



COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

SENATE

ECONOMICS LEGISLATION COMMITTEE

Estimates

(Public)

THURSDAY, 28 OCTOBER 2021

CANBERRA

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ECONOMICS LEGISLATION COMMITTEE

THURSDAY, 28 OCTOBER 2021

Members in attendance: Senators Bragg, Kim Carr, Chisholm, Cox, McAllister, McDonald, McGrath [by video link], McKim [by audio link], McMahon [by video link], O'Neill, Patrick, Rennick, Roberts, Scarr, Van, Walsh and Watt

TREASURY PORTFOLIO

In Attendance

Senator Hume, Minister for Superannuation, Financial Services and the Digital Economy, Minister for Women's Economic Security

Treasury

Australian Securities and Investments Commission

Mr Joe Longo, Chair [by video link]
Ms Sarah Court, Deputy Chair [by video link]
Ms Karen Chester, Deputy Chair [by video link]
Mr Sean Hughes, Commissioner [by video link]
Ms Danielle Press, Commissioner [by video link]
Ms Cathie Armour, Commissioner [by video link]
Mr Warren Day, Chief Operating Officer [by video link]
Mr Chris Savundra, General Counsel [by video link]
Mr Greg Kirk, Executive Director, Strategy Group, [by video link]

Australian Prudential Regulation Authority

Mr Wayne Byres, Chairman [by video link]
Mrs Helen Rowell, Deputy Chair [by video link]
Mr John Lonsdale, Deputy Chair [by video link]
Ms Margaret Cole, Executive Board Member [by video link]
Mrs Suzanne Smith, Executive Director, Superannuation [by video link]

Reserve Bank of Australia

Dr Guy Debelle, Deputy Governor
Ms Michele Bullock, Assistant Governor, Financial System

Committee met at 09:00

CHAIR (Senator Scarr): I declare open this meeting of the Senate Economics Legislation Committee. The Senate has referred to the committee the particulars of proposed expenditure for 2021-22 and related documents for the Treasury portfolio, and the Industry, Science, Energy and Resources portfolio. The committee may also examine the annual reports of the departments and agencies appearing before it. Questions on notice—the committee has set 4 November 2021 as the date by which senators are to submit written questions on notice, and 9 December 2021 as the date for the return of answers to questions taken on notice.

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

The extract read as follows—

Public interest immunity claims

That the Senate—

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

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

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

(1) If:

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

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

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

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

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

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

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

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

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

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

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

(13 May 2009 J.1941)

(Extract, Senate Standing Orders)

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

I ask members of the media to follow the established media guidelines and the instructions of the committee secretariat. As set out in the guidelines, senators' and witnesses' laptops, mobile phones, other devices and personal papers are not to be filmed or photographed. I remind everyone in the gallery that they are not permitted to speak or interfere with the proceedings or with witnesses at any point in time during the hearing. Security is present and they will be asked to remove anyone who does not follow these instructions. Witnesses and senators who are seeking to table documents during the committee's hearing were requested to provide an electronic copy of those documents the day prior to the hearing so that the documents could be circulated electronically during the hearing. Please liaise with the secretariat if you need assistance.

Senators, departments and agencies have been provided with advice on the arrangements in place to ensure the supplementary budget estimates 2021-22 hearings are conducted in a safe environment. This guidance is also available from the secretariat. I draw your attention to the QR codes available at all waiting rooms. Witnesses, observers and staff are encouraged to use the codes before entering rooms to allow a full record of attendance to be kept. The committee appreciates the cooperation of all attendees in adhering to these arrangements.

The committee's proceedings today will commence with the Treasury portfolio, beginning with the Australian Securities and Investments Commission and the Australian Prudential Regulation Authority. The hearing will then follow the order as set out in the circulated program.

Australian Securities and Investments Commission

[09:03]

CHAIR: I now welcome Senator the Hon. Jane Hume, Minister for Superannuation, Financial Services and the Digital Economy. I also welcome the chair of the Australian Securities and Investments Commission, Mr Joe Longo.

Mr Longo: Hello, Chair.

CHAIR: Minister, chair or officers, would you like to make an opening statement?

Senator Hume: No, thank you.

CHAIR: Mr Longo, do you have an opening statement to make or would you like to go to questions?

Mr Longo: Good morning. I'm happy to go straight to questions and be of whatever assistance we can to the committee.

CHAIR: Senator McAllister, you have the call.

Senator McALLISTER: We've got obviously a lot of information that scams via phone, email and social media increasingly are a problem. Is it your assessment that this is getting worse and worse every month?

Mr Longo: I will ask Commissioner Armour to take that question in more detail. You'll be aware of some recent initiatives ASIC has taken in that connection. But just one broad observation—the question of scams has been with us for many years. It's an ongoing and very difficult problem. I'll hand over to Commissioner Armour, who has been doing some work on pump and dump schemes in particular.

Ms Armour: This is an interesting question. When we looked at reports that we receive of misconduct from various members of the community, there was a significant increase in reports of misconduct in the 2021 financial year. But interestingly, since about April this year, we've seen a steadying of the numbers of reports of misconduct. That is quite interesting. The trajectory of increasing reports of misconduct has slowed down, though we have observed increases in particular types of scam behaviour. Obviously, one of the areas, as the chair just mentioned, that we're particularly concerned about is activities on social media platforms, such as what we call pump and dump schemes.

Senator McALLISTER: It would be useful to understand ASIC's role in this. I understand that other regulators and policy agencies have a role, but could you just describe for me the way that this interacts with ASIC's remit?

Ms Armour: ASIC's role is essentially following up scams that affect the laws in its remit. Is it possible for whoever is turning their pages over just to move away from the microphone? It's quite hard to hear.

CHAIR: Sorry, Commissioner. I'll out myself.

Ms Armour: Thank you very much. I'm sorry; it's always a bit awkward.

Senator McALLISTER: The chair is the chief rustler. I didn't hear that last answer. Would you mind telling me again what ASIC's remit is? What particular part of this puzzle are you responsible for?

Ms Armour: The particular part of the puzzle we're responsible for is largely scams that affect the financial sector. There will be other scams that come within the laws that we administer, but that is largely the main area. We work closely with the Australian Competition and Consumer Commission, which also has a remit to look at scams. They have more of a whole of economy focus, but we do work closely with them.

Senator McALLISTER: So, when you say 'financial sector', you are talking essentially about investment scams; is that an accurate characterisation?

Ms Armour: Yes, that is an accurate characterisation.

Senator McALLISTER: When you were talking earlier about the trajectory of growth in terms of these kinds of scams, is it correct to understand that it is investment scams that you are talking about and that that has been on the increase for the last two years, notwithstanding a recent levelling off in the rate of growth?

Ms Armour: Yes, I think that is a good way of characterising it.

Senator McALLISTER: You mentioned pump and dump, but is crypto the other area where we see scam activity from ASIC's perspective?

Ms Armour: Yes, we have had a significant number of reports on crypto asset scams in the last two years.

Senator McALLISTER: In short, what is the nature of that activity? I'm not asking for a detailed description of a case study, but in the broad where are the vulnerabilities in terms of crypto?

Ms Armour: One of the issues is platforms that are operating, particularly from other locations outside of Australia, and purporting to make available crypto investments to Australians. Often those investments are not materialising or not being made available or offering investments that actually relate to crypto assets that fall within our regulatory remit—derivatives over crypto assets, for which there is a requirement to be licensed.

Senator McALLISTER: Does ASIC have the powers and resources that you need to address this emerging area of vulnerability?

Ms Armour: To some degree. I know the recent Select Committee on Technology and Australia as a Financial Centre looked at this. One of the issues for us is that not all crypto assets fall within the descriptors of

the laws that we administer. That creates an issue, because we can't take action against all types of crypto asset scams. A consumer may think of this as an investment product, but the way they actually work they're not within the legislation.

Senator McALLISTER: Has the Minister, the Assistant Treasurer, Mr Sukkar, requested any briefing or information from ASIC on investment scams?

Ms Armour: I would actually have to take that on notice. I know we had provided some briefings on scams to various ministers, but I really would have to take that on notice. I don't have that in front of me.

Senator McALLISTER: I'd be interested to understand whether or not Minister Sukkar has requested a briefing, and separately whether or not you have provided any briefings. Do you understand the distinction?

Ms Armour: Yes.

Senator McALLISTER: And perhaps, let's say, over the last 12 months, to make that an easier question to answer.

Ms Armour: Thank you.

Senator McALLISTER: If I report a new investment scam via your website, will you share that information with other agencies, for example, ACCC's Scamwatch team, the AFP or their enforcement agencies, ACMA? Who gets the information if a scam is reported to you?

Ms Armour: Yes, I do believe we will share when we see the issue as one that's relevant to another agency. I'd just ask Warren Day if there's anything additional that we need to add to answer the senator's question.

Mr Day: In our process of receiving those reports of scams, the assessment will always include what other regulators, what other agencies, both domestic and overseas, may need to know about that scam given the issues raised. We do refer matters obviously to AUSTRAC, the ATO, the ACCC, and we share information with ACMA. As I said, we also share information with our international peers, certainly where the information provided to ASIC might indicate that they are operating outside of Australia.

Senator McALLISTER: In terms of that collaborative relationship, how often does ASIC meet with the ACCC in relation to scam activity?

Mr Day: We have an ongoing relationship with the ACCC and more formal liaison meetings probably every couple of months about these things. But our teams are sharing information weekly, I'd say, about a number of these matters.

Senator McALLISTER: Have you had any meetings with Treasury about these issues?

Mr Day: Not to my knowledge. There have actually been some discussions on scams with Treasury, but I'll have to take on notice the details of that.

Senator McALLISTER: Could you please provide information about the number of occasions you've met with Treasury to discuss these within the last 12 months?

Mr Day: Certainly.

Senator McALLISTER: Has this been considered by the Council of Financial Regulators?

Ms Armour: At the Council of Financial Regulators we actually have a working group that is specifically looking at crypto assets and coin matters. That working group is looking across the whole financial system at the issues that are posed in relation to these particular new technologies and new methods of facilitating business.

Senator McALLISTER: So, there's a specific focus on crypto across the different regulators? Can I ask, though, about scam activity, which is obviously somewhat broader?

Ms Armour: There isn't a broad look at scam activity; they're looking at it in relation to crypto assets. That's incorporated into the particular work stream there, but it's more looking from a holistic financial system perspective.

Senator McALLISTER: So, a focus on crypto, but at this point the Council of Financial Regulators is not looking at scams?

Ms Armour: There's not a specific working group, if you like.

Senator McALLISTER: Understood. Just finally, given the increase in scam activity, has ASIC been provided with any funding or resources to deal with increased investment scams?

Ms Armour: We have not applied for discrete funding for investment scams. As you would be aware, over the last period since early 2019 we have had significant increases to our funding, and particularly to our funding

for enforcement matters. We haven't made a particular application, as far as I'm aware—and I'm not sure whether any of my colleagues have a better understanding—for increased funding for scams.

Mr Day: What Commissioner Armour said is correct. Internally, within ASIC, obviously our enforcement teams are starting to work on more scam matters that are being raised where we see an opportunity. As Commissioner Armour covered previously, there are a number of scams that we just can't access because they're overseas and they're very difficult to effectively engage with, because they're highly mobile and move on. But where we have opportunities domestically, we have our enforcement teams now starting to move towards taking on more investigations in that space. We're also issuing more warnings than in recent years to the public about offshore scams. All of those are available through our MoneySmart website, our ASIC website. The things that we can do we're starting to do more of.

CHAIR: I've got just a few questions. There are quite a few senators who are seeking the call. I just have two areas I'd like to touch upon. The first is in relation to the ASX outage which occurred in November 2020. You've given previous evidence to committees in the parliament with respect to the significance of that outage. A summary of an independent report into the outage has been released by ASIC, and I commend ASIC for doing that. As I understand it, there is a review being undertaken, or an investigation, whatever term you want to give it, in relation to ASX's compliance with its reliance conditions in relation to that outage. I'd like an update from you, if I could, just in relation to the progress of that investigation.

Mr Longo: That investigation is ongoing, but I can tell the committee we are expecting to bring it to a conclusion fairly imminently. We are getting cooperation from the ASX, which has helped us get through the issues we have to look at more quickly. I can reassure the committee that it remains a matter that's getting urgent attention, priority attention. We're expecting to reach a result in that matter imminently. There are processes we have to follow. As soon as the commission is able to make an announcement on the result, we will.

CHAIR: I don't want to pre-empt the findings of ASIC in this regard, and tell me if I'm overstepping the mark. Will any of the investigations or considerations of ASIC, with respect to its findings, have any implications potentially with respect to the CHES replacement project? I raise that on the basis that the analysis of the results of the independent report into the ASX outage did have implications in relation to the CHES replacement project. You appreciate that the CHES replacement project is a project of great significance for the Australian financial market infrastructure. Can you advise whether or not there might be any implications arising for the CHES replacement project and how that's governed or progressed arising from the report, which will be imminently released?

Mr Longo: Clearly, the CHES project is probably the most fundamental project the ASX has in the next two years. I think it is a reasonable expectation that what will come out of this matter will include some expectations on ASIC's part about the governance around CHES. But at this stage, how that's actually going to look and work remains a work in progress. I can reassure the committee that CHES is very much part of our concern in concluding our investigation. As I said earlier, the ASX has been cooperative in that respect.

CHAIR: I have a final question in relation to this area before I move on to my second topic. You will also be aware that there has been some public debate with respect to what level of public reporting there should be or public release of information in relation to these matters in terms of the ASX outage last November and also with respect to the CHES replacement project. In particular, questions have been raised with respect to whether or not the independent report that was undertaken in respect of the ASX outage should have been released to the public in totality. There's interest with respect to the release of any information of market participants with respect to the progress of the CHES report. My question is: is ASIC considering the legitimate expectations of market participants who will be impacted by this project, and the information requirements they should reasonably expect with respect to the progress of the project and any issues with respect to the project?

Mr Longo: I will ask Commissioner Armour to supplement my response, but I think a key feature of where we land will be transparency. We will be ensuring that whatever arrangements or changes put in place coming out of ASIC's investigation will give the market and the general public transparency into what the ASX is doing. I think that answers your question, but I don't know whether Commissioner Armour would like to supplement it.

Ms Armour: Perhaps just to supplement by mentioning that in relation to the CHES project there is already a governance process which includes a number of committees, including a business committee, which does have representations of the various stakeholders in the equities market, so that they can get the information they need in relation to the CHES project. We've been attending those meetings to ensure that there is the degree of transparency and information sharing that has been required. The feedback we have at the moment is that we haven't always had feedback that the information sharing has been the way all the participants would like. But the

feedback we have at the moment is that that seems to be working quite well, but it is a matter that we are following and will continue to follow.

CHAIR: Thank you. I congratulate ASIC on the steps it's taking in relation to this matter. I'm going to be very impressed; I'm sure you're up-to-date with the latest developments in terms of corporations law and proposals with respect to different sorts of organisations. No doubt you're aware of what is becoming known as the Bragg report, the outstanding report which has been prepared by the fintech reg tech select committee out of the Senate, which is an outstanding piece of work. I compliment Senator Bragg on it and also the secretariat, who did wonderful work in relation to it. The concept of decentralised autonomous organisations has been raised as a proposed recommendation coming out of that report. It's been identified by a number of stakeholders that Australia has a real opportunity to recognise or legislate for decentralised autonomous organisations. I just want to quote from the fintech reg tech report. There's lots to quote from it. Herbert Smith Freehills in relation to this matter at paragraph 3.162, states:

(HSF) suggested that the introduction of a DAO Limited entity in the Corporations Act would provide:

- appropriate corporate oversight and guidance for a new business model manifesting in the digital economy, particularly in respect of digital asset transactions; and
- clarity and recognition as to the cross over between Digital Assets and DAOs and how their integration into existing regulatory regimes should be facilitated with an eye to both functions.

Has ASIC done any work in terms of considering that sort of model? Do you have any general observations in relation to the outstanding work that that committee undertook?

Mr Longo: I share your view that that report is ground breaking and a significant contribution to the policy debate and dialogue that now has to happen. That's my first point. Decentralised autonomous organisations are a unique, curious entity. As far as I know, only the state of Wyoming has actually put them into law. So, we have a lot to learn about how DAOs work. There are some very significant issues to think through. From a regulatory perspective, we have had many challenges over many hundreds of years of operations about how we make our corporations accountable, how we think about corporate misconduct and how we regulate corporations. We welcome the debate and discussion, but I think there are some very significant challenges ahead of us to figure out how to regulate this. With corporations at least there are people behind the entities called boards. But boards don't exist with DAOs; they're a combination of smart contracts and artificial intelligence, and how we think about regulating is really ahead of us. It's certainly an issue that ASIC has been starting to think about, and we look forward to working with Treasury, government as a whole and other regulators to see how this new form of grouping can be part of the future in dealing with crypto. I think they're the main points. I might just pause there. I know Commissioner Armour has done some work in this area. She might want to supplement this.

Ms Armour: No, I really don't have anything to add. I think it's an area that we really need to think about in the future and it does pose some really interesting philosophical questions for the way in Australia we regulate organisations like companies and other organisations, because it's a very different focus from individual accountability, as the chair mentioned.

Mr Longo: For example, how the FAR regime might apply to a DAO is an interesting question. If something goes wrong with the DAO, whom do we talk to? I think there's a lot of potential there but also a lot of work ahead of us to engage with this idea, which is clearly getting traction among the international academic community and in Australia. We look forward to being part of that.

CHAIR: That is excellent. Just because I've been talking about the Bragg report, I might give the call to Senator Bragg at this moment to ask some questions, if I could. Senator Bragg.

Senator BRAGG: I have two lines of inquiry for ASIC. The first is in relation to misleading and deceptive conduct. I note that ASIC has a regulatory guide RG234, which deals with advertising financial products and services, and as part of those guidances it is part of a corporation's obligations not to mislead or deceive consumers. I just wanted to ask about a couple of current cases. There is a super fund called EISS, which has had quite a lot of media publicity around some of its governance issues. I'm not going to ask you about that. This organisation has been saying that, if you're with this fund, your super is in safe hands. I'm just wondering whether that is a turn of phrase that ASIC thinks is consistent with that regulatory guidance?

CHAIR: Sorry. We're just having trouble with the audio. If I can ask everyone to make sure they are muted. We've had feedback problems over the last day or so. Can the witness hear us now? Commissioner Press?

Ms Press: I can. Senator Bragg, we are looking at a number of issues in relation to EISS, as is APRA. I would have to take on notice those exact words as to whether or not—

Senator BRAGG: I can supply that to you.

Ms Press: Please—and then we can have a look. I think it would be a question of whether or not it meets a legal standard of misleading and deceptive. I'm not sure.

Senator BRAGG: There is another umbrella organisation called Industry Super Australia, which has been advertising to investors that, if you invest with these funds, you're in, they're saying, 'good hands'. They have been using money to widely publicise a comparative tool for some years, which is called Compare the Pair. As part of this comparison, which I imagine would be subject to your legislative obligations to ensure that consumers are not misled or deceived, they have, as far as I can see, included in this comparison two funds, one fund called LUCRF and one fund called Maritime Super, which were two of the three worst ranked funds out of the almost 100 funds in APRA's performance tests. Given these are widely publicised adverts, have you made any inquiries as to whether or not these particular funds are part of that comparison?

Ms Press: We have not looked directly at whether those two funds are indeed part of that comparison. The work we've done on the Industry Fund super advertising is more around general comments that they're making and whether the general comments and the general data that they are using are indeed accurate.

Senator BRAGG: So you have made inquiries as to the quality of the data?

Ms Press: I'd need to take on notice exactly the details, but we have looked at those advertisements historically.

Senator BRAGG: Because if these funds are being held out as being in good hands when they're the worst performing funds, I would have thought that would be misleading and deceptive?

Ms Press: Again, I'd need to take on notice exactly that question if you wouldn't mind me coming back with a more detailed answer after speaking to our enforcement people.

Senator BRAGG: We'll provide you that on notice. We'll give you a lot of information on that. Finally, if you don't mind if I finish my line—

CHAIR: If you could; I do need to share the call around.

Senator BRAGG: I wanted to ask you about the insider trading business that you put out a release about yesterday. I'm wondering whether or not I am—

CHAIR: Whom are you addressing this question to? Maybe to the chair?

Senator BRAGG: It's hard to know with all the cameras.

Mr Longo: Please post your question and between us we will answer it. I will be directing that question to Ms Press.

Senator BRAGG: Thank you. Usually it's like *The Brady Bunch* and you can see everyone. It's a bit of a diminished episode today.

Mr Longo: That is totally understood.

Senator BRAGG: I will just ask a simple question. I'm wondering if you can update the committee on the statement you put out yesterday about the super funds engaging in insider trading. Please explain to us what on earth is going on and what you're going to do to stop this.

Ms Press: We have looked at a number of trades and switches that super fund executives and board members have made. There is a technical matter here. The prohibition only applies if there's an acquisition or disposal in it. A switch generally in a superannuation fund is not actually an acquisition or a disposal of a financial product under the Corporations Act. Therefore, the insider trading laws, if you like, don't actually apply in general to a switch. What we are doing and what we have looked at is conflict policies. We believe conflict policies are lacking in many cases. We are working with the funds, with APRA, which also has a role in conflict policy, to ensure they are improved. Finally, there is a number of cases where we are looking to see whether there is any law they might have breached including improper use of information. But we are still investigating that, and there's not much I can say about it.

CHAIR: I will give the call to Senator O'Neill.

Senator O'NEILL: Firstly, I note the government came back to the PJC committee requesting an extension on the OPD, which was motion 1249, with regard to the Sterling collapse. ASIC has been ordered by the Senate to produce documents regarding these inquiries made by and actions taken by ASIC in regard to the Sterling group. There are four documents that have been identified as relevant. At this point in time we are two days past the due date for the documents to be produced. Could we possibly have an update on the timeline for these documents being handed to the Senate?

Mr Longo: My understanding is we wrote to Senator Hume asking for more time. There were a number of issues that we needed to work through before we could hand the documents over. I don't have a specific day in mind that we'll be doing that, but I don't know whether our General Counsel, Mr Savundra, can give us more. I think we were needing about a week to complete our processes.

Senator O'NEILL: Sorry? I missed what you said then. You're meeting when, did you say?

Mr Longo: I think we will need another week or so to complete our processes. As the letter points out, we've referred aspects of the matter to the Commonwealth Director of Public Prosecutions. There are named individuals in the material. We're just working through a process to ensure that the integrity of our ongoing investigation and that referral isn't undermined. We're certainly going to produce the documents, but we just need some time to work through any need for very specific redactions. I might hand over to Mr Savundra.

Mr Savundra: I think we're working as quickly as we can, given the issues that Mr Longo referred to. I would observe that the documents that have been requested cut across the current ongoing investigation. As Mr Longo says, we have referred a brief to the Commonwealth director for assessment. That investigation is ongoing. ASIC is likely through the minister to make public interest immunity claims over the document through redactions. This will take some time. It's necessary for us to therefore consult with people who we assess will be materially adversely affected. We're hoping that we'll be able to complete that within the next week, but we're working as quickly as we can. Without making any commitments, I hope that we would be able to produce the documents during the course of the next week or, at the latest, the week after.

CHAIR: Sorry to interrupt you, Senator O'Neill. I have a logistical issue. I've just been informed by Broadcasting that, Commissioner Press, it's your camera which apparently is the gremlin in the system. If I can just ask you to turn your camera off and please stay with us. That's what I'm advised by our technological assistants.

Senator O'NEILL: Mr Savundra, thank you for your response. Can I point out that the Senate has already ordered that these documents be provided. That is the will of the Senate. You have indicated that you are in the process of constructing a public interest immunity claim, but we have not received that. On what grounds are you likely to seek a public interest immunity from releasing these documents to the Senate?

Mr Savundra: There is a number of grounds. I don't have the relevant parliamentary rules in front of me, but one is that it may impact or prejudice an ongoing investigation. It may affect or interfere with a future enforcement action. Thirdly, it may interfere with, if there is any prosecution, the trial of individuals. We have our letter to Minister Hume with us. Minister Hume has written to the President of the Senate setting out why we require more time. If I read from the letter, it states that the documents contain information disclosing the identity or information enabling a person to ascertain the identity of a number of third parties, including persons of interest, reporters of misconduct, whistleblowers, witnesses and other persons assisting ASIC; that ASIC has not had the opportunity to consult with third parties referred to in the documents that may be materially adversely affected by the disclosure of information; that that may damage the personal reputation and privacy of those persons. The second is that they may prejudice, one, ASIC's investigation; two, any future prosecutions of breaches of the law; and, three, the fair trial and impartial adjudication of a future prosecution. In the letter, we articulate and reference the relevant parliamentary rules. Most of that language that I've just described to you was repeating back grounds within the rules for public interest immunity claims.

Senator Hume: Chair, I have both of those documents.

Senator O'NEILL: If you want to table them, that would be useful. I do want to point out that the senators here, whom I am in good company with, receive confidential information all of the time. We receive information that we deal with in a confidential way. There is really no reason why in the interim while you consider whether these documents should be made publicly available to the entire Senate that they could not be made available to this committee or the PJC in confidence for us to be across the matters.

Mr Savundra: We'd be happy to consider that request, but certainly that's a very different proposition, providing documents in confidence to a committee rather than having the documents tabled publicly in the Senate.

Senator O'NEILL: Can I point out that the reason that so much of this public pushing for documents is because there is just a culture of secrecy and containment where we can't get our hands on documents that we need to do our jobs. Can I encourage you to continue to meet the order of the Senate, noting that it's already two days past the due date for those documents to be produced. I personally believe the claims of public interest immunity are somewhat spurious, but that's up to a further point down the track for the Senate to determine its response to that. But in the interim, given the large number of inquiries around Sterling and for senators to be

aware of what's happening, can I encourage you to provide the PJC certainly and this committee, if it's of interest to the committee, those documents in confidence.

Mr Savundra: I am happy to consider that, but what I would say is that ASIC wishes to be as transparent and open as possible with the committee. As I noted, we are a law enforcement agency. We're a criminal law enforcement agency, and all we're wanting to do is ensure that public disclosure doesn't interfere with that important work.

Senator O'NEILL: Yes, and it's up to the committee whether that claim is valid or not, so we need that documentation.

CHAIR: I have one quick follow-up question on that. I'll direct this to Chair Long. Are you aware that there has been a referral to a reference committee in relation to the Sterling matter and that a request is being made of ASIC to make a submission in relation to that important references committee matter?

Mr Longo: I think you could be assured that I'm very aware of that inquiry, and will be obviously fully cooperating with that inquiry when the time comes in a few weeks. If I have heard your question correctly, the Senate inquiry into Sterling?

CHAIR: Correct.

Senator O'NEILL: Can I just indicate two lines of questions I will have to put on notice. The first one is with regard to the much claimed enormous amounts that financial institutions have declared that they have put aside to repay to the Australian people who were ripped off in the way that was documented well by the Hayne royal commission. I'd be appreciative of a prompt response. My questions go to the financial compensation that has actually been paid to the Australian public by those financial institutions since announcements from 2017. Who's got how much money and what are the gaps, essentially? The other line of questions on notice really are with regard to Nuix. I'm very keen to know how much money has gone to persons of interest who have been identified by ASIC, and any action that you've taken to extend the ban on the former Nuix CEO Stephen Doyle's passport. I understand that's coming up for renewal right now. That's kind of a timely one. If you could give me anything on that, I'd appreciate it.

Mr Longo: That last one has been extended till early next year, but I will be able to get back to you fairly quickly on that last point.

CHAIR: Senator McKim, can you hear me?

Senator McKIM: I can.

CHAIR: You have some questions, I understand. You have the call.

Senator McKIM: I just wanted to ask about the widespread cheating at KPMG Australia on their independence exams. KPMG Australia was fined USD450,000 by the US audit watchdog the Public Company Accounting Oversight Board. What action, if any, has ASIC taken against KPMG Australia?

Mr Hughes: ASIC has followed with interest the PCAOB review of KPMG. Our sense at this stage is that we do not have a regulatory hook or mandate to take action against KPMG in relation to the matters looked at by the PCAOB, because the rules that establish the PCAOB's jurisdiction over those matters are entirely different from ASIC's mandate. We register individuals to conduct audits. The particular matter that was reviewed by the PCAOB related to internal training, and that does not give rise to a breach of the Corporations Act which would enliven our jurisdiction. At this stage we do not see any opportunity for us to take action. We are, however, closely engaging with the relevant accounting bodies, with CAANZ and with CPA as well.

Senator McKIM: So an Australian company has been fined by an overseas watchdog for cheating in Australia, and yet, because we don't have an adequate regulatory mandate in Australia, the Australian watchdog—you—appears to be unable to take action. Can I ask: is this an issue with an act of parliament or is it an issue with something which sits at a lower level than legislation?

Mr Hughes: Whether the Corporations Act is adequate or not to deal with this particular issue is a policy matter for government. What I would say is that the particular matters that were looked at by the PCAOB related to internal training, the conduct of that training and the performance by certain individuals within a firm. They did not relate to the performance of an audit, and it is that matter which ASIC has jurisdiction over, amongst others. Of course, the professional bodies themselves, CAANZ or CPA Australia, could of course choose to take their own action, but we can only enforce the laws that we have.

Senator McKIM: I understand that, but this involved over 1,000 partners and staff at KPMG Australia. The cheating happened in Australia by over 1,000 partners and staff of an Australian company. If the legislation is inadequate, why has ASIC not gone to government and asked it to improve the legislation to provide ASIC with a

regulatory mandate in these areas? Or is it just going to be, 'Just let it go. It's fine' for one of the big four accounting firms in Australia to blatantly cheat in the way that over a thousand of them did?

Mr Hughes: I don't think anything in my answers would suggest that it was okay. In fact, we viewed the conduct with the same disappointment that you've expressed. It would be unfair or inaccurate to say there's been no response. The PCAOB is the appropriate body that has exercised its jurisdiction to take action against the individuals involved, and KPMG itself has responded to that in terms of its own internal staff disciplinary action. I can only repeat: it did not relate to the conduct of an audit or other matters over which ASIC has jurisdiction. We don't have the power. Whether we should have the power is a question for the government and ultimately the parliament.

Senator McKIM: I appreciate that. Has ASIC asked the government to create that power for ASIC by legislative amendment?

Mr Hughes: I'm not aware, but I'd like to take that on notice and confirm back to you so that I can give you an accurate answer.

CHAIR: Senator McKim, sorry to interrupt you. We are over time now for this session. Do you have one final question you could maybe ask?

Senator McKIM: Just on a different matter, if I might, which goes to the ASIC announcement that it's not going to pursue criminal action against AMP for charging clients for doing nothing; in other words, fees for no service. Can I basically ask why ASIC is not pursuing criminal charges against AMP, whether you sought advice from the DPP on this, and any other information that you are able to provide? If the laws are inadequate, I'll ask the same question I did in regard to the previous matter: has ASIC asked the government to tighten up the laws so that action can be taken against AMP for charging fees for no services as found by Commissioner Hayne?

Mr Longo: I will ask Deputy Chair Court, who chairs our enforcement committee, to answer your question.

Ms Court: I'm going to give you my best answer, and any of my colleagues can jump in if I'm getting matters confused. My recollection on the AMP fee for no service matter that arose out of the royal commission is that we did a detailed investigation of that matter. We investigated the potential for criminal charges. That investigation was referred to the Director of Public Prosecutions. The answer to that part of your question is, yes. Ultimately the director elected not to lay charges. That would have been dependent obviously on the particular facts and circumstances of that case, but certainly it was investigated fully for the potential for criminal charges to be laid.

Senator McKIM: I'll put some further questions on that matter in on notice.

CHAIR: Senator Roberts, I know you have some questions. We are running over time, unfortunately.

Senator ROBERTS: I can be pretty quick.

CHAIR: You can be pretty quick and put the balance on notice?

Senator ROBERTS: Yes. Sterling First victims paid hundreds of thousands of dollars upfront believing they would essentially receive a 40-year lease in return. This would appear to be a long-term lease, where the victims are better classified as tenants instead of investors. Can you explain why someone in this situation would be classified as an investor instead of as a tenant?

Mr Longo: I will try to answer the question right now, but can I just go back to the exchange I had with the chair. There is an inquiry into these matters before the Senate in a few weeks, and I'll certainly be addressing all of these questions very comprehensively then. For today's purposes, it's certainly true that they were tenants but many of them invested, in order to pay for their rental, if I can use that word; in their capacity as tenants, they made investments in preference shares or managed investment schemes of one form or another. For today's purposes, if I could just answer your question in that general way, they probably wore two hats. They were a tenant, but in order to pay for their rent they made investments which created or was intended to create a cash flow to pay for the rent. We know that that all ended awfully for those people, and we'll definitely be exploring this in much more detail during the inquiry. I hope that suffices for today.

Senator ROBERTS: I can understand your position and that does suffice for today. So they're wearing two hats. With the investor hat, aren't they required to be provided with a product disclosure statement?

Mr Longo: Yes. If it's a managed investment scheme that has been registered in accordance with the act, they ought to have been provided with product disclosure statements. As we work through the inquiry we will be making submissions about PDSs, what we found and what we did, and in connection with stop orders. It will all be part of the submission we make in order for a comprehensive story.

Senator ROBERTS: So you're aware that the Sterling First victims did not get a PDS. What's the current status of your investigation, if you just tell me in detail?

Mr Longo: Can I just go back to your earlier question? I'm not saying today whether they did or didn't get PDSs. This is very fact sensitive. I do acknowledge they should have got PDSs, but I'm not sure what the position was with the individual investors.

CHAIR: Senator Roberts, sorry to interrupt, but we are over time.

Senator ROBERTS: Could I just ask one question?

CHAIR: Yes.

Senator ROBERTS: Minister, did the government conduct an informal review into the way ASIC handled the Sterling First case?

Senator Hume: No. That investigation is ongoing.

Senator ROBERTS: Thank you, Mr Longo. I appreciate your answers.

Senator CHISHOLM: Will ASIC become more business friendly under your leadership?

Mr Longo: If the implication is that business is going to get a free pass to do the wrong thing and not be followed up, the answer is absolutely, no. What business can expect from ASIC is essentially what the government has set out in its statement of expectations and in our statement of intent. We are a business regulator. Part of our job is to encourage businesses and to encourage consumers. There is a facilitation aspect to our mandate, but we remain absolutely committed to the enforcement part of our mandate, which has come up a couple of times this morning. I think you can expect ASIC to remain very active in making corporate Australia accountable for misconduct.

Senator CHISHOLM: ASIC has several key governance documents—a corporate plan, a statement of intent issued by the commissioner and a statement of expectations issued by the Treasurer to ASIC. Given that ASIC is an independent statutory independent body, does the Treasurer's statement of expectations bind ASIC in any way?

Mr Longo: The government is entitled to express its expectations within the broader regulatory framework that we operate under. ASIC is an independent regulator. We're accountable to parliament. We're accountable in all sorts of ways—parliamentary hearings like this one. So, I think it's absolutely the expectation of government that we remain independent, and that in fact is in the expectations itself. It is a prerogative of government to express its views on policy matters to us, and indeed under the PGPA Act myself and my fellow commissioners are required to discharge our duties in a manner that doesn't contradict the policy of the day. It's a nuanced operating environment, if I can put it that way.

Senator CHISHOLM: It's notable that the Treasurer's new statement of expectations has no reference to the banking royal commission. The previous statement indicated that ASIC should use its full regulatory toolkit and direct a substantial portion of its resources to surveillance and enforcement. The new statement of expectations states that ASIC should minimise the costs of regulatory requirements for regulated entities and consumers, and doesn't mention enhancing consumer trust or responding to misconduct. What do these changed expectations mean for ASIC?

Mr Longo: The statement of expectations, as you'll see, is a very short document and it's very high level. It is the Treasurer's document. He tries to cast it in that way. Our statement of intent was similarly brief and high level. I and the commission do not take from it I think the premise of your question. In other words, I don't see any part of that statement of expectations as sending a message to be less active. I see ASIC's enforcement mandate as absolutely fundamental. It's in our statutory objectives. We do not read what's in the statement of expectations as diminishing or diluting any of that. As I said earlier, the message has been more subtle and nuanced. We have a very complex range of statutory objectives, and they range from being business facilitative and encouraging confident participation of consumers, to taking an enforcement action when that is warranted and necessary. I hope that answers your question. I'm not trying to avoid it.

Senator Hume: Chair, just to be clear and to put it on the record, the statement of expectations actually states at paragraph 3.8 that in achieving its objectives and carrying out its functions in exercising its powers the government also expects ASIC to identify and reduce misconduct risk through well targeted and proportionate supervision, surveillance and enforcement activity. So, it is in fact included in the statement of expectations.

Senator CHISHOLM: ASIC's new corporate plan has no mention of the previous commissioner's 'Why not litigate?' approach to enforcement activity? Why is that?

Mr Longo: One concept that came out of the royal commission—and I'm getting a lot of interference. I'm sorry. I'm going to ask Deputy Chair Court to have a go at answering that question, but essentially we see it as an incomplete statement of ASIC's approach to enforcement. Of course, we're going to keep litigating. Indeed, we may very well see more litigation rather than less. But what matters is that it's the right litigation; that it's targeted,

proportionate, and that it has impact. Our commitment to enforcement and litigation is not going to change. We just see the 'Why not litigate?' as being an incomplete way of thinking about enforcement and the various issues we need to take into account. If it's okay, I'll ask Deputy Chair Court, who chairs our enforcement committee, to complete that response.

Ms Court: I will echo the words of Chair Longo. We very much acknowledge the significant attention that has been given to this issue, the moving away from the 'Why not litigate?' phrase. We are acutely conscious that it seems to be being interpreted as potentially sending a signal that ASIC is going to have a softer—if I can use that description—enforcement regime. That's not the case. Chair Longo and I have been at pains to make clear at every opportunity that litigation and court enforcement outcomes and pecuniary penalties are going to remain a critical and significant part of the regime. The main point that we are trying to make, though, is that we do have a range of effective tools to address misconduct. We need to make sure that we use that full regulatory toolkit that the parliament has given us, which includes litigation, referral to the DPP for criminal matters, but also can include in appropriate cases enforceable undertakings and infringement notices. Since the royal commission, ASIC's use of those other tools has become very small. We just simply can't litigate all matters, and nor should we. We need to keep litigating and litigating in a robust, strong way those cases demonstrating significant misconduct, and we need to be getting penalties that make executives and boards sit up and take notice so that the matters we take have a significant deterrent effect. But there will be occasions where the use of undertakings, infringement notices and other tools may be appropriate as well. The signal of the 'Why not litigate?' removals is to make sure that that full suite of tools is recognised.

Senator CHISHOLM: Has ASIC's funding and resourcing of enforcement activities changed?

Ms Court: I can jump in there, and Mr Day may be able to give you more detail. At a broad level, certainly following the royal commission our funding for enforcement activities was increased. If I sort of look at the activity that we're able to undertake in the enforcement area, going back to the 2018-19 financial year, we would have about 217 investigations on at any one time. That capacity has now been increased and we have 330-340 investigations on at any particular time. The level of our court activity, actions initiated in the courts and penalties recovered has increased over the course of that funding period. If you want any more precise details, I suspect Mr Day will have those.

Mr Day: The amount of money that ASIC is utilising out of its funding in relation to our enforcement group specifically has actually remained stable from last year compared to this year. That money is stable. In relation to our enforcement, supervision and surveillance funding, about 85 per cent of ASIC's budget is really devoted to those functions. That's similar to what it was the year before. In relation to that, it's quite stable.

Senator CHISHOLM: How many civil penalty proceedings has ASIC commenced since June 2021?

Ms Court: It's interesting you asked that question, because I asked for that very list just overnight. I'm trying to find the list that I was given. There have been seven or eight significant civil penalty proceedings filed in the Federal Court, and there have been a significant number of other lower-level matters, criminal matters filed in various courts, and some interlocutory proceedings, for example, freezing orders and injunctions. But at a high level, it's about seven or eight since 1 June. Anyone jump in if I've got that figure incorrect.

Senator CHISHOLM: What about in the previous four months to that?

Ms Court: That one I would have to take on notice, my apologies, unless anyone has that number at their disposal.

Senator CHISHOLM: Do you think it would be more or less than the seven or eight?

Ms Court: In the four months prior to 1 June?

Senator CHISHOLM: Yes.

Ms Court: I imagine it may be slightly less, but I have to confess I am guessing. I could also foreshadow, if it is of interest that, as often happens as you draw to the end of a calendar year, it would be my anticipation that there will be a number more civil penalty proceedings filed between now and the end of this calendar year.

Senator CHISHOLM: When considering enforcement action, does ASIC take as its starting point the question of whether a court should determine the consequences of a contravention?

Ms Court: When we consider enforcement action, we look at the nature of the conduct. We look at whether it has had a significant impact on market integrity or on consumers or investors. We look at the number of those consumers or investors that may have been harmed and the amount of money that may have been received by the financial institution improperly and unlawfully. We look at the period of time over which the conduct has extended. We look at the remediation that may have already been paid and the actions taken by the company to

remedy the conduct, and we make a decision as to what the appropriate enforcement outcome should be, taking all of those things into consideration. We always consider whether or not a matter should be filed in court and whether or not a court outcome is the appropriate public outcome in the circumstances. The enforcement committee makes that assessment in relation to every matter that comes before it.

Senator CHISHOLM: Do you think that that could have been made more clear in ASIC's statement of intent in the corporate plan?

Ms Court: Given the questions that are being asked of us, perhaps we could have made that more clear. As I say, though, the removal of the reference to the 'Why not litigate?' was certainly not intended to send any signal that ASIC is going soft on enforcement. We have been talking about that publicly, and the outcome of our activity and our enforcement approach will be demonstrated by the matters that we file in courts and the outcomes that we receive.

Senator CHISHOLM: We have further questions we'll put on notice.

Senator McDONALD: I will try to keep this brief. Mr Longo, with the transfer of responsibility for the financial adviser exam from SIA to ASIC, can you provide me with an overview of the discussions over recent months that ASIC has had with the government and SIA on this handover? When will the full transition take place and what might that look like?

Mr Longo: That's a short but big question. There has been a lot of work done with Treasury to prepare for the disciplinary body reforms that will take effect from the beginning of January, and we're working very closely with Treasury to ensure that we can run the exam efficiently and meet all the requirements of the Better Advice Bill. I know that's a very high-level response. I don't know whether that's sufficient for today. I'm happy to give you more detail and take the question on notice, unless Commissioner Press would like to supplement my response.

Senator McDONALD: In the interests of time, when will you be in a position to announce the more fulsome plans for the financial adviser exam in 2022, including the dates?

Mr Longo: I couldn't tell you right now. The regulations in connection with that bill have only recently been released. We are putting a lot of work into getting ready to assume our new role or expanded role at the beginning of January. I don't know whether Commissioner Press can help me on when we plan to publish more information about that, but I suspect it's imminent.

Ms Press: It is imminent, but we are working with ACER to get a new contract in place. Until that contract is in place we won't be able to tell you what the dates are going to be. We do know that it's important for advisers to have those dates, and we will be putting them out as soon as we can.

Senator McDONALD: Following the June 2021 Senate estimates hearings, question on notice BT177 from Senator Brockman asked about ASIC's High Court case against Westpac relating to their superannuation funds operating a general advice based call centre to encourage members to consolidate their super fund accounts, where the High Court found that it was personal advice. This seems to be alarming, because these were super funds owned by a big bank that was, through a call centre, providing services it claimed were general advice, and yet ASIC has chosen to charge 60 per cent of the cost of this action to the predominantly small business financial adviser sector. This was illegal conduct by a super fund. Why don't the super funds pay 100 per cent for this? How can you argue that the majority of this action should be paid for by small business financial advisers? Are you aware of any other similar cases where there has been an unfair allocation of costs to financial advisers?

Mr Longo: That question is really a question about how the industry funding model works. Again, we can take aspects of that on notice, but I'm wondering whether the COO wants to give a more detailed response. Essentially the allocation of cost is driven by the industry funding model, by law. I think that's essentially the answer. I don't know whether Mr Day or Commissioner Press can elaborate on that.

Mr Day: You broke up halfway through that question. In relation to the allocation within the matter, my understanding was that those matters did relate to financial advice aspects from the superannuation funds, but I'm happy to take that on further notice if you like, unless Commissioner Press has something to add.

Senator McDONALD: Thank you. I will provide that question on notice for further advice. Finally, since the commencement of the Protecting Your Super and Putting Members' Interests First reforms, can I ask for some visibility on consumer complaints in relation to super funds where they have lost their life, TPD and possibly their income protection insurance? Whom are they lodging complaints against, and are these complaints being lodged with APRA or ASIC?

Mr Day: In terms of complaints about superannuation in relation to those sorts matters, obviously, with the formation of the Australian Financial Complaints Authority, complaints about superannuation are generally now

going to AFCA. It may be that there are some complaints that have also been made to ASIC, and I'm quite happy to take on notice us looking for those. In relation to the complaints that might relate to APRA, I guess we'd have to have that question asked of APRA. I understand that it's following us in this hearing, so you'll get the opportunity to ask them there. In relation to the complaints about superannuation funds in the way that you've asked in relation to AFCA, I don't have that data available to me at this time, and I suspect AFCA might be able to better provide that information. As I said, I'm more than happy to take this on notice and look at the complaints we've received in relation to super funds in relation to the matters you've raised.

Senator McDONALD: Yes, I will follow up on both of those last few questions on notice, because I haven't received an answer and I would like to better understand particularly the allocation of costs and now this issue of insurance. Finally, I'm just trying to get an understanding of how the current arrangements for the oversight of unlicensed operators work. Financial advisers are subject to careful oversight of their licences by ASIC. What oversights are accountants—and I'm referring to Mr Papalia in WA, subject to that might have helped to reveal this kind of alleged misconduct that's seemingly been going on for nearly 20 years?

Mr Day: I'm not sure that I fully understand the question, but in relation to issues related to unlicensed financial advice provided by accountants, again, I'm happy to go away and look at a more detailed question about that and provide you information about ASIC's activities in relation to unlicensed financial advice, particularly as it relates to accountants.

Senator McDONALD: Following on, the ABC ran a series of stories on this case and kept referring to the gentleman as an accountant and a financial adviser despite him not being a financial adviser. Given the oversights that are on licensed financial advisers, I'm wondering what oversight there is for ASIC to protect the industry, given the strict regime that financial advisers are held under. Would you be going back to the ABC and asking them to rectify their stories?

Mr Day: That's a matter for the ABC in terms of that. I don't think there's a limit on people calling them financial advisers. There are a lot of people out there who call themselves financial advisers but aren't and don't hold licences. But in relation to the way the ABC refers to a particular person, I don't know that there's anything we could add to that.

Senator McDONALD: There's a significant cost to regulating financial advisers. If you're not going to provide any protections to that industry, then—

Mr Day: I'm not saying for a minute that we won't look at and not take action against someone who is providing unlicensed financial advice. What I'm saying is how the ABC in one of its own journalistic stories might refer to a person is not something that I think we can necessarily do anything about other than educate what the rules are to the ABC. I don't know how that would make any difference.

Senator McDONALD: I think it would be a starting point if you communicated with them that their story is incorrect. It is incorrect. It's misleading. If you don't provide advice to the ABC, I'm not sure who else is going to.

Senator Hume: Before we move on, can I just clarify for the senator on the issue of the industry funding model. Senator McDonald would know that the government is providing temporary and targeted relief for financial advisers in recognition of the transition of the industry funding model during the Hayne royal commission recommendation implementation. This will see ASIC levies charged for personal financial advice to retail clients restored to their 2018 and '19 levels of \$1,142 per adviser for the next two years, and the flat per licensing charge will remain at \$1,500. That's a 63 per cent reduction relative to the level estimated in ASIC's 2020 and 2021 cost recovery implementation statement, which said that the levy was going to be imposed at \$3,138 per adviser. While this temporary relief is in place, the ASIC industry funding model will be reviewed by Treasury to ensure that it remains fit for purpose for the long term.

CHAIR: Excellent. Thank you, Minister. I think we've now exhausted all of our questions for ASIC. There will be questions put on notice, and an opportunity for further questions to be put on notice. I thank you, Chair Longo, and your team for providing that. There were a lot of topics covered during that session, and it was incredibly useful. Thank you very much.

Mr Longo: Thank you, Chair. That's very generous.

Australian Prudential Regulation Authority

[10:26]

CHAIR: We'll now move to the Australian Prudential Regulation Authority. I welcome the representatives of APRA to this hearing.

Senator McALLISTER: I wanted to ask a couple of quick questions. I'm interested in understanding what work APRA is doing on climate change and, in particular, any work that APRA is doing to ensure that Australian insurers are meeting prudential standards in relation to homeowners insurance.

Mr Byres: Thank you for the question. I might just hand over to Ms Rowell to answer that one.

Mrs Rowell: As you would appreciate, APRA has a wide range of work that is being undertaken in relation to climate change more broadly, including the release of guidance for the climate vulnerability assessment, some pilot survey work. Specifically in relation to insurance and the meeting of prudential standards by insurers in relation to homeowners policies, we do not have any specific prudential requirements in relation to homeowners insurance in particular. What we are doing, of course, is engaging with insurers and a wide range of stakeholders around the potential impacts and flow-on effects of the financial risks of climate change, and how insurers more broadly are adapting their underwriting and claims processing, assessment and pricing activities to be able to balance the need for sustainable insurance from an insurer perspective with appropriate outcomes for consumers, and addressing some of the affordability and accessibility concerns. There are a number of ways in which, as you would appreciate, climate risks may play out and impact the affordability and availability of insurance. There's no single solution to that, and there are a number of policy measures, as I said, product design and underwriting measures and also litigation measures that the industry, government at all levels and stakeholders are working on to address those concerns.

Senator McALLISTER: Thanks very much for that, Mrs Rowell. It is complex, isn't it—that tension here, as in other domains that you work in, between affordability and availability, with prudential certainty? It is a tension. What do you expect in terms of pricing as extreme weather events increase?

Mrs Rowell: Absent any mitigating actions, it seems likely that insurance costs will increase as the nature, frequency and impact of events increase. It's important also to recognise that the impacts are varied across Australia in different ways. There are impacts for different geographic regions, different types of homes, construction and the like. Again, how those impacts play out will vary quite widely across the community as well.

Senator McALLISTER: In the insurance sector, the main set of issues you're thinking about are the physical risks of climate change and the way they flow through to the business model for the insurers that you regulate?

Mrs Rowell: That is one angle. Also, of course, we are looking at the way insurers are responding in terms of potential impacts on them and how they run their business, with other APRA regulated institutions as well—reputation, and other risks and impacts that might flow if APRA regulated institutions don't respond appropriately. Of course, there are the wider financial system impacts that we're looking at, for all APRA regulated institutions, and how they are considering and responding to the climate financial risk.

Senator McALLISTER: In terms of the broader environment, has APRA considered any potential impacts on mortgage rates or availability of lending? Is there any consideration of whether or not borrowing opportunities might be constrained as a consequence of the physical risks of climate change in areas that are more flood-prone or bushfire-prone?

Mr Byres: The short answer to your question is that those risks are real. It ties to the insurability question that you raised before. For many banks, part of the assessment of creditworthiness is whether the collateral for the loan is insurable. The ready availability of insurance, affordable insurance, is important in that respect. We have been, as you know, doing what we've termed a climate vulnerability assessment with the banking industry, the five largest banks, which make up a very large proportion of the banking sector. That looks at how they would adapt and evolve their business in response to a changing climate under a couple of different scenarios. It looks in part, but not entirely, at the risks that will emerge from their mortgage portfolios, which are obviously a very big part of their balance sheet.

Senator McALLISTER: Is there any indication that those risks are feeding into pricing, or have the potential to feed into pricing in terms of higher mortgages?

Mr Byres: I don't think there's any hard evidence at this point. I'm not aware of any. Is the risk there? Yes, I think the risk is there. A large part of the Australian banking system is funded from offshore finance. Increasingly, investors around the world are paying attention to and giving much greater priority to considerations of climate risk when they are looking at creditworthiness of those they're lending to. Of course, then there are those who are investing in the capital banking system. We have seen an increasing focus on climate. In some extreme cases we've seen investors who say that they're not willing to invest in certain counterparties because of a concern about climate risks. I'd say the risk at this stage is a potential concern rather than a current concern, but it is a real concern.

Senator McALLISTER: The transmission pathway is really the cost of finance for those lending institutions rather than differential pricing for individual borrowers?

Mr Byres: It's probably both of those things. We may see banks—and I'm just speculating—for example, charging a higher premium, particularly if properties are at risk of being uninsurable at some point in the future or the value of the collateral is likely to be more at risk from a changing climate. If you're lending for a 30-year mortgage, you need to have a long-term time horizon, as you think about the value of the collateral that you've got. That could be differential pricing. But there's a broader concern about making sure that the Australian financial system as a whole continues to have good access, as it does today, to debt and equity finance.

Senator McALLISTER: Does APRA know how many Australian banks or lenders have committed to a net zero emissions target?

Mr Byres: I don't know that we have a precise number there. I certainly don't have it in front of me, so I will take that question on notice.

Senator McALLISTER: Senator Canavan has publicly said that Australians should tell banks to 'bugger off' if they accept a net zero emissions target and that Australians should pay more in their mortgages to support continued emissions. Has APRA provided Senator Canavan, or any other Nationals MPs, with any information or modelling about the impacts of climate action or the lack thereof on mortgage costs specifically?

Mr Byres: No, we haven't.

Senator McALLISTER: This is a quite separate subject: there is some evidence that scams, and particularly online scams, have dramatically increased, particularly in light of the government's failed response to the COVID-19 pandemic, and banks and prudentially regulated institutions are in the firing line. Does APRA have any visibility on how much scams and cybercrime are costing banks and ADIs?

Mr Byres: It's not something on which we directly keep information. We do see information through peer regulators, but it's not something that we collect regularly from banks.

Senator McALLISTER: Have you provided any guidance to prudentially regulated institutions about how to deal with scams or fraud?

Mr Byres: Not specifically, no. We have a prudential standard on information security more broadly, which deals with, as you would expect, cybersecurity for the broader operations of a financial institution. But it doesn't go to that specific level of detail.

Senator BRAGG: I want to take you through some questions that I asked you last time you were here, on 2 June. I was inquiring about an organisation called the New Daily, which is owned by the Industry Super Holdings organisation. I was inquiring whether or not that would be covered by your review of expenditure on marketing by super trustees. You said that you would take that on notice. Can you give the committee an update on where you're up to with your inquiries into the New Daily and Industry Super Holdings?

Mr Byres: I might hand those questions over to Margaret Cole and Suzanne Smith, who are with us today. I should note for the record, Chair, that this is Margaret's first appearance before the committee, and I did want to acknowledge that, since becoming an APRA member on 1 July.

Ms Cole: It is my first appearance. I wasn't around for the last hearing. You have seen, I think, the material we published this week, a paper on what we found out from our thematic reviews, one of which covered expenditure. That was a sample of 12 superannuation trustees. It did not include ISH or the New Daily.

Senator BRAGG: ISH is owned by the super fund, is it not?

Ms Cole: I believe so.

Senator BRAGG: It's owned by the super funds as an investment; is that correct?

Mrs Smith: That's right.

Senator BRAGG: And it's a marketing vehicle, amongst other things?

Mrs Smith: ISH has three subsidiaries, one being IFM Investors, one being ISA and one being the New Daily. As to whether ISH itself is a marketing vehicle, it's a company that has three subsidiaries.

Senator BRAGG: That wasn't covered in your marketing review?

Mrs Smith: Margaret, are you happy for me to pick this up?

Ms Cole: You were around, and I wasn't, when that was instigated.

Mrs Smith: In that expenditure review we looked at expenditure for 12 different entities. Some of that expenditure included payments to ISA. They use ISA for marketing activities. ISA was captured from expenditure by individual funds, yes.

Senator BRAGG: If the super funds put tens of millions of dollars into ISH and that's used for marketing, is that outside your scope or inside your scope?

Mrs Smith: The funds contribute to ISA under contractual arrangement for services. They're not putting funds directly into ISH. ISH is an investment that they hold. When we spoke last time, Senator Bragg, we talked about that as being part of the investment decision that they would make as part of their investment strategy. The payments to ISA will be a contract that they have, and those arrangements will cover advertising, different collective advertising, and campaigns that will be run.

Senator BRAGG: What is the money that goes into the New Daily classified as?

Mrs Smith: The funds don't contribute to the New Daily directly.

Senator BRAGG: But they do. They put money into the ISH, which is members' money, workers' capital. That then goes into the New Daily. So they do indirectly fund it.

Mrs Smith: They made a contribution; they're shareholders in ISH. Our understanding is that no money flows from funds directly to ISH. ISH will receive profits from—

Senator BRAGG: Mrs Smith, I will interrupt you. You wrote to me on 20 August saying that currently there were 20 super funds who were in ISH, all of which treated their holding as an investment. So you can invest in ISH; you can put millions of dollars into it. That can be funnelled into the New Daily which is, as far as we can see from the public records, a failing media company.

Mrs Smith: The founding shareholders of ISH contributed to that a long time ago. They have an investment in ISH. ISH generates revenue from IFM, which is the investment arm, one of the subsidiaries, which is the most profitable part of that. Profits will flow from IFM to ISH. We don't have any record of funds paying further money into ISH.

Senator BRAGG: On that basis you can have a profitable arm with your left arm and your right arm can be a complete failure, but as long as you're levelling it out it's okay?

Mrs Smith: There are many examples of companies that hold a diverse range of assets and become—

Senator BRAGG: I'm trying to ascertain this: you've conducted this review. We've had extensive discussions about this before. You're giving a green light for the super funds to put capital into this media outfit at this time?

Mrs Smith: The expenditure review was undertaking expenditure for marketing, sponsorships and advertising. Putting capital into an investment is different. We didn't look at investments as part of this review; we looked at expenditure on marketing, advertising and sponsorships, of which there are contracts with ISA. They were captured. With respect to what we will be doing, there's a new test as of 1 July, which is the best financial interest duty, that funds now need to be held to account to. We need to look at how the expenditure that they're using on marketing and advertising will be in the best financial interests of members. That expenditure is under contracts with ISA for services.

Senator BRAGG: Is it your view that the New Daily will pass or fail the best financial interest test?

Mrs Smith: Our understanding, from the information we have, is that no funds are contributing any money directly to the New Daily. The New Daily is a subsidiary of ISH.

Senator BRAGG: Correct. On that basis, if I were a super trustee and putting money into an investment called Industry Super Holdings or something else and that was then funding something else through a subsidiary, I could do anything. Your argument here is an argument about subsidiary companies and the use of corporate structures.

Mrs Smith: We don't regulate ISH; we don't regulate ISA. We regulate the super funds and we look at the way that they make decisions around the investments. That's part of their investment strategy. ISH generate profits from IFM, which is a very profitable part of their investment strategy.

Senator BRAGG: You have made it very clear in your testimony today that this particular organisation, this media organisation, which is owned by ISH, can be successful or unsuccessful, but as long as it is owned by an organisation which has some semblance of commercial success then that's okay. On that basis, you could invest in anything.

Mrs Smith: I don't think I made that clear, Senator Bragg. What I said was we don't regulate ISH; we regulate the super funds that hold an investment. ISH has three subsidiaries. From time to time subsidiaries will perform differently. On the whole, ISH is a profitable venture for the super funds.

Senator BRAGG: Can I just remind you that the parliament has passed a law which enacts a best financial interests test for the super funds.

Mrs Smith: Yes.

Senator BRAGG: It doesn't allow super funds to put in place opaque corporate structures to avoid that test. APRA, as a potential regulator, needs to satisfy itself that the investments that super funds are making through any sort of corporate structure are in the best financial interests of the members. That is the statutory duty.

Mrs Smith: That's right, absolutely. We accept that. I understand where you're coming from, Senator Bragg, and I appreciate that you're focusing on the best financial interests of members. We're absolutely focusing on that as well. We look at the investments that super funds are making. They're investing in ISH, and ISH has been a profitable entity. There is no money going directly from the super funds. I understand what you're saying in that they're the shareholders of ISH and the New Daily.

Senator BRAGG: But you've written to me saying that the 27 funds who are shareholders of ISH treat their holding as an investment. It's an investment. Therefore, the investment in ISH which then passes through capital into the New Daily is an investment. Therefore, you have to assess that on the new test, best financial interests.

Mrs Smith: I don't know that I can add any more at this point on this issue. We're happy to talk to you about this separately if that would be helpful.

Senator BRAGG: I'd like you to take on notice the exact formula you're using to give a green light to this particular subsidiary company.

Secondly, I just wanted to ask you about an issue in some of the media in the past few days, particularly today. There's a fund called QSuper, which I think is looking at a regulatory fine and is flagging the idea that it might use members' money to pay this fine. I just want to ask you a broad question about this because I think it's important that members of super funds aren't paying for fines. What are you doing to protect these members?

Ms Cole: QSuper has had an application to the Queensland court to amend its trust deed in order to allow it to charge fees to build capital or build a reserve to meet liabilities, which could include regulatory penalties in the light of the changes to sections 56 and 57. We at APRA have looked at this extremely carefully. We, in fact, were notified of that application to the court. We decided that we had to go along, intervene and make the court aware of the relevant issues around that application. Fundamentally, we have kept very close to this. We are aware that there is some issue between QSuper and the ATO regarding the matter, which I think I've noted in the press this morning. That's not something between us and QSuper; it's between QSuper and the ATO. We have carefully explained to the court the balance that has to be had in order to protect members' best financial interests in deciding whether QSuper can be enabled to charge a fee for these purposes. That judgement is, in fact, still confidential until later today, although the import of the judgement is that the court is allowing the amendment of the trust deed to enable the charging of such a fee.

Senator BRAGG: Okay.

Senator WALSH: I have a few questions about your work in relation to the MySuper performance test. I'm looking at your opening statement, which notes that the trustees of the 13 products that failed the benchmark test are providing important information to APRA, including weekly information relating to the movement of members and the outflow of members from funds and that all funds have been losing members since the test results were published. Are you able to give us some early numbers on what you're seeing there?

Ms Cole: What I am able to say is that that's correct; there are member movements from 13 funds and probably from some other funds as well. Some of those are fairly marginal; some are more significant. There's been a bit of a tick up recently timing-wise. I think that's around the timing of the receipt of the letters letting them know of the outcome of the test. We do have some very detailed information, so we could take that point on notice and provide you with greater detail. We have regular updates and schedules on that weekly at the moment.

Senator WALSH: That would be great. Do you have a headline figure on how many members have left the 13 underperforming funds?

Ms Cole: Not right at my fingertips, but we'll take that on notice as well.

Senator WALSH: On notice, we would appreciate the numbers of people who have left the underperforming funds since the benchmark test, or since they had to communicate that to their members.

Ms Cole: Yes.

Senator WALSH: Thank you. You also say in your opening statement that it's now up to these 13 funds to start planning to transfer their members to a fund that can deliver better outcomes or make improvements and that you are carefully scrutinising the actions of those funds in that regard. Can you tell us what that scrutiny broadly looks like but also what actions APRA can take if we're finding that the underperformance is continuing and people are still sitting in those funds?

Ms Cole: The actions we are taking are intensified supervisory activities, so a great deal of contact with those trustees of the failed funds. We are having regular interaction with them. We have called for and expect to have very shortly, if we haven't got them already, contingency plans. We would expect them to be able to demonstrate to us how they're going to improve their performance and whether they stand a chance of passing next year's test.

It's fair to say, because of the design of the test for year 2, probably the biggest lever they can pull to change the outcome is to drop fees, which would be a desirable outcome in its own right. Where it appears that there is going to be difficulty in passing next year's test or we already have concerns about the sustainability of the entity, we are very much leaning in on pushing them to find appropriate merger partners. In this area we don't have a power to compel a merger, so we're basing this on conversations, leanings and moral persuasion, if you like, using whatever tools we have. We can put some directions on, as I understand it, to require entities to scan the market and have discussions around mergers. We know that there are active merger conversations, I think, in five of the 13 cases of trustees that failed the test.

You can expect us, I think, to be more muscular in those conversations and to try to get these mergers done, because it's inevitably in the best financial interests of members that the funds that have failed and are not sustainable longer term and don't have the economies of scale to transfer members to entities that can have a stronger future and much better performance for members. We have no tolerance for members remaining with underperforming funds throughout this process. We do want to see that happen, and you can expect us to be really pushing into that area.

Senator WALSH: Great. Just to clarify: you can encourage merger conversations, but you don't have the power to force mergers. What other tools are in your toolkit to do what you just said, which is to be forceful in relation to people being moved or moving from those underperforming funds?

Ms Cole: Not direct tools, but powers of direction and licence conditions that we would have to design, if you like, to drive towards that end. Have I got that right, Suzanne?

Mrs Smith: That's right.

Senator WALSH: Okay.

Mrs Smith: Directing funds to take all reasonable steps to look at how this would be in their best financial interests now with members actually remaining in the funds. Where we see that it wouldn't be necessarily in the best financial interests of members remaining, Ms Cole referred to directing funds to undertake a market scan to come up with a list of funds that were potential merger partners which would then demonstrate that members would be better off by being moved to another fund.

Senator WALSH: Thank you.

Ms Cole: The other thing we're looking at relevant to this is whether there's any possibility of simplifying merger or transfer processes because there are considerable complexities and thresholds that have to be passed and rules relating to the rights of members in the funds that join together or merge. Clearly, trustees take detailed legal advice on their rights in these situations and that tends to slow things down or make for greater complexity. We have an active program at the moment of looking at whether any of these procedures can be simplified, and we're talking to Treasury about that as well.

Senator WALSH: In terms of the data that you're collecting on what's happening to members in the underperforming funds, we have the stapling coming into effect, I think, very soon, in November. Will you also be monitoring how many members are stapled to those underperforming funds?

Ms Cole: I think we will be covering that in our supervisory interactions as well, yes.

Senator WALSH: What of this sort of information are you intending to make public at this stage in terms of members moving out of underperforming funds or members being stapled to underperforming funds?

Ms Cole: I'm not sure that I specifically know the answer to that question. I do think it's an important general point you're making, Senator, about transparency and what we can show to members is happening across this market. Anything that would help members to engage and understand that they need to take action themselves to move from non-performing funds into better performing funds would be a good thing. I'm all in favour of greater transparency and creating digestible information on this for consumers and members.

Senator WALSH: Would you be able to take on notice how many members are stapled to those underperforming funds during November?

Ms Cole: I will have to ask how easy or difficult it is to obtain that information.

Senator WALSH: Okay.

Mrs Smith: I'm not sure we have that information, but we'll take on notice our capacity to give you that number. We'll come back to you on that point.

Senator Hume: Stapling doesn't necessarily mean that somebody is stuck in a fund for life; they always have the choice to move on and to move out of a particular fund. It simply means that, when they change jobs, their next employer will use that fund as their default fund, rather than opening up a new fund for them and creating duplicate funds.

CHAIR: Thank you, Minister.

Senator WALSH: Ms Cole, you mentioned the impetus for the 13 underperforming funds to reduce their administration fees. Is APRA able to tell us what the general trends have been in relation to administration fees in super funds? Have they generally been going up, or stable or declining?

Ms Cole: Mrs Smith can add more information here because I am so new to the organisation. APRA have been publishing a heat map for a couple of years now, so there is some quite granular information published. That has helped drive fees in a downward direction.

Mrs Smith: I can reinforce what Margaret said. Since December 2019, when we started publishing the MySuper heat map, there has been in excess of \$400 million of savings for members due to a reduction in fees. We are due to publish the next MySuper heat map in December this year. I expect that to confirm an even greater number than that. The transparency that has provided has certainly had downward pressure on fees. The performance test has been another lever for that downward pressure.

Senator Hume: Since October 2020, which is when we announced the Your Future, Your Super changes, about 37 of the 81 MySuper products have cut their fees and around three-quarters of a million people have already looked at the online YourSuper comparison tool on the ATO website, which compares the fees and performance of all MySuper products.

CHAIR: Excellent; thank you, Minister. I note that Mr Byre did give us the benefit of an opening statement and it has been circulated; so we'll take that as tabled. Thank you for that.

Senator McDONALD: I want to follow up on questions I asked of ASIC earlier. I hope you have heard them but, if not, I'll repeat them. Since the commencement of the Protecting Your Super and Putting Members' Interests First reforms, I was asking about some visibility on consumer complaints in relation to super fund members who have lost their life TPD and possibly their income protection insurance. I want to know who they are lodging their complaints against. Are the complaints being lodged with APRA?

Ms Cole: I did hear that question earlier. We don't receive a large number of consumer complaints, not being directly consumer-facing, but we receive some. We direct those complaints, as I understand it, to AFCA.

Senator McDONALD: I'm following on from some questions Senator Small had. He has advised that new business volumes for the retail-advised life insurance channel have declined by 50 per cent over the last five years as a result of fewer financial advisers, lower commissions and a reduction in those advisers who are providing advice on life insurance products. He understands that new business is very important for life insurance as it adds younger lives to the life insurance pool and covers some of the fixed costs of these companies. Such a significant decline in new business is, presumably, concerning for APRA. What has been driving this decline in new business and what are the consequences for the retail-advised life insurance market?

Mrs Rowell: There are a number of drivers of changes in life insurance, whether advised or retail. It goes to affordability and the choices consumers have. There have been pressures on claims costs in insurance over a number of years. That has driven poor profitability across a number of classes of business, which the insurers respond to with increasing premiums. When you add an uncertain economic environment and financial impacts on consumers with rising life insurance premiums, you tend to get a reduction in the flow of life insurance new business to insurers. There are complex dynamics at play here, but one of the things we are concerned about is the future sustainability and profitability of insurers and how they are responding to that so they can meet their commitments to policy holders.

Senator McDONALD: In your response to Senator Small's question on notice from June, you justified life insurers giving large discounts to new clients on the basis that having them underwritten again reduces the risk they pose. Given that some insurers are offering a 25 per cent discount in year one, supposedly as a result of the

underwriting process, which the insurer needs to pay for, how can this be a good thing for the other policy holders in the insurance pool? Aren't these discounts a further indicator that the life insurance market is in difficulty? What guidance has APRA provided on these discounting practices?

Mrs Rowell: We have not provided any specific guidance to insurers on discounting practices. Across a range of businesses, discounting to attract new consumers is common practice. Our expectation of insurers is that they monitor their overall portfolio and profitability and how that is being managed and that they appropriately analyse and price the risks they are underwriting. There is evidence that, because of the initial selection of new policy holders, claims in the early years of insurance are lower and that can support a reduced premium relative to an existing life insurance policy holder. But overall, insurers need to manage the fair treatment of their customers with being able to sustainably write and price the business at a portfolio level.

Senator McDONALD: Thank you. In response to questions that Senator Small raised in June about the extent of premium increases for existing clients, APRA has confirmed that you will start collecting data on premium increases for the individual disability income insurance market. This market has lost \$5 billion over the last five years and APRA chose to intervene in the market in 2019. Why has it taken you so long to realise there will be consequences as a result of your intervention and to assess the impact on existing clients? What are you doing to ensure that these life companies are being fair to their existing policy holders?

Mrs Rowell: APRA's intervention in relation to individual disability income insurance is focused on ensuring that the new business that is written going forward is sustainable and able to meet the reasonable expectations of policy holders. It required a change to the settings, the design and the pricing of those products to enable that to occur. We intervened because we were not happy with the response of the insurance industry to those issues that were emerging and the poor profitability of that product class. Insurers, because of the poor profitability of that product, have reviewed their pricing, and that has led to increases for existing policy holders. That reflects the poor claims experience that has been occurring across that portfolio. We have not set any specific expectations for insurers in how they deal with their existing policy holders other than to say they need to appropriately manage the balance between their sustainability and being able to offer life insurance into the future and the fair and reasonable treatment of all their policy holders. But ultimately, how the insurers deal with existing policy holders is a matter for the insurer and its board.

Senator McDONALD: You have previously confirmed that you have not collected any data on premium increases for existing clients and that you have only recently commenced collecting more granular data on the IDII product. What has this revealed so far?

Mrs Rowell: I will need to take that question on notice; I don't have that information.

CHAIR: Senator Roberts.

Senator ROBERTS: Referencing this document, 'Stress testing banks during COVID-19', dated 15 December 2020, I have a question about one of the criteria APRA uses to stress test a bank, and that is a fall in real estate prices or, to use a simple explanation, the ability of a bank to maintain liquidity during a real estate meltdown. Can I say it like that?

Mr Byres: It is more a question of whether they can sustain their solvency, which for us is more of an issue of capital; but liquidity is an important consideration as well.

Senator ROBERTS: From the report, the figure APRA used as a proxy for a real estate meltdown was the loss of \$49 billion in residential mortgages over three years. Is that correct?

Mr Byres: That sounds about right; I don't have the document in front of me.

Senator ROBERTS: That is what I am reading. With that loss being 30 per cent of the total bank loss in the period of the stress test, as a loss rate this would translate into two per cent of Australian banks' residential mortgage loan book. Is this correct—and please confirm your figure—for the value of residential mortgages held by Australian banks. What is it?

Mr Byres: If we published that number, I am comfortable it is correct. Total mortgages for the banking system—

Senator ROBERTS: No, residential mortgages.

Mr Byres: Yes, total residential mortgages for housing loans we are talking about here, owner occupiers and investors, is in the order of a trillion dollars.

Mr Lonsdale: That is something we can come back to you on; very happy to take it on notice.

Senator ROBERTS: Thank you. A final question on this topic before moving on to a simple topic: can I confirm that APRA is projecting that a real estate meltdown would only cost our banks \$49 billion in losses on

mortgages, and that that loss would accrue over three years? That seems to be a very favourable assumption for the banks.

Mr Byres: That is the impact we expect to have on the banks, given they have collateral against their loans. Many loans have very low loan-to-value ratios. In many cases banks would have loans that, even with a substantial fall in real estate values, would mean the banks would incur no losses. That is not to say that the borrowers would be unaffected by any—

Senator ROBERTS: That is the concern.

Mr Lonsdale: Senator, I will add to your question of projectional forecasts: this is a stress test, so it is a set of assumptions that we use to look at the resilience of the sector and the entities involved. It is not a forecast or projection.

Senator ROBERTS: It is just that our constituents are concerned that we have had 20 years of the banks putting a lot of money into real estate—taking it away from small businesses and funnelling it into real estate—and we have seen real estate prices increase a lot recently; some people are calling it a bubble. So the question amounts to: are you letting the banks do as they please and then sweetening the impact for the banks?

Mr Lonsdale: We don't allow the banks to do what they please. We have a raft of prudential standards that are asked of banks, as they are making commercial decisions, to take risk into account. Where we see risks—an example would be the recent increase in the buffer—APRA acts; and takes action.

Senator ROBERTS: Does APRA embed staff in financial institutions like, say, the big four banks?

Mr Lonsdale: No.

CHAIR: Senator Bragg, you've got a few follow-up questions, do you?

Senator BRAGG: I have to say I'm concerned with your evidence. I'm worried about the way that you're looking to implement these new laws on best financial interests. What are you doing to protect workers' super? You've got this EISS super fund where they're spending a hundred grand on BMWs and 75k for Harvard courses and what not. What are you doing to clamp down on this extreme waste in this system?

CHAIR: Senator Bragg, is that question directed to the chair?

Senator BRAGG: Preferably, yes.

Mr Byres: I'll start but then my colleagues who are closer to that specific example can answer. So we're looking at the best financial interest duty in particular, but coming from the Your Future Your Super reforms and the associated reversal of the onus of proof which is now on trustees to demonstrate they're acting in the best financial interests of members. And that's an opportunity to significantly raise the bar on expectations for trustees. As we pointed out in the expenditure review that we published this week, there are a number of practices that were past practices under the previous regime that we think would not be sufficient to pass the new test. In many cases that expenditure has stopped under the new regime. But where it is continuing we have challenged the trustees now to demonstrate how they are meeting the new legislative requirements.

With respect to EISS and your specific example, I'll ask Margaret or Suzanne who are closer to that—

Senator BRAGG: So—

CHAIR: Senator Bragg, if we can just make sure the witnesses have a chance to fully complete their answer before we move on to the next question. Please continue.

Mr Byres: I'll hand over to Margaret or Suzanne on EISS.

Ms Cole: On EISS, an investigation had been commenced in May this year, and that investigation is ongoing. I can say it's focused on expenditure, governance and oversight of the EISS. We already have documentation that's come in pursuant to notices that we've served—and we're considering that—and we would expect to examine key individuals here. And we are focused on the paths that gave rise to concerns as well as actions to prevent such things happening in the future. Leaving aside EISS for the moment, for entities which were covered in the expert review what is really important, Senator Bragg—I think you would surely agree—is that we see that those practices cease. In many cases expenditure has stopped, and that is right and appropriate. Where it has continued we are looking into that properly and we will see what action we can take on it. But having a new test and new powers and a new burden of proof for the future, I would expect us again to be more muscular and bold in how we push into these issues.

Senator BRAGG: That's reassuring. Can I ask you about these adverts which have been used with Mr Greg Combet's face on them—and they're quite political ads from the Industry Super Australia group?

CHAIR: Sorry, Ms Cole, could you see what Senator Bragg was referring to there?

Ms Cole: No, I couldn't.

Senator BRAGG: We'll table these.

CHAIR: Okay.

Senator BRAGG: They're basically political adverts funded by the Industry Super Australia group, and I'm just wondering whether or not they would fall foul of your enforcement action.

Ms Cole: I go back to the answers that Mrs Smith gave earlier. Marketing advertising is an area that we would look closely at. Not all advertising is necessarily wrong. We do require and will require a great deal more analysis of how it is in members' best financial interests. We will not accept the sort of justifications we've seen in some of these past cases. So they're issues that we will be looking into. As to the Industry Super Australia dynamic, the answer goes back to what Mrs Smith said earlier.

Senator BRAGG: My final question—Chair, thank you for allowing me to have this line—is just in relation again to the discussion we had earlier about how you're proposing to handle this investment called the New Daily. So if the super funds are invested in this organisation—and there are 20 funds according to your correspondence that have investments in this organisation—and they incur a huge liability, for example, they may want to establish a legal case against someone, let's say. Where does that liability fall?

CHAIR: Is that question directed to Ms Cole?

Senator BRAGG: Ms Cole, Mr Byres.

CHAIR: Ms Cole?

Ms Cole: I'm not sure I heard it properly. Could I ask you to just put it again.

Senator McALLISTER: It's a hypothetical.

Senator BRAGG: It's not a hypothetical; it's happening right now. Sorry if I'm being unclear. So the question is: if the super funds are investing in an organisation—in this case the New Daily—and that incurs enormous legal liabilities or some other huge expense, where does the liability fall? Does it come back to the super funds who own it or where does it sit?

Ms Cole: I assume it would fall on the New Daily, if the New Daily is the legal entity involved in the proceedings. And there would be issues associated with costs.

Senator BRAGG: What risks do you think that poses to workers? In this case you're green lighting this as an investment inside the best financial interest test. This is a highly unusual media outfit which has already got itself into a range of legal messes. So how are you going to protect Australian workers from the risk of liability that this organisation is already creating, given that you've said it's okay, it's part of the best financial interest test?

Ms Cole: I don't think that's a correct representation of what we've said.

Senator BRAGG: The evidence you gave committee today is that, because this organisation is part of a broader organisation, it is all good and it's okay to be an investment.

CHAIR: Actually I think that evidence was by Mrs Smith. Maybe if I could ask Mrs Smith to address Senator Bragg's question, if you could.

Mrs Smith: So what I was trying to explain was that the super funds are investors in ISH. ISH is the parent company that has three subsidiaries, one of which is the New Daily, one of which is ISA and one of which is IFM Investors. So the super funds are shareholders in ISH. I think as Ms Cole said, if there was the scenario that played out as Senator Bragg explained that would be captured for the New Daily, that would then flow back up to ISH. My understanding would be that the exposure of those super funds would be capped at their investment into ISH. What I didn't say earlier was that a part of the profit flow to ISH from IFM is generated by those funds that use IFM as an investment manager. There are many funds, global funds, outside Australia who aren't Australian super funds who are investors who would use IFM. And so profits are generated from a multitude of funds from IFM. Those profits flow back to ISH. And so the ISH investment by funds is part of a broader investment portfolio. Super funds hold an investment strategy and they need to look at those investments on their merits as part of their fiduciary requirements as a super fund. They have a prudential standard on investment management, and the investments in ISH will get captured there. That needs to be part of—

Senator BRAGG: So—

CHAIR: Sorry, Senator Bragg, let Mrs Smith finish her answer.

Mrs Smith: It is to the super funds board. It is the executives of super funds to make sure that those investments are in the best financial interests of their members and—now we have this new process where we

have the reverse onus of proof—and that needs to flow through. But we don't analyse every single investment that super funds make.

Senator BRAGG: I think I've exhausted this line. Thank you for your indulgence.

CHAIR: Senator Bragg, I've got one follow-up question. Mrs Smith, I'm asking this as an old company secretary and general counsel who used to set up corporate structures et cetera: to what extent do you just look through a convoluted or complicated corporate structure and analyse what's practically happening in terms of the financial impact on the ultimate members for whom the superannuation fund is there to serve? To what extent do you look past the complicated corporate structure to really take a helicopter view as to what's happening practically with respect to the members' funds?

Mrs Smith: Thank you for that question. In this case we have done a lot of looking. We've dug into this deeply. I think Senator Bragg has raised this issue and line of questioning with us for probably more than a year now; so it has been something that we've been focused on. To the extent we can have access to information, that's good but we don't always have access to that information. But we do our best through ASIC and other channels to find out as much as we can.

Ms Cole: And I'd like to add, we are a regulator bound by the rules of our jurisdiction. If we don't regulate an entity we are not in a position to take action against it.

CHAIR: Thank you, Ms Cole, and congratulations on successfully finishing your first estimates session. I trust you enjoyed the experience. And if I can thank all the witnesses from APRA for all of the wonderful work you do. Thank you very much.

Reserve Bank of Australia

[11:30]

CHAIR: The committee welcomes the Reserve Bank of Australia, represented by Dr Guy Debelle and Ms Michele Bullock. In welcoming the RBA, the committee recognises the central bank's independence under the Reserve Bank Act 1959, particularly in regard to its setting of monetary policy. The committee is cognisant that, while the RBA does not receive annual appropriations, it does provide the parliament with opportunities to discuss its insight and performance, which the committee greatly welcomes. As such, no government minister will be in attendance with the committee while representatives of the RBA are present. Dr Debelle or Ms Bullock, would you like to make an opening statement?

Dr Debelle: No, thanks, Chair.

CHAIR: I'll give the call to Senator McAllister.

Senator McALLISTER: Dr Debelle, I want to ask you a couple of questions about climate change.

Dr Debelle: Sure.

Senator McALLISTER: In the RBA's latest financial stability review in October, there was a section on the Australian financial regulator's actions on climate-change-related risk. Has the RBA undertaken any modelling on the cost to the economy of not acting on climate change?

Dr Debelle: Not directly, although that's something we're thinking about. We're thinking more about what are the scenarios we can see—let me back up. The exercise we're doing with APRA, the climate vulnerability assessment, envisages a number of scenarios in terms of global outcome. Some of them involve policy actions at different periods of time. That model doesn't explicitly take account of particular policies. It just says, 'Okay, if things continue on the trajectory they're going for the next while, and in 15 years if it's decided to do something, what does that look like versus a net zero commitment?' The world envisages different climate scenarios without directly linking them to policies; that is a different way of putting it. That's the exercise that we're assisting APRA with. Going precisely to your question, no, we don't. We look at what the impacts are of some of the announced policies of our trading partners, which we talked about in our most recent bulletin and referenced in that financial stability review.

Senator McALLISTER: Can I get some clarity around the exercise you just described? The audio is not entirely clear, so I wasn't quite sure about the terms of your answer. You are contemplating whether or not to commission modelling to examine different climate scenarios; is that the advice you just provided?

Dr Debelle: More than that. The exercise we do has different climate scenarios in it. Yes, there is modelling which supports those. With that aspect, we haven't quite landed that. Hopefully, we'll have that landed by early next year.