Senator Sherry—Yes. But it just strikes me that they are remarkably similar and parallel. That is not a criticism. If you want to take the time—we have dealt with these issues.

Senator EGGLESTON—It must be a remarkable coincidence.

Senator Sherry—I am sure. Do not worry, when I sat where you did, we did have some remarkable coincidences with questions, too.

Senator EGGLESTON—What about default funds?

Senator BUSHBY—I touched on default funds, but not thoroughly.

Senator EGGLESTON—Can APRA advise if any of the default funds have higher administrative costs?

Senator Sherry—Again, that is almost exactly, word for word, the question we had earlier.

Senator EGGLESTON—Amazing.

Senator BUSHBY—I asked whether they had gone up.

Senator Sherry—I said ‘almost exactly, word for word’.

Senator EGGLESTON—What meetings or discussions has APRA had with industry participants in relation to the selection of default funds? Is that a question we might consider?

Mr Venkatramani—That goes to the issue of trustee responsibility and in particular risk management not only in respect of industry funds but in respect of all the trustees which we have licensed and which we regulate. One of the key issues would be the setting of investment strategy, the setting of various menu options and investment choices offered and, within that, what happens if somebody does not choose, which is where the default comes into play. We do try to understand the trustee processes and to the extent those processes require improvement we make suggestions in our reports and findings and follow them up. From time to time we also issue best practice guidelines, which are not enforceable at law but which certainly determine our risk assessment. The higher risk means you will probably be spending more time with the trustee. That is the way we approach it, but it is not confined only to industry funds.

Senator Sherry—As to the issue of the determination of a default fund—and it is not just an industry fund; there are corporate and public sector funds that are default funds, and some retail funds in some instances, particularly through a subcontract arrangement with a corporate master trust—there are no criteria for selection of those in this country. The selection is made by the independent Industrial Relations Commission. We have not discussed my actions in respect to that as to the request I made to the industrial commission, but APRA obviously, as has been outlined, has the prudential oversight of the funds and the way they operate.

Senator EGGLESTON—Is APRA satisfied with the role of the Australian Industrial Relations Commission, that they have used due process and due consideration in selecting their truncated list of default funds? Are you happy with the list that is available? Is that a question that is difficult to answer?

Senator Sherry—It is really a policy issue.

Mr Littrell—It is not a question for APRA, really.

Senator Sherry—APRA does not have involvement in it. As I have indicated before, am I happy with the approach? No, I am not. I have said it on a number of occasions. I wrote to the industrial commission and suggested it was an appropriate time to evaluate the long-term performance of default funds, based on long-term performance. That has not occurred. The commission is an independent court; I cannot instruct or influence them other than to make a submission and suggest. They gave some reasons and it is an issue that will be considered in the context of the panel to be led by Jeremy Cooper that I announced on Friday of last week.

Senator EGGLESTON—APRA will have an ongoing role, will they, in this matter of default funds?

Senator Sherry—I have not got one at the moment.

Senator EGGLESTON—Will they have an ongoing role—

Mr Littrell—In terms of the Industrial Relations Commission choice of default funds for industrial awards, it has really got very little, if anything, to do with APRA.

Senator EGGLESTON—But should APRA have a role?

Senator Sherry—That is a policy matter and that issue has been referred to the panel. I gave a commitment to the Senate, particularly to Senator Fielding, that this matter of criteria for the selection of default funds would be considered, and the panel I announced last week will be considering it.

CHAIR—Thank you very much to APRA for coming in this afternoon.

Proceedings suspended from 4.46 pm to 4.56 pm

Productivity Commission

Mr Banks—Perhaps I could make some opening remarks?

CHAIR—Please go ahead.

Mr Banks—Thank you very much for this further opportunity. I thought I would give just a brief overview of things since the Productivity Commission last appeared in this place. As you know, the commission has a number of streams of work. It has commission inquiries and studies. It has annual reporting under its statute. It does supporting research. It supports those activities. It also acts as a secretariat for various COAG bodies, particularly in the area of performance monitoring. There have been considerable developments in all of those activity streams of the commission. I will just briefly give you an indication of those.

Firstly, in terms of the commission projects stream, since the last Senate estimates in February we have completed and the government has released three final reports, one on paid parental leave to which the government has responded, one on drought support and one on regulatory burdens on the upstream petroleum sector. We have eight projects underway. All of those are relatively recent projects. Only one of those has actually issued a draft report, and that has occurred since February. That is the report on restrictions on the parallel importation of books, which came out in March. We have received a lot of submissions to that draft report.

We often get a lot of submissions to draft reports but as to this one I am not sure whether or not it is a record. Obviously we are thinking about all of those submissions and we are trying to finalise our report. As a consequence of those many submissions, we have had an extension until 30 June, so we are flat out doing that.

The other ongoing projects which have not yet released any draft report include some on diverse and nationally significant topics. The ones that will have draft reports coming out in September include the study on the contribution of the not-for-profit sector, an inquiry into antidumping, an inquiry into executive remuneration and a study into the performance of public and private hospital systems, on which we will release a draft in September and a final report in November. In addition, we have our inquiry into the gambling industries, on which we will be releasing a draft report in October.

We have also got two streams of work in the commissioned area which relate to regulation to look at more systemic issues. One is on business regulation benchmarking, which is in stage 2 and indeed the second year of that. It is looking at the different jurisdictions in relation to the regulatory burdens involved with occupational health and safety regulation and food safety regulation. They are two areas that are important to business and in which there is quite a bit of activity going on through COAG.

We have also got an annual review of regulatory burdens which is in its third year. It is looking at social and economic infrastructure, two really important areas of the economy to be looking at any issues to do with unnecessary red tape. We have a draft report coming out later this month. Another ongoing stream of work related to COAG has been announced and we are doing quite a bit of preparatory research on that. That is in relation to periodic reporting on the economic impacts and benefits of the COAG reform agenda. That in a sense is a follow-up to the work we did on the national reform agenda a couple of years ago.

The second stream is our annual reporting. Some of you may have seen that we recently released our trade and assistance review, which is a statutory obligation we have, to report on assistance to industry annually. That is that report.

The third stream of supporting research underpins a lot of the other work we do. We have had reports on public infrastructure financing. Another one on a more obtuse topic, intangible assets and productivity, focuses on some of the drivers of productivity. And there is a conference volume, picking up on a conference that we had last year, on promoting better environmental outcomes. We have an annual conference at the commission, which is a roundtable style conference, and this year's topic is evidence based policymaking. We have some international visitors, including from the World Bank, who are attending that conference.

The fourth key stream of work relates to the secretariat support that we provide to COAG and other national officials groups. Probably the report you would be most familiar with is the so-called blue book which looks at the efficiency and effectiveness of government services. That came out just before the last meeting here. Since then we have produced a compendium of Indigenous data from the blue book that relates to service provision to Indigenous people. We have our two-yearly report, *Overcoming Indigenous disadvantage*, due out in early July which focuses very much on outcomes for Indigenous people in a strategic framework of

indicators that will enable governments to understand whether there really is progress occurring. That will be the fourth report since 2003.

We have also been assigned some new tasks by COAG to assist the COAG Reform Council in overseeing and reporting on the national agreements between the Commonwealth and the states that replace the old SPP, special purpose payments. Our secretariat to the steering committee of the review of government services is preparing reports on performance indicators under those agreements in the six areas which will go to the COAG Reform Council which in turn will report to COAG. The first of those reports from us to the COAG Reform Council will be on the education and training areas and that is due in June. A second tranche of reports will be prepared at the end of the year.

The second new task for the Productivity Commission this time is as secretariat to the state and territory officials steering group that is developing a report on expenditure on services to Indigenous Australians, which is covering what has been a fundamental lack in data in Australia in terms of just understanding where the money being directed to Indigenous communities is going. That will be very important baseline data. It is happening late, but better late than never. The commission is helping as the secretariat prepares that work.

The three new COAG related tasks obviously imply significant resource requirements and the commission was fortunate enough to receive \$13.7 million over the next five-year period in the budget to enable us to advance that work. That concludes the introductory overview. We are obviously happy to take questions.

Senator XENOPHON—In relation to the study that the commission is doing as to the performance of the public and private hospital systems, I think you indicated that there will be a draft report out in September.

Mr Banks—Is it September or October? Yes, it is September.

Senator XENOPHON—That report will look at the comparative hospital and medical costs for clinically similar procedures performed by public and private hospitals. It also looks at the rate of hospital acquired infections by type reported by public and private hospitals; issues of fully informed financial consent by patients—I am just looking at your terms of reference. I am also looking at the most appropriate indexation factor for the Medicare levy surcharge thresholds. You are aware that in the budget it was announced that there will be changes to the rebate, which will impact on the mix between the public and private systems. Will your study shed light on the efficacy or otherwise of the rebate in the context of what you are looking at in terms of the mix between the public and private systems and outcomes? To put it crudely, where do you get the best bang for your buck in terms of outcomes in the public and private systems?

Mr Banks—I think in broad terms we may be able to give some indication, but one of the great difficulties in any work like that is (a) getting really good data and then (b) being able to draw robust statistical relationships among different drivers. I think we will be able to provide some information which will give some sense of the relative performance of the two sectors. As to the impact of particular subsidies and so on that have occurred, that is difficult but it obviously has affected the landscape. I might ask Michael Kirby, who heads our Melbourne

office and who has been a bit more closely involved in this, if he wants to make any comment on that.

Dr Kirby—I think the main thing is that it is early days in that project. We have only just got the terms of reference. We are in the process of developing an issues paper which will be released over the next couple of weeks. We will then be visiting relevant stakeholders and interested parties in that. It is early days in terms of the discussion to work out the key issues to be examined in the project. There are some very specific items in the terms of reference and they will be taking our priority.

Senator XENOPHON—To my knowledge there has not been a comparable study done like this before in terms of the efficacy and the outcomes of the private and public systems. Is that correct?

Dr Kirby—I think that is substantially correct. One of the issues here is data availability and comparability, and that will be a real challenge for the project. We will be having discussions with the relevant data providers, the ABS and the AIHW, in particular, to try to get the necessary data to do those comparisons. That will be a challenge for us.

Senator XENOPHON—Although one of the terms of reference is that, if there are limitations in the data, you may be making recommendations to improve the data set?

Dr Kirby—Yes.

Senator XENOPHON—So, you can get a like-for-like comparison?

Dr Kirby—Yes.

Senator XENOPHON—I turn to the issue of a study into water buybacks. When is that likely?

Mr Banks—These are very interesting tasks.

Senator Sherry—We have noticed.

Senator XENOPHON—The commission would say it has a competent minister.

Senator Sherry—Yes, I accept that.

Senator XENOPHON—You may be aware that the Victorian government announced that it was relaxing its four per cent cap in terms of water buybacks. I guess that is quite timely. Where is that study at and what are processes compared with an inquiry?

Mr Banks—I understand that study has been going through the various approval processes, which can take some time, as you probably now appreciate. We would anticipate receiving the formal terms of reference very shortly. The difference between a study and an inquiry in a formal sense really relates to the requirement to hold public hearings in an inquiry, but effectively the way the commission runs all of its work is very consultative. Increasingly, even in our public inquiries, we make much more use of roundtables, workshops and opportunities for informal interaction rather than obliging people to sit up and have a transcript in the very formal process of a hearing. It has its place.

Effectively, it will depend on the degree to which that kind of formality is seen as being important for the topic at hand. In this case with water buybacks I could see that we could

have some very valuable roundtable-type discussions and allow people to come along, but also there is an opportunity to have forums where individuals can come along to tell their story as well as put in submissions.

Senator XENOPHON—Some of them would be quite fiery, depending on who you invite along. In relation to that, what is an approximate timeline? I know there is still a process. Are you hopeful of getting something out by the end of the year or sooner?

Mr Banks—I will have to be reminded on the time frame. I understand that it is a six-month time frame. For example, if it arrived shortly a final report would be completed by the end of the year. As with all of our commissioned studies or inquiries, there would be a draft report as well to give people an opportunity to respond to what we are saying and for us to take that into account before we do a final report to government.

Senator XENOPHON—Moving on to the issue of the inquiry into gambling, there has been some commentary that in the 1999 study there was an extensive survey of prevalence rates of gambling addiction and problem gambling around the country. I think it was a survey of about 10,000 people. It was the most extensive survey of its type ever conducted at that time. You are not doing that at this time? Is that the case?

Mr Banks—That is correct. The whole question of what sorts of surveys we would do was obviously a threshold issue for us and a very important one. As you said, that first survey that we did was the first national survey. At that time we fondly imagined that that would have put a stake in the ground, there would have been further national surveys conducted after that report, and we would come back and perhaps do another one ourselves, all with a consistent methodology and, therefore, be able to determine exactly what had happened. In fact, that was a vain hope. Methodologies changed and moved on. Other surveys were done, but they were not national surveys, they were state based, so we had to have a look at all of that. The conclusion we came to was that we did not see great utility in doing another national survey either to be able to determine whether things had got better or to provide a stake in the ground for the future.

What we were able to do was a meta analysis, as they call it, of all the various other surveys that had been done. We are in the middle of doing that right now. There has been some quite good work. A lot of it has been state based rather than national, but we can get some significant insights from that. In addition, we are planning to do, and are a fair way down the track of doing, our own survey or repeating the survey that we did last time in relation to problem gamblers who are receiving help from the different services that catered for that. You will probably remember from the last report that that was quite a revealing survey. My understanding is that a comparable survey has not been done since. That is one where we really can add value.

Senator XENOPHON—In terms of the robustness, not so much of your meta analysis but what you are analysing, some surveys might be face-to-face, carried out by the states or telephone surveys and at venues. There is the SOGS index, which is on the way out. You have the Canadian Problem Gambling Index. You have the Victorian index, which is a modification. Will the commission be able to sift through all of that and give a reasonable

like-for-like comparison so that we can determine trends of problem gambling in the community and those at risk?

Mr Banks—At this point I should pass to the expert, Dr Lattimore, and get him to comment further.

Dr Lattimore—We are fortunate to have a reasonable number of surveys based on the Canadian Problem Gambling Index. That provides a degree of consistency in the application of a single instrument across the states.

Senator XENOPHON—The methodology might be different, though.

Dr Lattimore—Indeed. We are looking very closely at the exact methodology that is being applied in each of the states and we will be considering the implications of the exact design of that instrument and its application. You are absolutely right. We are also clearly looking at the degree to which you can draw a conclusion about how a SOGS score could be compared with a CPGI score. That is clearly going to be relevant in trying to assess what has happened to trends. We do have the Queensland data, where three surveys were done over time, but we are aware of the difficulties of just looking at that without taking account of, for example, the statistics and the precision in the results.

We are going to look at this very carefully and triangulate results by looking at help services and a variety of other questions that are not just being posed in relation to the CPGIs. There are questions that ask people: ‘Do you consider yourself having a problem?’—from one to 10—‘Have you sought help? Have you ever tried to exclude yourself from a venue?’ There is a whole range of additional questions that are not included in the CPGI but which have been asked over time, which will also provide a guide. We will be looking at a range of evidence to try to get to the question that you are referring to.

Senator XENOPHON—Ultimately, it will be a meta analysis of other surveys. There will not be a survey, even on a smaller scale, of the national survey in 1999.

Dr Lattimore—The difficulty of doing that is that, if you look at the required precision to look at trends, you would need a very substantial national survey. To put it in context, the most recent Queensland survey involved over 35,000 people being posed that question for just one state. Accumulating the evidence across states is probably a more reliable way of getting a picture of what the current circumstance is. The second point to make in this area is that there is the issue of what has happened on the trend side, which is interesting. But the other issue is just the current quantum of the problem. At least in the issues paper, the way we presented this is that most people accept that the quantum of the problem is significant regardless of questioning the reliability of the existing surveys.

Mr Banks—One of the services that we can probably provide in this report is the detailed analysis that we are doing of existing surveys which, to some extent, are being misused in public debate.

Senator XENOPHON—I think I have been accused of that, as has the industry.

Mr Banks—Even surveys that, for example, use the same broad methodology, like a SOG screen or the Canadian screen, when you delve into them you find that certain questions have been changed in the way the screen may have been used in one jurisdiction compared with

another or over time. We are delving into that. The account that we will provide of the extent to which these surveys can provide useful information or useful comparisons will be helpful in itself. Having done that, we will probably be in a better position than almost anybody to stand back and take a national perspective on what this all adds up to. As Mr Lattimore said, at the end of the day even those who are sceptics nevertheless would accept that the number of problem gamblers as a proportion of the population and of the gambling population, in particular, is such that it would still be seen as a significant policy problem.

Senator XENOPHON—Finally on this, is the fact that there is not a full survey this time around compared with 1999 in part a function of the efficiency dividend in a sense and other work pressures? You can only stretch your budget so far. I am not making a value judgement. You have to be prudent; you have a lot of work on. Is it the fact that things are a little leaner than they may have been 10 years ago by virtue of the volume of work you have now creating a resource issue?

Mr Banks—Ten years ago we were in a different situation in which there was no baseline data. There was no national survey. As I said, we had a goal for that work that, in a sense, was probably unlikely to be realised simply because the methodologies are changing. Even if we did the survey now with 50,000 people Australia wide, the cost of that would be huge, but the cost-effectiveness would be relatively low because we would get some insights for today but we could not guarantee that even that information would provide a baseline for the future. That is the problem. We will be able to provide lots of insights about what is happening today from a range of other sources without the need for such a large survey. That is where we are up to. It is not just a matter of dollars, but clearly we have to think about what is practical and cost effective.

Senator XENOPHON—Has the efficiency dividend made a difference in the sense that things are a little bit tighter than they would have been before the efficiency dividend?

Mr Banks—The amount of resources and the number of people we employ relates to the budget that we have. As I indicated, we have been given supplementation so I would be the last one to be critical of that. We are throwing the resources at the inquiry that we believe it needs, and we would do that even if it meant that we did less supporting research or something. We are quite confident. We have a large, strong team on that and we are doing surveys that are targeted and that we believe will add real insight this time to our report. When you see the draft report, hopefully you will feel that that decision has been vindicated.

Senator XENOPHON—Finally, I turn to the emissions trading scheme. In your annual report you were critical of the free permits that were to be issued. My question is not so much about that, but in relation to the economic impact of the current design of the CPRS. Is that something that the commission has done work on both in respect of this particular scheme and also any alternative models that have been floated in the course of this public debate—an intensity model, the McKibbin model, the Carmody model of a consumption based carbon tax? Has the commission done work on this and can you comment on what you consider to be the potential significance, adverse or positive, of an ETS to the economy?

Mr Banks—The commission has done some work in the past. It has typically been in the form of inputs to decision making through submissions to taskforces that have been doing

work, including the Shergold taskforce and then later the Garnaut study. Even that work was probably more principle based rather than based on any modelling. We have not been able to do any separate modelling from that conducted by the government. We are not in a position to make any independent judgment of a detailed kind based on modelling in relation to different models. The point that we have made in the past is that the best way to go in responding to this issue is through pricing carbon. There are differing ways of doing that and that is where the debate is going now. We have not had a call to do any further detailed analytical or quantitative work to look at the relative merits of different pricing mechanisms.

Senator XENOPHON—In terms of the protocols, if the Treasurer asked you to look at that, that would be something the commission has the capacity and expertise to do?

Mr Banks—I will ask a colleague, Mr Gretton, about the modelling capability. The commission has a lot of experience in modelling, but the modelling demands of that particular issue probably go beyond the capacity that we have in terms of the technology in house at the moment.

Mr Gretton—In terms of the modelling capacity, there are a number of agencies that have developed specific models to analyse the climate change problem. They have been very substantial undertakings. At this stage, the commission's modelling capacity has not incorporated a number of the features that have been included in those modelling efforts. I will just elaborate a little bit. The focus of much of our work looking at, say, national reform issues has been on the impact of a policy relative to the case of the economy without that policy. You might be referring to electricity reform or transport reform. However, in the case of the emissions trading and the climate change policies there is an additional dimension and that is the time dimension and how the economy might evolve over time and how the economy might respond to different policies and the cost to those economies. That is a matter that was addressed, for example, in the Treasury modelling, but at the moment those technologies have not been brought into the commission. I will add one point. The Treasury modelling was built on work that was previously done by the commission, so in this case the general modelling capacity of the community is developing all the time.

Senator XENOPHON—So, if it was something that you were asked to do, say, I have a question for the commission, you could do it if there were appropriate resources or you could outsource some of the modelling work, say, to Professor Adams at the Centre for Policy Studies or under his wing?

Mr Banks—Clearly, if the government wanted us to do something we would do that. If that meant gearing up and improving the modelling resources we have or drawing on others, we could do that as well.

Senator XENOPHON—Thank you.

CHAIR—Senator Fisher.

Senator FISHER—Mr Banks, you commented that in the past you have provided advice as to inputs into decision making. You gave a couple of examples and said that your input has been principle based rather than figures based. I gather from that that the Productivity Commission has not provided or did not provide to Treasury any inputs in respect of real

wages in terms of the Treasury's modelling of the impact of a carbon pollution reduction scheme; is that right?

Mr Banks—Yes. Everything the commission does is public. When I say 'inputs', these are public submissions that we have made at the time when other taskforces were doing work in this area. We drew on earlier work that we had done and also conceptual work about the strategic approaches and the different instruments available. It was to inform the work of those other taskforces. We would not be in a position to provide that kind of base data, anyway. The Bureau of Statistics and other institutions would be better placed to do that.

Senator FISHER—In Senate estimates last night Treasury indicated that its modelling, in respect of the Carbon Pollution Reduction Scheme, in concluding constant employment also assumes real wages will fall over time relative to what they otherwise would have been. Treasury noted, 'They will be higher than they would be today.' That is economist-ese for saying, in my terms, there will be a fall in real wages. From the perspective of the Productivity Commission, Mr Gretton indicated that some of his work has been more on the economy without the existence of a particular policy. Given that Treasury is saying that its modelling assumes that real wages will fall over time relative to what they otherwise would be—but nonetheless would be higher than they are today—it seems that Treasury is essentially saying that without the CPRS real wages would rise. That begs the question: how much faster would they rise compared with what they now will not rise by if the CPRS is implemented? Do you have a Productivity Commission perspective based on looking at the CPRS from an economic perspective in terms of where the economy would be in any of the models without that policy, and particularly in respect of workers' jobs and more particularly in respect of workers' wages?

Mr Banks—We have not done any analysis of that kind. One point I would make—and it is up to Treasury to talk about its own modelling—is that there is often a confusion between forecasts and projections. This is a nerdy thing that statisticians talk about every day.

Senator FISHER—You are very good nerds.

Mr Banks—Basically the modelling, as I understand it, does not involve forecasts but rather projections of the nature 'what if', holding everything else constant. The real world changes in all sorts of ways. We do a lot of modelling ourselves, as you would be aware, which is an important point to make.

I should say that in relation to the Treasury modelling, we are not in a position to comment on that work. We have neither done modelling of the same kind ourselves nor been required to analyse the Treasury modelling itself. There is probably no further comment I can make.

Senator FISHER—Thank you. Mr Gretton indicated that the Treasury modelling regarding the CPRS was built, to some extent, on previous Productivity Commission modelling. You perhaps mean in terms of systems rather than content, but can you explain what you meant?

Mr Gretton—Senator Sherry mentioned the Centre for Policy Studies at Monash University. That institution develops what we call benchmark models. The commission, as part of its work, supported the Centre for Policy Studies to develop a new benchmark model for analysis of the national reform agenda, and the work of that was published in 2007. Using

that benchmark model, which you might regard as a major development in the modelling field, the Treasury then requested Professor Adams to develop that model further to support its research. I think that development was described in a report that was published by Treasury. That is, in a sense, the evolution of the process.

Senator FISHER—Thank you.

Senator ABETZ—Once again, I thank the Productivity Commission for appearing. Mr Banks, in a speech—I am not sure how recent—you refer to the head of Infrastructure Australia secretariat recently commenting in the following terms about many of the infrastructure proposals submitted to that body:

The linkage to goals and problems is weak, the evidence is weak, the quantification of costs and benefits is generally weak.

You then state:

It is very welcome, therefore, that Infrastructure Australia has stressed that any project that it recommends for public funding must satisfy rigorous cost-benefit tests.

I assume you still stand by that?

Mr Banks—I do.

Senator ABETZ—What is the Infrastructure Australia Fund worth? It is slightly over \$8 billion, as I understand it. Of course, that is split down to a number of projects, clearly less than \$8 billion. You can have, if you like, a cost-benefit analysis on everything, but chances are it would not make much sense to have a cost-benefit analysis as to—let's pick something ridiculous—whether I ought to get paperclips into my office. At what financial point is there a trigger where you would suggest that a cost-benefit analysis does start to become a worthwhile investment? Do you get my drift?

Mr Banks—Depending on how many staples you would require in your office.

Senator ABETZ—No, paperclips.

Mr Banks—You might even want to do it there. Essentially, a cost-benefit analysis sounds like an impossibly difficult and complex thing to do, and it can be difficult to the extent that some things are harder to measure than others. The framework is surely one that you would apply to decisions large and small, just because it requires you to think about the costs relative to the benefits, the different options for achieving something and going for the one that has the best outcome.

Senator ABETZ—It is a good discipline to have.

Mr Banks—It is a fundamental discipline to have. The commission is on the record over many years in arguing that in a whole range of areas it is a good framework for decision making, particularly in the infrastructure area, where you have investments that will endure for many years if not decades.

Senator ABETZ—Not that I am an expert in these things, but it appears that you would quite rightly have welcomed Infrastructure Australia's approach in relation to its assessment of projects. Is that how I would read it?

Mr Banks—I am on the record as saying that I approve of those sentiments. That is right.

Senator ABETZ—It would not be too much of a leap of logic to then say, if it makes good sense to have it as a discipline for small and large projects, the larger the project gets the more important that sort of discipline becomes?

Mr Banks—That is correct.

Senator ABETZ—I will just pluck a figure out of the air at random here. If we were to have a \$43 billion project, what is the Productivity Commission's view about the need for a cost-benefit analysis in relation to an infrastructure project of that size?

Mr Banks—I think I have already answered your question in general terms. I think a cost-benefit analysis is an appropriate framework and discipline for thinking about these kinds of large-scale investments.

Senator ABETZ—Time flies when you are having fun at estimates, but I think it was yesterday that we were advised that no cost-benefit analysis, for example, had been done in relation to the NBN proposal, which just happens to be also \$43 billion. The Productivity Commission is of the view, without trying to put words into your mouth—and if you think the NBN is a different consideration tell us—that in principle it would be good practice to have a cost-benefit analysis. Is there anything unique, as you understand it, about the NBN that would suggest that it is not worthy of a cost-benefit analysis?

Mr Banks—We have done no particular study of that, so I would have to retreat to the general principle that I enunciated earlier.

Senator ABETZ—Yes. Is there nothing that you understand about the NBN proposal that would suggest to you that the NBN proposal should be an exception to the rule? It is always the exception that proves the rule, as I have been told, and I am just wondering whether there is anything about the NBN proposal that would suggest that it is not worthy of such an analysis?

Mr Banks—I have nothing further to add.

Senator ABETZ—Has the Productivity Commission, for example, been asked to look at the benefit of sticking pink batts into everybody's roof around Australia? I withdraw that—not everybody's. The pink batt proposal supposedly is an economic stimulus. As a bang for the buck does the Productivity Commission have any views on that?

Mr Banks—Clearly, we were not asked to do a report on that, otherwise you would have seen reference to that.

Senator ABETZ—Once again this was a project—and somebody will correct me if I am wrong—of about \$4 billion, about half the size of the Infrastructure Australia fund of \$8 billion. The general principle of a cost-benefit analysis, you would say, may have been worthy for that proposal?

Mr Banks—We could look at a whole lot of particular examples of the general proposition I would make. I guess I would say that in general it is a very good framework for decision making. It is also true, as I said, that some components of that framework—elements of it—can be quite hard to calculate, particularly when you are looking at environmental externalities and so on. Nevertheless, the advantage of that framework is that it requires an

articulation of the values imputed to such subjective elements that may not have a price in the market.

Senator ABETZ—I dare say you would respond in similar terms if I were to ask you about the boom gate proposal, although I cannot quite recollect the total figure for that particular aspect of the stimulus package.

Mr Banks—I am clearly a fan of the cost-benefit analysis framework. I probably will not go much further than saying that.

Senator ABETZ—Are there any general studies on cost-benefit analyses that you might be able to point to in relation to these matters? Another one that I am considering is the proposal for every school to be given a new building. In the Productivity Commission's experience has the one-size-fits-all approach indicated that productivity benefits can vary substantially from project to project?

Mr Banks—We are probably not in a position to comment on specifics like that. If you ask me in general terms whether the cost-benefit ratios could vary from one infrastructure project to another I would have to say, yes, that is likely to be the case.

Senator ABETZ—We have got schools that are brand new, just opened, with all the facilities and, guess what, they are going to get an extra room whether they need it or not. There are schools that once housed 600 students and now have only 200 students and are in need of maintenance. But no maintenance; they are just going to get a new separate building on the same school building allotment, which would suggest that the productivity value and the multiplier effect of those sorts of proposals would be marginal at best.

Senator Sherry—That is your observation and statement.

Senator ABETZ—It is.

Senator Sherry—I do not know if there is a question there.

Senator ABETZ—I think it was agreed by Mr Banks that the productivity of these various projects would vary, and I have just given two examples of where the productivity would be marginal.

Senator Sherry—That is your claim.

Senator ABETZ—Of course it is, and I think logic would dictate that. There is a favourite project of mine of which the Productivity Commission has been somewhat critical, and that is the Commercial Ready program. I forget when that was. I think it was about 12 months or so ago that we may have discussed the Commercial Ready program here. As a Productivity Commission you do see the importance of having government support for R&D?

Mr Banks—Yes. In fact, I recall an interesting conversation we had along these lines before. That is true.

Senator ABETZ—You would not see that necessarily as business welfare?

Mr Banks—No. In fact, in the report on trade and assistance, to which reference was made earlier, we explicitly state upfront that the fact that we are documenting the amount of money that goes to industry in different ways does not mean that that is a social cost—all of that net

social cost. Research and development, with the spillovers and broader benefits that that generates, is obviously an area where there is a strong case for public support.

Senator ABETZ—As to the \$6.2 billion car plan, do you know what I am referring to? The name escapes me at the moment.

Senator Sherry—The Carr car plan?

Senator ABETZ—Yes, that is right.

Senator Sherry—Senator Carr's car plan.

Senator ABETZ—That is right—\$6.2 billion. I understand the Productivity Commission in the past has undertaken work in relation to assistance to the auto sector; is that correct?

Mr Banks—Yes. In fact, having looked at some of the transcripts from earlier presentations here I note one of those Senate estimates was just after we had done some modelling work that fed into the Bracks review that in turn informed the government's decision in that area.

Senator ABETZ—You did some work for the Bracks review?

Mr Banks—We were commissioned by the Treasurer to do some modelling work that would help inform the Bracks review and indeed others—the government itself ultimately—making a decision in this area.

Senator ABETZ—There were some people calling on the Productivity Commission to undertake that review, but my voice was not heeded. Just so that I understand it, the Productivity Commission cannot go out doing projects that it thinks are important. It operates on the request of the Treasurer to look at a particular issue; is that right?

Mr Banks—The constitution of the commission is the same as it was under the previous government. Clearly, policy relevant work deserves to be commissioned formally by the government, which in turn responds to the commission's report. As I said, we do some supporting research, but typically that is research that can provide inputs to the commissioned studies that are our main bread and butter.

Senator ABETZ—What is it about the auto sector that you refer to as the lure of the automobile in a speech titled 'Interstate bidding wars: calling a truce', which, if I might say, as with your other contributions is very interesting and stimulating? Is it a male thing, do you think—you know, boys and cars?

Mr Banks—I would not just leave it at cars—

Senator Sherry—I think it is territory.

Mr Banks—That is a very old speech. I am impressed that you have gone back so far. This country, as everyone here knows, has a long history of assistance to the automotive sector, as do other countries. There is a range of reasons for that. I think the important thing is that over time the nature of that assistance and its level has changed in ways that have enhanced the productivity of the sector.

Senator ABETZ—I am sorry?

Mr Banks—The nature of that assistance and its levels have changed in a way that has probably enhanced the productivity of that sector.

Senator ABETZ—But value for dollar? That has enhanced productivity, but could it have been enhanced in cheaper ways?

Mr Banks—We are on record as saying that there was a case for further reducing tariffs and the government accepted that in its decision.

Senator ABETZ—I think I quoted to Dr Henry part of a speech that he made in relation to that, that whenever tariffs go down the monetary support seems to go up, and we reflected on that. It is a vexed area. In my not so new role now as shadow minister for industry I am trying to absorb as much information as I can from learned commentaries in these areas. Have you done any work in the area of—you might imagine I am being lobbied on this—government funding for what is seen as the new area of biotechnology and information technology. I hasten to add that I do not necessarily ascribe to this view, but some say the automotive sector was a sunrise industry, let us say, 100 years ago, whereas now biotech is and we should be funding biotech with government support—the sorts of arrangements that may have existed in the past. If you are free to comment on that I would be interested in your perspective.

Mr Banks—I suppose I would comment in general terms. There is a range of areas where the markets will not deliver what is required. Those areas tend to be research intensive areas where there are failures in incentives for adequate research from a social perspective. We conducted a study into science and innovation—to which I think you were referring earlier—in which Dr Lattimore was involved a couple of years ago. He might like to comment.

Senator ABETZ—If he would like to comment, I would appreciate it.

Dr Lattimore—We did not identify particular areas that were particularly promising for government support. As indicated before, the view was that there are significant spillovers to everyone from high-technology, high-risk activities that provide information for other parties. That would include biotechnology and IT, but also a whole range of other areas. In particular areas where there is a national priority, of course, biotechnology might have a particular application, but that would be led by that national priority rather than the technology itself.

Senator ABETZ—If I were to ask you to go back about 25 years, would you have been supportive of government assistance to a company such as Cochlear? That is a hypothetical, but do you see the point I am trying to make? With some of these activities it is difficult to get fully private funding, so a bit of government investment not only adds to the general body of knowledge but sometimes has huge commercial spin-offs as well.

Dr Lattimore—We have accepted that in the past. The challenge for R&D grants or any mechanism for funding R&D in the business sector is to get R&D that was not going to happen otherwise. You want to be fairly sure that they were not going to fund it themselves or through third parties anyway, and that it is likely that the knowledge they generate will be useful to other parties, not just appropriable by the firm. The higher the risk, the more unusual the research, the more likely you would accept a grant being given to a firm—subject to the likelihood that it is going to be beneficial.

Senator ABETZ—Can you tell me about the status of the Indigenous report. I think you mentioned it in your opening statement, but could you please flesh that out a bit.

Mr Banks—There are two streams of work that relate to Indigenous disadvantage. One is the Blue Book, where we look at the efficiency and effectiveness of government service provision. As I said earlier, we produce a compendium of data that relates to government services to Indigenous people. But the other report we do for COAG, the *Overcoming Indigenous disadvantage* report, has its origin in a COAG meeting in 2002. That report provides indicators in a strategic framework that relates to the outcomes for Indigenous people in a lot of areas that are particularly important and are now attuned to the Closing the Gaps objectives that COAG is committed to. The rationale for that is to provide baseline data initially so that we can tell as a society whether things are getting better or not. One of the problems that has bedevilled Indigenous policy is that we have not had the data to really understand what policies are working and, as I said earlier, what expenditure is occurring and where, and whether things are getting better over time. Finally, I think we are in a position where we can start to understand that in more detail. That is what that report is trying to do. It is effectively a report to all governments.

Senator ABETZ—How long has that been underway?

Mr Banks—That latter report, *Overcoming Indigenous disadvantage*, has been going since 2003. The fourth edition will come out in July.

Senator ABETZ—In one of your speeches you had the example of the tragic circumstance in Alice Springs of young Aboriginal children deliberately taking up petrol sniffing so that they would get the benefits the others did, which was an unforeseen consequence of undoubtedly very compassionate and thought-out policy in Canberra that had terrible consequences on the ground. I think you made the point in your speech that, had there been consultation with some of the Aboriginal elders in that community, those sorts of consequences may have been foreseen. All I would say to you and to whomever else is working on it is: all strength to you in assisting governments—Liberal or Labor, state and federal. The Indigenous issue is one that all sides of politics have tried to grapple with. We get all sorts of wonderful new theories, ideas and mantras and try to implement them, and nearly all of them have had unintended and difficult consequences. I am sure that any assistance you can give to governments of any persuasion will be most appreciated. All the very best with that.

Mr Wonder—You might be interested in table 313 in our portfolio budget statement, which is on Australian government Indigenous expenditure. In particular it identifies what the Productivity Commission is spending in that area. There has been a significantly increased response to the budget initiative that Mr Banks referred to earlier. The commission in 2009-10 will spend over \$2 million of its budget in relation to Indigenous related activity.

Senator ABETZ—It is one of those things that I think at the time people may have questioned: why would you get the Productivity Commission to look into these things? But good intentions ain't necessarily good policy. Having a very rigorous analysis of what is happening on the ground and the consequences is very helpful. Can I finish on one last issue. It was some years ago now that you talked critically—if that is an incorrect descriptor tell me

so—or commented about the use of multipliers in analysis of projects. I think it would be fair to say that it was not only the use of multipliers but also the misuse of multipliers. Can you tell us something about the ‘magic’ of using the multiplier? How rigorous is it? How beneficial is it? It gets bandied around a lot. We are told about stimulus packages and putting pink batts in people’s roofs and all sorts of things, and everybody seems to have their own multiplier effect. Would you like to comment generally on that aspect of what the Productivity Commission might consider?

Mr Banks—I guess our work going back a long way has tried to get in behind multipliers to look at where resources are coming from and so on. But of course the multiplier arithmetic depends upon the degree to which an economy is capacity constrained or not. Obviously an initiative that might be in a region that has very high unemployment may have quite different effects to one that is in a region where the labour market is quite stretched. I would just make that general observation.

Senator ABETZ—As I understand it, part of your thesis was that, if you have government support for, let us say, a major building project, it may draw personnel and labour force out of where they were in the private sector, thus increasing the cost of labour for everybody else in the sector. So whilst that is a stimulus and creates wealth within the community, it is also a cost to the community—a bit like the mining boom was in Western Australia. Diesel mechanics who used to work for the Metropolitan Transport Trust over there, or its equivalent, all of a sudden had to be paid big dollars to keep them from going up north, and government projects can potentially have that impact as well. Is that your thesis?

Mr Banks—There is a range of examples where we have seen those diversions that have occurred. As I said, it really does depend on the state of the labour market to some extent. The modelling that the commission has been involved in, the so-called economy-wide modelling or general equilibrium modelling, is explicitly designed and has been used over many years to get more of an acquittal in the sense of the costs and benefits of such initiatives. In an economy everything is joined up to everything else. It is often very hard to make a judgment based on a particular initiative unless you know how that it relates to the wider labour market or the wider economy. Again, I am speaking in general terms, but that is the way it is.

Senator ABETZ—For example, if there is a fair bit of building activity occurring in the residential area and there are school projects in combination with that, that might put extra pressure on the price of houses. That might be seen as potentially a downside, whereas, if a government were to invest its money in widening a road or redoing a port, that might add to the country’s capacity to export more quickly, because we would not have bottlenecks with our coal exports and so on, and there would potentially be a substantial multiplier effect. Are they two examples that make the points of differentiation?

Mr Banks—I would not get into the detail to that extent.

Senator ABETZ—Very wise.

Mr Banks—I would just make the general observation I have made. Again, I am not quite sure what reference you are making to an earlier speech because everything I have said is on the public record. There were references made earlier to an inquiry we did into the gambling industry. I recall that in a report we did 10 years ago we looked at the gambling industry’s

claim that the deregulation of gambling had been very good for jobs and very good for the economy. The work we did at that time showed that, over the longer term, the deregulation had not really done anything for jobs at all, simply because over time it had diverted labour from other industries, including the hospitality and retail industries, into the gambling sector. Again, apart from the conditions of the labour market and so on at the time you are looking at it, it depends on the time frame over which you are considering some of these policy initiatives.

Senator ABETZ—I have it right in front of me. At the bottom of page 7 of your speech entitled ‘Interstate bidding wars: calling a truce’ you say:

This will mean either that the wage rates of such employees increase, raising the costs of other firms within the local economy, or that some other potential projects will be stymied.

It was under the subheading ‘Jobs Creation?’. I just thought I would explore that with you. Thank you very much. As always, it was very interesting and I am always the beneficiary when I have had discourse with the Productivity Commission at these hearings.

Senator FISHER—I have questions about water restrictions and, in particular, domestic restrictions. I note your report in March last year about the cost of water restrictions. Your report addressed the hidden costs of water restrictions—for example, the costs of dying gardens, replacement equipment, replacement fauna, the impact on buildings—such as cracking in an Adelaide backyard in my South Australian electorate—and the impact on pipes and infrastructure. Do you have any plans to update that work? We have now had at least another 12 months of water restrictions across the nation as a tool to manage water use, particularly in Adelaide. It is arguable that there are further hidden costs to be felt now as our trees start to feel the fact that they have been starved of water. There is a potential for trees to fall over and, at the very least, hurt people in ways that the community has not experienced before. Do you have any plans to review and update your work?

Mr Banks—That study was undertaken as a discussion paper to raise issues that we thought were quite important in relation to the urban water sector, because there was a lot of work going on in relation to rural water but not so much in relation to urban water. The extent of the restrictions and so on meant that that was obviously an important policy area. Quite a lot has happened since then in different jurisdictions, but the issue remains important. We are not proposing to take that particular study much further. What we have been doing, and it is indicated on our website, is some modelling of urban water systems to try to understand how they operate and how different policy instruments could impact on the efficiency of those systems.

Senator FISHER—As part of that, do you have a view about the effectiveness of water restrictions as a management tool? There has been evidence given to other Senate committees from the likes of Ken Matthews, the boss of the National Water Commission, that water restrictions are a blunt tool and that, over time, communities experience what he called ‘reform fatigue’ and there is a hardening of demand for water. Do you have a view in that respect, and are you able to investigate that aspect as you have done with part of the work you have just referred to?

Mr Banks—That earlier study talked about different instruments and about quotas and water restrictions being quite blunt instruments. In a sense, restrictions like that are equivalent to a price that you might apply; it is just that the price is not revealed. It has costs.

Senator FISHER—Is a transparent price not better?

Mr Banks—The whole area is a vexed issue of optimal urban water policy and management. We do not observe any country in the world that would have a free market in urban water, just because water is so important to people. The point we were making was that you cannot control the amount of water that comes out of the sky, but you can control how that is managed, allocated and so on. Indeed, you can influence the incentives for investment in water storage. All of those things are obviously very important. We did not have answers. We had questions. We did a bit of analysis to indicate that it was worth doing more work in that area.

To come back to your original question, we are proceeding to do some modelling work that we think could help governments understand different policy approaches and their pay-off s, but the bigger question of taking that earlier work forward in relation to looking at different reform options and so on is not something we would initiate ourselves. That may well be an inquiry that the government at some point in the future will consider.

Senator FISHER—I take those points. Are you able to factor into the work that you are already doing the question about the cause and effect of water restrictions in the sense that it seems to be accepted lore that if water consumption reduces after the imposition of water restrictions it is because of the imposition of water restrictions—without any testing of that theory. Are you able to test the theory that water restrictions actually have the effect of reducing consumption?

Mr Banks—With these different policy instruments and their relative merits, it depends on how important it is to achieve a particular target. The merit of water restrictions is that you establish a target that relates to the supply and you enforce that by law. If people obey the law then you have met the relevant target.

Senator FISHER—There is merit if, indeed, those restrictions achieve that target rather than something else; for example, consumer education with people becoming water wise and wanting to be water wise, irrespective of what your organisation has already pointed out are cost-destructive, cost-causing or restrictions that impose hidden costs.

Mr Banks—Yes, that is true. People do want to do the right thing. In the area of Canberra where I live you do not see any green nature strips anymore. It has gone from being a badge of pride to a badge of shame if anybody has one. People's sentiments change and so on. I guess the big question just comes back to how important this issue is. Some of the work that we did suggests that there could be billions of dollars of national income or GDP at stake in getting this right. I think it is worth doing some work to advance that, just in the way that the rural water policy agenda has been a very important one for Australia. We are mainly an urbanised society. Seventy per cent of water gets used in rural areas, with the balance of it in urban areas. There are a whole lot of questions about how we make best use of that resource.

Senator FISHER—Indeed.

Mr Banks—Watch that space.

Senator FISHER—Thank you.

CHAIR—Senator Cameron.

Senator CAMERON—This is a role reversal. I would like to ask you about a few things. In relation to the Richard Snape lecture series—let me say that I do not do this with any criticism of the format you have set up or the recognition of Richard Snape and his contribution to Australia—could you advise me how much the Productivity Commission has spent on the Richard Snape lecture series? I think it started in 2003. You can take it on notice.

Mr Banks—I will just comment on that. We certainly will come back with the detail of that. I could say that it has been quite a cost-effective lecture series.

Senator CAMERON—I would expect nothing else from the Productivity Commission.

Mr Banks—Our first lecturer, Professor Max Gordon, had come back to Australia from the United States. He was happy to give the lecture for nothing. In other cases we have paid travel costs, but everyone who has been a lecturer has been happy to provide the lecture for no fee. We will get back to you with the detail on that.

Senator CAMERON—That is good. I have a list here of your lecturers over that period. How do you determine who the lecturer will be?

Mr Banks—We publish each of the lectures. In the foreword to that I indicate the criteria that we have used. Typically we have looked for people who have international standing, who have addressed global economic issues, and fortuitously so far there have been people available. Mr Snape, himself, was well known in those circles, so people who have known or been colleagues of his come to us. I am sure that you would agree that the standing of the lecturers has been very high. We have been trying to get a range of people involved from different countries and cultures so that they are not all necessarily people from the United States or from Australia.

Senator CAMERON—You have done countries and cultures. What about different points of view, such as challenging the orthodoxy?

Mr Banks—We are open to suggestions.

Senator CAMERON—I am not suggesting anything. I am worried about the Productivity Commission in terms of the orthodoxy that drives a lot of your analysis and I am wondering if you may get a bit stale. Why do you not use this Richard Snape lecture series to try to get some challenging views to the orthodoxy of the Productivity Commission?

Mr Banks—We could certainly do that. As I said, we seek people of international standing in the profession. We had a conference that you might be interested in a couple of years ago on behavioural economics, which is an example of the commission creating a forum to challenge the orthodoxy. That was quite a successful conference that we had. We produced a conference paper and we had people from overseas who were putting quite a different line to the normal line that economists would put, based on psychological analysis, laboratory work and so on on how people behave in certain circumstances. That proved to be a very good conference. We are not closed at all to providing opportunities for alternative points of view.

Senator CAMERON—What about recruiting Nobel laureates who would have different points of view from what would be the Productivity Commission's view on a range of issues?

Mr Banks—The problem with those sorts of people is that they are hard to get here and hard to get here with the cost-effective budget that we allocate to these things.

Senator CAMERON—Have we tried?

Mr Banks—In the case of those two gentlemen, no, we have not, but if we could find a way to encourage them to come they would be excellent candidates for that position.

Senator CAMERON—Have any of these lecture series that occurred between 2003 and 2008 informed the work of the Productivity Commission on an ongoing basis?

Mr Banks—We have a number of functions as an institution. One of them is just a broader public information role. The lectures that have been given have been published. We had one lecture from Martin Wolf, who writes for the *Financial Times*.

Senator CAMERON—I might have even come to that one myself if I had known it was on.

Mr Banks—Again, to make this a cost-effective venture we do not have unlimited numbers, but we are looking to what extent we would do it as an in-house thing, or whether we would open it up and have it as a major public lecture where anybody could come along. Again, we are open to that.

The point that I was going to make is that the one that Martin Wolf gave was actually prescient because he was talking about global imbalances and the possible implications for the global financial system 18 months or two years before the crisis actually happened. The debate that was engendered through that and the publication of that report was quite prescient, although it was not necessarily picked up and acted upon at the time.

Senator CAMERON—Obviously I looked at a number of your Productivity Commission reports when I was the national secretary of the MWU. I certainly do not agree with some of the outcomes that you proposed. Given the sort of orthodoxy that in my view drives the Productivity Commission, why should the government not think about having some competition there and using the market to get some advice, as distinct from the Productivity Commission?

Mr Banks—We welcome that. In fact, the government, as you know, gets a lot of advice from the market and consultants have provided many reports. Probably more so today than ever before we find that the work we do is contested, and that is all to the good. I guess the niche that we occupy is one of independence and always taking the big picture. You might differ with us as to some of the methodologies we use or the perspectives we bring to bear.

Senator CAMERON—I am not looking at just the methodologies but maybe some of your conclusions as well.

Mr Banks—Again, as you well know from the past, those conclusions are floated in preliminary form in draft reports, and anybody in the community can come along and debate those with us. We learn from that. Our final reports often differ somewhat from our draft reports.

Senator CAMERON—Do you want to take that on notice and tell me where you have changed? I am only joking! This is about the power of arguments. What arguments have you heard that might change some of the orthodoxy of the Productivity Commission arising from the global financial crisis? Have you learned any lessons from that or is everything as it was before the financial crisis?

Mr Banks—I guess it should be said that we mainly do our thinking in relation to the tasks that we have been asked to do and the circumstances that apply to those. The issues that might arise in a gambling inquiry, one into consumer policy or one looking at the charitable organisations sector would be different ones than if we are looking at infrastructure. We are open to changes and developments in thinking which typically get brought to bear in those particular inquiries that we are doing because of the people who are involved. As you would remember, we have quite wide participation in those inquiries.

Thinking that relates to different areas, no matter how new, is thinking that we take on board. For example, many years ago the old Industry Commission did a report on research and development and we brought Paul Romer to Australia. He was one of the stellar performers from the USA who was actually willing to come at a modest price. He talked about the new growth theory, which was a very new thing at the time. My colleague, Dr Lattimore, was involved in the report on consumer policy, and behavioural economics was a feature of our thinking in how we would reshape consumer policy.

My answer to what I think is your implied question is that we are open to different ways of thinking about things, but the way in which we tend to do that tends to be through the tasks we are given, which these days range very widely compared to the earlier years of your organisation.

Dr Lattimore—Is it worth me talking about consumer credit? This report came out in April 2008, but, of course, it had a gestation which was rather longer than that. We recommended quite widespread changes to the way consumer credit should be regulated in Australia, in particular a more national approach. It also included the regulation of parts of the industry that had hitherto not been significantly regulated in the advice area for credit brokers and so on. That was ahead of the crisis, but clearly we did not take the view that any system of regulation in the market would go; we had in mind relatively stringent regulations in that area because of the interests of consumers. What we did there was, in a sense, take analysis to the issue of whether consumers would be better off or not under a particular regulatory arrangement. There was no assumption that the market necessarily would deliver the right outcome.

Senator Sherry—I might say on that particular report that it was a great inspiration to the government because we picked it up and we are implementing it.

Senator CAMERON—I am not criticising everything, just some things. Thank you for that. I look forward to your next appearance. I will be better prepared for that.

Mr Banks—I look forward to that, too. Thank you.

CHAIR—I thank the Productivity Commission for appearing. The committee will resume after the dinner break with the Australian Securities and Investment Commission.

Proceedings suspended from 6.20 pm to 7.31 pm
Australian Securities and Investments Commission

CHAIR—Do you have an opening statement you would like to make?

Mr D'Aloisio—I would just like to introduce Michael Dwyer, one of our new commissioners that the committee has not met as yet. Mr Dwyer joined us late last year. He has extensive experience as a chartered accountant and an insolvency practitioner, including during a term as national president of the Insolvency Practitioner's Association of Australia. He has held a number of positions in business and accounting and brings tremendous skills to ASIC.

I would like to also note just briefly that our deputy chairman, Jeremy Cooper, will finish his term in July. He has been appointed to head the important superannuation review and, as such, will be leaving ASIC. Jeremy has over the past five years made an outstanding contribution to ASIC over a wide range of areas, most recently with retail investors, and it has been an outstanding public service to Australia. We are pleased that he is continuing with his public service in his new role.

I did want to make two or three additional points with the committee just to pick up in between the time we last met which was in late February to now. Since we last met the stock market has fared better. It reached its lowest point in March but in the period between 6 March and 27 May it has recovered some 21 per cent. That, along with the more positive international developments for the financial markets, led us to lift the short selling ban on financial stocks, so that the market is now fully reopened in relation to short selling. But we have said to the market that if we feel that we see dangers of systemic issues we would not hesitate to reinstate the ban.

My second point is that, while the stock market has fared better and seen some positive signs, the destruction of shareholder wealth and investor value has continued. To date our estimate is when we look at major company collapses, entities that have suffered significant market capitalisation losses and debenture issues that issuers have become insolvent, we think that sort of destruction is around \$73 billion. As the downturn in the economy continues that figure may well increase, particularly when you see the vulnerability of the real estate sector.

But just to give you some perspective on those collapses, the losses from the corporate collapses in the wake of 1987 were about \$20 billion, which at the time was about 5.4 per cent of GDP using 1989. The figure of \$73 billion which I have just referred to is about 6.2 per cent of 2008's GDP. Another perspective on those collapses and near collapses is that from November 2007 to April 2009 the Australian stock market lost something in the order of \$617 billion, equivalent to about 52.2 per cent of GDP, so that gives you a perspective about what has been going on in our market. Those numbers of course do not tell the whole story of the pain that goes with wealth destruction particularly for retail investors that we have seen in some of these collapses.

My third point is really around the managed investment schemes. I will be in your hands if you would like me to talk a little bit about those schemes or if we just take them in through the questions. As you know, the managed investment scheme sector, particularly the

agricultural sector, has had some difficulties so I am in your hands if you would like me to talk a little bit about that or whether we just leave that to questions.

CHAIR—I think it would be useful if you could just give us a brief summary.

Mr D'Aloisio—The MIS is really a generic term to describe a variety of structures for the creation and operation of collecting investment schemes or projects. Basically it covers everything that involves an investor acquiring something other than a security; that is, a share or a debenture or an interest in a prudentially regulated entity such as a bank deposit, a superannuation interest or a life interest. The sector includes things like managed funds; public unit trusts; ASX listed trusts; common funds; limited partnerships; investment pools and clubs; cash management trusts; property trusts; property syndicates; mortgage trusts; serviced strata schemes; agricultural schemes, including forestry, horticulture, viticulture; and alternative investment schemes such as horse racing syndicates, for example.

There are something in the order of 5,200 registered managed investment schemes in Australia. They are operated by 674 responsible entities. Statistics on total funds invested that are under management in these different types of MIS are not reliable but we estimate that it is around about \$350 billion. The registered MIS schemes can be listed or unlisted. We have got something in the order of 110 listed schemes. Mostly they are invested in property or infrastructure.

To move from there, there is the key regulatory regime for the managed investment schemes. MISs that are offered to retail investors need to be registered with ASIC. ASIC does not actually approve them. There is no merits assessment. The law does not prescribe or proscribe particular product features or characteristics. For example, there are no restrictions on permitted investments or borrowings, so long as the nature of the investment is disclosed in a PDS, a product disclosure statement. The operator of a registered MIS is called a responsible entity and it needs to hold a licence. The responsible entity and its officers are required by law to operate the scheme in the best interests of the members and need to comply with statutory duties such as the duty of care.

The law has a high level of self-regulation in it. It requires a responsible entity to come up with its own compliance plan for the scheme and to follow it. The adequacy of the plan and its compliance is reviewed by its board or, if the majority of the directors are not external, by a compliance committee and they are also subject to separate audit.

A managed investment scheme can only offer ongoing redemptions; that is, for members to redeem their investment of their units while it is liquid. If it becomes illiquid, or not liquid, it may, but is not required to, offer investors a right to withdraw funds but only from available cash and then on a pro rata basis for horizontal equity with the members.

The policy behind the managed investment schemes was something that was initially debated and my recollection is that when the Wallis inquiry came along it got wrapped up in the Wallis report. The basic philosophy or policy behind it is similar to a number of other areas of the Corporations Act; it is essentially to leave it to the market with oversight and market conduct supervision from ASIC.

ASIC's role in relation to managed investment schemes is we have the function of licensing the responsible entity. We have the function of registering the scheme, as I said

earlier, but we do not actually vet or approve it but the scheme does need to be registered with us. We monitor ongoing disclosure through the product disclosure statement, but again there is no requirement that the product disclosure statement actually be filed with ASIC. But we do as part of our work review those where we can.

We monitor conduct around the way that the registered entities operate. Our work also extends to ensuring that registration does occur. For example, we have over a number of years prosecuted and moved into areas of illegal managed investment schemes, or managed investment schemes that did not comply with the law or with registration, and we have closed down hundreds of schemes over the last two or three years.

In short, the MIS schemes that are there vary widely. They are used in a number of areas. Essentially the business plans, the models, are determined by the directors and managers of those schemes and ASIC plays the role of licensing and supervision, as I have outlined. In the questions we can go further into aspects of that as senators wish.

My final point, moving away from managed investment schemes, is in the area of corporate governance. Since we last met the Supreme Court of New South Wales has handed down the James Hardy decision, which focuses on the obligations of directors of public companies to keep the market properly informed. The decision is the first part of that court proceeding. The matter returns to the court for the assessment of penalties and other submissions that defenders may wish to make in July. That completes what I wanted to say in opening.

Senator Sherry—First, I want to acknowledge Mr Michael Dwyer who is the new commissioner, as Chairman D'Aloisio has mentioned. He is in for a unique experience. Secondly, I do want to place on record as the minister my thanks to Jeremy Cooper, the retiring deputy chair of ASIC. He has been deputy chair now for five years and I am particularly pleased, given his level of expertise, knowledge, work, diligence and enthusiasm as illustrated here over the last five years, that he has taken the position to chair the panel inquiring into the operation of the superannuation system. Thirdly, as I think some committee members certainly would be aware, the issue of the circumstances, regulatory oversight and distribution of a range of managed investment schemes—and the latest two, of course, relate to Timbercorp and Great Southern—is also under consideration by the Joint Parliamentary Committee on Corporations and Financial Services. I have welcomed that. They are the three points I wanted to make in opening.

Senator RONALDSON—I add my voice to those who are thanking Mr Cooper very much for his service. Having been invited by the minister to do so, I think I might address my questions to you, Mr Dwyer. I am being most unfair.

Senator Sherry—I do not think I invited you to do it in the first round—

Senator RONALDSON—I do not know whether or not you have it available, but can you provide me with a table of ASIC fees and charges, including fee-for-service charges, filing charges and annual or periodical fees?

Mr D'Aloisio—Yes, we can. I should mention of course that in a strict sense they are fees that are levied by government that ASIC collects, so we are simply a collection agent. We do

not actually set those fees and we certainly do not specifically tie them to fee for service and so on. But we can provide you with the full schedule of that.

Senator RONALDSON—Can you break down the fee revenue by business size; is that possible?

Mr D'Aloisio—The revenues are collected for specific functions, if you like, so there are filing fees. For example, a significant percentage of those fees would—from memory—come from the registration of companies. They would come from filing certain forms that companies are required to lodge each year. For example, the annual return would have a fee. We can list those and give you a break-up of how the percentage of fees relate to those. We can also then give you separately the functions that ASIC performs and what its expenditure is, but the two exercises are not interrelated. They are two separate exercises.

Senator RONALDSON—Can that be done by way of small, medium or large business as to the revenue of those—

Mr D'Aloisio—No. We could not just look at how—the way we are divided up it has not gone through a structure. We run the organisation with what we call stakeholder teams and deterrence teams and we have a real economy group. Then we have the shared services that support the organisation. We could provide a break-up around those businesses if you like.

Senator RONALDSON—That would be good. Could you provide me with the total revenue forecast for ASIC fees and charges for 2009-10, 2010-11, 2011-12 and 2012-13, please?

Mr D'Aloisio—That is an extra four years. We will do that and we will speak to Treasury, because I think Treasury may want to provide that information direct to you rather than through us, because, as I say, we are an agent for the government in collecting those fees. We will speak to Treasury and provide that.

CHAIR—The suggestion is that we deal with Storm first and then move on to other issues.

Senator IAN MACDONALD—I guess the first question might be just for a brief update on where ASIC is with the investigation into Storm?

Mr D'Aloisio—At the last meeting we had I think I outlined where we were and the nature of our inquiries. Subsequent to that I also outlined those to the parliamentary joint committee. In essence where we are is that our investigations are looking clearly at wrongdoing—that is, in the sense of breaches of the law—but we are also looking at the potential to recover compensation for the investors for breaches of the Corporations Act. We have outlined that our investigations in relation to compensation are broad, so that we are looking at all the players or participants. As I outlined previously, we are cooperating very well and very clearly with all parties but particularly with the investors themselves and the group that represents the investors.

In terms of timing, we cannot at the moment give you a date, an outcome, in a sense because these inquiries do take time. As you would understand these are careful investigations. We have set ourselves a milestone. We think that by the end of August we will be in a position to be able to update the market more clearly on where we are. That is not to say that we may be ready to commence or not commence any proceedings at that point but I

think we have certainly set that ourselves as an indicative timetable where we want to get to a particular point in these investigations and be able to update the market. We are very conscious of the fact that investors will want to know: is there compensation? Where is it likely to come from? What are the difficulties and that sort of thing? Clearly there may also be other wrongdoing that we might want to take proceedings on.

Senator IAN MACDONALD—Have you got a number of people full time on this or are they doing this amongst other duties?

Mr D'Aloisio—No. We have a dedicated Storm task force or team, or Storm financial team, and that has in effect probably two commissioners who are involved in the work of that task force. We have a senior executive leader that is heading the team. Then in terms of equivalence, depending on what stage they are at, there will be at least another 10 to 15 that will work pretty much full time and fully dedicated. Again, I can get more specific full-time equivalence for you. It has been handled in the way that we would ordinarily handle major investigations and major cases, and there have been a number of examples of those.

Senator IAN MACDONALD—Sorry, I have just been called to another committee so I might leave and Senator Williams might want to ask some of these things. Please do give us those on notice. But are you aware that a bank—and I will not indicate which bank—is trying to help people in these difficult circumstances when people are really very emotionally upset and perhaps in some cases unbalanced? Again, I will not say which bank, but a bank is talking about concessions subject to people agreeing to waive any legal rights they have. This of course will exacerbate with time as your investigations continue, as the people get more and more desperate and may clutch at any straws. I have had many reports of that. I do not have firsthand reports. I have not been sitting in the room, but are you aware of that?

Mr D'Aloisio—We are fully across that. We are aware of that and we are in discussions with that bank. We are conscious of the issues that you are raising in terms of the fairness of any sort of arrangement that could be entered into. But we need to be careful here, because if an investor genuinely wants to settle or do something in relation to a potential claim and has proper advice, then one has to respect the right of an investor to do that. But we are aware of the fact that we would want the investors to be able to make those sorts of decisions with full knowledge of whether there is a potential other action or other things that ASIC may or may not do. We are in discussions with that party.

Senator IAN MACDONALD—Thank you for that.

Senator WILLIAMS—One point that Senator Macdonald made was that if the bank comes to a settlement with a client who is in financial trouble for whatever reason, they will have to sign a secrecy clause. What is the name of the clause where you do not disclose anything?

Mr D'Aloisio—It is just a confidentiality clause.

Senator WILLIAMS—If that were the case and later on down the road if there were some class action or something would that exclude those people from being part of that class action if they had come to some sort of settlement with a confidentiality clause?

Mr D'Aloisio—If I may speak generally rather than on specifics, because, as I said, we are across that issue and we are in discussions with that bank. But I can speak generally. Generally speaking if a party enters into a settlement of a claim or compromises a claim that he or she may have had and that is legally entered into, not with coercion, proper advice et cetera, then you would have thought that would stand up, that subsequently that party could not reopen that issue. As far as the law is concerned that issue has been resolved and that document would prevail.

There is a difficulty for us as well, if I may mention, which is that if a party does not take an opportunity on a matter in the expectation or anticipation that ASIC may do something and then ASIC does not because the case is not there, there is an issue about the bird in the hand, so to speak. I think we are very conscious of that issue. We are conscious of the issue that you are referring to, that we would want parties that get involved in that to really know what they are getting into and why and that they have had proper advice. It is a sensitive issue. It is an issue that we would like to continue to work on and give you a report at a subsequent meeting. But we are very alive to the issue and the concerns that you are expressing.

Senator WILLIAMS—Last time we spoke with Minister Sherry here there was concern about people having to sell their houses or leave their houses. Do you know of any who have actually had to do that at this stage? I am not aware of it.

Mr D'Aloisio—I am not personally. I have not asked our team but we can do that. We are not aware of any at this point, but I will more specifically check that question.

Senator WILLIAMS—With ASIC and the dealings of Storm up until now, your report is due in August; isn't it?

Mr D'Aloisio—Our report on?

Senator WILLIAMS—On the Storm situation.

Mr D'Aloisio—What I have said is that indicatively we have set ourselves the end of August to be able to update the market on the types of actions we are looking at, whether we are likely to take proceedings and what they could be. We are clearly moving as fast as we can. As I said earlier, we have a sizeable team on the matter. We are working as fast as we can, but I think it needs to be understood that there are all sorts of issues of fairness for a lot of parties in these situations, and they just take time to unravel.

Senator WILLIAMS—The last time we were in estimates here I mentioned about Justice Greenwood's finding in December 2008 in the Federal Court in regard to a prima facie case that the CBA may have to answer regarding misleading and deceptive conduct. Are you aware of that situation?

Mr D'Aloisio—I recall it.

Senator WILLIAMS—Just off the top of my head the situation was that in December Storm had taken the Commonwealth Bank to court over misleading and deceptive conduct. They have filed an injunction I believe on all the assets and financial activities et cetera. In seeking that injunction, the way I saw it was that Justice Greenwood ruled that there was a prima facie case of misleading and deceptive conduct that had been carried out by the Commonwealth Bank and the issue was remanded to a court hearing for 9 January.

Mr D'Aloisio—I think that case was withdrawn. Of course—

Senator WILLIAMS—It was 8 December the Commonwealth Bank hit up Storm for \$10 million, which basically was the end of Storm and the end of the court case due the next day. That is the point I make.

Mr D'Aloisio—You can assume that we are fully looking into all those facts. As I said earlier, if we are looking at compensation we are clearly looking at all parties and all events in relation to this matter.

Senator WILLIAMS—That is virtually one of the issues that has now come to a sudden stop because of the actions on 8 January this year in relation to the CBA putting a letter of demand on Storm. I think it was for \$10 million in 24 hours. Does ASIC ever interfere with deed of company arrangements?

Mr D'Aloisio—As part of its supervisory role generally speaking ASIC would let deed of company arrangements—and this is where Mr Dwyer can help me with his broader experience—

Senator WILLIAMS—Could you just explain in 10 seconds what a deed of company arrangement is?

Mr Dwyer—Creditors have the ability, through what is called a voluntary administration process, after a period of 28 days to attend a second meeting of creditors where they have an option to either put a company into liquidation, enter into a deed of company arrangement or return the company to the directors. If a deed of company arrangement, a DOCA, is proposed, that DOCA will normally provide for the arrangement between the creditors, the directors and any other third parties that might be contributing funds to pay a dividend to creditors. That deed of company arrangement might provide for simply the realisation of the assets under the DOCA and payment to creditors pro rata from those assets. It might provide for additional contributions to be made to pay creditors. But the point of a DOCA is that if it does not go into liquidation, then the investigation process that a liquidator would normally go through is avoided.

Senator WILLIAMS—Is it normal practice that ASIC does not interfere in any way with DOCAs?

Mr Dwyer—No, our normal practice would be to monitor high-profile voluntary administrations where potentially investors or creditors have either complained or are concerned about the potential of a DOCA. If a DOCA is proposed, if it is passed by creditors at the meeting and if there were any reason why creditors are concerned about the voting process or the terms of the DOCA that may be detrimental to them, they may ask ASIC to look at that DOCA. We would look at it. If it were a commercial decision from the creditors and the creditors decided that it was in their interests, then we would not interfere so long as the process had taken place and there were no irregularities around the process.

Senator WILLIAMS—Did you interfere with the DOCA in relation to Storm?

Mr D'Aloisio—Yes.

Senator WILLIAMS—Why?

Mr D'Aloisio—From the DOCA that was proposed and the way that it was unfolding, leading to the vote by creditors, and from the statements being made around the DOCA at the time and that had been put on websites, we took the view that creditors, in a nutshell, were not going to be in a position to make a full and proper assessment of the proposal in that DOCA and we used our power to ask the court in Brisbane to put Storm Financial into liquidation/winding up. The matter was contested. The court took the view that it was in the best interests in that case to wind up Storm and a winding up order was made.

Senator WILLIAMS—Have you heard anything about the CBA forcing or pressuring ex-Storm clients into cashing in their superannuation to pay their debts to the CBA? Have you heard about those sorts of activities?

Mr D'Aloisio—I have not personally and that has not been reported to me by the team, but I will look into it.

Senator WILLIAMS—I have been given some information. The person who gave us that information said that the CBA has been forcing and pressuring ex-Storm clients into cashing in their superannuation to pay their debts to the CBA. This person has guaranteed to give me the names and details of someone in this situation. I find that a little alarming in the circumstances.

Mr D'Aloisio—If we can get details of that we will look at that and see if there is any wrongdoing or whether, in fact, it may be that there are other facts involved.

Senator WILLIAMS—I can get you those details.

Mr D'Aloisio—I do not want to prejudge the issue, but it would certainly be something that we would look at as part of this very carefully.

Senator WILLIAMS—Also on that issue, I have been guaranteed by my informant that names and details can be provided of that situation. What concerns me most of all is that many of these people are elderly and, as you are well aware, past their days of working and heading towards the twilight of their lives. They are under a tremendous amount of financial stress. That is my greatest concern in all of this, because I have been there and done that.

Mr D'Aloisio—We are concerned with that. In terms of our own track record, we have taken a similar position for Westpoint and Opes Prime investors and we have been working very hard to recover compensation for them because we understand, as you do, that there are retirees involved, people who have reached the end of their working life, and these are very difficult circumstances for them.

Senator WILLIAMS—I will see if you agree with me on this. One thing I found amazing when talking to one Storm client was that when the bank made his margin call and sold up the shares he was at 143 per cent LVR. I keep asking myself why they were ever let to go that far, past the point of no return.

Senator Sherry—We have discussed this before and I have run through the changes. We have released draft legislation to regulate margin lending as a product. One of the issues of great concern, which is addressed in that draft legislation, is the LVR ratio, particularly the security of using a person's home and so on. I will not go through those issues now because

we have dealt with them before, but that is an issue that is dealt with in what is a product, at the moment, that is not regulated or supervised and will be as a consequence.

Senator WILLIAMS—No doubt we will find out a lot in the inquiry.

Senator ABETZ—At the last estimates you agreed to go away and have a look at the activities of Mr Garrett. You have reported back to the committee saying that there was nothing for you to pursue in relation to that. I accept that. However, I would be interested to know, in your examination of the matter, whether it was revealed to you with whom Mr Garrett had spoken?

Mr D'Aloisio—You can assume, in conducting our inquiries, we would look very carefully at those sorts of matters. I do not think it is proper for me to go into the specifics of that. We have looked at it. We have made our inquiries. We have given you a report. Hopefully that should deal with it. In terms of our functions, the way we get information, confidentiality and so on, I do not feel it is proper for me to answer that.

Senator ABETZ—Would it be fair to assume that in your normal course of examination of a matter such as this you would want to satisfy yourself as to everybody with whom the person, in this case Minister Garrett, would have spoken and the potential that may have had in relation to the regulatory framework?

Mr D'Aloisio—I think that would be a fair assumption.

Senator ABETZ—I can accept what you say. I will personally conclude from that—and I do not expect you to comment—you in fact did find out everybody that Mr Garrett had spoken to on 5 January this year. I note for the record that he still refuses to answer, on two occasions now, in written questions on notice and also at Senate estimates, but at least he has told somebody, by the sound of it.

Mr D'Aloisio—I am not commenting on that.

Senator ABETZ—I did not expect you to comment.

Mr D'Aloisio—Thank you.

Senator ABETZ—In relation to another matter generally, undoubtedly like all bodies you do not have sufficient resources? You could always do more with more resources? It was thus under the Howard government and it is still thus under the Rudd government, I am sure.

Senator Sherry—There was extra money allocated in the budget.

Senator PRATT—Yes. I have some questions about that.

Senator ABETZ—That was more of a rhetorical comment. I want to know how seriously ASIC takes complaints that come from, let us say, company structures that are run by a voluntary board?

Mr D'Aloisio—Do you mean not-for-profits?

Senator ABETZ—Yes. Let us get to it. In the aged care sector, for example, if an allegation is made that a director has, without agreement of other board members, signed up his brother's building company to undertake work would that be a matter worthy of investigation?

Mr D'Aloisio—Certainly if we can get details of that then we will have a look at it for you. Just to explain how our complaints area works, we have what we call a very significant complaints section. At the moment we are looking at somewhere in the order of 15,000 to 20,000 complaints a year that would come into ASIC via our call centres in different ways in the organisation. We have teams that assess all of those and they get culled through. If they are matters that involve potential breaches of the law they may well be referred to deterrence teams that act on them. Generally speaking, a number of those complaints might be addressed to me that I will reply to personally after the investigation and so on in the organisation. We take complaints and complaints handling as very much a core business of ASIC. If the matter is one that shows on the face of it, as this may do, that there is a breach of director's duties, there are conflicts of interest, related party transactions and that form of behaviour then we would look at that. It is not determined by scale as in big end, small end. It is determined by the fact that you have people in the community who have concerns, and we would look at that. It is fair to say that a significant number of that 15,000 to 20,000 that I am talking about are handled over the phone or they do not go anywhere, but we can give the committee statistics—I think we publish some in our annual report—on just how those 15,000 to 20,000 get culled. Some of them turn out to be quite serious indeed. Some of those complaints for us are so important they actually lead to major cases and major investigations, simply because you have seen them, if you like, as a smoking gun. Particularly if you get a group of complaints around a particular entity or group that becomes a smoking gun for you to really get your investigation teams in and have a good look.

Senator ABETZ—Thank you for that. I welcome that answer and that reassurance. I have a specific case in mind that I will not name. As I understand it, a complaint was made requesting that the matter be investigated, not by telephone, but in fact in writing, and a response was provided saying, 'What you have written does not disclose that we could run a successful prosecution and therefore we won't be pursuing it.' Of course, the volunteer directors who made the complaint about the other director and what had happened do not have the resources, the investigative minds or training and were somewhat astounded to receive a response to say, 'Interesting, but your letter on the face of it does not disclose that we can prosecute somebody and therefore case shut', rather than saying as you just did: 'On the face of it this does excite some interest. We will investigate it.' It was just dead batted straight back.

Mr D'Aloisio—I am happy to look at it again, if you could get it directed to me. That is not to suggest that is the only way we would re-examine cases. You have to look at the facts and you have to look at the particular file. It may be in the way it was originally communicated it may not have disclosed sufficient information for the staff member at ASIC that looked at it to put further resources in it. The response may have been aimed at eliciting a further response back with more information. I do not know. I am happy to look at it again.

Senator ABETZ—Having seen the correspondence, it did not create that impression. I understand a director has written again to ASIC and I might suggest to them that they make further contact with you. On the face of it, and having some knowledge of the organisation, I do think it is a matter that is potentially serious. I will not make a value judgement in relation to another matter that I have asked you to investigate, but I think this may be a worthy matter.

I will leave it at that and suggest that they make further contact. I thank the committee for its indulgence.

Senator Sherry—Senator Abetz referred to the budget, and I will be very brief. This year's budget allocated \$81.9 million additional funding over four years. That was in addition to the \$30 million provided to ASIC in the mid-year economic and fiscal outlook. Along with that there was \$66.7 million in additional support in 2008-09 for ASIC to perform its additional responsibilities into the national consumer credit regulation.

Senator ABETZ—You will find that will not be enough. It is never enough, is it, Mr D'Aloisio?

Mr D'Aloisio—I will leave that as a matter between you and Senator Sherry.

Senator ABETZ—All the best with your activities.

Mr D'Aloisio—Thank you.

Senator PRATT—I would like to ask about the budget and why it had been increased.

CHAIR—You were pre-empted by our overly efficient minister. Senator Bushby.

Senator BUSHBY—I have a question.

Senator PRATT—I did have some other questions, but on a different topic.

Senator BUSHBY—I do not mind if other people have questions.

CHAIR—Senator Williams, would you like to go back to Storm?

Senator WILLIAMS—No, I have more things for ASIC.

Senator Sherry—If there are any other questions on Storm could we deal with them now and then move on to other things?

Senator HEFFERNAN—I have a few quick questions.

CHAIR—On Storm?

Senator HEFFERNAN—Great Southern.

CHAIR—Go ahead.

Senator HEFFERNAN—I wrote to Mr Lucy in April 2007 raising some concerns about the maturing 1994-95 blue gum investments and the injection of external products and/or funds to enable these investments to record a profit.

Senator Sherry—Can you speak up a little bit? I am unusually having trouble hearing you.

Senator HEFFERNAN—I wrote a letter in April 2007, which was quoting the bleeding obvious—that there was something wrong. There is certainly something wrong with the way the forests of 1994 and 1995 were harvested and then sold internally. I am not going to labour this point, but you wrote back and advised: 'Investors were encouraged to roll over to new investments with the offer of a discount. As the circumstances surrounding the returns offered to 1994 and 1995 investors have been disclosed, it appears that the investors have the necessary information to be able to make informed decisions about whether to make further investments. Our preliminary view is, therefore, that the disclosure given by Great Southern

Plantations has been adequate to inform investors of the status of their investments.’ In light of recent events, do you think that is a reasonable statement?

Mr D’Aloisio—That response, I am sure, was in good faith and based on the material then available to ASIC. I think the reply was made in 2007. We are all aware that there has been a lot of water under the bridge since then, in particular in relation to these business models. We have to really work through whether these are just flawed business models or whether it is to do with leverage and asset values declining or liquidity.

Senator HEFFERNAN—It was never determined at the time, given you were satisfied with the disclosure, whether there was a Ponzi-type arrangement in the top-up or just an outside dividend to encourage the look of the investment for further investors? Did you have a look at that at the time?

Mr D’Aloisio—I cannot speak about at the time. We have turned our mind to Ponzi-type schemes in this area and we feel that is not really a proper description. These are quite genuine business models that people believed in and they do, like a number of things, depend on additional investment money coming in for part of the liquidity. Clearly, when you have the circumstances that we have had and the concerns that you are seeing with these business models, some of them have failed.

Senator HEFFERNAN—I guess it is interesting to read the balance sheet, all the interest free loans and the generosity of the share deals.

Mr D’Aloisio—As I said earlier, in our role as the oversight body in a sense we can, in the way that the legislation and the policy behind it is, let the market sort these out, and we can come in on issues such as disclosure and licensing and whether there is wrongdoing in related party transactions and so on. Our work in these schemes as they unfold is still at an early stage.

Senator HEFFERNAN—I can recall asking the CEO in Broome one day what the strength was of all the interest free loans that appeared in there. It was millions of dollars. His answer was, ‘We’re competing with Macquarie Bank for staff.’ I just want to draw your attention to the questions and answers that were provided to the investors, as opposed to the shareholders, in the Great Southern 95 project and the returns. The question that was asked on behalf of the investors was, ‘Why did the wood get sold to a related party, rather than being harvested, processed and sold on an FOB basis?’ That is a reasonable question. The answer stated, ‘The decision to sell the wood to GSEC, being a Great Southern entity, was primarily driven by the efficiencies this option provided, which benefited both the grower and Great Southern.’ Do you think that discloses much information to the investor? That was the answer.

Mr D’Aloisio—Not on the face of that.

Senator HEFFERNAN—Another question asked:

How was the price determined? Would I have received more if the wood hadn’t been sold in this way?

This is in 2007. Any wonder some of us were a bit worried. The answer stated:

The price was determined by the board of Great Southern Plantations having regard to a number of factors. As you would have been aware over the years, the 95 project, representing our second project, faced some issues.

It goes on to state:

In determining the amount to be paid to growers—

not in what the market was—

the internal company, GSEC, has taken account of these factors and is paying an amount that is higher than would have otherwise been the case given the specific issues faced by the project.

It is amazing what they got away with. Further:

Did GSEC acquire the wood due to the returns being lower than expected?

The answer states:

No. The decision to sell to GSEC was primarily driven by the administrative efficiency this option provided, as well as the timing of shipping and GST related issues.

And so it goes on. I note that as a consequence of all of that some people did resign. It is easy to be wise after the event. It stated:

As the circumstances surrounding the returns offered to 94 and 95 investors have been disclosed it appears that the investors have the necessary information to be able to make informed decisions about whether to make further investments.

I await the inquiry.

Senator Sherry—There are two broad issues. ASIC's examination of what has occurred, and obviously that is being conducted. There are actually three policy questions. One is the future regulation and supervision issues that arise from this, and that is before Mr Ripoll's committee. He has decisively moved to request—and the committee agreed—to do the special examination of the MIS in these two cases. Then, of course, there are the tax issues and the more broader community regional issues, which you may be considering in your committee. They are all important.

Senator HEFFERNAN—It should all work together. I would like to ask a question in relation to what I have been describing as bunnies for many years, going back to when Shane Murphy was in this place. They are the poor buggers that wanted the tax deduction in a hurry upfront, rushed to the accountant, who rushed to the financial planner and got the 10 per cent fee. Some of those people did not realise that there were follower fees for the life of the investment and ended up with a \$50,000 tax deduction and a \$240,000 debt when it matured. What is their obligation on that \$240,000 debt?

Mr D'Aloisio—We would have to look at the facts. It is pretty hard to advise generally in relation to an issue such as that. I think you used the word 'bunnies', but a lot of these investors did understand what they were doing and what the purpose of their investment was and traded off the longer term return against the shorter term return, coupled with tax deductions and so on. If you have borrowed a real amount of money on which you are claiming interest as a deduction for tax purposes then generally speaking in order to get that deduction you are liable to repay the principle, unless there is some sort of limited recourse arrangement against the interest you have acquired. Generally speaking, you would have to repay that debt.

Senator HEFFERNAN—To give a bit of hope to these people, because there is a lot of misery around, the Boundary Bend Timbercorp olive harvest is now on. It would be fair to say

that Korda is doing a pretty fair job trying to make good of something that is a mess. The fact is that a lot of those investors, as opposed to the shareholders and the promoters, will have paid for the harvest in their management fees upfront and they are now having to negotiate the sale of the olives on the tree to get cash flow to do the harvest. So, they have paid for the harvest twice. In those circumstances it would not be surprising to see a class action, would it?

Mr D'Aloisio—Again, yes, you could see that people feel they have rights and they might want to pursue them. The issue is going to be: what is left of the asset? Therefore, having myriad rights does not matter much.

Senator HEFFERNAN—Does that complicate what happens to the crop when it is harvested and what happens to that money? Will that be put into some trust until the law determines what becomes of it, having paid for the harvest?

Mr D'Aloisio—As to the obligations of the administrator or however it is being administered, clearly they would look very carefully at any proceeds and who the beneficiaries of that should be or who has the entitlement. They will determine that as part of the ongoing administration of that group. How it is held, whether it is put in the trust or not, is really more a formality. What really will be determined is: what are the rights, who has got these rights and how are they going to be satisfied?

Senator HEFFERNAN—That will be the responsibility of the administrator. Thank you.

Senator PRATT—I would like to ask about short selling. As I understand it, the International Organisation of Securities Commissions has a report with its preferred direction and standards. I would like to know how well our regulations align with those standards.

Mr D'Aloisio—The four principles that IOSCO has outlined in that report are quite consistent with the approach that we have in Australia and that the Australian government has taken on short selling. From memory, the first principle is in relation to naked short selling. While the IOSCO code has not banned it in the same way it has been banned in Australia, the effect of that statement by IOSCO is that naked short selling is not a desirable feature of the market. IOSCO has also commented on the importance of reporting and disclosure in relation to covered short sales, and how that is important to the market. It has not recommended what form of reporting and disclosure, such as gross reporting or net reporting, a particular jurisdiction should take. However, in terms of what we are doing with gross reporting, the government will be announcing its approach to reporting. It is our understanding that it certainly will be consistent with those principles. I think I can say that our regime is consistent with it, and in some respect only in the sense of we have a reporting regime in place and it is operating, whereas the IOSCO code stops short of actually recommending one. In that sense we are consistent with it and probably slightly ahead of it.

Senator PRATT—In a more general sense, how important is it to stay on top of international developments when looking at the way we regulate these kinds of things, not just short selling but a whole range of securities markets? I imagine in the current climate, with the way things have changed so quickly, that will be quite important.

Mr D'Aloisio—It is extremely important. ASIC itself has said that it would be a major priority, because of our capital markets in Australia being a net importer of capital, be

involved in the flow of funds and the national regulation affecting the flow of funds in and out of Australia to make Australia an attractive place for capital. We have had strong support from the previous government and this government for ASIC to be fully involved and to devote resources to working with IOSCO and international regulators. We are on the technical committee and executive committee of IOSCO. We are currently co-chairing the unregulated products taskforce in relation to securitisation and credit default swaps. We are on all of the standing committees of IOSCO looking at important regulatory issues that could ultimately impact, if government or other governments adopt them, the flow of capital.

At an international level I have been pleasantly surprised that ASIC has a very good reputation. Indeed, the fact that we are on the committees that I have just mentioned and the work that we are doing is an indicator of the respect that exists internationally for ASIC and for Australian regulators. I do not want to single out ASIC. I think APRA and the RBA are in a similar vein.

The answer to the question is that we see it as extremely important. Our role is to feed into Treasury and government what comes out of these meetings. We work closely with Treasury. A representative from Treasury will generally accompany us to major meetings and we work closely with the other agencies in relation to international issues. The current agenda of international issues for us—and that are relevant—is, as you have mentioned, short selling, the work around credit rating agencies, the work around the unregulated product area that I mentioned, the work around unregulated entities such as hedge funds, and markets. All of these things are important as well as the general debate and the broader debate going on internationally as to international regulatory regimes and whether there need to be changes in regulatory architecture internationally in the way that some of these issues are handled. Also, in the accounting and audit area, ASIC has involvement and interest in international issues because they can affect the Australian markets.

Senator PRATT—That leads me into my next question regarding work with local industry in relation to the further development of regulations and the sorts of consultations that are being undertaken.

Ms Gibson—We have an extensive consultation program with the main market industry bodies. In no particular order, they include IFSA, AFMA, the Australian banking association and SDIA, which is the Securities and Derivatives Industry Association. We also talk to AMA, which represents the hedge fund industry, and with the Australian Securities Lending Association. I hope I have not left anyone out. Certainly in discussions about short selling we had a number of forums for all of those. We also consulted with the other regulators and with the ASX. All of our major programs include formal consultations. Through our stakeholder teams that the chairman mentioned we also have senior executive leaders who are designated to talk on a regular basis to representatives of those various associations.

Senator PRATT—I wanted to ask about the covered short selling ban being lifted in May. What was put in place to monitor that?

Ms Gibson—We have a group called Market Watch, who are looking at the market all day on screens and so on. They have designated one person to look at financial stocks, in particular, for what is happening. We get the ASX reports daily about the level of short

selling. We are also looking to stock lending levels. We are looking for particular build-ups or otherwise in positions or anonymous trading.

Senator PRATT—Are there any problems so far?

Ms Gibson—No.

Senator PRATT—Thank you.

CHAIR—We will go to Senator Macdonald.

Senator WILLIAMS—Chair, do you want me to finish with ASIC? I have some things for ASIC regarding Storm. I can wait until after Senator Macdonald.

CHAIR—It is entirely up to you.

Senator WILLIAMS—Senator Macdonald should go first.

Senator IAN MACDONALD—I am sort of across what Senator Williams asked you so I will try not to repeat that. Do you have any statistics on the Storm investigation that would be available, such as total investment in Storm, total losses, total number of people, how many investors affected and how many have been forced on to social welfare? Do you have those sorts of statistics?

Mr D'Aloisio—We would not have them in a form that we would be comfortable to publish, but as part of the investigation and part of what we are looking at clearly we look at those sorts of issues as well in terms of numbers of investors, how they were affected and what they lost; for example, if they had a claim, what sort of damages they could expect and what has happened to them. We would have that information, but not in a form to release to the market at this point.

Senator IAN MACDONALD—Would you be able to tell us—you may not have the figure with you—how many investors have actually contacted you?

Mr D'Aloisio—I will take that on notice and just make general comments. Not only do we have investors that have contacted us either through the action group, the complaints system that I spoke about earlier at ASIC or directly coming in through other ways to ASIC; in addition, we have sought to communicate with them as well to ascertain who they are, to talk to them and so on to help us with our inquiries and investigations. It is a two-way communication process. I am happy to see if I can get some statistics around that for you if you wish.

Senator IAN MACDONALD—I appreciate your investigations are ongoing and that you have to be cautious with what you say, but can you give me confirmation that you are investigating not only the Storm financial operators but also those who were involved in margin loans?

Mr D'Aloisio—You can assume that our inquiries and investigations are of the fullest extent. As I think I said to this committee or the PJC, that extends to the financiers as well as directors, the companies themselves and other parties that have been involved in this episode.

Senator IAN MACDONALD—You would be aware that with a matter such as the Storm collapse that involved so many 'ordinary people', particularly in a confined locality such as Townsville, there are a lot of rumours flying around. I do not expect you to comment on this,

but I will just tell you the rumour, say, that the Cassimatises had sent millions offshore to Bali. If your investigations determined that rumours that are circulating, which you are no doubt aware of, are not correct, do you, as a rule, then announce that to dispel rumours that may in other ways impede your investigations?

Mr D'Aloisio—That is difficult, because what is a rumour and what may not seem like something that is worth following up at one point in time may become relevant because of other information, speaking generally, as the inquiries and investigations unfold. It would be rare for us to say that there is a rumour in the market and then quash it. We would have to be quite careful about that. Certainly, we strive to keep the market informed to the extent that we can. As I said, we have set ourselves an objective to give the market an update at the end of August, to be much clearer about where we are at and where we are going. In relation to the broader issue that you have raised about money offshore, passports and all that sort of thing, you can assume that, as a general approach to inquiries and investigations by ASIC in any matter, they would be the sorts of issues that ASIC investigators would turn their mind to.

Senator IAN MACDONALD—There have been reports in the Townsville media, and instances quoting the chairman of the joint parliamentary committee inquiry into this, that there was criminal activity involved. I thought that was a rather silly statement by the chairman from his own point of view. Are you able to indicate the nature of any criminal activity that is being investigated?

Mr D'Aloisio—I am not in a position to comment on that, and nor is it appropriate.

Senator IAN MACDONALD—That is fine. Thank you. There was a suggestion made to me that an agreement entered into between ASIC and Storm in December 2008 actually worsened the situation by preventing the Storm people from doing things that they might have been able to do to lessen the impact in December, which then got worse in January. Do you accept that?

Mr D'Aloisio—No. I think at our last meeting Deputy Chairman Cooper commented on this. From memory, I think it is in the *Hansard*. Certainly, our position is quite clear. We did not do anything that we felt would have exacerbated the issue. At that point in December 2008, just as our investigations were taking off, a lot of things had happened. We do not think there is any substance to that claim, but I am happy to look at it again and give you a more specific answer. Certainly, we do not think there is any substance to that claim at all.

Senator IAN MACDONALD—There are suggestions that because Storm were taken out of the whole procedure that a certain bank or banks were then able to escape some scrutiny and activity that might otherwise have been imposed upon them had the financial advisers of people who had invested been able to get banks to do something.

Mr D'Aloisio—We will look at it again. At the end of the day what happened with Storm was about debt and the absence of equity leading to debt needing to be repaid. If you have a situation where you have that sort of deficit and the double leverage model that they were operating it is difficult to extrapolate from that that some action or act could have occurred which would have prevented a financier calling in a debt or selling securities. We will look at it, but it just seems to be something that has been said after the event.

Senator IAN MACDONALD—There were people who reported to me that the bank or banks—some, not all, I might add—were advising the borrowers and in some instances were saying that they had told the financial adviser, Storm, which was then out of the picture and could not do anything because of this agreement with ASIC anyhow. But many of the complaints that have come to me have been that the banks simply did not advise the borrower in the terms of their agreement. That of course becomes a legal matter between the borrower and the bank should the borrower be in a position to engage expensive commercial lawyers to take them to court. Of course, people in this situation do not have a brass razoo left. The prospect of getting any decent counsel in the commercial area to take on their cases is limited unless it is—

Mr D'Aloisio—We recognise that and that is why we have said we are looking at this as a potential case under section 50 of the ASIC Act. We were in effect standing in and looking after the interests of the investors, because of public interest issues such as the one you have just mentioned. They are not in a position to look after their own interests and they have rights that we feel as a matter of public policy we should pursue for them.

Senator IAN MACDONALD—I appreciate that—

Mr D'Aloisio—I will look at that issue again. I think we will write to the committee on that because it came up at the last meeting and it has come up again. I am keen to ensure that we give you a clear answer on that issue. As we have said, there is no doubt in my mind it is not what ASIC did that is at issue here. It is what happened to that organisation, how it was run, the business model and the actions around its collapse.

Senator IAN MACDONALD—What you give us is made available to people who have spoken to us and to the action group as well. Is it ASIC's practice to issue bulletins, media releases, newsletters or whatever?

Mr D'Aloisio—What we are seeking to do, and what we have done in Westpoint, for example, is that we have set up a website. Part of the website provides general information available to all investors, and in the case of Westpoint we have also set up a specific website going through the general website for each investor. Each investor uses a user name and password. If there is specific information we think we should be giving that investor which should not be available to other investors we would provide it that way. Our objective in our planning for this matter is to do the same with the Storm investors so that you have both our general website, which at the moment does have information on it, but in addition we want to move to the point where we have a specific website for the particular investor so that they are comfortable that their information and their privacy is respected. At this stage we are not quite there yet with Storm. But we have done it with Westpoint and it is part of the process that we are looking at for major investigations and major actions, because our desire is the same as yours. There is nothing worse, when you are an investor out there who has lost money, than not being able to feel that your particular situation is being looked at and your particular case and what you have lost is known. That is what we are seeking to address with those websites.

Senator IAN MACDONALD—People will be very interested in what you have told us tonight, so thank you very much for that.

Mr D'Aloisio—We are keeping the action group informed as well.

Senator WILLIAMS—When we met last time at Parliament House I asked you about the situation of a bank breaching the Corporations Act. You said if that were the case you would look at the situation.

Mr D'Aloisio—I am sorry, a bank would?

Senator WILLIAMS—If a bank or any other company were found guilty of breaching the Corporations Act, it is your job as the watchdog to look at that; is that correct? When it comes to bank bad behaviour is it ASIC or APRA—

Mr D'Aloisio—APRA is the—

Senator WILLIAMS—Explain that situation to me.

Mr D'Aloisio—APRA is the prudential regulator and it would clearly look at issues of capital adequacy and so on. But in terms of—

Senator WILLIAMS—Issues of what, sorry?

Mr D'Aloisio—Capital adequacy or prudential issues. But issues such as the failure of a bank, as any sort of major listed company, for example, to provide continuous disclosure to the market would be something we would investigate. Financial product disclosure, insider training, market manipulation—there are a range of laws the Corporations Act would regulate, and banks are in no different position from any other corporation.

Senator WILLIAMS—If a court decision was handed down that a company breached the Corporations Act do you go looking through those court judgments or do you wait for people to contact you? What is the process that sets you in pursuit of any bad behaviour, if I could call it that?

Mr D'Aloisio—Our ability and our actions can arise through the complaints system that I talked about earlier. You look at the complaints and you find that perhaps around an institution there might be a bunch of complaints around similar issues. That might alert you to the fact there could be a smoking gun on some form of misconduct, whether it is unconscionable conduct or misleading and deceptive, and that would set off your inquiries that could then lead to an investigation and so on. It could emerge from the fact that we ourselves, through the way we monitor the market, might pick up behaviour through Ms Gibson's market-watch teams and so on, and we would go in and have a look. In a court case, for example, which might start off as a civil case, if as a result of that case the judge may make a comment about the behaviour or something of that nature, we would clearly pick that up and look at it.

Senator WILLIAMS—When you say you 'would clearly pick that up', you would obviously keep a close eye? Do you look at the media reports or whatever in those situations?

Mr D'Aloisio—There are a range of things. Ms Gibson mentioned earlier the issue of stakeholders and our consultation with stakeholders. Again, that is part of keeping close to the market so that you pick up things that you should be looking at ahead of time. There are a range of ways we would pick things up.

Senator WILLIAMS—Are you familiar with a case that was handed down in the Adelaide Supreme Court of a breach of the Corporations Act by the Commonwealth Bank against a bloke by the name of Doug Juvenivic?

Mr D'Aloisio—I am not personally aware of that.

Senator WILLIAMS—Is no-one in ASIC aware of it? I am talking about the people here in front of me now. I do not expect you to speak for the rest of the tribe.

Mr D'Aloisio—I can check that for you.

Senator WILLIAMS—I could give the judgment here if you like.

Mr D'Aloisio—What is the allegation?

Senator WILLIAMS—What happened is under section 428 of the Corporations Act the Commonwealth Bank sold an asset belonging to Mr Juvenivic and instead of selling it at the market price or auction price or whatever they sold it to a partner of Mr Juvenivic and, according to the judgment, sold it for a lot less than they should have sold it, but it tidied up their books. I do not think that is an uncommon practice where they want to clean up their books and what they write off is tax deductible and those sorts of things. But the case was heard in 2004 and Mr Juvenivic took it on to the High Court seeking compensation. To the best of my knowledge, if you can read some of this language—some solicitors speak in different language from what I am used to—the High Court was not in a position where it could award compensation, even though it was aware of it. If you like, I will give you those two judgments on that case. It clearly highlighted there in simple form the judgment of the Supreme Court and the breach by the Commonwealth Bank under the Corporations Act. I will give that you, if you would like to follow that up.

CHAIR—Are you tabling that?

Senator WILLIAMS—Yes, if that is the process I would be glad to table it.

Mr D'Aloisio—I would be happy to look at it. It is a little unusual in the sense that, if it has gone through a process, a legal set of proceedings right up to the High Court, one would assume that a lot of the issues have been—

Senator WILLIAMS—The issues have been resolved. Mr Juvenivic is in voluntary bankruptcy. He is financially dead in the water. But the point I make is that the judgement has clearly shown that the Commonwealth Bank breached the Corporations Act. I have asked whether you were familiar with it. Was anything done about it? If that is not the case, would you follow it up?

Mr D'Aloisio—Yes, I will.

Senator WILLIAMS—I will just hand you another document. I do not want to table the next document. I do not want to mention the bank. I would like to keep this one just between you and me, if we could for a while. This is a case where one bank—and I do not have to say alleged here—has committed fraud. They are the words of the bank's solicitors, not mine. The bank's solicitors have told the bank they have committed fraud and what happened from there on. I am not going to name the bank there. The Commonwealth Bank does not send me Christmas cards. Years ago we had a big dispute for 10 years. They are also aware that when

we went to have a mediation with Sir Laurence Street the bank's solicitors interviewed my bank manager, Peter Neil, who was living at Goulburn, when I was talking to him a couple of months ago, and the bank's solicitors had written a statement for Peter Neil and sent it to him to sign saying, 'This is a statement of yours. We need it for the mediation with Williams and Sir Laurence Street.' Mr Neil refused to sign the statement. The bank's solicitors then forwarded it to Sir Laurence Street and me saying this was my bank manager's statement. I phoned him after mediation and said, 'Why didn't you tell the truth?' He said, 'Was my signature at the bottom of that?' I said, 'No. It says at the top that it is a statement of Peter Neil and your name is printed.' He said, 'Until my signature is on it it is not my statement.' Then he told me he had refused to sign it. But the bank's in-house solicitor sent it, anyway, which was not a very good thing but that is all history. That was completed in 2000, so nine years ago. The point I make is I present this to you because I cannot help having an attitude that there seem to be two laws in this country—one for most and one for others. That is why I wished you to have a look at that one. That is a clear judgement in 2004 of the Adelaide Supreme Court. There are no secrets in that. Then the High Court judgement follows it. I will ask you to keep this one private and you can discuss it with me. There are comments from people like the late Frank Galbally, who described it as the worst case of civil crime he has seen in his life in 50 years of judgements. That was his comment. If you wish to table that, that is fine but I do wish to keep that one out of the public eye.

CHAIR—It is not possible to table it, as I understand it, and keep it out of the public eye.

Senator WILLIAMS—No, the first one.

CHAIR—The first one is fine.

Senator WILLIAMS—This one is fine. That is all public knowledge. But this one here I would like to just deal with it with Mr D'Aloisio personally.

Mr D'Aloisio—The ruling is that one is tabled, so we will come back to the committee. The other issue is a normal complaint in private, which we will deal with outside the committee?

CHAIR—Yes.

Mr D'Aloisio—Thank you for the clarification.

Senator BUSHBY—I think we touched on the first issue I was going to raise, and that is the potential for more regulation of over-the-counter derivatives. You touched on that in the broader answer you gave to Senator Pratt's question, did you not? I was sort of half listening at the time and was not sure.

Ms Gibson—I think it was mentioned that that is one of the concerns of IOSCO—

Senator BUSHBY—Yes. But I understand in the last week that ASIC together with the RBA and APRA have indicated they would like to see more regulation around the way that is run, or maybe a central clearing house I think was one of the suggestions for a better way of approaching that to make sure that it is done in a way that protects consumers.

Mr D'Aloisio—Over-the-counter markets in Australia, according to the joint RBA and APRA report, compared with what has happened overseas have operated well, but there is

room to improve. There is a consultation report that has been put into the market and we are working with the RBA on that.

Senator BUSHBY—What sorts of timelines are you looking at?

Mr D'Aloisio—I am not sure. I might come back to you on that. The next stage is an extensive industry consultation. It is probably just a few months I think, but I can check that.

Senator BUSHBY—The turnover of over-the-counter derivatives is actually quite large, is it not?

Mr D'Aloisio—It is about \$90 trillion or something. It was a very big number.

Senator BUSHBY—Yes, that is in Australia. It is a very large—

Senator Sherry—I have read it, but I do not believe it does call on the government to legislate for some sort of regulatory supervision.

Senator BUSHBY—I may have overstated that. When I used the term 'regulation' I was not necessarily referring to government regulations as such. It was more as a framework around the market and the way it operates. I am interested to hear about that. It is a significant activity, as we have heard. It is trillions of dollars. Obviously in an unregulated situation or a situation where there is not a framework there is certainly a potential for individuals and entities to suffer large losses. I am interested to hear about that and how that is going. You said you would take it on notice in terms of timelines. As to the next one, recently you have reminded people that there is I think \$564 million of unclaimed money out there?

Mr D'Aloisio—Yes.

Senator BUSHBY—I went onto the website and had a look and unfortunately it came back with zero results for me. I did discover my great uncle has a very small amount of money outstanding to him.

Mr D'Aloisio—Try all different versions of spelling.

Senator BUSHBY—There is half a billion dollars worth of unclaimed money there. What methods do you use to try to get that message out to people that they might have money there?

Mr D'Aloisio—We do it regularly. Our consumer and retail investor group, headed by Delia Rickard, does a very good job. She appears on various shows and programs. And through our FIDO website we promote that that is there and say that people should have an extensive look. We have been doing that quite regularly, and hopefully with some success, although it is very difficult to be able to measure how successful you are.

Senator BUSHBY—I should have thought in doing something like that you would be able to gauge its success in one way by the number of hits on the website and, similarly, whether there is a draw-down by people who discover that they have some unclaimed moneys. Is that not apparent when you do these things?

Mr D'Aloisio—I will check with our people. I think look at those sorts of statistics, yes.

Senator BUSHBY—Also phones calls to your 1300 number, I would imagine.

Mr D'Aloisio—Yes.

Senator BUSHBY—Can you give me some details over a period of time of how effective that is?

Mr D'Aloisio—Yes, we can do that.

Senator BUSHBY—I would be interested to know whether you have any analysis to back up or disprove one of the concerns that I have that the people who forget they have money are probably elderly or those who do not necessarily closely follow matters that might lead to them hearing the announcements that you make. They are probably less likely to be active and involved followers of the financial market.

Mr D'Aloisio—That is why the program tends to use programs like *Sunrise, Today* and the current affairs programs, on the basis that they deliver the message more broadly to the sort of community that you are referring to.

Senator BUSHBY—Which is certainly an appropriate way of doing it. Have you thought any further about how you might connect people with their money?

Mr D'Aloisio—Again, we will write to you with a more detailed answer, but with the sorts of things that I have mentioned you get to the point where you exhaust them. We do not have the resources to run extensive advertising on a continuous basis and those sorts of things. There is a limit to which we can go. Periodic reminders through our FIDO website and through television programs, media interviews and articles, we feel, are pretty good.

Senator BUSHBY—I commend you for the efforts that you take in that respect. But it is half a billion dollars, with up to \$990,000 in one particular account, so—

Senator Sherry—I'd better check out who that one is!

Mr D'Aloisio—Unfortunately—I did not try—but I do not think you can do the \$990,000 reverse and find out who it belongs to.

Senator Sherry—But it is a worldwide problem.

Mr D'Aloisio—It is a worldwide problem.

Senator Sherry—There are unclaimed moneys in most countries of the world. I am not sure whether relatively we are proportionally over or under, but I recall looking at this a couple of years ago, and your earlier comment I think is right. The sense I got was that a significant proportion were unclaimed dividends from demutualised institutions. Two stood out in particular. I cannot recall the precise figures, but they really did stand out, which would seem to indicate that there is a group of people who probably do not know they own a share because they did not purchase it in the first place but got it as a result of demutualisation. There are those issues as well.

Senator BUSHBY—That highlights what I was going to ask next. There are obviously privacy considerations that would have to be looked into, but a lot of information would be available from the ATO, Centrelink and other government organisations to enable you to cross-check the names. Maybe the people could be prodded gently to have a look at the website to see if there is something there that might belong to them.

Senator Sherry—We have had significant discussions about the superannuation issue, data matching of TFNs and all the things we are looking at there. There are separate issues. I am

sure the tax office and Treasury will be thrilled, but I will add this to the project to see what is possible to improve data matching through the ATO.

Senator BUSHBY—The reason I asked about super as well comes back to my belief that this money belongs to these people.

Senator Sherry—That is right.

Senator BUSHBY—We have an obligation to do everything we reasonably can to try to link it back to the people who own it rather than leave it with the government. I will move on from there. I noticed in a media report today that ASIC is conducting a national survey of large dealer advisers, known as the ‘quality of advice’ project. Are you able to tell me anything about that at this point?

Mr D’Aloisio—This, I think, is a statement that came out of the recent SDIA conference that I spoke at, when I indicated to that industry, the brokers, that we felt it was time to have a good look at the quality of advice that is given to their clients. The association has responded positively to that and would like to be involved. It is keen to see what the level of quality of advice is and how it can be improved. It is at the early stages, but our stakeholder team with brokers and market participants, headed by Greg Yanco, is running that project. Again, as it develops I am happy to keep the committee informed of what comes out of it. Its objective is to lift the quality of advice available primarily to retail investors, whether they are investing in the stock market, through funds management or in another way, and give them access to better advice from their brokers and market participants.

Senator BUSHBY—I probably could ask a few more questions, but I will leave it at that for the moment. Please keep us up to date as to how that develops.

Mr D’Aloisio—We will.

Senator BUSHBY—I notice that under the National Consumer Credit Protection Bill 2009 you have a role to play in terms of Australian credit licences.

Mr D’Aloisio—This is the new credit legislation.

Senator BUSHBY—The new consumer credit legislation.

Mr D’Aloisio—We will take over the full running of credit in Australia from the state bodies, through initiatives that the government has announced. We will register and license credit providers, including new groups such as mortgage brokers and so on, and administer the new regime on responsible lending. That complements our existing regime on unconscionable conduct. It is a very extensive suite of responsibilities that ASIC has been given, and we are well advanced in our plans. As the minister mentioned earlier, we have been allocated resources to enable us to—

Senator BUSHBY—I imagine you are very happy about that given how extensive it sounds.

Mr D’Aloisio—I did not mention it earlier, but the government has given us the resources we feel we need in the next few years to do our job, including in relation to credit.

Senator BUSHBY—Before the legislation was presented, did you provide advice on the legislation itself—what it should be like and how it should work?

Mr D'Aloisio—As is normally the case with something such as that, particularly as ASIC will be the responsible body to administer it, we have been involved throughout the process. Where the government and Treasury have sought assistance, we have provided it. In addition to that, with the expertise within ASIC that we are building to take over this responsibility, clearly we have also been proactive in providing views. We recognise that it is a matter for government at the end of the day whether or not it accepts our views, but we have been providing them and have been actively involved.

Senator Sherry—I will make two quick points. One is that the proposed legislation released is a draft bill. There has been intensive consultation, and there will be some changes on some matters, which I cannot go into today. Equally important with the policy development of advice from ASIC and from many, many others are the practical implementation issues. From ASIC's point of view you have to assume when legislation passes and comes into operation that there is a very significant administrative set of issues to try to minimise any dislocation.

Senator BUSHBY—A significant task.

Senator Sherry—It is a very substantial project.

Mr D'Aloisio—We have, again, a commissioner in charge of that, new Commissioner Boxall, and we have especially recruited one of our senior leaders, Andrew Smith, to head that task force. Andrew has extensive experience in working both as a corporate lawyer and as a finance lawyer and has been involved with major companies involved in consumer credit. So we feel that we have the team to take on this responsibility.

Senator BUSHBY—A final question on that, and without in any way indicating what the coalition will do when it comes before parliament: if the legislation did not pass, would you still get the money? Has it been announced in a conditional way? Is it conditional upon the bill becoming legislation?

Mr D'Aloisio—We have put a secret clause in the agreement.

Senator Sherry—I do not think it would matter what I thought about it or what the chair thought about it. The finance minister might have something to say about it.

Senator BUSHBY—It is quite clearly tagged for that purpose?

Senator Sherry—Yes.

Mr D'Aloisio—Our understanding is that it is—

Senator BUSHBY—If, for whatever reason, it did not end up as legislation or was delayed into next financial year, then presumably that would be adjusted in some way?

Mr D'Aloisio—It would be a matter for government.

Senator Sherry—We will cross that bridge.

Mr D'Aloisio—It would be a matter for the government but, because we are already spending in a sense, we would hope that it would be sorted out at a government level.

Senator BUSHBY—I will move on to the next issue. It was reported in the *Australian Financial Review* that you intend to scrutinise listed companies' financial statements and

balance sheets to a greater degree than usual basically because of concerns about the ability of some firms to refinance debt and to comply with lending covenants in the current climate. Would you like to expand a little on how you are approaching that?

Mr Dwyer—We conduct through ASIC an annual surveillance of accounting accounts. At this stage we have completed our 31 December 2008 surveillance program in relation to accounts. Our report is currently being compiled and should be available for distribution by the end of the month or early July, which is in line with what we anticipated and in line with previous years.

Senator BUSHBY—You would normally conduct a surveillance program of this type?

Mr Dwyer—Yes.

Senator BUSHBY—Is this different in any way to what you have done in the past?

Mr Dwyer—We are obviously in close contact with the accounting professions. We expect there will be increased activity around issues such as going concern and emphasis of matter in terms of auditors' reports. Our surveillance of those accounts in terms of numbers has increased over the past six months and as a commission we are considering expanding that program.

Senator BUSHBY—So you are looking at a greater sample size?

Mr D'Aloisio—Yes, the sampling size is extremely important. Clearly we are looking at making sure that we pick up the areas that we think will be more susceptible—things like valuations and so on—so that we are comfortable that we are picking up not only large companies but in mid-sized companies and others as well.

Senator BUSHBY—What do you do if you pick up a company which appears to you to be at risk?

Mr Dwyer—We would liaise with the auditors of the company. In relation to the surveillance program you are talking about, it is a surveillance process that we go through. If you are talking about a company that might be financially at risk and we get some complaints about it, we have a program that reviews those companies as distinct from the annual surveillance program of financial statements. Are you talking about companies at risk?

Senator BUSHBY—What I am referring to is the media report, which may be wrong. I am basing my question on that, and that is why I am asking you. They are referring to a greater degree of scrutiny basically because of concerns about the ability of firms in the current climate to refinance debt and to comply with lending covenants. That is a driver for a greater level of surveillance? Is that a fair comment?

Mr Dwyer—Yes, it is.

Senator BUSHBY—If you come across a firm that is otherwise well managed but may well have difficulties in terms of refinancing its debt because of the credit squeeze, obviously you would not be looking at directors' duties or breaches of directors' duties in that circumstance. It is not their fault at that point. What is the consequence of looking at that?

Mr Dwyer—We would be reviewing the directors' reports as to what they consider the value of the assets are, questioning directors and auditors as to whether, in fact, they believe

those values are fair, discussing whether there should have been or was some qualification as to going concern or emphasis of matter—

Senator BUSHBY—So effectively you are looking for breaches of what they should have done—

Mr D'Aloisio—and whether there should be a disclosure to the market. Ultimately our role in pursuing the issues, as Michael was saying, is to ensure that the market is properly informed and that the accounts are a true and fair view. If there is an issue that we feel the market should know about, we would work—

Senator BUSHBY—Is it a greater degree of activity with listed companies or do you also look at private companies—or are your responsibilities really only for listed companies?

Mr D'Aloisio—We are reviewing that at the moment. Certainly we have had an emphasis on listed companies and probably not as much in the unlisted area. We feel that with the nature of the market and the asset destruction and the issues that have occurred we need to look at the unlisted vehicles as well as the listed ones.

Senator BUSHBY—You mentioned in the opening statement and in the reply to my question that the report would be tabled soon. Could you take on notice whether your surveillance is highlighting greater degrees of problems?

Mr D'Aloisio—Yes, I think so. In the normal course we would say that, compared to the previous report.

Senator BUSHBY—I have a few questions on short selling. How did the scope and duration of our response to short selling compare with the responses in other markets, in particular the United States and the United Kingdom?

Mr D'Aloisio—Markets are not all the same, and clearly the regulators of those markets took judgments. We are very confident that the judgments we made were the right judgments for the Australian market. In September last year the state of the international markets, the absence of long buyers in the market and the rumours that had then emerged moved us to the point of saying we needed a circuit-breaker and we imposed a total ban on covered short selling as well as, prior to that, naked short selling. It is fair to say that at that point a number of jurisdictions had put a ban on or were putting a ban on only on the financials, but we felt that in our market at that time the circuit-breaker was what was needed. After, I think, 60 days we lifted our ban on the non-financials. There was extreme pressure at that point for the ban to be lifted on the financials also. We felt that there could be systemic issues given where the market was and we formed the judgment that, on balance, we should err on the side of not taking a risk on systemic risk but against allowing the price discovery benefits and liquidity benefits that come from short selling. We left the ban on the financials and reviewed it again in January 2009. At that time with events that were going on globally we still felt that the balance should have been in favour of leaving the ban on the financials. Last week the commission met and decided that the systemic issues and the potential systemic issues were now outweighed by the price discovery benefits from short selling and that the ban should be lifted.

Going back to your question about other international jurisdictions, a number of them lifted the bans earlier. Interestingly, a number that lifted the bans earlier have gone back and started to talk about how they should maybe have up-tick rules, down-tick rules and other rules to regulate short selling.

We think when we look at the evidence over the past six or seven months that it was a proper exercise of ASIC's powers. The fact that the market did not have the price discovery benefits, we felt, was far outweighed by what we perceived as potential systemic issues for the financial sector if one or two or three of our major financial institutions were aggressively attacked by short sellers where you did not have the confidence in the market from the long players to offset the plays of the short sellers.

Senator BUSHBY—Am I right to conclude from that statement that we effectively took a more conservative approach to this than in most other jurisdictions?

Mr D'Aloisio—I think it is a matter for the market. For you to form a judgment on conservative and liberal—basically, we had to make the call in real time, and we are pleased that we have moved the market. The ban has now been lifted and the market is operating very well.

Senator BUSHBY—The Australian finance sector was not facing the same pressures as the markets in the US and the UK were. This is not meant to be pejorative in anyway; I am just working through it. Yet you did take a more cautious approach—maybe that is a better word than 'conservative'—to this than the regulators in either of those jurisdictions, despite the fact that our market appears not to have been facing the same pressures. Was there anything in particular about our market that led you to believe that we needed to do that when they were not doing it elsewhere?

Mr D'Aloisio—There are a couple of issues. The size of our market compared to other markets; it is a small market and the structure of our market with financial institutions, banks and REITs, we felt that there were some differences that required us to be probably more cautious in how we approached it. Indeed, a number of other smaller jurisdictions maintained the ban for a period of time as well. Whether or not it was for the same reason, I do not know. You have to compare the Australian market at 1.4 to 1.5 per cent of global equity markets, with the United States at 54 per cent and the UK at 33 to 34 per cent. We are a very small market, and a substantial amount of money from, say, hedge funds operating out of the United States or out of other jurisdictions could actually amass quite significant money that could, in a short-selling play, have significant impact on a small market. We have to weigh up those things. You are not weighing them up in a sense of having hard data; you have to weigh it up in the way that the market was unfolding at the time.

Senator BUSHBY—Have you conducted any analysis or quantification of the benefits and costs of ASIC's measures over the period that the short selling was in place?

Mr D'Aloisio—We think the benefits far outweigh the costs.

Senator BUSHBY—I assumed you would after your—

Mr D'Aloisio—Because we have markets operating at the moment where confidence is returning, and they are operating well. We think, as I said earlier, that overall the benefits have

outweighed the costs. It is very difficult to measure. The best measure that exists in terms of working this out is what they call the bid-ask spread or the price of equities. There are so many factors that affect the bid-ask spread that it is very difficult to conclude that short selling was having a negative impact; in other words, that the spread was widening or not. We think where you take liquidity out of the market there will always be probably a widening of the bid-ask spread in some way, but whether that is volatility, whether it is attributed to the short selling—I think the economists in probably six to 12 months will do that analysis and we will get a picture on it. At the moment it is very difficult. We certainly did studies and things and we were monitoring it, but we just could not be conclusive about it.

Senator BUSHBY—As you mentioned, you have lifted the ban, but you have regulated it or you have put in place some parameters around short selling itself in the intervening period, I presume, until the regulations take force?

Mr D’Aloisio—In terms of disclosure, yes. We put in place the disclosure and reporting last September. It operated for the non-financial stocks when we re-opened them in November, and has operated and gets reported daily, for example, in the *Financial Review* and through the ASX. That regime has now been extended to the financial stocks. It will be replaced when the government announces and puts in place a new disclosure and reporting regime, on which I am sure the minister can comment.

Senator BUSHBY—I asked the minister about that in an earlier session of Senate estimates.

Senator Sherry—We had a discussion earlier about it in the markets group.

Senator BUSHBY—That is right, and I am aware that there are draft regulations that have been put together, and no doubt parliament in due course will have the pleasure of looking at them and deciding how appropriate they are.

Senator Sherry—In the meantime, there is a disclosure regime known as daily gross reporting, and the ASX produces its reports.

Senator BUSHBY—How confident are you that those disclosures are sufficient to cover things in the meantime?

Mr D’Aloisio—We think in the way they have worked for the non-financials, we have been comfortable that they are working, and they are working for the financials. But Belinda’s teams are supplementing that with a much closer view of the market on a daily or hourly basis, if you like, with the ASX. We will keep those additional resources in place until the new regime is fully operational.

Senator BUSHBY—I do not know if I can ask this, but do you think what you have got in place is sufficient for the long term? Do we need the regulations? Now that your regulation has been clarified by the—

Mr D’Aloisio—They are policy issues for government. We think that the reporting and disclosure regimes can be strengthened, and we have given that advice to government, and I am sure government is taking that into account.

Senator BUSHBY—Have you had anything put into the regulations?

Mr D'Aloisio—We have had input to government. They have asked us in terms of what our view is in relation to disclosure and so on, and we have provided those views.

Senator Sherry—Just briefly, we discussed earlier today that there are quite strong differing competing views about how you have supervisory reporting around short selling. I think it would be true to say that there are very few who would argue that you do not have a disclosure regime going forward in short selling, whatever the differences—

Senator BUSHBY—Nobody has put that to me.

Senator Sherry—No-one has seriously put that position. Obviously given there are regulatory issues about cost and who would pay, et cetera, as well as other issues about the timing of reporting, obviously ASIC's input into those considerations, as well as a whole range of other people and organisations, is fairly important. I think with ASIC having lifted the ban and having dropped its current disclosure regime and then having something come in at a later date, however different it is—and it will be different to some degree—to drop it and then bring it back in again, it is best to continue with the current situation.

Senator BUSHBY—As I indicated earlier when we were talking in Treasury, from my view it would have been ideal to have had the regulations out there, passed and ready to come into force as of the date and have everybody understand what they were going to be with the ban being lifted. Obviously for reasons we discussed earlier, that was not possible.

Senator Sherry—Even if we had been in that position, there would still be implementation issues.

Senator BUSHBY—There will still be implementation issues looking forward.

Senator Sherry—That is right. You would not necessarily be able to implement the new disclosure regime for short selling from the date of the lifting of the ban, because there are implementation issues.

Senator BUSHBY—But there would have been certainty for the industry.

CHAIR—Can I just point out that we are due to have a break in a couple of minutes. Do you have much longer?

Senator BUSHBY—I will go for more than a minute and a half.

CHAIR—I am sure you will.

Senator BUSHBY—I am probably within 15 minutes of finishing. There are a couple of other small issues, but this is basically it.

CHAIR—If that is the case, we will not have the break and we will finish at 9.45 pm.

Senator BUSHBY—I will aim for that.

Senator Sherry—Do any other senators have other questions?

CHAIR—No.

Senator BUSHBY—So I have another hour and a half then?

CHAIR—Another 15 minutes or so. Senator Bushby.

Senator Sherry—I am sure we would be willing to forgo the 15-minute break if we are finishing at 9.45 pm.

Senator BUSHBY—I am happy; I do not need the break.

CHAIR—All right.

Senator BUSHBY—We were talking about the implementation issues and how that goes. I understand that this disclosure regime was in place prior to the ban being put in place last year. Presumably a lot of this stuff would happen on computers and there would be IT software issues that people would have to set up to be able to comply with the regime. Earlier I discussed the transitional costs in Treasury with the minister. One concern I had was that, with a lifting of the ban, the people who are looking to trade in this manner will have to ensure that their systems comply with what the ASX has put in place. At some point in the relatively near future we would hope to see the regulations, and those people will have to update and there will be costs for the industry again. Doubling up of costs, I guess, is the issue I am concerned about. Although I acknowledge, as the minister says, that even if it happened at an overlapping date there would be some transition, it would be one transition that they could deal with even if it did involve a peeling off in stages of the ASX regime and a move onto the regulation regime. At least there would be certainty, they would know what they were dealing with and they could move forward on that basis.

Mr D'Aloisio—Another way of looking at that is that this process has taught everyone a lot of things. The fact is that, by telling the industry, as we did, that we needed the gross reporting and the daily reporting and getting that moving, I think we have all learned a lot about that process. When these regulations are announced, yes, there will be some initial costs and so on, but really for the long-term benefit of the market we at ASIC would not see those as significant or duplicative. We have moved gross reporting and it has been working. It needs to move into a much more automatic electronic form of reporting, subject to what the regulations say would be a further extension of that. We do not wish to be unsympathetic with cost because we are very conscious about cost, but this is such an important disclosure for the market and the integrity of the market that the one-off costs that need to be incurred really do—

Senator BUSHBY—I do not argue that. I think that the ultimate regulation, as it is put in place, will come with costs for implementation. What concerns me is not the one-off costs; it is the two-off costs in terms of the timing in the way this has been done.

Senator Sherry—It is fair to say that has been a major consideration. There is an upfront establishment cost and then there are ongoing costs. That has been a major consideration, certainly for me, given not just additional costs but also the current environment. It has not been the best commercially for brokers and operators in the current environment. We are certainly very conscious of that.

Senator BUSHBY—I do not want to labour the point, but essentially at this point in time you have had the ban lifted and you have got participants in the industry who are looking at getting back involved. They need to address the regime that is in place through ASX. We have had some evidence tonight that that may well be tightened up or some changes made before the regulations come back in, which would involve more costs in ensuring that their systems

comply. They are doing this in an environment where they still do not know what the regulations are going to be and what they are going to have to change to comply with that. I do not think we can go any further with that at this point. Mr D'Aloisio, you mentioned the uptick rule as it applies in other jurisdictions. To what extent does the uptick rule apply to short selling in Australia as it applies at the moment?

Mr D'Aloisio—There is no uptick or downtick rule at this point.

Senator BUSHBY—Is that a concern to the ASX?

Mr D'Aloisio—I cannot speak for the ASX, but given—

Senator BUSHBY—To ASIC, sorry.

Mr D'Aloisio—No. In the regime that we have in place and with the way that it is working, I think we would like to see international developments. Earlier I mentioned the IOSCO work on short selling. Certainly, IOSCO at this stage is not pushing for uptick or downtick rules. We will monitor that and see how the developments occur internationally and provide advice to government. At the moment, ASIC itself does not have a specific concern, given the way the market is operating and the disclosure that is in place in the market.

Senator BUSHBY—Forgive my rudimentary understanding of the markets and how they work, but you indicated before that one of the reasons why you considered that we needed to take a cautious approach to short selling last year and to maintain it for longer was that we are a small market. Surely in a small market without the uptick rule—and I might be wrong—there is potential for mischief to occur in a big way.

Mr D'Aloisio—If you have monitoring and disclosure that is working so that you can identify the aggressive selling fairly quickly or selling that might be coupled with rumours and so on, you can use other powers—for example, we could put a stop order on a particular stock or a stock could go into a trading hold. The ASX and ASIC have other ways of monitoring and dealing with specific situations, so you would look at those. We just have not done the analysis as to whether there is any limitation in those other powers that would require a look at the uptick rules. As I say, I think in part the international response to the uptick rule in the US was probably a feeling that they took the short selling ban off too soon. There was quite a lot of concern in that market. The NYSE re-examined whether it should have an immediate stop on a stock if falls to a particular level and you have got to stop trading on it and so on. They were looking at ways of monitoring aggressive short selling focussed on stocks. We think that with the powers the government gave us in the amending bill last year—the additional confirmatory powers that ASIC has—and the ASX powers we should be able to deal with those issues. We would provide advice to government if we felt we needed to look at that and we will do that in the context of international developments.

Senator BUSHBY—Presumably the legislation passed last year gives the government power to pass regulations that would include an uptick rule.

Mr D'Aloisio—It would be through the ASX. We can get you the technical and legal, but between the ASX and us we would be able to achieve that.

Senator BUSHBY—So it is not likely to be considered or addressed by the regulations then?

Mr D'Aloisio—I will take that on notice and check it. I do not think it would be.

Senator BUSHBY—Minister, I take it that if I asked you questions about what is likely to be in the regulations you would take them on notice?

Senator Sherry—Yes.

Senator BUSHBY—There is nothing you can give away at this point that is—

Senator Sherry—No.

Senator BUSHBY—Not just the hot bits but the other bits—the more mundane stuff that is likely to be there?

Senator Sherry—No.

Senator BUSHBY—I will leave that one, then. I will move on from short selling to dispute resolution schemes. With regard to these, what is the rationale for selecting a maximum compensation amount of \$500,000?

Mr D'Aloisio—I stand to be corrected here. The limit of recovery is \$280,000, and that is the scheme. There is no science behind picking these limits. You are really looking at balancing, I guess, reasonableness for the financial institution in terms of agreeing to be part of a dispute resolution mechanism and looking at the sorts of claims that could be made. I think ASIC's approach has been to try to lift it from lower levels that have been operating to these higher levels and giving the industry a period of time.

Senator BUSHBY—My apology, the \$500,000 was to the value of the case that—

Mr D'Aloisio—Yes, it is \$280,000.

Senator BUSHBY—That is the maximum amount of compensation. I take it the \$500,000 limit is the cut-off in terms of what you can look at in this respect.

Mr D'Aloisio—Yes.

Senator BUSHBY—How does that limit compare with external dispute resolution schemes of a similar type in other countries?

Mr D'Aloisio—Our team looked at that. I will get you that answer.

Senator BUSHBY—You will take it on notice?

Mr D'Aloisio—Yes.

Senator BUSHBY—What consultation with the financial services industry occurred before this announcement?

Mr D'Aloisio—I am sorry?

Senator BUSHBY—What consultation occurred with the relevant stakeholders?

Mr D'Aloisio—There was a series of public consultation, industry consultation and so on, over an extended period of time going back—

Senator BUSHBY—There was a formal consultation process?

Mr D'Aloisio—Yes, they were formal consultations, going back to November 2008. The two teams heading that did really very extensive consultation and, indeed, very extensive persuasion as well in arguing the case.

Senator BUSHBY—From ASIC's perspective or the industry arguing to you?

Mr D'Aloisio—Negotiation.

Senator BUSHBY—Strong negotiations?

Mr D'Aloisio—Well, negotiations.

Senator BUSHBY—I understand. Has a regulation impact statement been prepared to analyse the effect on business of this change?

Mr D'Aloisio—It would have been as part of the change. We can get that and let you have it.

Senator BUSHBY—That would be great, thank you. How is it anticipated this change will affect the viability of smaller firms in the financial services industry?

Mr D'Aloisio—In a way this is limiting liability. Generally, in claims, plaintiffs have got the right to unlimited recovery of their damages or to the extent to which they have suffered. In a way, by limiting and having a process where you have capped your liability, it should be helping industry at all levels. I am not sure that I would subscribe to the issue that it would put them in a worse position. It actually puts them in a better position, because the rights that a plaintiff would otherwise have and pursue may well be much greater. It is just that the plaintiff trades off the expense of a court litigation process against a less formal process, a quicker process of recovery. The financial institution trades off the court process as well and the fact that it has its liability capped at a level, as distinct from being unlimited. That is the bargain, if you like, in getting this to work. Then the issue is where do you put that limit, where does the bargain balance sit.

Senator BUSHBY—I acknowledge the value in a scheme of this type in terms of keeping people out of the courts and the great expense involved with that. I guess time will tell whether the balance has been achieved in a way that actually works.

Mr D'Aloisio—These schemes have now been in operation for some time. When you look at the statistics, when you look at the work they do, the people that are in them, I have certainly been very impressed with the way that they have worked and the speed at which they have been able to resolve issues. They are, we believe, very worthwhile and that is why ASIC puts a lot of time and effort into helping the groups with these.

Senator BUSHBY—Madam Chair, that is my last question. Thank you very much.

CHAIR—Thank you, Senator Bushby. As there are no more questions, we will thank the Australian Securities and Investments Commission for appearing here this afternoon. We thank the minister.

Senator Sherry—Thank you.

CHAIR—I thank the secretariat for all their hard work over the week and Hansard and Broadcasting. Can I ask committee members to stay behind for a private meeting?

Committee adjourned at 9.42 pm