COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL SERVICES

Reference: Corporations Legislation Amendment (Simpler Regulatory System) Bill 2007

WEDNESDAY, 13 JUNE 2007

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JOINT STATUTORY COMMITTEE ON

CORPORATIONS AND FINANCIAL SERVICES

Wednesday, 13 June 2007

Members: Senator Chapman *(Chair)*, Ms Burke *(Deputy Chair)*, Senators Bernardi, Murray, Sherry and Wong and Mr Baker, Mr Bartlett, Mr Bowen and Mr McArthur

Members in attendance: Senators Bernardi, Chapman, Murray, Sherry and Wong and Ms Burke

Terms of reference for the inquiry:

To inquire into and report on:

Corporations Legislation Amendment (Simpler Regulatory System) Bill 2007

WITNESSES

Committee met at 3.38 pm

CHAIRMAN (Senator Chapman)—I declare open this public hearing of the Parliamentary Joint Committee on Corporations and Financial Services. On 9 May 2007 the committee resolved to inquire into the Corporations Legislation Amendment (Simpler Regulatory System) Bill 2007 and related bills. The committee has agreed to meet today as a subcommittee for the purpose of this hearing. The bills include proposals to simplify and improve corporate and financial services laws, specifically in the areas of financial services, company reporting obligations, auditor independence, corporate governance, fundraising, takeovers and compliance.

I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. This gives special rights and immunities to people who appear before committees. People must be able to give evidence without prejudice to themselves. Any act that disadvantages a witness as a result of evidence given to a committee may be treated by the parliament as a contempt. It is also a contempt to give false or misleading evidence to a committee.

If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request for an in camera hearing may of course be made at any other time. I also welcome any observers to this public hearing.

BELL, Mr David, Chief Executive Officer, Australian Bankers Association

TATE, Ms Diane, Director, Corporate and Consumer Policy, Australian Bankers Association

CHAIRMAN—I now welcome our first witnesses, from the Australian Bankers Association. The committee has before it your submission, which we have numbered 4. Are there any alterations or additions you wish to make to the written submission?

Ms Tate—No.

Mr Bell—No.

CHAIRMAN—If not, I invite you to make an opening statement, at the conclusion of which I am sure we will have questions.

Mr Bell—The ABA welcomes the introduction of the bill and commends the government for its willingness to refine financial services and corporations regulation to address industry and consumer concerns. The ABA has been working closely with the government, Treasury and ASIC with a view to striking a better balance between costs to the industry and protections for consumers.

Generally, the ABA welcomes the legislative amendments, including, firstly, reduced disclosure requirements for financial products, making it simpler for consumers and less onerous for financial services providers; secondly, better recognition of sophisticated investors, meaning that some investors who find current disclosures unnecessary to assist them in making an informed decision will no longer have to receive lengthy disclosure documents when they get financial advice; and, thirdly, streamlined reporting obligations for financial services providers and reporting entities—for example, the ability to distribute company annual reports via the internet or other electronic means. We are also pleased that the government is seeking to introduce company reporting changes so that reporting entities can take advantage of the reforms for the 2006-07 reporting period.

The ABA is also pleased that the government is giving further consideration to the proposal known as the 'sales recommendation model', proposal 1.1. We support the decision not to include this proposal in the bill. It is our view that further consideration needs to be given to the proposal. A better approach would involve the following: amending the definition of 'personal advice', limiting the definition to circumstances where a recommendation is made and acted on, and removing simple products such as basic deposit products, non-cash payment facilities, general insurance products, consumer credit insurance products and cash management trusts from the advice regime.

It is our view that this approach would also address a number of industry and consumer concerns that are driving considerations about members, such as SOA exemption, which is proposal 1.2, and SOA threshold, which is proposal 1.3. The ABA is pleased to continue to work with the government, Treasury and consumer representatives on refinements that identify a practical solution for concerns with the scope of the advice regime.

The ABA provides some targeted comments on those proposed legislative amendments, which we believe require some further consideration and clarification. We think that many amendments within the bill will provide benefits and should be implemented. However, a number of amendments as currently contained within the bill present some practical and technical problems. We are of course happy to take questions from the committee. Thank you.

CHAIRMAN—Does the ABA have a view on what is an appropriate level for the statement of advice threshold, which is nominally set at $15,000?

Ms Tate—The SOA threshold needs to be set at a level that is practical so that it has some real benefits for industry and consumers. It was originally proposed that the threshold may be around $10,000 in the proposals paper. The explanatory memorandum now proposes that it could be around $15,000. In terms of whether it is appropriate for the types of products and whether relief would be available, some products within the market, more on the managed investment side, have minimum investments of $25,000, so the relief would not necessarily be available for those types of products.

We notice that in the bill there is the notion that the threshold will be prescribed by regulations. Obviously there is a piece missing from this picture. It also says that we may be able to have different thresholds for different classes of products. That is certainly something that we would like to see explored a little bit further. A threshold by its nature tends to be arbitrary, so if it is going to be arbitrary then it should be practical as well as arbitrary.

CHAIRMAN—Can you elaborate on the concerns you have about the interaction between the statement of advice threshold, on the one hand, and the statement of advice exemption available where there is no product recommendation and no remuneration involved?

Mr Bell—It might be best if we give a couple of scenarios and then backfill on that. Do you want to give those scenarios, Ms Tate?

Ms Tate—Under the threshold, if a client, for example, has a $30,000 superannuation investment and they want to invest another $12,000, and the adviser provides some guidance or advice as to that, they would not necessarily have to provide the SOA under the threshold because the investment that they are seeking is another $12,000 and they already have the super product. Whereas if the client walked in to an adviser with $12,000 and said, 'I want to make an investment,' and the adviser says, 'Well, we recommend superannuation for you,' then the relief would not apply because it is an initial investment into superannuation.

That is the threshold. If you then mixed it with the SOA exemption, it is not clear with the way that it is currently drafted in the bill how that might intersect. For example, if the client meets with the adviser to discuss a $12,000 investment and the adviser recommends a three-year term deposit and that adviser receives a salary, then it is unclear. Because the investment is $12,000, it would technically have the relief of the SOA threshold, but would it have the relief of the SOA exemption, as we are calling it, because the adviser receives a salary?

One of the particulars of the way that it is currently drafted is that remuneration is a bit unclear. It says 'remuneration directly or in relation to'. Remuneration structures differ across the industry and so it is unclear whether someone who receives a salary, or who gets paid, would be able to have the relief available for them. If it is under $15,000, it is exempt. But how does it work when you start to cross over each other? With the original proposals that we are talking about, 1.2 and 1.3, there could be some technical problems with the way things are currently drafted. Would you like me to go through some of the other technical problems with those two proposals?

CHAIRMAN—Have you suggested an amendment to obviate that particular problem?

Ms Tate—We think that they probably need to be looked at in isolation from each other so that they make more sense standing alone, and then probably the crossover is not a major issue. In terms of the exemption—

CHAIRMAN—Senator Bernardi has another question on that particular issue before you go on to the others.

Senator BERNARDI—I think the bill is trying to capture whether an adviser derives a benefit in relation to the investment advice through the provision of statements. If the adviser is on a salary, that is not linked to the provision of the product investment advice. I am not sure where the confusion lies.

Ms Tate—Currently the wording in the bill says that it is remuneration 'directly or in relation to' the advice. If you earn a salary—and our questions seek to have this clarified—and you are

paid to provide advice, ergo you provide advice to your customers, that is also potentially that advice to that customer.

Senator BERNARDI—So you believe there should be a clarification—

Ms Tate—Absolutely.

Senator BERNARDI—where you are remunerated as a consequence of investment advice rather than by a salary. Is that what you are saying?

Ms Tate—Yes. If this is about restricting the circumstances where certain remuneration is provided, we need to be clear about what we are talking about with remuneration. At the moment that is not clear in the way it has been drafted. That is one of the areas. There are a few more, and one in particular is a restriction that relates to recommendation of a class of products by a product issuer. We are not sure why that restriction is in place. That would seem to suggest that a financial planner in a bank will not have relief, whereas a financial planner outside a group environment would have relief. We are not sure why the distinction is there.

It is also unclear about recommendation of a class of product. For example, if you were to receive some information about types of products that might be useful for you in your initial meeting—this is really about trying to give some relief around that initial fact-finding meeting—what are you able to say in that meeting about a product? Of course that is going to come up in a conversation. That is what clients will want to have. I think we need further clarification around product recommendation and that nexus with remuneration. In our initial submission to Treasury we suggested that, if it is about no recommendation and no remuneration, that is too tight a restriction. We could look at it as no recommendation or no remuneration and clarifying both of those areas. That may be a solution to ensuring that it is not too tightly wound, because currently we would not see that this would be a lot of value for most situations.

We obviously acknowledge that there are some benefits in it in terms of initial fact finding. One of the areas that is exempt is in relation to modification of investment strategies. That is about a review or update of what is already in place. It has partially dealt with the problem, which is the up-front side of things, but it has not dealt with the ongoing or strategic advice side. We would like to see some attention given to that as well.

In terms of the disclosures that it is requiring, there are two parts which are introducing alternative disclosures. One is an oral strategic advice statement that you would need to provide as a communication, and the other part would be something in a written form, which seems to be a record of advice. But it is unclear as it has been cast here whether that record of advice is the same as a record of advice that is formally used within the law already. There seems to be some confusion around the rules for that. It also seems to capture some information that would be provided in an FSG already. There seems to be an overreliance on some disclosures in the provision. We would like to see that tidied up as well.

Ms BURKE—In your opening statement, and other submissions have made the same point, you said that you thought one of the problems was defining ‘advice’—that is, clarifying what is meant by ‘advice’ and therefore listing a range of products to exempt, such as deposit products

or, as mentioned by others, superannuation. Would you have preferred to have seen that sort of regime as opposed to a money exemption regime?

Ms Tate—There are two ways to answer that. Firstly, simple is best. What we should be seeking is a simple regime that is not introducing additional complexity. Secondly, with respect to amending the 'personal advice' definition and removing the simple products, which is what we have said in relation to proposal 1.1, we see that there would be some benefits here depending on how the definition of 'personal advice' was amended. This is to deal with personal advice, initial fact finding and potentially strategic advice. We still see benefit in looking at this so long as some of these impracticalities which seem to be in the drafting are dealt with.

Mr Bell—We would still want to have direct reference to the products that I made mention of in my opening statement.

Ms BURKE—Yes. If you had a direct reference to products, do you think it would clarify some of those concerns about the money limit and the remuneration issues? If you listed the products, would that make it clearer for people giving that advice?

Mr Bell—It would make it clearer. It might not deal with those two issues you just talked about.

Ms Tate—One of the reasons we are on a net benefit basis opposed to the sales recommendation model—which obviously is not in this bill but it gives some clarity to what we are saying here—is that, if you draw a line in the sand and put the simple product range that we have mentioned underneath that line—at the moment there are varying degrees of refinements that have dealt with some of those products, it is a bit of a mishmash at the moment—it would be a simple solution to say that those products are outside the advice regime. You are still covered by the licensing provisions and you still have the consumer protections afforded within that respect. And there would still be consistent disclosure for similar products, so it would be consistent with Wallis, and then you would have to deal with above the line. Some of these elements here are more about the above the line, but there would certainly be some benefits for those simple products if an SOA were not applicable to all of them. That approach would deal with it.

CHAIRMAN—You indicate that you believe that there is a need to rework the small business test in relation to sophisticated investment arrangements. Can you elaborate on your reasons for that?

Ms Tate—When the government first started consulting on this the small business test was included in the consultation paper and then it seemed to fall away at the proposals paper stage. One of the thoughts behind that was that the sophisticated investor test might deal with some of the concerns in relation to small businesses. One of the main concerns that we have about what is already in the bill in relation to sophisticated investors is that it actually exempts small business. We would say that there does not seem to be a logical rationale for that, because businesses are made up of individuals. If an individual has the sophistication to be able to conduct a trade or transaction and so forth on behalf of their business and they have been authorised to do so, then they should be allowed to have the same relief that is applied to

individual investors. We think that the sophisticated investor test may deal with some of the concerns in relation to the small business test.

I will give you an example of a small business that is an importer/exporter. They do not meet the current test in the law for, say, the employee threshold. They do conduct trades, obviously, internationally. They need foreign exchange to do so. They probably need some derivatives to hedge their currency exposures. At the moment they would still be caught as retail clients in dealing with the OTC market in respect of being a retail client, when in actual fact they are doing these trades quite frequently. They do not need the same disclosures that perhaps other customers do.

Mr Bell—You have the anomalous situation where an individual can be classed as a sophisticated investor if they are doing something of their own accord, but as soon as they move or act within the confines of their small business that is lost. That does not make sense.

Senator SHERRY—Just on this issue, how would you define 'sophisticated investor' and who should define it?

Ms Tate—What is in the bill gets us partially there, but some of the drafting around it restricts it. For example, there is some concern about the use of the title 'sophisticated investor'. Does 'investor' mean that you are exempting those that are not strictly investing—for example, someone who is managing a financial risk? It may be that a more appropriate title to the section could be 'sophisticated clients', with any reference to 'investing' within the draft provision itself being removed, and that would also deal with some of the concerns around other situations—for example, group life insurance and so on. We need to be careful about what we are including and what we are excluding. We need to deal with that question around 'investor'. The intention of the draft provision is that it should be applying to situations where there is an interaction at a sophisticated level, whether that is investing, managing a risk and so forth.

The other area, which seems to be a little nonsensical, is that currently the provision would exclude the relief being available if a client received disclosures commensurate with being a retail investor—for example, a FSG, a PDS or a SOA. It would seem sensible that, if a financial service provider and their client agreed that it would be useful for them to have this information anyway, that should not exempt them from the relief. We have made some comments about changing the wording currently from a financial service provider not obliged or not required to provide these documents. We do not see any real benefit in not providing information to customers just to get the relief.

The other area that is not clear is that this test has been taken from chapter 6, which is a securities prospectus environment, and put into chapter 7, which is a financial products environment. The way that people transact is slightly different in that it is ongoing. At the moment, with the way that the relief has been cast, it seems to say that I can go through the process of being recognised as sophisticated, having my financial service provider recognise that on reasonable grounds, and then I make a written acknowledgement of that, and this might apply to only one transaction. For example, in the FX market things are happening pretty quickly and it would not make sense practically that it would apply to only one trade. It would make sense that it apply to a class or a subclass of products on an ongoing basis. That is one of the other areas we would like to see changed.

Effectively, we think it should capture sophisticated businesses. It needs to be clear about what it is applying relief for, which is not just investing; it is also managing risk and so forth, and making sure that where information is able to be provided to clients that can still be done.

CHAIRMAN—Do you think the provision by licensees of different kinds of transaction statements to clients for different classes of investments is practical?

Ms Tate—Once you have identified a client as being sophisticated for a class of product, it needs to occur for that licensee. The licensee is the one that has the relationship with the client, and this test really is about the relationship between a client and a licensee, so that needs to be done in that context. It would be impractical to have relief apply to each trade—that would not be relief.

CHAIRMAN—There is a division, so we will have to call a break.

Senator SHERRY—I have a pair. I am happy to press on.

CHAIRMAN—Have you got questions?

Senator SHERRY—Yes.

CHAIRMAN—Okay, I will let Senator Sherry ask some questions.

Senator SHERRY—Out of courtesy to you, I am happy to break.

CHAIRMAN—No, I am happy to let you continue—otherwise we will get behind. As long as it is not too controversial!

Senator SHERRY—Never! Mr Bell, can I raise a few bank issues with you, on a related topic. With respect to the basic theme and tenor of your comments, I am picking up that you still see this as work in progress; it is not the answer to the current complexity surrounding disclosure and its implementation?

Mr Bell—Yes, it is work in progress, but we would err on the side of saying it is a good start. We are generally happy with the thrust of what has happened. It is still a work in progress, but we think things can be ironed out.

Ms Tate—That is particularly relevant to the proposal that is not in the bill.

Mr Bell—Proposal 1.1.

Ms Tate—We need to get some further discussion, clarification and consideration about the intent that we need to deliver and what the proposed approach might be to do that. In terms of what is in the bill, we have made comments specifically around a few issues on which we have been involved in consultation with the government and Treasury for some time. In principle we support what these are doing. There are some practical issues that we think need to be sorted out. For example, the SOA exemption and the SOA threshold changes are unlikely to be of as practical use as they could be.

Senator SHERRY—This may have been covered before I came in but, on the $15,000 threshold, what is your understanding of how that has been determined? What is the basis of it?

Mr Bell—Do we know?

Ms Tate—We know that the $10,000 threshold was proposed in the original proposals paper, and now it is the intention, from what has been stated in the explanatory memorandum, that it will be $15,000. The other thing we did make comment on previously was that the threshold would be prescribed by regulation, so it is a bit of an unknown at this stage. But it also says that a threshold could be prescribed for a class of product, which indicates that there could be different thresholds. A threshold by nature is at some points arbitrary and so it needs to be practical, we would say. So $15,000 may not be a practical threshold for some products where the minimum investment is $25,000.

Senator SHERRY—Has the ABA itself done any research—or you might be aware of member research—on the readability, understandability and consumer testing of current disclosure documentation?

Mr Bell—The ABA has not done research on this. Have our members?

Ms Tate—Individually they may have done some consumer testing themselves just in terms of their own client and customer relations. Certainly a little bit has been done by ASIC and some other industry associations as well.

Senator SHERRY—A very little bit by ASIC.

Ms Tate—They may be better placed to answer that.

Senator SHERRY—I would be really interested in any research that your members may be able to provide. I understand there are issues of confidentiality, but it strikes me that we are a long way, even with these changes, from consumers being able to comprehend the documents that are being issued and understanding them. Therefore, the central purpose of disclosure is being defeated.

Ms Tate—What these changes would do is address certain concerns that have been brought up. We think that the conversation around the intention of proposal 1.1 may address some of what you are talking about.

Senator SHERRY—Sure, but is it really satisfactory? There might be difference about the details, but, if it recognised that there does need to be significant reform in this area, is it satisfactory from a practitioner point of view to be doing it in bits over time?

Mr Bell—I think at this stage that is where we are at.

Senator SHERRY—That is not what I asked. I asked: is it satisfactory to take that approach?

Mr Bell—It may or may not be, but the point we are at is that we are dealing with this in chunks and we are happy with the chunks that we are seeing so far.

Senator SHERRY—But here we are approximately three years on from FSR operation, and it is still not 'right'. There are different perceptions about what is right, but it is still not right three years on.

Mr Bell—It is getting better, and it is good that the steps are being taken to correct what was wrong previously.

Senator SHERRY—You don't see a practical difficulty in a chunk-by-chunk approach? Let us take the position of a compliance officer in a financial institution. There are a set of changes that they will have to oversee and implement as a consequence of this legislation, there will presumably be yet another set and, if there is a change of government, there will be another set. Is it particularly desirable from an operational point of view to take this sort of approach?

Mr Bell—The choices you have are to do that or take the big bang approach. The trouble with the big bang approach is that it will take a lot of time. The advantage of this approach is that it is fixing issues on the way through.

Senator SHERRY—It is still taking a lot of time, though.

Mr Bell—Sure, it is taking time, but at least we are getting things fixed on the way through. If we had saved everything for one big go, we might be in the position at this point where we had not seen anything, so I think this is the better of the two approaches.

Senator SHERRY—Will the ABA be carrying out any consumer testing after these changes are implemented to see what the understandability-readability for consumers is?

Mr Bell—It is unlikely that we would do consumer testing. It is likely that our members would, but we would have to speak to them about it.

Senator SHERRY—You are the highly responsible, peak organisation for the banks. It seems to me logical that you would do some research testing.

Mr Bell—I acknowledge that we are the highly responsible entity for the banks, but it is not an area of expertise for us. It is typically something we would not do. There are many occasions where our members do things which we then collate and report back on to committees and people like you. No, I do not think we would be involved in doing that.

ACTING CHAIR (Ms Burke)—But, obviously, in putting forward the proposals that you have put today, you have asked your membership base about the issues they are having and what they are experiencing, based on their research?

Mr Bell—Yes.

ACTING CHAIR—You come with an informed view from your membership base, so there has to have been some sort of dialogue somewhere with someone who said, 'These were the problems when it was introduced and this is how we're fixing it.' Somewhere along the way someone has to have done something to work out that it was not working; that is why we are fixing it.

Mr Bell—Certainly our members would not have dreamt this up. This would be based on customer feedback.

ACTING CHAIR—But you have also had the conversations with your membership base to ask, 'What's the experience on the ground?'

Mr Bell—Yes, that is correct. Our feedback is informed by what our members think, and no doubt our members' feedback is informed by what their customers think. That is the way we would typically present our views. We would not get into the space of polling directly, because they are not our customers; the customers belong to our members. Our customers are our members.

Senator SHERRY—Yes, but I am aware some of the other peak organisations have done some research in this area. From the ABA's point of view, how do you reconcile the fundamental conflict of interest, for example, where a bank employs a planner or a bank owns a life company and it directly employs a planner? How do you overcome the fundamental conflict of interest in terms of providing reasonable advice to a client?

Ms Tate—The law is very clear in making sure that licensees have an obligation to manage conflicts, and they also have to make disclosures regarding conflicts. We would say that, if there is a planner who is providing advice and they make the right disclosures in terms of remuneration, other interests and those sorts of things that are already embodied in the disclosure documents, that should address any concern that there may be.

Senator SHERRY—So you would argue that, if we ever make the regime understandable for consumers, that is sufficient to protect the consumer?

Ms Tate—Disclosure—that is one of the tenets of the law.

Senator SHERRY—Do you think it operates adequately in that space?

Ms Tate—In terms of disclosures of conflicts of interest?

Senator SHERRY—Yes.

Ms Tate—I think that the disclosures of conflicts of interest are embodied in a number of different disclosure documents that should give an informed position to consumers.

Senator SHERRY—Do you think that is the way it works in reality?

Ms Tate—The question is: do consumers read the disclosure documents—

Senator SHERRY—Yes.

Ms Tate—and I cannot answer that.

Senator SHERRY—Have you ever seen any disclosure documents?

Ms Tate—Yes. As a consumer I receive them myself.

Senator SHERRY—Do you read them?

Ms Tate—I do read them. I am an informed consumer!

Senator SHERRY—I would expect you to be. Obviously the remuneration and incentive practices of banks when it comes to planners would vary from institution to institution. Do you have any survey data about, where a planner is directly employed by a bank, what the options are in terms of other providers' products, if any?

Mr Bell—We do not have any survey data.

Senator SHERRY—Do you have any survey data for when an individual goes to a planner who is directly employed by a bank?

Mr Bell—The ABA does not have any survey data of that type.

Senator SHERRY—Could you ask your constituent members for survey data?

Mr Bell—Of course.

Senator SHERRY—I would be interested to see that. The theory with economic competition is that people get a variety of advice and they compare the advice they get on a particular product. That is the theory, at least. It strikes me that it would be very hard to go into a bank without the planner ensuring that a sale of that particular bank's product occurs; in fact, it would be expected, I would have thought.

Ms Tate—It gets back to the point of the client-bank relationship. If a client walks into a bank expecting to hear about products that the bank offers, that is still providing a valuable service—as long as the disclosure regime is comparable to the relationship that they are having, and we would say that at the moment, in terms of proposal 1.1, we need to think about that a little bit further. If you walk into a bank and want some information about a simple product, it is not reasonable that the full advice regime would be imposed on all of those simple products that we mentioned before; whereas, if you go into a bank wanting further information about an investment plan and you have certain ongoing strategies, that sounds like financial planning to me.

Senator SHERRY—What is your understanding of section 947D of the Corporations Act in terms of its application to this legislation via regulation—the research and the level of information that is required—should these changes pass the parliament?

Ms Tate—Could you give me a bit more information on what that section is? I do not have the law in front of me.

Senator SHERRY—I do not have it handy. You might have it, being a specialist knowledgeable in the area. Section 947D goes to the level of research that is required, the

gathering of information for a customer. Is it your understanding that that will still be a provision in the regulations for this particular legislation, should it be enacted?

Ms Tate—I am assuming section 947D relates to providing advice in terms of looking through what a customer's needs and circumstances are. Under the regime, an adviser will still be required to do a certain amount of analysis into what the needs of their customer are, otherwise they will not be providing reasonable advice.

Senator SHERRY—So your understanding is that that will still be required?

Ms Tate—In the situations that we are talking about here—specifically, an SOA threshold and an SOA exemption—there would still need to be some interrogation into what would be reasonable. We have made comments around what disclosures we think would be reasonable, and we are not sure if it does provide relief in that respect. But, certainly, above the threshold and outside the exemption, the law will still continue as it is now.

Senator SHERRY—Thank you.

CHAIRMAN—Further questions? Senator Wong.

Senator WONG—My apologies that I was not able to be here for the earlier part of your evidence, and this may have been covered. I refer to your comments regarding the auditing of the narrative section of the remuneration report. Can you remind me: what does section 300A currently require? Is what you are proposing essentially a lessening of the auditing requirement?

Ms Tate—It is not a lessening; it is more of a clarification. At the moment the remuneration report that may form part of a directors' report is to be audited. We are aware that the remuneration report is not just about facts and figures; it does contain narrative about remuneration payment philosophy and framework and that sort of thing.

Senator WONG—That is right.

Ms Tate—It would seem unreasonable to ask an auditor to go beyond that and make comment about an individual company's determinations about remuneration policy. They are there to audit the numbers and make sure that those figures are reasonable.

Senator WONG—What if the narrative section is a section that might, for example, explain how fair value for an option is determined, all those sorts of matters, which do go to pay-for-performance issues?

Ms Tate—Wouldn't they also be included in the financial statements?

Senator WONG—That is the question: would they?

Ms Tate—I believe they would be.

Senator WONG—So to what extent is what you are proposing different from the existing law?

Ms Tate—It would clarify that the auditor would be required to give an opinion only in relation to the statements, if you like—say, the financial statements or the figures in relation to the remuneration and not the narrative.

Senator WONG—Do you say that the existing law does require some comment on the narrative?

Ms Tate—We believe it does.

Senator WONG—So it is a lessening essentially?

Ms Tate—I would not say 'lessening'. Again, I would say it is clarification. I think already the law requires directors to provide their sign-off on the opinion in relation to their full report, anyway.

Senator WONG—Okay. Thank you.

Senator SHERRY—I was going to ask Mr Bell to take a question on notice, because realistically I would not expect you to have the information here today. Can you check with your bank members, in terms of a planner who works for a bank, for example, what is the remuneration practice in terms of sales targets that are set? Do they set sales targets for products by a bank-remunerated planner? Is there an incentive payment and, if so, what is the basis of the incentive payment?

Mr Bell—Will do.

Senator WONG—As for the exemption for subsidiaries that you are proposing—again, on the remuneration report—can you explain to me why you say that is unnecessarily burdensome? Is that on the basis that the subsidiary would have its own requirements?

Ms Tate—Correct.

CHAIRMAN—If there are no further questions, Mr Bell and Ms Tate, thank you very much for appearing before the committee and assisting with our deliberations on the legislation.

Mr Bell—Thank you.

Ms Tate—Thank you.

[4.15 pm]

KOROMILAS, Ms Deborah, Member Representative, Investment and Financial Services Association Limited

McRAE, Mr Chris, Member Representative, Investment and Financial Services Association Limited

MICO, Mr David, Senior Policy Manager, Investment and Financial Services Association Limited

O'REILLY, Mr David, Policy Director - Regulation, Investment and Financial Services Association Limited

O'SHAUGHNESSY, Mr John, Deputy Chief Executive Officer, Investment and Financial Services Association Limited

SQUIRE, Mr David, Member Representative, Investment and Financial Services Association Limited

CHAIRMAN—I now welcome the representatives of the Investment and Financial Services Association. The committee has before it your submission, which it has numbered 10. Are there any alterations or additions that you wish to make?

Mr O'Shaughnessy—No.

CHAIRMAN—I invite you to make an opening statement, at the conclusion of which I am sure we will have some questions.

Mr O'Shaughnessy—Thank you for the opportunity to submit and thank you for the opportunity to appear before the committee. IFSA is a national not-for-profit association that represents the retail and wholesale funds management, superannuation and life insurance industries. IFSA has over 140 members, who are responsible for investing over $1 trillion on behalf of more than 10 million Australians. Members' compliance with IFSA standards and guidance notes seek to ensure the promotion of industry best practice.

The current Australian regulatory environment is well recognised as one of the best in the world today. However, as is often the case with complex systems and structures, the practical implications of change can be difficult to predict. IFSA has worked, and will continue to work, closely with government and the regulators to identify inefficiencies within the current regulatory regime and to suggest practical policy solutions that deliver the benefits of a competitive and efficient market while ensuring that consumers are adequately protected. IFSA is in the unique position of having members that cover both the product and advice segments of the retail financial services industry. Therefore, our comments take account of how the proposed changes would affect all aspects of financial product and service delivery.

The further refinements proposed by the bill are positive, and our comments are directed at constructive recommendations that will further enhance the regulatory and industry efficiency. The focus of our submission and comments is for the extension of these proposals: firstly, to provide scope for electronic delivery of regulated disclosure documents for companies, registered schemes, disclosing entities and superannuation funds; secondly, extend the small-investment statement of advice to superannuation and life insurance products in seeking a higher monetary threshold—to do otherwise may effectively deny significant groups of consumers the benefits of financial advice; and, thirdly, to cover certain technical drafting issues and comments on the proposed section 761GA, the meaning of 'retail client', and situations where a statement of advice is not required.

We note that many of the proposed changes are reliant on regulations being made and, whilst not expressly subject to the bill, the objective is to provide consumers with adequate information and shorter documentation. It will be a step closer in proposed regulations that will permit incorporation by reference and enable provision of shorter and more informative disclosure documents, documents that will better assist consumers in making better quality decisions.

The remaining issue that is the subject of further consultation with government is the scope of the definition of 'personal advice' that currently results in significant inefficiencies for both industry and consumers. IFSA strongly supports the government's actions to improve the overall effectiveness and efficiency of the corporate and financial service regulatory regime. We have a shared interest in assuming that consumers and business benefit from the regulatory regime under which we operate. Thank you.

CHAIRMAN—Thank you very much. At the outset, can I ask what your view is as to the impact the legislation will have on the capacity of financial advisers or financial planners to give advice to clients? As you are aware, one of the main concerns with the financial services reform legislation is its impact on the cost of advice and how that particularly mitigates against a move to a fee-for-service advice structure because of the complexity of the documents, the statement of advice et cetera, that have to be provided. Is this going to provide the scope for a much more simplified documentation system and therefore a lower cost to advice, or is it not going to have much impact?

Mr O'Shaughnessy—It will definitely improve the situation. We see this as very much a step forward and our recommendations are really to encourage that step to go further forward. I will ask one of our members to explain what might happen in the day-to-day activities with the financial planners.

Mr Squire—Mr O'Shaughnessy is right. It needs to be seen as a package as well. As Mr O'Shaughnessy alluded to in the opening statement, we are awaiting some regulations that will include a principal called 'incorporation by reference', which will help us to simplify documents even further. We believe those regulations are not far away. Subject to other comments about things that perhaps need to be tidied up in the bill, it should have the ability to provide the adviser with a better ability to provide more timely, cost-effective advice to the consumer and, particularly for consumers in a lower socioeconomic group, the ability to seek and obtain advice, because of the lowering of the cost.

Thresholds are an issue as far as we are concerned, and also carving out a couple of the very important parts of consumers' needs. One is life insurance and the other one is superannuation insofar as new accounts. We see that as not as productive as it could have been and we would have liked to have seen that in there so it gives the total picture to the client. For example, we do not see any reason why, with somebody who has an existing superannuation portfolio, the adviser would be exempted from providing a statement of advice, yet somebody opening a new account would not be exempted. There does not seem to be any reason, particularly when the consumer protection mechanisms, such as being provided with an FSG, PDS and also all the other provisions of external dispute resolution mechanisms and so on, plus the overarching requirement of having a reasonable base of advice, they do not go away, they always stay.

CHAIRMAN—You expressed the view that the threshold for the statement of advice provision should be $25,000 rather than $15,000 as indicated. Treasury claim that their proposed threshold of $15,000 was calculated to cover the cost of providing a statement to clients. Why do you have a much higher break-even point than Treasury seem to have provided?

Mr O'Reilly—The feedback from our members on the threshold is that the $25,000 figure would be a more accurate figure. In terms of the EEM to the proposal, Treasury has done a business cost calculator calculation where they have outlined their assumptions for the calculation of the $15,000 amount they did that. I can refer you to page 127 of the EEM, item 7.1. They have actually made an assumption that five per cent of advice provided fell below $15,000. We have had feedback from at least one of our members, who is a major provider of advice in the market, that three per cent of the advice provided falls below $15,000. So, based on that assumption, $25,000 is probably about right. We also note that in terms of the assumptions for the threshold, the threshold is something that can be determined by regulation. It is something that will be a moving amount. We would prefer to see possibly a more standard basis for the determination of that. If it is five per cent of advice, then it is something that needs to be reviewed, but let us at least maintain it on that basis. On our members' calculations in terms of approximately five per cent of advice going under the amount, it would be around $25,000.

CHAIRMAN—Do you consider the provisions relating to records of advice sufficient? I notice your comment that you have some concerns about definitions of direct remuneration and other aspects of the record of advice as a substitute for a statement of advice. Can you perhaps just enlarge on those?

Mr McRae—The real issue about remuneration and records of advice is that at the moment if you get a record of advice there is the same level of disclosure of remuneration as there is in the SOA and as there is in the FSG. I suppose we were comparing this scenario of a level of strategic advice that the industry and planners in the industry are concerned falls into the realm of advice because of the nature of the definition and falls outside the realm that is currently covered by 7.1.33, the regulation that exempts particular strategic information, rather than advice from being advice. It is that grey area that the industry was looking for some help and guidance in. We feel what is given is very useful, but the obligation to provide information about remuneration—indeed there is an obligation that you cannot receive remuneration in this law—seems to cut across the obligation of a planner running a business to charge a fee for that service.

If I am a planner I can give information, which is strategic information, useful to a client in a generic environment and I can charge that client for it if I am a planner. If it falls into the arena

of advice, even though we have this law giving us an ability for that to apply, notwithstanding it is advice, I cannot be paid for it. And it is not a scenario where any product is being sold; it is a scenario where the advice is still strategic. It just does not seem necessarily to be logical that there is an obligation to provide the normal, if you like, screeds of information about your remuneration facility, and that can be your ties to product issuers or your conflicts area and so on, if in fact there is no product sale associated with this at all. It seems to prevent planners from providing the customer up front with the prospect, 'I can run you through a broad strategic opinion and for that my charge is'—whatever it is, $100, $300—'as a fee for service and I invoice you for that.' This would prevent that occurring. Consequently you have to ask the question whether that requirement to say you cannot be remunerated for this will prevent what we are really looking for here, which is for planners to be encouraged and to feel as though this is something we should be doing for that level of consumer.

Senator BERNARDI—Mr O'Reilly, your submission stated that one of your members estimated that three per cent of their transactions or statements of advice were dealing with less than $15,000. Just for my information, is that a fee-for-service planner or advisory business, or was it a commission oriented remunerated business?

Mr O'Reilly—I do not know. I would assume that it is commission based.

Mr O'Shaughnessy—There is a combination, some fee for service and some commission based.

Senator BERNARDI—In the main, though, in the industry people declare themselves as a fee-for-service-type business or a commission oriented—

Mr O'Shaughnessy—Probably in the main it would be commission based.

Mr O'Reilly—But, having said that, there are also rebates that people do provide in terms of—

Senator BERNARDI—Yes, I understand the industry. I am just interested, because I think the style of business you have referred to here, as one of your members, would reflect on the number of people who are going to go to them for advice, and particularly with lower amounts of money.

Mr O'Reilly—Yes.

Senator BERNARDI—It comes down to marketing and a range of issues. Thank you.

Mr O'Shaughnessy—One of the issues there, of course, is if it is easier to give advice on smaller amounts it will actually skew the figures as time goes on. There probably needs to be ongoing revision as to what is a sensible number.

Senator BERNARDI—Yes, I understand that, because most financial planners choose not to give advice to people under a certain amount of money, and they get turned away because it is not profitable for them and it is not profitable for the people. I understand that perfectly, and that is why the statistics could be a little bit optimistic from your perspective. I think Treasury might be closer to the mark, but that is just a personal view.

CHAIRMAN—Are there any further questions?

Senator SHERRY—Yes. I would like to clarify this. I think I know what you mean but others may not. As to the issue of strategic advice, are we talking about investment option, for example, within an existing product—what is best for a 25-year-old: you are in bonds, you should not be, you should be in higher return options? Is that what you are talking about?

Mr McRae—I was actually taking it back a step. I was talking about the scenario where you may be contemplating, as a customer, investing in property and negative gearing and saying, 'What are my options?' and I might be talking about superannuation as an option in the context of your investment direction. So this is at a higher level again. You might ask the question: 'Why doesn't the exemption in the regulation apply—that in 7.1.33? Once we start talking about your circumstances, that broad definition of 'personal advice' leaves advisors in no-man's land in the context of—

Senator SHERRY—Firstly, I wanted to understand what IFSA meant by 'strategic advice'. Secondly, I have had put to me over time the ability, or lack thereof, for an institution and/or planner to provide limited advice within a product. Is that made any easier by these changes?

Mr Squire—That is one of the things that we have talked about for a long time. I give the example of members in a superannuation guarantee charge fund. They have nine per cent of their salary going into a scheme. The employer has decided which scheme it is going to be. They have taken advice from the advisor, and they have put it in at a scheme level. They might have, say, 200 members. They might give them choice of asset allocation in the underlying fund.

The members neither made a purchasing decision nor committed any of their own money; it is the nine per cent that is going in there. At the current time, the way the law operates, if the advisor gives them advice about the asset allocation in the underlying fund, that is treated as personal advice and triggers all the requirements of personal advice. You can imagine with a scheme like that that it is quite uneconomical for the advisor to be providing the full personal advice in those circumstances. As to the problem with the way it is drafted, in particular one of the sections at the moment talks about strategic investment advice being not excluded. Therefore, you could not rely on this exclusion where that was the case. In that particular case you still have the perpetuation of this situation where an advisor would still have to go through all the process of doing the full advice, statement of advice, and so on, whereas the client, being the member at that point, is not actually committing any of their own money, effectively. They are seeking advice to make sure that they get the right investment profile for themselves long term. They are the people who can least afford to pay for advice.

Whilst the adviser, yes, is being remunerated at the fund level, he is certainly not being remunerated to go and talk to 200 people and provide statements of advice with a full investigation of their circumstances. That is not possible. That means you have a large proportion of people who are going without that very important advice.

Senator SHERRY—It seems to me that the area that this is most likely to have an impact on is lost accounts and consolidation of accounts; would that be your understanding?

Mr O'Shaughnessy—It would certainly be a great help in that area.

Senator SHERRY—Given the limit of $15,000.

Mr O'Shaughnessy—I actually do not know the numbers, but an awful lot of the lost accounts fall under that—

Senator SHERRY—Some 5.7 million, or 9.7 billion.

Mr O'Shaughnessy—But the average of those accounts would fall under the threshold.

Senator SHERRY—I am sure it would be well under the $15,000. How would people pay for that sort of advice? We are dealing here with small amounts of money, whatever the figure is, but very small amounts of money in the context of lost super. How would they pay for that?

Mr O'Shaughnessy—The first issue at the moment is that planners just cannot afford to get into that space. A step forward to do it more efficiently will encourage more planners to do that. They need to work out the fee approach to it, whether it is fee for service or commission, because they need to run their businesses on the basis of making a profit and get affordable advice through to those people. The methodology will vary quite considerably depending on—

Senator SHERRY—But just in this space, it seems to be this is where there would be a significant impact, so I am just focusing on a practical outcome. Could they ever afford to, frankly? If you are dealing with a small amount of money—let us say it is $500, $1,000, a typical lost account—it would seem to me that a commission based charge of one per cent would be way under the real cost, so you would be looking at a flat fee, ironically, of probably $50 or $100, or something in excess of that. Realistically, can a planner get into that space and make a rate of return to cover their cost, just in that space?

Mr O'Shaughnessy—I think there will be further penetration. The circumstances vary tremendously. Some people with a large account will actually have small funds. It could be consolidated, and this would be a step forward in helping them consolidate those.

Senator SHERRY—Just on that point, there are still a lot of exit fees around on legacy products, or what are termed legacy products—half a million. You would have to get some reasonably detailed information—that information, for example—to give some informed advice to a person.

Mr O'Shaughnessy—I agree. I think the real impact, though, is that this lowers the cost of actually giving that advice. I believe some people will get the advice for nothing; others will need to pay for it, but it will vary tremendously with the licensee and the planners, and also the opportunity that presents itself. This is actually making it easier for those people to get advice. It still does not have a zero cost base attached to it.

Ms BURKE—Do you do an analysis at the moment of the cost range for what planners are charging people, both fee for service and commission? Have you actually done that work on the range of costs that people are charged? If you are going to make the argument that it is lower, we need to actually verify this against something. I am wondering whether anybody has done the work on what the current cost is.

Ms Koromilas—I think to a large degree the cost comes down because you have to produce less paper in order to—

Ms BURKE—It is an argument, and I agree with it; we often hear that things are going to cost less, but when you actually benchmark what the actual cost is—I am just curious. We are telling people to shop around for planners and advisers and we say to ask them about the commissions, but are people able to compare cost prices at the moment, let alone if this makes it less? I am just interested if anybody has done the work, really.

Mr O'Shaughnessy—I have not seen any research at that level. We do research at a macro level about the overall costs and down to segment, but not the costs that you are talking about, particularly to this level.

Senator BERNARDI—When Senator Sherry asked about lost super and getting advice about consolidating accounts and exit fees, there is a facility whereby people can go on and ask to track down their lost super. It is done through tax file numbers and various other things. The consumer could then contact your members and the funds can give pretty straightforward advice about what the exit fees would be if they wanted to withdraw it in the process and those sorts of things. They could put all that information together themselves quite simply and then seek advice on the consolidated amount if that were the case. They are not required to get an investment adviser to do all the running around for them, are they? Because the basic information, as Senator Sherry was suggesting, that consumers need is available from the funds. Is that right?

Mr O'Shaughnessy—In the main it is.

Senator SHERRY—So it is only at that point of choice of a new superannuation fund, if that is what they need to consolidate their existing holdings into, that consumers would require strategic advice?

Mr O'Shaughnessy—I think that is the question in the main, but circumstances change. I have got a couple of people who want to jump in.

Ms Koromilas—That particular advice would actually be advice in relation to a particular financial product, and therefore would not be strategic. I think the strategic advice can go to two levels. The first level, which Chris talked about, is at a much higher level in terms of somebody walking in the door and you saying: 'You have got some money sitting there. Maybe you should be looking to put more money into your superannuation or diversifying to various different assets.' Then there is that level down again where you might be talking about asset allocation within a particular fund such as your superannuation. Do you go for Australian equities, which are again classes of products? With all of those types of things strategic is much more in relation to where I put my money as opposed to which specific product to actually put my money into.

Senator BERNARDI—Just following on from that, in my experience most financial advisory firms, in one way shape or form—'most' is probably a bit generic, but a number of them—would welcome people coming in and having an initial consultation to see whether they fit the client model. You can get that general advice of, 'Yes, you should be putting more money into super but, really, you are too small for us. We can recommend you head in this way, shape or form.' So

there is that high-level strategic advice or that broad general advice, I guess it is called, available to most people if they choose to do it.

Ms Koromilas—Unfortunately, under the current legislation that would be personal advice and therefore an SOA would be required—and to some degree that is what some of these provisions look to try to believe, to actually get through that. I think in terms of some of the questions that have been raised, a lot of the provisions are actually a step forward and they may actually encourage dealer groups to become much more innovative in terms of how to resolve some of these issues. They are a step forward in that regard.

Senator SHERRY—We used the issue of lost super earlier. When you have got millions of people failing to do anything in a compulsory system why should they have to pay for it? Why shouldn't the system itself have a default mechanism to resolve that problem for them?

Ms Koromilas—I think the superannuation industry provides a product. I suppose you cannot really mix the two things. The product is provided at one end of the market and the advice in relation to that is provided elsewhere.

Senator SHERRY—Sure, you provide the product, but I am just interested in your view as to why should we not have in the lost super space a default solution? We have a default investment category within a fund and most people are in the default investment. They are not active; they do not make active decisions. Why should we not have a default solution for lost super?

Ms Koromilas—In terms of them receiving advice?

Senator SHERRY—No, in terms of solving the problem. There are millions of these accounts growing every year. Individuals can go to the ATO website.

Mr O'Shaughnessy—Can I just pick up on the first part of that. I think there are two ways to look at why people should pay. One is if a small business person—and most planners are—is spending time helping somebody do it, then that time, I suppose if I look backwards, has actually been quite high. It is actually difficult to track down superannuation funds. It is difficult to get them transferred. I think in the new era it becomes easier. I am not saying it is easy, but it becomes easier. So it is a step forward. So if you look from the small business person's perspective, they are actually putting time aside to help somebody consolidate. I can also see the other side of it from a guaranteed system. It does not seem reasonable. I think the environment is actually improving and this particular point of change will be a step forward. Are they the perfect solution? I think there is still room to move forward.

Senator SHERRY—I think it was you, Ms Koromilas, who referred to costs coming down, less paperwork and, in the opening statement from Mr O'Shaughnessy, improved efficiency. How much will the cost come down?

Ms Koromilas—I think that depends, per dealer group. They all do have different models. There is not consistency across the group. It is particularly hard at this point to be able to put an exact dollar figure in terms of how much costs would come down, but in terms of efficiency processes those things will in the long term lead to a reduction in costs for the dealer group and therefore would encourage people to actually provide advice in this space.

Senator SHERRY—But you say costs will come down; will price come down?

Ms Koromilas—I think that is a question for each dealer group to answer. They may potentially—

Senator SHERRY—No, I am asking you, representing BT: can you guarantee to this committee if this legislation is passed the cost you charge will come down?

Ms Koromilas—As I said, different companies have different models, but—

Senator SHERRY—No, I am asking you in terms of your company, BT: will the price come down?

Ms Koromilas—The price of the advice?

Senator SHERRY—Yes.

Ms Koromilas—Not being the general manager of that business, I am not sure that is a question that I can particularly answer. The costs are probably much more the indirect costs.

Senator SHERRY—Perhaps you could take it on notice, but I am just interested in this argument. The argument is there is greater efficiency, less paper and less cost. What I am seeking from the industry—or you as the witnesses—is: will the price charged come down? Logically, it must.

Mr O'Shaughnessy—There is another dynamic in this, and that is that we believe there will be more encouragement for people to deal with clients that they have not dealt with in the past. In terms of trying to give a black and white answer as to whether costs will go up or come down, I think a good result will actually be that more people who have got small account sizes will be given advice. If we are talking about an hourly rate, my guess is that it possibly will not. If we are talking about a transaction cost, it is very, very hard to judge, but the real benefit is that 15,000 planners—not all of them, but a number of them—are likely to give more advice to smaller account holders, the smaller opportunity holders. So it is very, very hard to determine what a black or white answer to your question might be.

Senator SHERRY—But you have made an assertion and a claim that costs will come down and there will be greater efficiency. It seems to me that, logically, if costs come down you should be able to tell me that price will come down for the consumer.

Mr O'Shaughnessy—In my opening statement I definitely did not say that costs will come down. I talked about efficiency—

Senator SHERRY—So costs go up when there is greater efficiency?

Mr O'Shaughnessy—I did not say the cost would go up either.

Senator SHERRY—No, you did not—

Mr O'Shaughnessy—I actually have not made a comment about cost, but there would certainly be improved—

Senator SHERRY—Ms Koromilas did, in terms of the cost of paper.

Mr O'Shaughnessy—Sorry, but you said it was in my opening statement. I talked about efficiency, and on the basis—

Senator SHERRY—Improved efficiency.

Mr O'Shaughnessy—that for small accounts—those with under $15,000 or hopefully $25,000, in that area—it will be easier to work with those customer with those sorts of challenges.

Senator SHERRY—So, ironically, costs may go up. Is that what you are suggesting?

Mr O'Shaughnessy—No, I am not. What I am saying is that at the moment we believe more planners will be encouraged to work in this space, which I think has got to be—

Senator SHERRY—Which means the cost to the individual may go up. In some cases it could go down, in some cases it could go up, because they are paying for more.

Mr O'Shaughnessy—At the moment they are not being well served to a point of almost being disenfranchised, so this is a move forward.

Senator SHERRY—But it comes back to the fundamental issue I raised earlier. In a compulsory system, why should a consumer pay, where there is a very, very significant failure, in order to solve a problem?

Mr Squire—I am not sure that I actually see where the failure is. People have moved employment quite a bit, so they have this lost super around the place. Generally speaking—and I know the government has done a lot of work around financial literacy—people just do not go out and do that. They need support and help. If we look at the broader industry—not just IFSA members, but if you look at banks and other institutions that deal direct with consumers—I actually think that, with the lessening of the paperwork, it is going to actually allow particularly salaried financial planners to actually move into this space and help the people that really need the help. They might be doing a lot of volume in that but—

Senator SHERRY—Sorry, you are missing the point. My argument is this. I put to you: why should a consumer pay for that at all? The failure is so massive. There are 5.7 million lost accounts. It went up by half a million in the last financial year alone. Why should consumers pay that cost to anyone?

Mr O'Shaughnessy—Senator, I think the question is—

Senator SHERRY—Why should they have to go and fill out a form when clearly millions do not do it? Why should they have to go and find the name of the fund? Why should they do that in a compulsory superannuation environment?

Mr O'Shaughnessy—The question on the other side of that, though, is if the planner spends time, and sometimes it is considerable time, are they compelled to do it pro bono? As a small business person, should they be allowed to charge fees?

Senator SHERRY—I am not suggesting they do it for nothing, what I am suggesting is they should not be doing it at all because the system should solve the problem. Maybe they should focus on a few other issues, like investment advice, level of contributions or level of insurance, which would seem to me to be a bit more strategically worthwhile. But, sorry, I just want to come back to this issue: you are claiming improved efficiency but you cannot give me an assurance that the cost will go down and that reduction in cost will be passed on to the consumer. It seems to me you are trying to have it both ways.

Mr O'Reilly—No. Can I explain the purpose of the provision. The complaint has been made generally that one of the impediments to certain people in our community seeking advice has been because the cost has been high and therefore they are precluded. One of the elements of that cost element is the preparation of the statement of advice. So what this provision has tried to do is alleviate that cost element from the provision of advice and therefore encourage people to seek advice. So one would assume that, if there is less paperwork in terms of preparing the statement of advice, they will not be paying for that element of it, and that is all that the provision tries to do. It does not do anything further. One of the examples provided was in terms of the consolidation of accounts. In our submission, what we did raise was if you are trying to choose a targeted account in which to consolidate, that person is going to require the same level of advice for that as they will for a new account.

Senator SHERRY—I do not want to get hung up on the lost super. I just used that as an example because it seems to me that that is an area where there is a significant issue which this may address. But, bottom line, after this legislation passes do you still think the average punter consumer understands the documentation that is being issued to them?

Mr O'Shaughnessy—IFSA is in the middle of undertaking comprehensive research in this area. We will have the findings from that probably in about eight weeks that we will take publicly.

Senator SHERRY—From your expert perspective, would you agree with the contention that generally the consumer does not read or understand the documentation that is being issued in the system at the present time?

Mr O'Shaughnessy—There is certainly room for improved comprehension, most definitely.

Senator SHERRY—I am just interested in the practitioners. What is their view? Do you think consumers understand what you are issuing?

Mr Squire—As I said right at the outset, when you look at the bill plus also the regulations that will provide incorporation by reference, we should be able to get a lot of the stuff out of these particular disclosure documents now to make it simpler and easier to read for the consumer. We have seen ASIC put together a model statement of advice; that was all very nice but, nevertheless, there was still the requirement to have certain things in there. By using incorporation by reference we can focus on the actual principles that the client needs to

understand when making a decision in terms of what the advice is about, how it suits their needs, what the adviser is being paid, what the conflicts are and so on, in a nice simple form, in a simplified, shorter document. We know, and we have known for years and years, that various types of documents—the old CIBs we had in the life insurance industry many years ago—people do not read all of those. They get past the first 10 pages, that is it, they go to sleep. So we think the bill, together with the regulations and together with the incorporation by reference, will make it a lot easier. We will give the things that are most important to the client so they can see them up-front. The other things they might like to read will be given to them separately.

CHAIRMAN—No further questions?

Senator SHERRY—There are some further questions.

CHAIRMAN—We are way behind schedule, Senator Sherry.

Senator SHERRY—But this is important. I mean the industry has been concerned, as I have, about these lengthy documents for a long time. You are giving me a very generalised approach. As a major player, you must have analysed it. How many pages are we going to cut out of these documents? Are we going to get down from 50 to 20, from 20 to 10 or four? You must have done some analysis of what the likely outcome will be.

Mr O'Shaughnessy—The guidelines on incorporation by reference are critically important, as we said earlier on. We believe it is a major step forward to help deal with this. Shorter documents probably on their own should not be the end game; it should be getting a much better informed consumer who is actually able to make better quality decisions. We are particularly interested in the outcomes of—

Senator SHERRY—So your contention is that with simpler documentation, if we ever get it—frankly, I will believe it when I see it—and greater education that is sufficient to protect consumers?

Mr O'Shaughnessy—It is certainly a tremendous improvement.

Senator SHERRY—Have we done any literacy surveys lately of the increase in financial literacy and understanding of Australians?

Mr O'Shaughnessy—I cannot recall. Certainly there are ongoing literacy surveys. I have not seen the latest. A lot of the work that we are doing in our review of the documentation will actually pick up what consumers are interested in and also their comprehension of existing documents and look for areas where we can improve.

Senator SHERRY—You describe this as a major step forward. I put the same question to the RBA. Do you think it is satisfactory that we have got a generally recognised too overly complex disclosure regime at the moment? There is general agreement on that across the board. How we solve the issues is a different matter. Do you think it is satisfactory? We are three years on now with FSR. We have still got documents that generally people do not understand or read, and we are doing it in bits now. This is one step forward. Presumably there will be a couple more steps forward. That is more change, more variation to documents and more regulations and law for the

existing compliance officers to have to digest, understand and then communicate to people in the industry. Do you think that is a satisfactory approach?

Mr O'Shaughnessy—The industry is excited that we are moving forward. We would always like to move forward at a rapid pace. I think particularly the aspect of incorporation by reference in this suite of changes is very, very important in that area and perhaps, if we achieve a good outcome, that may be something that actually helps accelerate the process. But we just want to see continuous improvement, with better informed consumers who are more confident in handling the products that we manage.

Senator SHERRY—I would be interested to see from the three providers we have got here your current disclosure document—typically, a real life example. I could go to the web, I suppose, and get it. I am tired of reading those and they are voluminous. Once this law and the regulations are passed, which I think is likely next week, I would like also to see your draft documentation. I do not want to be unfair to the three providers—you are just here—but I would be interested to see what the change is going to be from the past documentation to what is proposed for the future. Given the changes go through next week, you will presumably already be working on it, so I would just like to see what the change is in reality.

Mr O'Shaughnessy—I will let them answer, but at the moment we are not clear on what the incorporation by reference outcome looks like and I think it would be more helpful if we could actually provide that information after we are aware of the significance of the changes in that area.

Senator SHERRY—The regulations—you will need the regulations for that?

Mr O'Shaughnessy—Yes, most certainly.

Senator SHERRY—It is a bit unsatisfactory. We have got the bill but we have not got the regulations, and the regulations are pretty critical to all of this. Presumably we will see them. Do we know when we will see the regulations, Chair?

CHAIRMAN—Sorry?

Senator SHERRY—Do we know when the regulations are being released?

CHAIRMAN—No, I do not.

Senator SHERRY—I do not want to be unfair to the three practitioners here, but the before and after documentation from a cross-section of the people that you represent would be useful just to see how far we have got. But at this rate, three years on, it reminds me a bit of the pace for PI insurance for planners; we are five and a half years with that one. It still will not be resolved come 1 January. Thank you.

CHAIRMAN—Thanks to each of you for your appearance before the committee and your assistance with our inquiry.

[4.59 pm]

CAMPO, Ms Robbie, Project Manager, Industry Super Network

COATES, Mr Nick, Project Manager, Industry Super Network

WHITELY, Mr David, Executive Manager, Industry Super Network

CHAIRMAN—Welcome. The committee has before it your submission, which was numbered 9. Are there any alterations you wish to make to this written submission?

Mr Whitely—No.

CHAIRMAN—I invite you to make an opening statement, at the conclusion of which I am sure we will have some questions.

Mr Whitely—Firstly, we thank you for the opportunity for us to appear in relation to this bill. We would like to make a brief opening statement and then of course we will be available for questions afterwards. Our interest in the bill relates to the proposals to ease some of the regulation attached to giving personal financial advice with the aim of making this advice more accessible and more affordable. We believe this objective is laudable.

We have previously submitted that, in order to effectively and efficiently address the regulatory framework for financial advice, it is first necessary to address the minimum professional standards applying to advisers. We submit that if financial advisers were subject to an obligation to act in their clients' best interest it would enable a meaningful rationalisation of the regulatory framework. The central purpose of FSR, or of the FSR disclosure regime, is to manage the conflicts of interest systemic in the financial advice system. Any relief provided to the FSR industry must first and foremost be seen in the context of not diluting consumer protection. We believe that any changes to FSR need to be prudent.

We have limited our submission and our introductory comments today to just a couple of areas of the bill. The first main reform measure introduced to the bill which we would like to speak to is the statement of advice relief where an adviser provides no buy or sell recommendation and receives no remuneration. This measure is intended to provide some relief where an adviser is providing strategic advice which does not attract remuneration. We strongly submit that this measure should also permit superannuation funds and other product issuers to provide within-product advice to their members provided that there is no advice-related remuneration earned for this advice. Examples might include advice on whether a member should avail themselves of the government co-contribution or perhaps change their asset allocation.

There are many Australians for whom superannuation is their only asset. Their advice needs are limited to issues related to their super. If this exemption were to permit super trustees to provide within-product advice to their members it would provide a cost-effective way of enhancing the coverage of financial advice without compromising the quality of advice or compromising consumer protection. It would ensure that members of public sector funds,

industry funds and corporate funds would also benefit from the cost and access benefits of regulatory relief. This provision would also be wholly consistent with the intention of the bill, and in fact the exclusion of super funds from providing within-product advice appears inconsistent with the intention of the bill. We also understand that this was the original intent of the bill and could be achieved with only a minor amendment to the bill.

The second measure we would like to address is to relieve an adviser from providing an SOA or advice relating to an investment of less than $15,000. We have some significant reservations about the rationale for this reform. In particular this measure is justified as a means of addressing the problem of multiple account proliferation. We believe for most Australians personal financial advice is not an effective or efficient way to deal with a multiple account problem. Superannuation was initially excluded from this proposal because it is a product which accumulates over the long term. We thought this exclusion was sensible. There has not been sufficient explanation as to why it has been included, nor has there been sufficient consultation.

Despite these reservations, we are supporting this proposal, but we think it is crucial that three safeguards be taken into account. Firstly, the threshold should not be raised further than the level of $15,000 and in fact should be scaled back to $10,000, as originally proposed. Secondly, the threshold should apply to the total amount under advice not just the amount being transferred or consolidated. Otherwise, this measure goes beyond assisting small-scale investors. Finally, where advice relating to super switching is made, the bill must ensure the advice process and the ROA includes the following elements: investigation of the from fund; comparison of the from and to funds, including the justification for the recommendation to switch and the cost of switching; the disclosure of conflicts of interest; the disclosure of all remuneration, including fees and commissions; and of course the advice should be appropriate, have a reasonable basis and take into account the personal circumstances of the client. We are happy to take any questions.

CHAIRMAN—Would you extend the proposal to allow in-product advice to financial planners? If not, why not?

Ms Campo—I think if the exemption were framed so that it permitted within-product advice then it would apply to any qualified financial advisers, so the funds would be using staff who were qualified fully as financial advisers to provide that advice. So it would apply across the industry, yes.

Senator SHERRY—Would there be some sort of difficulty with product lists? A planner can only recommend or give advice on the product list.

Ms Campo—An adviser or a fund would only be able to avail themselves of the exemption if they were providing advice within a product, so it would depend on the way in which the adviser's product list was structured, but if it were within a product and there was no recommendation to a new product then they could take advantage of the exemption.

CHAIRMAN—Can I get you to elaborate on your concerns relating to the sophisticated investor changes. It appears to me from your submission that you are suggesting that the previous what you may call objective financial basis of determining what a sophisticated

investor is should remain and this proposal for what you refer to as a subjective assessment should not proceed. Is that a correct interpretation of your position?

Mr Whitely—I think the concern we have is the assumption made that just because someone may have an SMSF they are a sophisticated investor. I think that is probably an unreasonable assumption to make. Our concern is that any test to determine whether someone is sophisticated should remain objective rather than be a subjective one that the advisers themselves make.

CHAIRMAN—Is a financial basis necessarily an objective test? You can have people on high incomes who are not necessarily sophisticated investors whereas there are people perhaps with lower incomes or lower levels of wealth who may have a lot of experience and a lot of sophistication in investment.

Ms Campo—The test which is based on someone's asset base or their income level exists in the Corporations Act currently so that is not a new provision.

CHAIRMAN—I understand that.

Ms Campo—But I think that at least it is—

CHAIRMAN—Is it an improvement in that it is taking into account a person's actual experience rather than purely a monetary amount?

Ms Campo—I think the test exists in the Corporations Act but in quite a different part. I think the consequences for investors of being classified or being determined to be a sophisticated investor are quite significant in that they lose the benefit of all or most of the consumer protection measures that apply. When you are applying that to the part of the act which governs the provision of advice and provision of product disclosure, then I think that we would have concerns about the way that may be applied especially in relation to the SMSF sector. There are many investors in that sector I think who may be classified as sophisticated investors and who lose the benefit of quite significant consumer protections when they are not really sophisticated investors.

CHAIRMAN—Does this change give the sophisticated investor access to wholesale products they previously have not had?

Ms Campo—No, it just alters the protections that they are entitled to—for instance, with the receipt of a product disclosure statement a requirement for advice, if they are given it, to be appropriate.

Mr Coates—I think the concern there is that, with a potential remuneration structure that might have some conflicts of interest embedded in it, you are relying on an adviser to make the objective assessment themselves and then get the client to sign that. Retaining some sort of objective test, whether that is the old wholesale investor test or not, is a way of safeguarding against that possibility.

Senator SHERRY—I could not quite understand your concern about SMSFs in this space.

Ms Campo—The way the exemption is framed it excludes superannuation, so members of an industry fund, for instance, could not be classified as sophisticated investors under this test. However, because SMSF investors are not investing in superannuation products per se they could be classified as sophisticated investors—

Senator SHERRY—As a result of these proposed changes?

Ms Campo—That is right.

Senator SHERRY—Has Treasury responded? I suppose we will get a response from them later, but are they aware of this issue?

Ms Campo—I am not aware.

Senator SHERRY—I would like to go back to the issue earlier where we started to discuss the ability to give what I think is termed limited advice, which might be an investment option. If you are in a fund and it does not involve switching from a fund—just so that I am clear on this—you say these proposed changes do not make it any easier to offer limited advice within a product?

Ms Campo—No, the exemption is framed specifically so that it excludes the possibility of within-product advice being given and taking advantage of this exemption. The way it is framed it can really only be used in two situations: firstly, when someone sees an adviser and is not given any recommendation to buy or sell a particular product and no direct remuneration is received in relation to that advice, and, secondly, when an investor is given advice to remain in a product and the adviser can continue to earn a trail commission in relation to that advice. The way the proposed subsection is written it specifically excludes giving hold advice that relates to modifying an investment strategy or contribution levels.

Senator SHERRY—Going back to a point that arose from the Chairman's question: if consumer A goes to a planner and asks about an investment option within, as an example, Host Plus, and the planner does not work for Host Plus, you are not opposed to the planner giving advice about the investment option within Host Plus? The fund itself will determine the way the person is paid if they are in fact paid by the fund.

Ms Campo—In order to take advantage of the exemption, no remuneration could be earned in relation to the advice, but I think that the exemption would apply to any financial adviser advising within a product in terms of what we would suggest should be allowed.

Senator SHERRY—The reason I am progressing to this is that one of the arguments I have heard is that, in the context of industry funds, with one prominent exception they are not on product lists. AMP put them on their product list for at least a period—

Ms Campo—Briefly.

Senator SHERRY—yes, but they were removed. But, in relation to the product list issue, would a planner need to have it on the product list, or would you remove the product list

altogether for superannuation funds? It seems to me that it begs the question of why do we have a product list—there would have to be a necessary change in that space?

Ms Campo—I think that product lists are generally cited as being part of a risk management process of a licensee. My understanding is that advisers are able to advise off their product list but they must seek special dispensation from the licensee in order to do so.

Senator SHERRY—They probably have a problem with their PI insurance too, I suspect, where they have got it.

Ms Campo—Yes. I think that the exemption could be granted without taking account of those broader issues. I think there may be—

Senator SHERRY—Sorry, the point I get to with the product list is: if it is in fact a risk management tool, if that is the way it effectively operates, I can understand it in a non-super space, but in the super space we have got a licensing regime that applies to retail corporate industry funds. The licensing process, it would seem to me, takes care of the risk, so why—in theory at least—should a planner not be able to offer advice? How they are paid for it is a different but related issue. In that sense, the complaint I get is that industry funds generally are not open and transparent and the planner cannot find out about them, et cetera. Is that correct?

Mr Whitely—It is a misconception. It is one that is peddled around a bit. If a financial planner wishes to learn about an industry fund or the major public offer industry funds, they are going to get information from organisations such as SuperRatings, from Rainmaker and more recently, I think, from Standard and Poor's and, I understand, from Chant West, too. So the information is readily available.

Ms Campo—There are some fee-for-service dealerships which do have industry funds on their product lists.

Senator SHERRY—They are pretty limited though.

Ms Campo—I think though that quite often product lists are used as a means of containing business within the related entities of the licensee.

Mr Whitely—What you will tend to find is that, a little like AMP, there are a number of groups which have industry funds on their product lists and they allow advisers to perhaps provide some advice about that particular fund. What they do not permit an adviser to do is recommend an industry fund to a client. In fact, I am not aware of a financial planning group that does allow a tied adviser to recommend industry funds.

Senator SHERRY—Have you come to any conclusion as a consequence of this legislation as to whether costs are going to come down?

Ms Campo—I can only comment on the material that has been provided in submissions and comments that are made. Treasury had forums relating to the development of these proposals, and it seemed that the way it was put was that it would be more affordable for planning firms to be able to advise clients with lower amounts to invest. Rather than the costs coming down, it

would go below the point of break-even for the planning firm. So it is not really about costs to the client but more related to the profitability of the planning firm or licensee.

Senator SHERRY—So it is rather the ability to charge something rather than nothing?

Ms Campo—Yes, that is right.

Senator SHERRY—How does that reduce the cost to the consumer of the operation of the system?

Mr Whitely—I am not sure that is the stated intention of the bill, is it?

Senator SHERRY—No, but you were sitting here when that I posed that question to the earlier witnesses. The claim was made that there is increased efficiency; one witness, as you would have heard, said there would be reduced paperwork—costs come down. But I am just struggling to see at the moment where consumers are going to end up paying less. Costs can come down, but that does not mean that the price comes down.

Ms Campo—I think there is also a question in relation to whether it will actually cause more consumers to go out and seek advice. I think there is a real question in relation to that. I think there is a way that this reform could create a more efficient means of providing advice. In terms of the financial needs of millions of Australians, they are related pretty closely to their superannuation, and if you enabled superannuation funds which cover the large proportion of low-income earners to provide within-product advice then it really is a very efficient and effective and low-cost means of giving access for those clients to limited advice but advice which satisfies all the needs that they have.

Ms BURKE—This current bill does not actually allow that to happen.

Ms Campo—No.

Ms BURKE—You would actually have to make an amendment to what is before us now for that to occur.

Ms Campo—Yes, but the amendments that would be required would be minimal. We have noted in our submission the amendments that would be required and it would be quite straightforward. We understand that there is a pressing timetable in order for this bill to get through but we think that the changes that would need to be made to make this bill much more effective would be able to be achieved in that time frame.

Mr Whitely—We said in our opening statement as well that it seems inconsistent to the intent of the bill that this provision would not be allowed.

Senator SHERRY—Your understanding is that it is not, and that appears to be the understanding of the other witnesses, too.

Mr Whitely—Yes.

Senator SHERRY—It begs the question: do we seem to be in a staggered-type attempt to simplify the system, if I can use that broad description?

Mr Whitely—The first problem, again as we said in our opening comments, is that one way of reducing regulation around advice would be to introduce a best interest test for advice as provided. We know that that is not going to happen in the next week, but I think it is something which further consideration should be given to. In terms of making advice more accessible and lower cost, as Ms Campo has said, perhaps the most effective way of doing that would be to allow all superannuation funds to provide the advice.

Senator SHERRY—If there were a best interest test, how would you see that as being enforced? It would be enforced by the regulator presumably checking out best interest advice, but do you still think it would overcome issues around conflict?

Ms Campo—I think if you were acting in a client's best interest then you could not do so in the face of a conflict of interest. So in order to satisfy the requirement to act in the client's best interest you could not be in a conflicted situation, in the same way that a doctor or a lawyer cannot act in the face of conflict.

Senator SHERRY—In terms of your response to this legislation, have you given any consideration to how much it would reduce the paperwork issuing from the funds that you represent? Has anyone done the analysis that says there will not be 50 pages, there will be 20 pages? I asked a similar question to the earlier witnesses.

Ms Campo—I think that the measure that would most assist industry funds and other funds that operate on a profits-to-members basis does not currently exist in the bill so none of that work has been done, no. But I think that it would enable funds to provide a much more efficient means of communicating with members and advising them on key elements of the superannuation fund.

Senator SHERRY—At the moment you cannot quantify the cost saving and therefore the saving to members?

Ms Campo—No.

Ms BURKE—In your opening statement you referred to the two things that we have been talking about if you had an exemption so that your members could tell their members about making better contributions or co-contributions and all those things that would be a benefit. And also, at the end you were talking about advice between switching, and exit fund and entry fund, and the cost, and the comparison which ASIC has done in the shadow shopping exercise and drawn to people's attention. That is not mentioned in the draft bill. Have you had discussions with Treasury about some of those concerns, and do you know if they have been considering those issues going forward?

Ms Campo—The detail about what a record of advice will contain is not in the bill; you are right. We have had some discussions with Treasury about the regulations during the process of drafting the regulations that would support the bill. They have indicated that the regulations will require that the record of advice include details of the basis for the advice and also the details of

the remuneration earned, any conflicts of interest that an adviser may face and, if the advice relates to the replacement of one part of the product with another that is a switching situation, then it would need to detail the elements which are currently contained in section 947D of the act. They are the things that relate to the loss of any benefits that might follow, charges that may be incurred and any other significant consequences of the disposal of one product and acquisition of another.

Ms BURKE—We have got to wait to see the regs to see if these issues are picked up, and at this point in time nobody knows.

Ms Campo—That is right.

Mr Whitely—I think the concern to us as well was that throughout this process, which I think kicked off in around November last year, there have been a number of submissions provided by a number of industry groups, some of which suggested that there should be some substantial dilution of consumer protections around these particular areas. We are obviously very keen to see that that does not happen. We think that would be very risky. Given the speed with which this bill is making its way through parliament, obviously we are very keen to make sure that it is included in the bill and the regs. We want to see them there.

Ms BURKE—We could actually introduce this legislation before the regs come in and not address quite a few of the issues that most of the people who come are going to present to us?

Mr Whitely—Quite possibly.

Senator SHERRY—Was your submission and your interaction with Treasury made on the basis that superannuation was not included and that it was a $10,000 threshold rather than $15,000?

Ms Campo—No. We have had several discussions with Treasury, but the most recent one was after the release of the bill so it did relate to the actual content of the bill.

Senator SHERRY—I am just trying to understand the time line here, though. Up until the release of the bill, based on the discussion paper released earlier and the discussions you had up to the release of the bill, it was only at that point in time that the $10,000 became $15,000 and super was included for the first time?

Mr Whitely—Yes. The original consultation paper came out in, I think, November. I cannot quite remember who it was from, but we received a tip-off that this was something that we should be engaging with because it was likely to include super, but at that stage the areas, I suppose, relevant to what we discussed today excluded super. We had seen the consultation paper and thought: 'That's very interesting but it does not include super. That's a positive thing; that's a good thing.' But we received a tip-off—as I said I cannot quite recall from whom—that it was something we should be paying attention to. Only when the draft bill came out did we actually know that super would be included.

Ms BURKE—The other thing that you referred to was direct and indirect sources of remuneration. That would also be something that would be picked up in the regs. Where is the concern about direct and indirect remuneration issues in the bill at the moment?

Ms Campo—In the case of an exemption which is given when you are not giving a buy-sell recommendation and there is no remuneration, we think there are at the moment a couple of areas where the drafting of the legislative provisions is flawed. The first is in relation to remuneration because it states that the adviser or providing entity does not receive any direct remuneration or other benefit in relation to the advice.

Ms BURKE—It does not cover any indirect—

Ms Campo—The industry has spent so much time trying to address issues of indirect means of remunerating financial advice that we think that provision should say 'direct or indirect' or even just say 'any remuneration'. Otherwise, you are inviting indirect means of remunerating advisers for this kind of advice. The other area where we think the provisions of the bill would benefit from a bit of attention is where it states that the exemption applies where an adviser does not recommend or state an opinion in respect of the acquisition or disposal of a product. There is no 'reasonable person' aspect to the way that is framed, which leaves it open for an adviser to make recommendations or state an opinion, but not explicitly so. We think that it should be consistent with the way the other sections relating to these kinds of issues are framed so that it becomes 'make a recommendation' or 'what a reasonable person would think was making a recommendation,' or something of that order.

Senator SHERRY—I just have one final issue. I saw a reference, I think in yesterday's *Australian Financial Review* in an article by Barry Dunstan, to the cost of reprinting documentation given the change in the licensing number. I am trying to recall the precise detail. Is that an issue that you have considered?

Mr Whitely—It is not an issue we have considered in our submission, no.

Senator SHERRY—What is your understanding of any potential difficulty in that area?

Mr Whitely—Anything that requires the reprinting of stationery in various publications that a super fund might produce when you have half a million or a million or over a million members is obviously quite substantial.

Ms Campo—I think the issue is that any change in regulation causes quite significant implementation costs. So I suppose having fewer ad hoc changes is preferable so as to have a more considered process. The other factor is to have a reasonable amount of lead-in time so that funds can exhaust their supply and have the opportunity to reprint compliant material within a certain period, say a year, so that they have the chance to run down their existing stock.

Senator SHERRY—What is your understanding of the operative date? Did you have any indication?

Ms Campo—Of these provisions?

Senator SHERRY—Yes.

Ms Campo—They vary but I think these ones that we have made submissions about are on proclamation.

CHAIRMAN—No further questions? Thanks to each of you for appearing before the committee.

[5.30 pm]

GRANT, Mr Graeme Alexander, Director, Australian Institute of Superannuation Trustees

WOOD, Ms Catherine Maria, Director, Australian Institute of Superannuation Trustees

CHAIRMAN—Welcome. The committee has before it your submission, which will be numbered 3. Are there any alterations you wish to make to the written submissions?

Mr Grant—No, there are not.

CHAIRMAN—If not, I offer you the opportunity to make an opening statement at the conclusion of which I am sure we will have some questions.

Mr Grant—Thank you. Firstly, we are grateful for the opportunity to make a further submission to the committee. As the committee is probably aware, AIST exists to provide support for and representation of trustees of the not-for-profit or all-profit-to-members segment of the Australian super industry. As such we are not directly involved in financial planning and provision of those services at this stage in any great volume. In considering the proposals before the committee, AIST's primary emphasis is whether they enhance or reduce the likelihood that our members will receive high quality advice if they utilise the services of a financial advisor. Without seeing the regulations—and in the last two groups you have spoken to it has become plain that no-one has seen those—we are unable to form a final judgement. We are concerned, however, that the proposal before us is as likely to weaken as to strengthen consumer protection provisions. For instance, the actions by AMP commission agents, which resulted in ASIC issuing an enforceable undertaking that advice given to more than 30,000 mum and dad investors be reviewed, could in fact become legal. Our concerns have been exacerbated by information which has come to our attention subsequent to lodging our submission which we believe is highly relevant. A report on the ASIC website dated 11 May this year states:

The Supreme Court of New South Wales today found that super switching advice given by First Capital Financial Planning Pty Ltd (First Capital), a Sydney-based financial planning firm, was misleading or deceptive and did not have a reasonable basis. The court made the orders by consent today in proceedings commenced by ASIC in December 2005.

It went on:

Between December 2004 and September 2005, First Capital advised 170 teachers to switch from their state government superannuation, First State Super, to a superannuation fund recommended by First Capital. The fees payable in the recommended fund were significantly higher than the fees payable in First State Super.

The Supreme Court found that the SOAs given to the teachers was misleading and deceptive and did not disclose a reasonable basis for the advice because:

- the SOAs did not properly explain the differences in fees between the First State Super and the recommended fund;
- the SOAs did not contain a comparison of the fees to be paid;
- on most occasions the SOAs did not contain details about insurance, including the associated costs, which was available to clients in First State Super;

- the SOAs failed to highlight the impact higher fees and costs have on potential returns; and
- some of the SOAs contained misleading comparisons between the past performance of First State Super and recommended funds.

There are aspects of this case which set it apart from other instances of bad behaviour by rogue financial planners. The first is of course that a court has found that the planners obtained money by misleading and deceptive conduct. The second, and I think the more concerning issue, is that this has been a well-planned exercise. First Capital has targeted teachers, and they are a relatively high income group which has enjoyed the benefit of super for many more years than the public at large and so could reasonably be expected to have much more substantial account balances as a consequence.

The third thing that concerns us is that First Capital actually went to the trouble of setting up a separate business entity, a business structure they named EdSuper, as their vehicle through which they approached the teachers. The fourth is that the court evidence clearly indicates that they analysed the relative offerings of First State Super and the commission-paying alternatives and failed to mention any features of First State Super which are superior to their favoured product. This is not a random action by a few rogue agents hungry for some easy commissions; this has every appearance of being a very well-planned operation targeted, thought through and executed.

Forensic auditors from the big accounting firms have been claiming for years now that the amount of money in super will attract organised criminal gangs. AIST has always been sceptical of those claims, seeing their words as perhaps an attempt to secure some business. Now we are not so sure. As one who was in the UK during their pension scandal, the reporting of this case brings back some unpleasant memories. This is exactly the behaviour which caused the UK pensions industry a £16 billion restitution bill in the 1990s. Indeed, working through the government's anti money-laundering regulations has alerted many of us in the sector that we are more vulnerable than we previously thought to fraudulent activity. It is against this continuing background noise of financial planners being involved in financial scandals that we urge the committee to counsel the government against making any change to the quality of consumer protection afforded the public.

School teachers are among the better educated sectors of our workforce. If this could happen to 170 of them, how much more vulnerable are people of lesser education backgrounds? In particular, given the compulsory nature of super, we urge that super be deleted from any such changes until we can all be certain that appropriate safeguards are in place. It is quite one thing for people to be misled and deceived in respect of elected investment decisions but quite another if it happens in the case of their mandated super.

AIST is keen to see the quality of financial advice delivered to super fund members improved and made relevant to their needs. We struggle to see how that can be delivered through a commission agency system in which the interests of product providers and financial advisers are aligned so closely and so clearly to the exclusion of member interests. We are currently thinking through how an appropriate outcome could be achieved through the use of fund staff, properly trained and skilled, and not conflicted by their remuneration arrangements. We are happy of course to answer questions.

CHAIRMAN—Thank you. We have just had Industry Super Network giving evidence. Do you have any significant differences in the issues that you are raising, concerns you have or additional concerns to what they have raised with us, or are they pretty much the same?

Mr Grant—They are similar because we have similar interests, but I think we are particularly concerned about the capacity of the superannuation fund trustees to be able to provide appropriate advice to members. We are also concerned that the model that provides advice to high-asset-holding, high-income people is not necessarily an appropriate model to apply to low-income, low-asset-holding people. The view that we formed is that many of our members, given proper information and given the relative simplicity of their financial circumstances, do not really need a financial plan. If they are given the options in a seminar, they are able to identify where they fit in relation to the various options. Most of them would be in a position to make the decision themselves if they had the confidence to proceed. It is a confidence matter, not an advice matter. I will particularise with members of the fund with which I am associated, Cbus. The average member retires with $40,000. The average member does not have a house or, if they do, they probably have a mortgage left. They probably have hire purchase or other finance commitments such as credit cards. The options are limited and the best option is frequently very obvious. It seems to us but to me in particular that there might well be a different solution needed for this lower-income lower-asset group in the community.

Senator SHERRY—You argue that if a statement of advice exemption is to be allowed, it should only be extended to include within-product advice. How do you justify this position, given that you do not believe the exemption should apply to superannuation?

Mr Grant—We argue that case in the event that superannuation is included. We do not argue that super should be included. Our primary position is that in the time since super appeared on the scene in this bill, there has not been enough time for people to think through—certainly for us to think through—all of the implications of including it. We would like to see its inclusion either not take place or to be deferred until that proper consideration can be given.

CHAIRMAN—Further questions?

Senator SHERRY—I asked earlier witnesses this. Was it your understanding when the initial consultation was carried out that super was not to be included?

Mr Grant—Absolutely.

Senator SHERRY—And the quantum limit was $10,000.

Mr Grant—That is right.

Senator SHERRY—Rather than $15,000.

Mr Grant—Yes.

Senator SHERRY—We have now got to a point where super is included.

Mr Grant—Yes.

CHAIRMAN—Aspects of super.

Senator SHERRY—Yes, aspects of super, and the $10,000 is now $15,000. It is clear there will be further 'reforms'; no-one seems to believe it is going to stop here. You contend that the super-related issues should wait until whenever the next round of reforms occur.

Mr Grant—That would be our preferred position so that people can objectively and carefully look at the outcome. Most people are going to be affected only through super. There is a very large proportion of people in the community whose only asset—other than a house, a car, if a car is an asset, and personal effects—is their super. They would not have another financial asset of any substance requiring any advice.

Senator SHERRY—You raised the case of First Capital. I have actually asked ASIC to provide some detailed data on that without naming names. I was just interested to find out what their detailed analysis shows. Is it your contention that given the detailed operation of the First Capital scam—and I think I can safely use the term 'scam'—that would be legal under this legislation if it was passed?

Mr Grant—No, it could not possible be legal because the court found that their behaviour was deceptive and misleading. I cannot imagine that this piece of legislation will legalise deceptive and misleading conduct.

Ms Wood—If this was passed it is partially a concern that if anyone gave advice on an amount under $15,000, and therefore not subject to a detailed statement of advice, it makes the whole issue of pursuing the adequacy of the advice given and pursuing a remedy more difficult.

Senator SHERRY—Would it be your understanding that in terms of activity a large element is going to be around lost account consolidation or small account consolidation as a consequence, or do you see a broader application if the legislation is passed?

Mr Grant—Given the average size of lost accounts is in the hundreds of dollars, I cannot imagine that financial planners are going to spend their time trying to consolidate those amounts. It would be only in relation to clients who have got very substantial sums elsewhere that they would get involved in providing advice. I think the whole question of addressing the consolidation of lost accounts of that size has got to be addressed in a totally different fashion.

Senator SHERRY—Do you have any idea of what it would cost? I will ask the FPA this. It seems to me that if you were giving advice about a lost account there would still be a reasonable cost associated with that. Do you have any idea what a cost would be?

Mr Grant—It depends where the lost account is. If it is with the ATO or one of the ERFs, in fairness if you have got other monies to amalgamate a lost account with I think it is pretty clear that the money should be amalgamated with the other account. The features there that concern us about switching do not really apply in those circumstances because there is no loss of insurance, for instance. The investment returns are usually far below those of superannuation funds. You are paying a fee, which you will avoid anyway, so it is difficult to see that there would not be mainly pluses in making such a consolidation. The real concern is in any circumstance where a financial adviser is not required to make the member aware of the benefits they are forgoing that do not exist in the scheme the money is going to. That is part of the case which we have just been speaking about.

Senator SHERRY—I pose this question to all the witnesses. What do you believe from your practical experience is the general consumer understanding and readability of disclosure documents issued in the financial sector at the moment? Do they understand them?

Mr Grant—I think many professionals have difficulty understanding them or seeing the point of them. I have certainly seen at least one document from a major institution that came to family member that principally just contained sections under which the only words typed were 'this section does not apply to you'. There were 87 pages. By the time you waded through it, it was very difficult to find out if there was anything there. As for the disclosure, I am sure members simply skate by it and do not understand it at all.

Senator SHERRY—Maybe I should have asked the Industry Super Network this, but I have heard that where surveys have been carried out of members, fundamentally the document that members examine and read is the statement—monies in, out and rate of return—but there is even a limited readership of annual reports cover to cover, looking through the 16 to 20 page, very well presented, colourful document.

Mr Grant—I cannot speak for other funds. Ms Wood might like to speak to the ones she is involved in. Certainly, I think more of those annual reports and member booklets are quickly scanned for photographs to see if anyone they know is in it. As for reading the detailed elements of what is distributed, it is the member statement they read to make sure the contributions they should have received have been received. They look to see what has been deducted and then the final account balance. Again, I think the evidence would suggest that the readership rate goes up as people get older and as they have got more money. Samples of one family are not good, but my own three children, who are all in their late twenties and early thirties, are not keen and avid readers of the documentation that is sent to them.

Senator SHERRY—Would these changes, if passed, have any implication for the information contained in the annual reports, for example?

Mr Grant—I think not.

Senator SHERRY—Not at all?

Mr Grant—I think not. They would have implications for one thing that we had been negotiating with APRA over a period, that is intra-fund advice. We have been negotiating with them to provide that with appropriately qualified people. My reading of these regulations would mean that the agreement we have reached with APRA would have to be revisited.

Senator SHERRY—I think it was AIST that was quoted in the article in the *Australian Financial Review* by Barry Dunstan about the number and the costs of changing the printed documentation in terms of the number that would have to be the licence number.

Ms Wood—Off the top of my head I cannot think of a cost. But the product disclosure statements and all of those documents are complex and expensive to produce. It is breathtaking to have to do it for the purpose of the change of which number gets put on. I concur with the other comments that were made by the previous witnesses that were commenting on adequate

lead-times and things like that, so that rather than having to pulp documents that have been prepared, you can at least use them and then change over in a reasonable timeframe is ideal.

Senator SHERRY—If the legislation passes, at this point in time on at least some of the documentation it is only the number that needs to change as a consequence of this legislation?

Mr Grant—That is my understanding.

Senator SHERRY—We will clarify that with Treasury as well.

Mr Grant—I know that just at the moment we are issuing a new PDS on the 28th of this month and the cost is in the order of $400,000.

Senator SHERRY—$400,000?

Ms Wood—Yes.

Senator SHERRY—That is just for the PDS. Is that for a six-month or a year's print run?

Mr Grant—It will be about six or eight months.

Senator SHERRY—That is a lot.

Mr Grant—We would not print for a whole year.

Ms Wood—Based on experience we do not do print runs for more than about six or 12 months. You get benefits of scale out of how many you can print, but experience shows that something happens that makes you redo them.

Senator SHERRY—It is a significant cost.

Mr Grant—Yes.

Senator SHERRY—If it is only the number issue that changes as a consequence for your print run, is it six months to do a new print run if it is just a licence number?

Mr Grant—I would have thought that we have got to produce a new PDS every 12 months. It should be at the time you produce your next PDS. I would think that would be a sensible provision.

Senator SHERRY—Thank you.

CHAIRMAN—If there are no further questions, thank you very much for your appearance before our committee.

Mr Grant—Thank you.

[5.51 pm]

DUARTE, Mr Jason, Policy Analyst, Financial Planning Association of Australia

FITZPATRICK, Mr Gerard, General Manager, Policy and Government Relations, Financial Planning Association of Australia

CHAIRMAN—I welcome the representatives from the Financial Planning Association. The committee has before it your submission which is numbered 13. Are there any alterations that you wish to make to the written submission?

Mr Fitzpatrick—Not to the written submission, but I would like to make a brief statement that summarises our position.

CHAIRMAN—If there are no additions I invite you to make an opening statement at the conclusion of which I am sure we will have some questions.

Mr Fitzpatrick—Thank you. As you may be aware the Financial Planning Association has approximately 12,000 members organised through a network of 31 chapters across Australia and an office located in each capital city. The FPA represents qualified, professional financial planners who manage the financial affairs of over two million Australians with a collective investment value of more than $600 billion. FPA members welcome the changes in the Corporations Legislation Amendment Bill. Currently there are a number of compliance burdens imposed upon financial planners that do not provide concomitant benefits to consumers.

This bill is widely supported by our membership because it will reduce administrative and regulatory complexity and, as a result, reduce the cost of advice. We also welcome the suggestion to refer proposal 1.1 to the wider financial services industry to consider greater clarity in the general and personal advice definitions of the Corporations Act.

We have some points, however, that we believe will benefit the bill if accepted. The key points are as follows: the explanatory memorandum proposes a $15,000 threshold for requiring the provision of a statement of advice. FPA members strongly believe that a threshold amount is an effective method for broadening advice to more people. However, we consider the materiality level is insufficiently ambitious and a threshold of $25,000 would be more effective, with the inclusion of superannuation and life insurance products. On that point, FPA members are disappointed that life risk insurance products appear to be excluded from the materiality threshold. Our members believe this will create a bias towards advice on life insurance attached to superannuation. Anecdotal evidence from members suggests that many consumers erroneously believe that insurance attached to superannuation is adequate. This may not be the case and could lead to a situation where consumers are inadvertently underinsured.

FPA members suggest a threshold applied to risk premiums assessed at an indexed $1,500 whereby life risk advice on premiums less than this amount would enable a record of advice to be issued in place of a statement of advice. Since life risk insurance will be allowed if it is

associated with a superannuation interest, a separate threshold will still need to be determined to allow for this inclusion.

The bill requires also that the providing entity must comply with 'any applicable requirements of regulations made for the purposes of the section' or a criminal offence is committed. This is inconsistent with other sections of the act which identify the relevant regulations that apply. 'Any applicable requirements' of the regulations is open to interpretation and imposing criminal sanctions in cases of unintentional breaches, particularly where there is no consumer detriment, is unnecessary and excessive.

The bill as applied to sophisticated investors appears to be limited exclusively to investment products. FPA members believe that these amendments were intended to include life insurance products, such as group life cover, and as such the bill should be extended to include these products of such investors.

Greater clarification is required where the provisions of section 947D of the Corporations Act, which applies to product switching, will apply to records of small investment advice under the bill. The legislation itself does not extend product-switching provisions to records of small investment advice. This is only affected by virtue of regulations which modify the act. Since the bill effectively implies the creation of two new types of records of advice, uncertainty remains as to whether the new regulations will apply or the existing regulations will be extended. The FPA believes that section 945A, the reasonable basis for the advice provisions and the requirements for disclosing the remuneration and conflicts-of-interest will be sufficient for ensuring adequate disclosure for records of small investment advice, while maintaining an appropriate balance between reducing the cost of compliance to broaden the affordability of advice and ensuring the protection of consumers through disclosure.

On scalability of advice, an essential measure to improve the effectiveness of the proposals will be an explicit statement in the bill or regulations that personal advice is scaleable. By this we mean that the adviser is able to limit his or her investigation to key factors where appropriate to best provide appropriate advice to the clients' needs while maintaining a reasonable basis for that advice. For example, a client seeking advice solely on the consolidation of their superannuation and not requiring advice on any other product will be able to seek such affordable advice.

The bill allows for a situation where there is no product recommendation and no remuneration. In that case there should be no requirement for an SOA. The FPA believes that planners should be able to be suitably and adequately compensated for their advice given. Where no product is recommended there should be no need for the provision of a statement of advice.

FPA members believe that addressing these points in the bill will result in an effective regulatory regime which, as a result of streamlining and cost reduction of the unnecessary aspects of compliance, should allow for greater access to the planning function from a broader range of Australians.

Finally, we would like to highlight the value of advice. Good advice from an experienced, well-informed planner can help people save money, protect against risk, manage debts, grow assets and plan for retirement. These benefits accrue not only to the individual concerned but to

the wider community as a whole. These are benefits that should be made available as broadly as possible. This bill is a significant step in that direction. Thank you.

CHAIRMAN—you expand on your argument that the exemption from the statement of advice requirements should not be contingent on advice being given without charge?

Mr Fitzpatrick—There are aspects of advice whereby there will be no product recommendation. That is the key point that we are making. Currently it is tied to no product recommendation, no remuneration. However, where there is no product recommendation we believe there is still an element of advice being given by the financial planner and, as such, there should be adequate compensation for that advice given. That may be in a very broad or strategic sense and there may be a number of components to that advice. But to consider that simply not having it tied to a product and then also not having any remuneration and that the statement of advice should not be provided seems to be rather restrictive from our point of view.

CHAIRMAN—In their submission, Choice have suggested that advisers may recommend products implicitly in an attempt to attract the exemption from providing a statement of advice. What is your response to that?

Mr Fitzpatrick—The act already provides adequate protections in that regard. Advice should not be given without a reasonable basis and there are a number of other additional protections that are there. So to then suggest that there is some way of implicitly providing advice, I am not sure that is really an effective argument against this particular suggestion.

CHAIRMAN—Could you elaborate on your argument that there is an inconsistency in the bill in relation to consolidation of funds?

Mr Duarte—Can you expand on that question?

CHAIRMAN—In your submission in relation to consolidation advice you argue that there is an inconsistency in the bill. I am just wondering if you can give us a bit more detail on how you see that?

Mr Duarte—More detail was provided in our opening speech and we will provide a copy afterwards. What we are trying to say is that the act itself does not extend 947D, the product-switching provisions, it only applies to statements of advice. The regulations themselves impose those requirements upon records of advice. The bill creates a new type of record of advice, a record of small investment advice, and the other type of record of advice where there is no specific product recommended. What we are saying is that there is no proposal in the bill to extend these provisions to also apply to record of advice. That is why there is still a lack of clarity around whether new regulations will be introduced to extend that. The FPA's belief is that 945A, the reasonable basis of advice provisions, is sufficient. The product-switching provisions are not necessary for records of small investment advice where they fit below the threshold, which is proposed to be about $15,000.

CHAIRMAN—There was earlier comment made in regard to the point that financial planners make about not being able to get access to information about industry funds. The comment was made that that information is readily available from ratings agencies. What is your view on that?

Mr Duarte—We seem to receive that feedback from our members as well. One positive initiative the FPA has taken and we have available to members on our website—this has been produced jointly with ASIC and ASFA—is a superannuation account checklist. It is a service for members. It is a product that members can use and industry funds would provide all the information that is available on the checklist that is expected. ASIC has also advised that where industry funds are not providing all the appropriate information, or any fund in general, they are bound by law to do so. ASIC will investigate accordingly, but we do continue to receive that feedback. In some cases industry funds are not providing all the right material, and that is because they have got a completely different unit pricing structure and the products are different. It is different to the way retail funds promote themselves and to the information that is available in the PDSs. It is a concern that comes back over and over again. I understand 945B of the act should be allowed in cases where inaccurate and incomplete information becomes aware to the financial planner and it should apply in some cases of industry funds, or funds in general, where the financial planner believes that the advice is incomplete because they are unable, after making inquiries, to obtain the relevant information that they believe is necessary for the advice to be sufficient.

CHAIRMAN—Are you saying that the information that the industry funds say is available through the rating agencies is not sufficient information and that there needs to be more information provided by the industry funds?

Mr Duarte—I will have to look at the rating agencies question further. I am happy to take that on board but I would be interested to know the extent and the detail of that information that is available. The feedback we are getting from members is that it is not enough.

CHAIRMAN—Further questions?

Senator SHERRY—I will start on this issue. I can go to the web and access not all but most industry fund documentation, including annual reports and PDSs. I accept I cannot do that with all of them. Frankly, not all of them I would want to go near. But with most you can access what I would consider to be information required to make a reasonably informed decision and, likewise, I can do it with retail funds and most corporate funds, although not all. So really I am asking you to take on notice could you please let us know what industry funds a planner cannot obtain necessary information. I am interested in fact, not generalised observation, because I just do not accept it. It might have been the case a couple of years ago but I do not accept that with most industry funds you cannot obtain the necessary information on the record, certainly for the bigger, well-known funds like the Hostplus, the Cbus, the Stars, Australian Super and funds of that type and scale.

Mr Duarte—Are you asking us to name specific funds?

Senator SHERRY—Yes. Come back to the committee with an example of where a planner cannot obtain information in respect to the major industry funds. As I said, I accept that with some industry funds it is difficult because I cannot access some of them on the website, but most I can.

Mr Duarte—I do not think that it is fair to name specific funds.

Senator SHERRY—Frankly I will determine what is fair or not. I have asked you a question to take on notice. What I think is unfair is when we get this generalised comment that some industry funds do not provide the material. Therefore I ask myself and ask you: which ones? Give us the facts. We can only make decisions based on facts. We cannot make decisions based on generalised observations without the detail.

Mr Duarte—I am prepared to provide you with facts and specifics.

Mr Fitzpatrick—We will get back to you on that issue.

Senator SHERRY—That is all I am asking. I think this issue is largely resolved now. But notwithstanding that, let us assume that most funds—corporate, industry, retail—you could get from the web. Is there not then an issue of the product list? I mean a planner will not make any recommendation on any fund that is not on their product list, will they?

Mr Fitzpatrick—There are issues around the product list. There are also issues about how a planner may consider what will be the potential consequences of regulatory intervention were they to go outside of the product list. That is an issue that cuts across this question quite significantly.

Senator SHERRY—In non-superannuation areas I accept the validity of the argument, but in the superannuation space where we have just been through relicensing again—it has been a big change and all trustees have been re-licensed—it seems to me fundamentally the risk issue has been taken care of by the licensing process, which is very, very rigorous and you have a smaller number of funds—so why can a planner not give advice on any licensed registered superannuation fund, subject to being able to get the information necessary.

Mr Duarte—If it is not on the APL a financial planner can seek approval from the licensee.

Senator SHERRY—Coming back to matters of fact, again we have assertions that there will be a reduction in paperwork, there will be a reduction in costs and improved efficiency but, as I have said, I would like to know the fact behind the assertion. How much? Are we going to have a reduction in the cost passed on to the consumer? If so, how much and where?

Mr Fitzpatrick—I recognise your requirement for the facts but this is not a simple question to answer. However, from discussions with members and taking the life risk approach as an example, one of the cost reductions that was cited was not only the issuance of documentation but also the requirement for a second meeting. They have the whole time scale. If you take the time scale through in terms of meeting a customer, assessing their needs, discussing what the requirements are and then the provision of the required documentation and the opportunity for that customer to then read through it, return it and accept whatever advice there is: there is a whole cost stream that comes into that. We would like to be able to give figures and we are trying to see what those figures will be but I do not think we give you a figure. I would merely be plucking a figure out of the air.

Senator SHERRY—I would not ask you to do that. Everyone knows how reasonable I am. I ask public servants when I am doing estimates. You have given an outline of where you believe costs will come down, so I would like you to take on notice to provide some indicative figures. I

do not want the names of planners or anything like that, I just want to know an indicative fee cost structure before and after.

Mr Fitzpatrick—Yes.

Mr Duarte—I would like to make a point on that. We cannot guarantee when advice is more affordable or cheaper whether those costs will be passed on to the consumer. When I have spoken to a number of our members what they have said is with these new provisions under the bill it will make advice more accessible to low-income earners, more accessible to those with small amounts of money to invest.

Ms BURKE—My question is: why? You make that assertion, but on what basis is it going to be more accessible? Everybody has said that, so why is that going to be the case?

Mr Duarte—The answer to that question is that records of advice are simpler documents than statements of advice.

Ms BURKE—But you have not said that it is going to be cheaper. As a consumer if I had $10,000 that I am considering investing, why am I suddenly going to think that I will go because I am going to get less paperwork? Isn't the consumer driven by price? Is it more cost driven on what I am going to have to pay to get the advice to deal with that $10,000?

Mr Fitzpatrick—In a competitive environment one would expect that where there are reduced costs that there will be a reduced price to the end consumer.

Ms BURKE—One would assume.

Mr Fitzpatrick—Those assumptions are valid because financial planners are in a position to provide advice—

Ms BURKE—I am not saying that you should not be remunerated for what you are doing, but you are making an assumption that it is going to be easier, more accessible and more achievable and I would like to know why?

CHAIRMAN—Mr Fitzpatrick was trying to answer the question.

Mr Fitzpatrick—I would say that the financial planning industry is a competitive market. There are opportunities for customers to derive benefits by shopping around to a number of different financial planners.

Senator SHERRY—I hear this 'opportunity' word. I want to know what happens in real life. You might be able to tell me or show me an FPA survey that would indicate how many consumers have shopped around. For example, they have been to planner Joe Smith, they have been to two down the road and they have these useless disclosure documents that no-one can read. How many have actually shopped around—economic theory, market capitalism—laid out the three or four disclosure documents from the three or four planners and then they make an informed choice? Frankly I do not believe it happens but as a reasonable person I can be

convinced. If you can show me survey data that indicates how many consumers shop around and go from planner to planner I will be convinced, but I am yet to be convinced.

Mr Fitzpatrick—I see your point and I am prepared to take on board that approach and see how far we can go in terms of assuaging your concerns. I would agree with you in the sense that if you were going to look at the numbers that take away the documentation, weigh up the size of the documentation and then decide on that basis then it will be a price decision. What we are saying is that when you reduce the costs then the likelihood will be that you have in a competitive environment the opportunity for greater price differentiation, particularly for low-income earners, because they will be brought within the remit of what will be affordable advice from financial planners.

Senator SHERRY—I put the same question to some of the providers when they appeared with IFSA. With the before and after documentation, your members must now be turning their attention to the current documentation and what they would need to do in the next few months if the legislation is passed next week and we get the regulations. I would appreciate it if you could take on notice for you to supply the before and after documentation. Even if this passes, are we truly going to have documents that are readable and understandable for most consumers out there?

Mr Fitzpatrick—It is certainly the aim of the industry to make documentation as user-friendly as we can. There is not any desire on the part of the industry to have huge documentation.

Senator SHERRY—Do not misunderstand me. I am not blaming the industry and I am not blaming the lawyers. This is a government responsibility. The government has brought in the FSR. It is its responsibility. I do not blame the planners for this one.

Mr Fitzpatrick—Just to continue with the point that I was saying, I think it will in turn be determined by the interpretation given by relevant regulators and the response from the industry. I appreciate your comments about the role of the industry in this and we see that as very positive. We are trying to simplify the documentation

Senator SHERRY—You can only do so much. The regulator issues a document with the principles and the suggested approach, but at the end of the day I do not think unnaturally that your people and the compliance people have got to look at these documents and they have got to cover off, so we end up with longer documents than necessary. I do not blame you or the lawyers for that. Do you see these changes as part of a step-by-step process? Do you see the changes reform as ending here or is there more that you would like to see?

Mr Fitzpatrick—As we mentioned in our opening statement we do welcome these changes. As issues progress there are always improvements that can be made and a review of how the legislation and regulations are being implemented would definitely be beneficial in terms of a graduated basis with some kind of step change. I would not say that the industry is in a position now whereby it would like to see wholesale change again. There has been so much change over the last few years so we would like to see an achievement of a reasonable balance of regulatory intervention and an overall legislative framework. There are improvements that could be made but some time to embed some of these changes would be welcomed.

Mr Duarte—The bill is missing changes to what was originally proposal 1.1. The FPA has asked for a change to the general and personal advice provisions and we would welcome further consultation on that.

Senator SHERRY—It seemed to me from earlier witnesses that they were indicating that once these changes go through that there will be more. This approach worries me. It is three years since FSR and the original horrible documentation, and we have still got the horror documentation minus a few pages here or there. There will be these changes off to your compliance officers and then there will be another set of changes. It seems to be a very piecemeal approach.

Mr Duarte—It has been a very slow process and we expect further regulations on these as well. There will be another set of regulations coming out. I believe the last lot has not yet been approved but there will be more regulations on the thresholds on these changes in the bill. So there is not a lot of time.

Senator SHERRY—I accept that. Do you accept that it is a lengthy and ad hoc approach?

Mr Duarte—Yes.

Senator SHERRY—I was not overly surprised but you have nominated a figure of $25,000 rather than the $15,000. I think the initial discussion paper had $10,000. As I said, I was not overly surprised because IFSA had the same figure, surprise, surprise. I almost fell off my chair when I saw that.

CHAIRMAN—I thought they would all want $10,000.

Senator SHERRY—I was so surprised.

CHAIRMAN—I thought the same, too.

Mr Duarte—In a competitive environment—

Senator SHERRY—Why $25,000?

Mr Duarte—In a competitive environment there becomes a figure where the cost of compliance is so great that it is not worth taking on any client with a small investment amount. The remuneration would be so low that it will not be in the best interest of the adviser to take on that client. We have surveyed members. We have been involved in an extensive consultation process. We believe that $25,000 is a step in the right direction. $10,000 is too low. $15,000 now includes superannuation.

Senator SHERRY—Based on $25,000, what would be the cost outcome?

Mr Duarte—The outcome will be that there will be broader access to affordable advice for those who have low incomes or small investments in which to invest.

Senator SHERRY—What would be the typical fee of cost at $25,000. IFSA indicated a percentage of three per cent. You said you have done some surveys with your members, so what figure comes to mind?

Mr Duarte—I have figures in the office, so can I get back to you on those?

Senator SHERRY—Yes.

Mr Duarte—I cannot come up with a figure because there was an amount we had on complex investments and small investments, or more simple investments. So obviously the cost will depend on the complexity of the advice that is given.

Senator SHERRY—One of the areas where there seems to be some significant potential for change is an area of the lost accounts which have generally got small balances and of course there is a lot of them. Is that part of your analysis?

Mr Duarte—No.

Senator SHERRY—Why not?

Mr Duarte—We do believe that with the materiality threshold including super it will make it easier to consolidate those lost accounts or small accounts where individuals hold multiple accounts.

Senator SHERRY—How would members pay for that? Would they pay for it under these provisions?

Mr Duarte—How would they pay?

Senator SHERRY—Yes.

Mr Duarte—We do not get involved in the type of remuneration.

Senator SHERRY—I know you do not get involved in telling them fees or commissions but you do know what your members do. How would they pay for it?

Mr Duarte—For argument sake, in the case of where it is less than $25,000 a financial planner would negotiate the costs with the client. There may be other advice included as well that the financial adviser would identify, so possibly a fee-for-service.

Senator SHERRY—If we say it was just consolidation, do you have any idea what a typical charge would be in those circumstances?

Mr Duarte—It would depend on the number of accounts and if there is insurance attached. There are too many variables to answer that question. Can we say cheaper than the status quo?

Senator SHERRY—It does beg the question: why should people pay anything for that? I am not suggesting the planner should carry the cost, I am suggesting the system should solve such a massive problem.

Mr Fitzpatrick—There may well be a strong case for that but if you are asking us what would be the planner's position then you would have to ask why a planner should not be paid for that.

Senator SHERRY—I do not argue with that. If they are going to do the work they will want to be paid. That is the nature of it.

Mr Duarte—We agree that it should certainly be cheaper. Currently a full, detailed statement of advice is required for super consolidation and in many cases it is not worth the while of the financial planner.

Senator SHERRY—I would not expect you to have this data to hand but perhaps you can take this on notice. If we look at the types of advice and analysis necessary, what would be a typical cost for the major areas for advice: type of fund, level of death and disability, level of contribution, investment option and the lost account? There are some others. What would the typical cost be in time and money to analyse each of those separately?

Mr Fitzpatrick—We are happy to take that on notice.

Senator SHERRY—I am sure somewhere in the industry people have done some analysis on the costing. I do not want the names of individuals or institutions because that would be unreasonable.

Mr Duarte—We can also add to that an example that we have in our office of all the detail and time that goes into the inquiries, analysis and comparisons for a simple consolidation.

Senator SHERRY—You are talking about inquiries in terms of investment advice?

Mr Duarte—If we stay on super consolidation, a lot of people underestimate the amount of work that goes into that and is involved in that. A number of phone calls need to be made.

Senator SHERRY—I tried to do it for my stepson. I got there. Is it your understanding that section 947D of the Corporations Act will be incorporated within the regulations and it will still be required?

Mr Duarte—We do not know if new regulations will be released or if the existing regulations will apply.

Mr Fitzpatrick—This is where we are seeking the clarification because we do feel that there is a potential for misunderstanding.

Senator SHERRY—Have you had any advice from Treasury on that?

Mr Duarte—No.

Senator SHERRY—There was also an issue raised about the status of self-managed superannuation funds. The Industry Super Network raised the point that SMSFs may inappropriately fall into the new category. Do you have a view on that? You did not express a view. You may not have been aware of the potential issue there.

Mr Duarte—Which new category?

Senator SHERRY—The self-managed superannuation fund sector falling into the sophisticated investor category. You have a comment about sophisticated investor but not about the SMSF sector.

Mr Fitzpatrick—Our view on sophisticated investors was relating to the limitation.

Senator SHERRY—Could you have a look at that, because it seems to me that it is an issue that should be considered, given that SMSFs are regulated—certainly until recently not particularly well regulated—by the ATO and they also have a carve-out from FSR on some other issues there.

Mr Duarte—We can take that on notice.

Senator SHERRY—Just have a look at that. Thank you.

CHAIR—Senator Murray.

Senator MURRAY—You have referred in your submission to the sophisticated investors situation. Was that covered earlier when I was not here?

Mr Fitzpatrick—We have not discussed sophisticated investors beyond the comment that was made earlier.

Senator MURRAY—You said in your submission, section 761GA, which applies to sophisticated investors:

> … it appears to be limited exclusively to investment products. The FPA believes that these amendments were intended to include life insurance products, such as group life cover, but these provisions appear to exclude such products without justification. Simple amendments to the wording of provisions would correct this anomaly.

I have two questions to start with. Why do you think it was intended to include life insurance products and how do you think it could be easily changed to correct the anomaly?

Mr Fitzpatrick—Our initial view was that the definition of sophisticated investor would be a definition that would apply across the board.

Senator MURRAY—Who gave you that impression?

Mr Duarte—Our consultation with members and our reading of the EM in the bill. It applied to other investments as well. It would be logical to include a substantial, large life risk product.

Senator MURRAY—You are telling me that you believe the amendments were intended to include life insurance products because of the explanatory memorandum, although you are saying that the terms of the bill itself, the clauses in the bill itself, appear to exclude them. Are you saying the EM is not clear?

Mr Duarte—We did not understand why it was not included.

Senator MURRAY—That is different to what you just said.

Mr Fitzpatrick—This may be an issue—

Senator MURRAY—Do you want to start again? Tell me why you thought—

Mr Fitzpatrick—What we are saying essentially, as has been mentioned by my colleague, is the view that has been taken by members was that the sophisticated investor definition would or should be broadly applied and when the bill came through we could see that was not the case. Our initial estimations were that we would be seeing a broader definition applied for these types of investors.

Senator MURRAY—Is your argument essentially that if a sophisticated investor category is to be created it should apply to all product classes and not to some? Is that what you are saying?

Mr Fitzpatrick—It should be expanded to include the investment and the insurance risk as well.

Senator MURRAY—That was not my question. My question is: are you saying that if the sophisticated investor category is to be introduced it should cover all products and not just investment products?

Mr Fitzpatrick—I am not aware that we have discussed this in detail but I would see that there is some merit to a broadening. Whether that would go across the board and how that would be applied might need to be reviewed.

Senator MURRAY—What are the benefits of expanding the clause to specifically cover group life cover?

Mr Fitzpatrick—There is an issue about consistency.

Senator MURRAY—What are the benefits to the financial planner?

Mr Fitzpatrick—I would think that there are aspects of consistency in terms of once the definition of a sophisticated investor is arrived at with the relevant customer, then the provision of advice on a broader set of products would be available to that planner. What you would have potentially with this current scenario is that if you have a definition of sophisticated investor for one part, the investor would be categorised as a sophisticated investor for part of the advice but then would have to receive all the additional disclosure documentation associated with being a retail investor for the other part of their advice. Effectively you would not be arriving at the level

of appropriate discussion for that level of investor. We are assuming that these are sophisticated investors with experience of the products concerned.

Senator MURRAY—This might be a difficult one because I do not know if such categorisation or analysis has occurred, but is there typical behaviour by sophisticated investors? For instance, are they typically repeat business, they come in regularly and discuss matters with a financial planner, or do they tend to be one-stop shoppers and make a broad decision over a range of issues at a time? The reason I ask this is if there is a series of investment products and other products which they are interested in and pursue through the financial planner, you would want to do the whole package of disclosure, statements of advice and so on all at the same time and it would be odd to have one set of documentation for one set of products when also dealing at the same with, for instance, insurance and you had to do a different set of documentation. What is the typical way in which somebody who would fall into this category operates through a financial planner or does it vary for individuals such that you cannot make—

Mr Duarte—I know of some financial planning firms that deal exclusively with high-net-worth individuals but, to answer your question, I do not have those figures.

Mr Fitzpatrick—My assumption is that there would be no typical categorisation of how the client or the customer would behave. I would think there would be some investors that would be purely interested in a particular financial product and may well consult with a planner on that issue. Equally there may be someone who wishes to establish a relationship with a planner such that they will be able to transact through a number of products over a period of time.

Senator MURRAY—So your point, in essence, is just a simple consistency one. If a sophisticated investor is going to get less disclosure documents because of their status in one set of investment products, then why should they not have the same treatment for other products such as group life cover? Is that the point you are making?

Mr Fitzpatrick—That is the general point. One would assume that where you had a sophisticated investor they would not necessarily appreciate the requirements that they would have to receive documentation on one side compared to another if they were treated taking their position as sophisticated investors into consideration.

Senator MURRAY—That is all I have, Mr Chairman.

CHAIRMAN—There being no further questions, thank you very much, Mr Fitzpatrick and Mr Duarte, for appearing before the committee and for your assistance with our inquiry.

[6.36 pm]

RENOUF, Mr Gordon, General Manager, Policy and Campaigns, CHOICE

Evidence was taken via teleconference—

CHAIRMAN—We now have a witness by teleconference representing Choice. The committee has before it your submission which we have numbered 8. Are there any alterations or additions you wish to make to the written submission?

Mr Renouf—Having given some further thought to the matter before appearing before the committee, I have another four pages which I will email to the committee as a supplementary submission, if that is acceptable.

CHAIRMAN—Yes, it would have been good to have had it in advance so we could refer to it but the next best option is for you to send it off to us.

Mr Renouf—If I had been appearing in person they would have been my introductory remarks, but I am conscious of the committee's time.

CHAIRMAN—I now invite you to make a brief opening statement at the conclusion of which I am sure we will have some questions.

Mr Renouf—You would like me to make a brief statement?

CHAIRMAN—Yes.

Mr Renouf—Thanks for the opportunity to appear. I want to restrict my remarks mainly to the question of the threshold, which is the matter that concerns us most. I guess the essential point we want to make is that we think that this particular measure is essentially tinkering with something which is a much larger problem and that the bases which are offered for it being put forward, that is that it will reduce costs to industry and thus to consumers and that will increase access to financial advice, have not been sufficiently tested. In that context, I would like to note that, as I understand it, there are still discussions going on between Treasury and other stakeholders in relation to a response to what was labelled proposal 1.1 in the parliamentary secretary's proposals paper of last November, and in particular that there was some talk about an approach different to that in the proposals paper but which would identify particular products and simple products such as term deposits and exclude them from some of the personal advice requirements and possibly a slight tinkering with the definition of 'personal advice'. To our mind, those changes interrelate to the proposed changes to the threshold and ought to be considered together. Indeed, our view would be if the response to proposal 1.1 could be got right, there may be no need to deal with the threshold question except possibly in relation to financial planning where again, we would reiterate, we are not sure that the threshold really addresses the problem. In the paper which I propose to send you, there is some discussion of the analysis in the regulatory impact statement of the costs incurred by advisors and some questions asked about that methodology.

As to the general approach to the disclosure requirements of the financial services regime that we discuss a little in the supplementary submission—I will not go into the detail—but basically our perception would be that in a rational world a fundamentally sound approach has not worked particularly well, for a number of reasons, and we list them. One of those is some of the complexities in both products themselves and the way in which remuneration structures are set up around those products. Often these are the cause of the problems we see; they lead consequently, firstly, to some conflicts of interest but also to a need for complexity in statements of advice which would not otherwise be there.

Turning to the threshold itself, in the document I will send you we take on some of those claims in the regulatory impact statement. We suggest that it is unlikely to lead to a broad increase in access to advice. We suggest other ways in which we may solve that particular problem. We note the fact that the very investors that we are seeking to reduce the costs for by in some cases removing the requirement that they get adequate advice and in some cases reducing the amount of written information that they get are those least likely to be able to remember and understand the advice they are getting orally when they first discuss the matter with an adviser, whether a planner or otherwise, and therefore those most likely to benefit from clear, concise and effective disclosure, if they get it.

That would probably do in terms of an introductory statement. Maybe it is better for me to address the matters that the committee is concerned with.

CHAIRMAN—Thank you very much. In your submission you recommend the exclusion of superannuation from the list of products for which a statement of advice may be omitted. How would you respond to the argument that these amendments, particularly in relation to superannuation, are primarily directed to small superannuation accounts and their possible consolidation and that consolidation often works in the best interests of such investors? So if you exclude superannuation from proposals then you are going to mitigate against the potential for consolidation.

Mr Renouf—The first point is that we certainly agree that consolidation is a major issue. The multiple accounts one is a major issue. Indeed, we wrote a report on the subject, which is available, to raise that issue last year. We question whether providing access to advice in this way will solve that particular problem. If you think about the advice that people need in relation to consolidation, they are not looking for an overall financial plan. If they do not have a defined benefit account or a corporate super fund, which most of them would not have, they really need some fairly straightforward advice about the benefits of consolidation, which is something only a little bit more than general advice. An alternative approach would be to do some carve-outs from personal advice for that particular fact situation regardless of the amount involved and deal with it that way. Then you would see a range of other people being able to provide that advice, not necessarily for reward, including possibly super funds, employers and some community organisations as well as planners.

The second thing is that we are not sure that creating a threshold at $10,000, $15,000 or even $25,000 would necessarily mean that you would have an army of planners prepared to provide the advice that consumers in fact need, partly because our experience is that where interactions with social security law are important, as they may be with low-income and some middle-income people, planners are not all that skilled in that area. Secondly, once you do start getting

into the arcanity of that sort of law you are spending a lot more time and the sort of resources that the client group we are talking about would have available to pay planners may not be available. Thirdly, we are not sure that planners really do want to market their services to people who only have that kind of financial problem, even if they are saving $260 because they do not have to produce a statement of advice, if that is in fact the saving that they would make.

CHAIRMAN—You also are concerned about the changes to the definition of 'sophisticated investor'. Would you accept that the existing objective test of clients' sophistication in relation to the provision of wholesale advice excludes many investors who should be treated as wholesale clients?

Mr Renouf—Yes.

CHAIRMAN—As you have indicated in your submission, you disagree with the proposal for advisers to judge whether an investor is sufficiently sophisticated, but is there some sort of reconciliation between the current situation, which is purely a monetary decision, and some more subjective test?

Mr Renouf—I think there is no magic answer. We are concerned about the potential for abuse. We do not have concerns about major reputable financial institutions such as banks advising small export businesses that need to hedge but are currently treated as retail events, although obviously that is a problem that should be solved. We have some concerns about other ends of the industries where people may be prepared to form judgements that people are sophisticated because that is the outcome they want, because it will allow them to do certain things, the sorts of people who were selling Westpoint or the sorts of people who were getting substantial trail commissions or whatever. We have some experience in the area of consumer credit where there is an opportunity for consumers to sign a declaration that the finance that they are requiring is wholly or mainly for business purposes, then the Uniform Consumer Credit Code would not apply. There is certainly evidence in that particular market that some vendors of finance are encouraging or requiring at the sort of bottom end of market people to sign that to avoid the application of the UCCC, or purportedly avoid it. So we do have concern that there is some scope for abuse. As I say, we certainly recognise that there is a problem and that some sort of solution ought to be found. It may be simply an area where a concerted compliance monitoring effort by the regulator may simply be required to avoid that abuse. So I guess what I am saying is that our objections to the proposal are not so much that it is completely unwarranted, but that there is as part of the market that we are rather concerned about in how it would apply and we do not have a magic answer.

CHAIRMAN—Thank you. Senator Sherry.

Senator SHERRY—I have a couple of issues. Going back to the issue of the rolling together, consolidation, I read your paper from last year of the small accounts, particularly lost accounts. I cannot recall the exact detail but Choice proposed a default solution to resolve that problem, did it not?

Mr Renouf—Yes.

Senator SHERRY—So you see the ideal in our system, given the size of the problem, having an effective default solution rather than having to rely, at least to some extent, on planners advising in that space.

Mr Renouf—Well, a combination of things which include getting tax file numbers out there onto every super fund and a centralised fund that can effectively tell people that they have multiple accounts and they ought to consider whether consolidation would be the right solution for them. We certainly did say as the Financial Planning Association quotes in their submission on this matter that doing something about access to advice is also important, but I guess we are not convinced that making a particular form of advice, namely that through the financial planning industry, is necessarily the highest priority in relation to this particular client group and this particular problem.

Senator SHERRY—What is your understanding of the proposed changes in terms of a fund and/or planner being able to offer in product or so-called limited advice?

Mr Renouf—In this bill?

Senator SHERRY—Yes.

Mr Renouf—I am not sure that I am completely across that. One of the things that I know was raised by one of the submissions is the question of whether the adviser needs to be across the fund from which the money is being transferred. So if you are in two funds and you are advising to move everything into one, we are a little bit concerned if people are getting advice where the adviser is not required to think about whether the from fund is actually a better product.

Senator SHERRY—No, my question does not go to the issue of movement from one fund to another, it goes to the issue of you are in a fund and you want limited advice about one issue. Let us take level of death and disability insurance or investment type. My understanding is this legislation does not make that any easier.

Mr Renouf—Yes. I think proposal 1.1 could be adapted to deal with that. I think that is quite an important issue both in this situation and in the situation of things like term deposit and the costs of those. But the availability and cost of basic advice about a product could be improved by getting that proposal right and that is why I think they ought to be dealt with together and that the threshold questions ought to be deferred so the rest of this bill, which is mostly very valuable, could be put through.

Senator SHERRY—On the issue of the inclusion of superannuation and the change to the $10,000 monetary limit to $15,000, my understanding is that that was not in the initial consultation paper but it was in the bill. When did Choice become aware that that would be included in the bill, when they got the bill or at what point in time?

Mr Renouf—My recollection, and I was not the responsible officer at the time, is that the threshold was not structured in this way in the December proposals paper, it came out at some interim point as a $10,000 limit—I could be wrong about that; it could have been in the proposals paper, I am sorry, I do not know—and then, yes, you are right, it became $15,000 in

the bill and some people are saying it should be $25,000. So, yes, certainly I did not see it go from $10,000 to $15,000 until the last few days. I suppose, to be fair, there is some discussion in the RIS about where the $15,000 has come from, but I am not sure it is convincing.

Senator SHERRY—I have one final general question. From my reading, understanding and examination of other systems, to varying degrees the issue of conflicts of interest, selling and commission selling are contentious issues in a lot of countries around the world. That is my understanding.

Mr Renouf—Yes.

Senator SHERRY—Do you know of any country that, from the Choice perspective, has been able to minimise or satisfactorily resolve these conflicts?

Mr Renouf—No, I am sorry, I do not.

Senator SHERRY—I just wondered whether you had had contact with other consumer organisations about what approach has been taken in other jurisdictions.

Mr Renouf—We are often constrained by the resources and the number of issues we can deal with in detail, so I am unable to—

Senator SHERRY—I understand. Thanks, Chair.

CHAIRMAN—Senator Murray?

Senator MURRAY—Are you familiar with the way in which lawyers bill their clients?

Mr Renouf—In broad terms, yes.

Senator MURRAY—Your recommendation 1 says:

> The record of advice should disclose the nature of the advice and the basis of that advice, remuneration and any conflicts of interest.

Leaving aside the conflicts of interest item, which is not usually in a lawyer's invoice, a typical legal invoice would say, 'Well, this is the topic that we discussed and that I gave you advice on,' and a short summation of that advice and how much it would cost would also be there. That is a very simple system to set up and administer and works effectively in that profession. When I read through your recommendations 1 to 4, I get the sense you are proposing a far more detailed and fuller proposal than just that.

Mr Renouf—When I come down to it, what I am proposing is that, in the absence of a more fundamental review of why the clear, concise and effective disclosure requirement in FSR has not in fact delivered clear, concise and effective disclosure to consumers and has led industry bodies for better or worse reasons to produce rather longer documents than are useful to consumers, my preferred option is that we would not currently tinker with the system by introducing a threshold which will in fact add to the training requirement, if not the paperwork

requirement, for the industry but that we seriously examine how we can have a system which will produce short-form disclosure for consumers that is actually useful to them.

Senator MURRAY—Let us leave aside the threshold for the moment. The area of discussion in your submission I am referring to is headed 'The Exemption from Providing a Statement of Advice where there is no Product Recommendation or Remuneration'. you then go through that argument. Essentially my question to you is: if there is an exemption from providing a statement of advice where there is no product recommendation or remuneration, in the example I gave you of the legal circumstance where the same thing could apply at least the invoice should outline the basic details of the interaction such as cost, time, topic and that sort of thing. It is not as if there is no record. That is the point I am putting to you.

Mr Renouf—I have not been thinking about no product, no recommendation today. In fact, since we wrote the discussion I have had this conversation with the Australian Bankers Association and read the financial planners submission and my views may well have changed. My understanding is that the no product, no remuneration proposal, if it actually delivers that, is probably not problematic. If it means that a person can have an initial interview with somebody and say, 'Tell me your circumstances; this is the kind of thing you might want to do; I am not charging you now; I am not recommending a product to you now.' I am not sure if we were to get the no remuneration how that would relate to us with the bill—

Senator MURRAY—I am going to have to interrupt you. I have to go down to the chamber, unfortunately. But if you want to continue to expand on your answer, please do. The other members of the committee will pick up from there.

Mr Renouf—Except I did not quite understand the question in relation to a solicitor's bill, so maybe I cannot do that.

CHAIRMAN—Sorry?

Mr Renouf—I am saying I was just querying Senator Murray about the relationship of a solicitor's bill to the no product, no remuneration system. I just do not understand his question so I am not sure that I can enlighten you any further.

Senator SHERRY—Is it your general conclusion that the current disclosure documents we have seen issued are not effectively protecting consumers by informing them in a simple and concise way? And even if they were informed in a simple and concise way, would it protect them in itself?

Mr Renouf—There is no simple answer to that question. I want to make two or possibly three points. The first point is that what the risk ignores and what I think the committee should bear in mind is that the statements of advice have a number of functions, not only the function of informing consumers. Obviously that is their primary purpose and if they were clear, concise and effective then I think they would be useful to many but probably not all consumers. The reason statements of advice are also important is that they are very important in supporting ASIC to undertake compliance monitoring, as we have seen in a number of cases, and they are very important in assisting consumers to take any problems they have to the internal dispute

resolution and later external dispute resolution systems that apply to the relevant financial service licensee.

In talking about whether statements of advice and disclosure are generally useful, obviously assisting consumers to make informed decisions is our primary approach to consumer protection. But the problem we have here is that disclosure of complex financial products and complex remuneration arrangements where there are things that the business does and does not want to disclose means that the things which the business does want to disclose are disclosed well by using communications professionals, in advertising or in other ways, and things which the business does not want to disclose are written by lawyers and meet the minimum requirements of the act, or not much more. The problem here is the combination and complexity of products and remuneration arrangements, some of which in our view are overly complex or which overly create conflicts of interest, and the fact that some information is put up front and some information is in the detail, so to speak. This is why I am saying that rather than tinker with the current system by introducing a threshold which, in our view, probably will not extend the ability of people to get advice we should have a bit more of a fundamental look at the way in which disclosure is made in relation to financial services products. If we get the proposal 1.1 right, which would exclude some of the simpler products from the complexities of the regime, we would only be talking about the more complex or more long-term products and we may well be able to design a system which produces a better result for both consumers and business. I hope I have addressed your question.

Senator SHERRY—Largely.

CHAIRMAN—If there are no further questions, Mr Renouf, thank you very much for your appearance before the committee and for your assistance with our inquiry.

Mr Renouf—Thank you.

[7.00 pm]

FRASER, Mr Bede Conrad, Manager, Financial Reporting Unit, Corporations and Financial Services Division, Markets Group, Department of the Treasury

MILLER, Mr Geoffrey John, General Manager, Corporations and Financial Services Division, Department of the Treasury

SELLARS, Mr Andrew Newell, Senior Adviser, Corporations and Financial Services Division, Department of the Treasury

SMITH, Ms Ruth Viner, Manager, Investor Protection Unit, Department of the Treasury

CHAIRMAN—I now welcome our final witnesses for the day from the Department of Treasury. May I remind our witnesses that the Senate has resolved that an officer of a department of the Commonwealth shall not be asked to give opinions on matters of policy but shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy. It does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Any claim that it would be contrary to the public interest to answer a question must be made by a minister and should be accompanied by a statement setting out the basis for the claim.

The committee has before it your submission which is numbered seven. Are there any alterations or additions you wish to make to the written submission?

Mr Miller—No.

CHAIRMAN—I invite you to open with a statement and then we will move to questions.

Mr Miller—We do not propose to make a statement. I think the committee has probably got lots of questions and we thought we would get right into it.

CHAIRMAN—Thank you. The Australian Bankers Association and others have made the point in their submissions to us that under the bill at proposed section 761GA(F2) a licensee is prevented from providing written information to a sophisticated investor. Can you advise on the justification for that provision?

Ms Smith—That was drafted in the expectation that the assessment of sophistication would be made at the beginning of the encounter. We understand that that is not always the case.

CHAIRMAN—Why does that prevent written information being provided to them? Why should that prevent written information being provided to them?

Ms Smith—It is not written information. It is particular documents that are required to be provided to retail clients, so the expectation was that the assessment of sophistication would be

made at the beginning of the discussion with a financial planner and therefore those further documents would not be provided.

CHAIRMAN—They would not be required?

Ms Smith—That is right.

CHAIRMAN—So it does not prevent written information being provided?

Ms Smith—The acknowledgement here is that they have not received particular written information. That is the acknowledgement of 761GA.

CHAIRMAN—The section does not prevent written information being provided, it is an acknowledgement that they have not received it?

Ms Smith—That is right.

CHAIRMAN—It is a misinterpretation there by the Bankers Association, you are saying?

Ms Smith—If in fact the material is provided after the acknowledgement, no, that would be fine. The person would still be sophisticated because it would not have been required to be provided.

CHAIRMAN—The ABA at page eight of their submission also expressed the view that the legislation and the explanatory memorandum appear inconsistent in relation to fees and charges. Can you respond to that?

Ms Smith—Fees and charges in relation to anything in particular?

CHAIRMAN—I will have to go back to their submission. They say that in relation to fees and charges the amendment will require product issuers to provide a report to ASIC when there is a change to fees and charges. The legislation and explanatory memorandum contain differing requirements referring to PDS, enhanced disclosure fee table and statement. It is our view that the intention of the amendment was to capture superannuation and managed investment fees and charges, rather than all products and PDSs. If the latter were imposed, this would result in a significant increase in compliance costs for product issuers and reporting to ASIC. Paragraph 2B should be amended to refer to fees and charges as set out in the enhanced disclosure fee table.

Ms Smith—That has not been brought to our attention previously. I think it is item 223. Is that what they are talking about?

CHAIRMAN—No, they do not specify the item, they just refer to fees and charges.

Ms Smith—Fees and charges set out in the product disclosure statement?

CHAIRMAN—Yes.

Ms Smith—And then the notice to ASIC of those changes?

CHAIRMAN—Yes.

Ms Smith—We can look at that, but it has not been brought to our attention previously.

CHAIRMAN—Several witnesses have queried whether the provision relating to electronic distribution of annual reports has been drafted to include investors who have already opted out of receiving their report on paper. What is Treasury's view on that?

Mr Fraser—I think, potentially, that is a misunderstanding. Item 233, part 3, of the bill actually makes it a requirement that a one-off notification only needs to be sent to those members who have not specifically asked not to get a copy, so it will go to everyone apart from those people that have already said that they do not want a copy.

CHAIRMAN—Superannuation and life risk have been excluded from the statement of advice amendments, with the exception of existing superannuation accounts. Can you comment on the rationale behind the exclusion of superannuation generally from the reforms?

Mr Fraser—As you would be aware, this initiative was identified as part of the Banks report. The government accepted the Banks recommendation that we look at electronic distribution for annual reports, so the provision is looking at and providing this exemption, or relief, for annual reports and then the government will examine how that operates in practice before extending it to other forms of investor communications.

CHAIRMAN—Sorry, we are on the previous question.

Mr Fraser—Right, okay.

CHAIRMAN—No, I had moved on to querying the issue of superannuation.

Mr Fraser—Sorry.

CHAIRMAN—Why was superannuation excluded, and also life risk insurance, from the amendments to the statement of advice, other than existing superannuation accounts which I understand are included.

Ms Smith—We are looking at item 117, is that right, the proposed small investments threshold?

CHAIRMAN—The statement of advice amendments generally that include the—

Ms Smith—Superannuation and life risk have been omitted on the basis that they were very significant issues for the financial wellbeing of the person and their family in the future and that it was more appropriate for a full statement of advice to apply, except in the limited circumstances provided in the draft provision.

CHAIRMAN—Which relates to existing superannuation accounts?

Ms Smith—That is right.

CHAIRMAN—Can you explain why they are included then?

Ms Smith—With the possibility of consolidation of smaller accounts into an existing account or supplementation by a small amount of an existing account.

Senator SHERRY—In considering whether the consolidation of small accounts would work in practice, did you undertake any examination of the likely cost of advice around consolidation of small accounts? A person goes to a planner, the planner says, 'Look, I will give you advice about fund A, B, C, small monies and lost accounts below the $15,000'. In practice, I would have thought even with these provisions, it is going to be fairly limited in it is application, given the likely cost?

Ms Smith—We understood that the break-even point for writing a statement of advice was about $13,000 and therefore the idea was to provide greater access for persons with lower amounts to obtain financial advice. As to how it will work out in practice, that is yet to be seen.

Senator SHERRY—But how did you determine that? You say you understood the break-even point was $13,000. On what basis did you formulate that understanding of $13,000?

Ms Smith—I think that was advice from industry but I cannot remember exactly who told us.

Senator SHERRY—Certainly some witnesses today have given a figure of $25,000?

Ms Smith—I am not sure that they were talking about the same thing.

Senator SHERRY—Are you able to indicate which areas of industry this $13,000 break-even point came from?

Ms Smith—No, I cannot remember exactly where it came from. I am sorry.

Senator SHERRY—In terms of the cost, what was break even, what percentage?

Ms Smith—In writing a statement of advice, vis-à-vis the commissions that could be expected from the amount.

Senator SHERRY—So it was based on a commission percentage applied to $13,000 to cover the minimum cost?

Ms Smith—Yes.

Senator SHERRY—Were you advised what the actual cost would be? Surely you must have got that information?

Ms Smith—Sorry? As distinct from—

Senator SHERRY—The actual monetary cost?

Ms Smith—Of preparing the statement of advice?

Senator SHERRY—Yes?

Ms Smith—No, I do not remember that.

Senator SHERRY—Sorry, you do not remember or you were not advised?

Ms Smith—I do not remember that we were advised.

Senator SHERRY—Could you take that on notice for me, please?

Ms Smith—Yes.

Senator SHERRY—If it is a commission-based sell, one per cent of $13,000 is $130. I do not know what it would cost to offer a statement of advice in this area. It is probably $100 to $200, I would have thought, given the time, so we are looking at one to two per cent. It might be more. But there is a base cost—there has to be—and let us say it is $100. If you have got a very small lost account with a few hundred dollars—there are a lot of them as a matter of fact—or if you have got two small lost accounts with a few hundred dollars in them, how would it be economic for an individual? If it costs you $100 and you have got two accounts with, say, $200 each, it is a lot of money, isn't it?

Ms Smith—That a statement of advice would cost or that you—

Senator SHERRY—Yes.

Ms Smith—Yes, but—

Senator SHERRY—I mean, how is it going to resolve the problem of 5.7 million lost accounts?

Ms Smith—I am not sure that we are asserting that it does solve all of that problem but it may provide access to financial advice for some of those people.

Senator SHERRY—For some of them, yes. See what amazes me—and it is not having a go at you particularly—is that year after year we have had these claims that there is another solutions for lost accounts, something that will resolve the lost account issue, and every year I look at the ATO's annual report and the figure keeps going up, and going up substantially.

Ms Smith—Yes.

Senator SHERRY—We have had three advertising campaigns that I can recall. It was claimed choice of fund would solve the problem to some extent, not totally but to some extent.

We have now got the 'send out the form' approach; ATO is going to send out the form, you would be aware of that, with the TFN?

Ms Smith—Yes.

Senator SHERRY—And we have now got this latest approach, your approach, not you as an individual but the department's. We have had all these approaches to solve the problem and none of them seem to work. The problem has got worse, hasn't it?

Ms Smith—I think the number is increasing.

Senator SHERRY—Yes, that is right. Have you given any consideration to any other ways of solving the problem?

Ms Smith—No, I do not think our division has but other areas may well—

Senator SHERRY—This is not a problem unique to Australia. There are other countries that have issues around lost, unclaimed accounts. Have you looked at other jurisdictions for solutions?

Mr Miller—I am sure that Treasury probably has but our division and the officers here have not personally been looking at that sort of thing. That is not within our purview.

Senator SHERRY—You say you are sure. Perhaps you should take it on notice. I am not so sure, frankly. If they have not, they should, because there are ways of solving this problem. You can adopt Labor policy but we will wait to see the election outcome to ensure that is implemented.

CHAIR—Leading on from that I was going to ask whether you have done any estimates of the time that would be saved by an adviser generating an RAO over an SOA?

Ms Smith—No, we have not done any time assessments, but we understand it is significantly less.

CHAIR—Can I take you back to that first question I asked in relation to the issue raised by the ABA? As I understand it in order to be considered a sophisticated investor the client must acknowledge that they did not receive various documents including 'any other document that would be given to a retail or unsophisticated investor'. In other words, the provision appears to preclude any documentation being provided to a sophisticated investor because it refers to 'any other document'. That is the point that the ABA is raising, whether that is the intention or whether it is a misdrafting or—

Ms Smith—The provision was modelled on 708(10) which already provides in the context of chapter 16 a sophisticated investor test. I am not sure whether that has been a problem there. If in fact it turns out to be a problem there is I believe a capacity to modify it through regulations.

CHAIR—On your interpretation it does not prevent documents being provided to a sophisticated investor, what it does is it does not require documents to be—

Ms Smith—Following assessment that they are sophisticated.

CHAIR—Is there going to be a definition of the required content for an ROA?

Ms Smith—Yes, there is.

CHAIR—When will that occur?

Ms Smith—The draft regulations are expected in the next few weeks.

Senator SHERRY—The bill will go in the Senate next week, as I understand it, and be dealt with before the winter break. Are we going to get the regulations before then?

Ms Smith—I doubt it.

Senator SHERRY—Why do you say you doubt it?

Ms Smith—Some have yet to be drafted.

Senator SHERRY—So we are going to be dealing with the bill before we get the regs, effectively?

Ms Smith—That is right.

CHAIR—Do you think there will be any need for antiavoidance measures to prevent advisers using the SOA exemption through creative methods of delivering advice?

Ms Smith—It is not clear how you could in practice chop up a larger amount into $15,000 sessions of advice and an ROA on each $15,000 and presumably have the consumers' agreement to doing that.

CHAIR—As you are probably aware, in relation to the figure of $15,000 both the Financial Planners Association and IFSA suggested that threshold should be $25,000 and have put forward arguments to that effect. What is your response to the arguments they have given?

Ms Smith—Our starting point was the break-even point for the cost of preparation of the statement of advice and reducing that cost. It was not clear why they chose the $25,000.

Senator SHERRY—I do not necessarily accept their evidence but it was that the $25,000 was the break-even point. I would be surprised, frankly, if they had not given that calculation to Treasury.

Ms Smith—I certainly have not received a calculation leading to the $25,000.

Senator SHERRY—Maybe it is a bit of an ambit claim after the event. It went from $10,000 to $15,000 and they thought they would try and edge it up a bit higher, perhaps. We will see. On the point of the $10,000 to $15,000 and the inclusion of superannuation, my understanding is

that in the initial paper that was issued in, I think, November or December last year, the $15,000 and the super were not included in that paper?

Ms Smith—Yes.

Senator SHERRY—At what point in time was there a paper informing industry that it would include super and the $15,000 rather than the $10,000?

Ms Smith—There was no subsequent paper advising industry of that. The decision was taken as a response to the submissions received on the November paper.

Senator SHERRY—For those who did not agree or were not expecting that, the first they would have become aware of that as an issue was when they got the draft bill?

Ms Smith—That is right.

Senator SHERRY—I just wanted to be clear on that. What is the effect of the change to audit provisions on audit independence? Have you examined that issue?

Mr Fraser—In relation to what?

Senator SHERRY—The impact on audit independence. I am reading a question from Senator Wong.

Mr Fraser—There are three key areas in terms of the proposed changes in the bill. The first one is to pick up some anomalies arising from CLERP9. They are anomalies that have been addressed in ASIC class orders and through the regs. We are actually pulling those corrections into the legislation. So that is one aspect. The second aspect is picking up on some items that were identified through a comparative review which Treasury undertook. One of those issues was the restriction on the multiple former audit partner which is a recommendation out of the Banks report. The third key area out of the audit independence were some technical amendments that ASIC requested us to put through. It is a package, I suppose, of a range of technical amendments, largely.

Senator SHERRY—So it is not going to impact on audit independence as such?

Mr Fraser—No. The initiatives coming through from the comparative review actually identified that Australia's audit independence requirements are very robust and the proposed changes will still mean that our framework is very robust.

Senator SHERRY—Assuming the legislation passes, albeit we have not seen the regs yet, another issue which I did not realise the significance of until I asked was that the understanding of product providers is they will need to reprint their documentation to take into account the change in the licensing number. Is that your understanding?

Ms Smith—No, there is no change to the licensing number that I am aware of.

Senator SHERRY—There is not? The number that they have to quote, one of the licence numbers changes?

Ms Smith—Which item are you concerned with?

Senator SHERRY—They were not specific about the licence number. Were you here when Mr Grant gave the evidence about the printing costs involved?

Ms Smith—No.

Senator SHERRY—Could you have a look at that for me? What the AIST, the Australian Institute of Trustees, were arguing was that they need to reprint documentation as a consequence of the legislation passing and it is only to the extent they need to change a licensing number.

Ms Smith—Was he referring to a prudential bill or to this one?

Senator SHERRY—No, this one. There was some coverage of this issue in, I think, Monday's *Australian Financial Review* in Barry Dunstan's article. Have a look at the transcript if you could because it just seems to me to be one change that we can have some impact on. He was contending that they have to do a new print of existing stock and that will cost $400,000. It seems to me if we can avoid that and that is the only change that we end up getting that it is just a practical issue. They are doing their print run at the moment. The cost is $400,000 in the case of the fund he is CEO of, which I think is Cbus. It is a not insubstantial cost and they are seeking to avoid that. They do six-monthly print runs and it is fairly typical apparently. Could you just have a look at that?

Ms Smith—That is a change from a licence number to an ABN?

Senator SHERRY—I think so, yes. Is that what is here?

Ms Smith—No, it is not in our bill.

Senator SHERRY—If you could just double check on it; if it is not a problem it is not a problem, but they claim it is. The issue of in-product advice, so-called limited advice, has been raised by most submitters. That is not affected by the changes here?

Ms Smith—No, that is being considered in the context of what is known as proposal 1.1, the sales recommendation and the subsequent discussions on that.

Senator SHERRY—Why is it not in this legislation, because it was raised in the initial discussion paper, wasn't it?

Ms Smith—Most recently it has been discussed in the context of 1.1 and it was thought best to work our way through all the issues there before putting in place any further amendments that address that.

Senator SHERRY—From a practical point of view we have got a set of some changes with a good possibility of further changes at some point in time around that issue of 1.1.

Ms Smith—If that proves to be necessary.

Senator SHERRY—You seem to be indicating in your submission where it refers to 1.1 that accordingly this matter will be the subject of ongoing development for possible inclusion in a future legislative vehicle.

Ms Smith—That is right.

Senator SHERRY—It was in the original discussion paper. Why was it not included in the legislation? Could you not work out a solution?

Mr Miller—Yes, essentially that is correct. As you see from our submission we had a quite a lot of consultation and part of the aim of the consultation was to find that middle ground. You will see from all of the submissions you have had so far that there are many different point of view on any particular matter. It is not even a clear the dividing line between one side and the other. There are many points around a box, for example. What we have attempted to do is find the middle ground amongst all the people we have consulted with and, to a large degree, we have found that middle ground. Part of the issue of finding middle ground is that no-one is absolutely happy with everything we have done. But we have found the middle ground on virtually all the matters. But there was so much dissention and so many polarised positions on that 1.1 we realised that we would not be able to find a middle ground that was going to be satisfactory, so we essentially launched into a new level of consultation to try to find that middle ground.

Senator SHERRY—But if you do not find it, at the end of day there has got to be a solution, I would have thought.

Mr Miller—We hope so. We have to yet find that middle ground. We have already had one set of consultation subsequently just on 1.1 and that was very valuable. As yet, we still have not found that middle ground, but I think we are getting closer.

Senator SHERRY—It begs the question that there does not seem to be a middle ground on the $10,000 to $15,000 or the inclusion of super, so why is it in the bill?

Mr Miller—I think there is probably middle ground. You are quite right, it is not necessarily exactly what everybody wanted but it is what I would call a middle ground.

Senator SHERRY—If we were to approach the world of policy development from the point of view of finding the middle ground, crikey.

Mr Miller—Sure. I mean middle ground within reason. We have to put it within a policy context.

Senator SHERRY—Good policy from the point of view of protecting the consumer, I would have thought.

Mr Miller—Sure, all of that. I take your point. But that is where we have got the middle ground. We had representatives from consumer protection and we had representatives from

various funds. We had that variety of representation that gave us, from a good policy perspective, the views of all the players.

Senator SHERRY—I cast my mind back to the debate about compulsory superannuation, if we tried to find the middle ground on that one we would still be here today, 15 years on. In relation to issues around disclosure, conflicts of interest, commission, selling and all of those sorts of issues, they are not unique to Australia. These are serious issues of contention in other systems around the world, particularly compulsory private pension systems. I do not mean you individually necessarily, but have you done any analysis of solutions to these contentious issues in other jurisdictions?

Ms Smith—We have looked briefly at the UK arrangements. At this stage we have not had the opportunity to look further.

Senator SHERRY—Sorry, I could not hear you.

Ms Smith—We have not had the opportunity to examine in detail other countries' solutions to this problem.

Senator SHERRY—The central issue of how you successfully protect consumers, particularly in a compulsory financial environment, is a vexed issue but it does not seem to me to be one which we are incapable of solving. This is what a lot of all this is about, isn't it, minimising and stopping mis-selling, switching and vested interests and those sorts of issues. That is what a lot of all this is about, isn't it?

Mr Miller—It is about getting the balance right. I think some of your previous commentators here today have said the same thing. We want the market to work properly but we want the right level of consumer protection.

Senator SHERRY—Let me just get to that. In terms of a market operating efficiently, if the market was operating efficiently why do we have compulsion?

Mr Miller—It is a policy matter which is beyond me.

Senator SHERRY—Yes, but do you see the contradiction? In a rational market people would save for retirement. If they were making rational decisions we would not need a compulsory public sector superannuation fund, you would do it anyway. But a lot of people would not do it so we make it compulsory and we erect structures around that. There is no rational market when it comes to long-term savings because people do not make rational decisions, so we force it on them. That is the policy conclusion we have come to in this country, isn't it?

Mr Miller—Within whatever that policy framework is we want to make things as efficient as possible.

Senator SHERRY—Yes, we do. Have prices been coming down? Has the money charged for the cost of operation of funds come down? I have not seen the evidence of that happening?

Mr Miller—I am not sure.

Senator SHERRY—It is a policy debate which is a bit unfair on you, but I just point out that it is not a rational market. In terms of disclosure and what is understandable to consumers, have you done any market testing, research of consumers, to identify what they do in fact understand in the context of disclosure? Have you done any of that?

Mr Sellars—This particular piece of legislation does not in fact impact on the exact content of things like SOAs, so not in this context, we have not. I am not aware that we have done any research—

Senator SHERRY—Some of the witnesses have said there will be a reduction in paper issued and—

Mr Sellars—Yes, there would be a reduction in paper but the content of an SOA, for example, is not something that this bill addresses. This bill addresses whether the consumer gets an SOA or gets an alternative document. That is what this piece of legislation does.

Senator SHERRY—There is largely agreement across all of the different players that the current documentation that is being provided to consumers they do not read because they are too lengthy and full of jargon. Have you looked at these documents that are being issued? You have?

Mr Miller—And I think that many of the people have come forward have said the changes that are coming forward in this bill are going to solve a lot of those problems.

Senator SHERRY—Have you done a compliance impact assessment of the before and after: what we have got now, what will happen as a consequence of the legislation being passed?

Mr Sellars—The regulation impact statement has some of that kind of analysis.

Senator SHERRY—Yes. I have to say I have not looked at it.

Mr Sellars—In terms of the precise costs, I think that some of the earlier witnesses were mentioning the difficulty of coming up with precise numbers because of the variation of circumstances.

Senator SHERRY—That is true. They claim confidently that costs will come down but how confident can we be of it being passed onto consumers? Have you looked at that issue? I am not convinced this is a rational market. Have you looked at consumer behaviour? Do consumers behave rationally? Do they go to four planners, say, and get four different advices and put that down in front of them on a table and rationally pick out the product for them at the right price? Have you done any examination of that issue?

Mr Miller—I do not think so.

Senator SHERRY—I suggest you should because I do not think it happens. It goes back to that issue of rational consumer behaviour in a compulsory product. If they were behaving rationally you would not need to make it compulsory in the first place. There are a couple of issues on which you could not reach agreement. We have touched on the 1.1. Were there any other issues that have been deferred for possible future legislation?

Mr Sellars—I think 1.1 is the main one in that category.

Senator SHERRY—Has Treasury received any estimate of the time savings for an adviser generating an ROA as distinct from—

CHAIRMAN—I asked that.

Senator SHERRY—Did you? Okay.

CHAIRMAN—As there are no further questions, I thank the Treasury officials for your appearance before the committee and your assistance with our inquiry. That brings the hearing to a conclusion.

Committee adjourned at 7.37 pm