

HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ECONOMICS

REVIEW OF THE AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY ANNUAL REPORT 2016

4QON: Mr Berger's fitness and propriety to act as a trustee director

Hansard page 11.

Ms BANKS: I would like to go to a similar line of argument—transparency, particularly in the context of the TWU. In The Australian newspaper today there are reports of almost a million dollars in payments made by TWUSUPER to that fund's sponsoring union, TWU. Has APRA conducted any investigations into TWUSUPER about those related party transactions? It is a simple question, and I want to get to a few others. Have you conducted any investigations specifically?

Mrs Rowell: We did look at that, because that issue was first raised in the royal commission, around arrangements between various industry funds and unions. The TWU was one of those. We investigated it and, as a result of that, I think suggested that there was room for them to improve some of their practices in relation to managing those arrangements.

Ms BANKS: To that royal commission, as you would also be aware, there was much revealed about superannuation liaison officers—in fact billing hundreds of thousands of dollars to members to pay these SLOs. Is APRA aware that, in 2014, a former TWU SLO, John Berger, appeared before the trade union royal commission and confirmed the TWU had been paid by TWUSUPER, in one instance, around \$90,000 for doing 2½ days work as an SLO and that, in his evidence, he stated that he knew the funds for the SLO work were coming from members' funds and he didn't think it was problematic that the union was being paid such enormous sums. Is APRA aware of that?

Mrs Rowell: Again, those issues were well aired back in the royal commission and were the subject of our engagement with the funds that were noted in those regards. I just repeat what I said before: some of the proposals that are on foot now in terms of enhancing the accountability and transparency around those sorts of arrangements are intended to address those problems.

Ms BANKS: To follow that point through, does APRA have any concerns about Mr Berger's fitness and propriety to act as a trustee director of TWUSUPER given he was complicit in the SLO arrangements, as revealed in the trade union royal commission?

Mrs Rowell: I don't think it's appropriate in this forum for us to talk about individuals without having a fuller consideration of the particular facts that you are putting on the table.

Ms BANKS: It goes directly to the question of transparency. We have had that as a result of the royal commission, and part of our transparency is in relation to having independent directors on these industry funds, and now this same man, Mr Berger, has been appointed as a trustee director of this very fund. So does APRA have an opinion, or are you happy to take that question on notice?

Mrs Rowell: I will take that question on notice.

Answer:

APRA is aware of the payments made from TWU super to the TWU relating to work undertaken by John Berger and these are a matter of public record. ¹

¹ <https://www.tradeunionroyalcommission.gov.au/Hearings/Documents/Transcripts/turc-transcript-public-hearing-2july2014.pdf>

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APRA made a number of inquiries of TWU Super including investigating further the payments outlined in the Royal Commission hearing. APRA examined the payments in detail including the processes of the RSE licensee more broadly in relation to expenses paid to Superannuation Liaison Officers (SLO). APRA's review highlighted some weaknesses in the process and approach to these types of payments. APRA proposed improvements in the governance and oversight of these arrangements, particularly in relation to the evaluation of SLO performance, and review and determination of SLO expenses. Changes to improve the rigour around monitoring and oversight of SLO activities, including an amended service agreement were implemented after this review.

APRA's prudential framework requires registrable superannuation entity (RSE) licensees to establish and implement policies, processes, and procedures to ensure that responsible persons are fit and proper upon appointment and on an ongoing basis. Such policies, processes, and procedures should also provide for the removal of individuals where they are found to be not fit and proper.² The responsibility of ensuring that only fit and proper persons are appointed to board and executive positions remains with the RSE licensee itself. APRA requested information from the RSE licensee in relation to the process undertaken in relation to assessing the fitness and propriety of John Berger and is satisfied with the information provided in response to that request.

Expense transparency and the management of super fund expenses more generally is an ongoing area of supervisory focus by APRA. The level of supervisory focus on fund expenses varies depending on any concerns APRA has about this matter or the RSE or RSE licensee more broadly.

APRA has recently highlighted its intention to enhance the prudential framework for superannuation in relation to operational governance in light of ongoing identification of weakness in the business practices of some RSE licensees in this area. The term operational governance relates to how an RSE licensee determines its strategic objectives, undertakes business planning and runs its business operations on a day-to-day basis. Sound operational governance includes rigorous decision making and monitoring in relation to fund expenditure, among other matters.

APRA continues to observe instances of poor governance practices by some RSE licensees in relation to decisions regarding the use of member money and fund expenditure, particularly where payments are made to related parties. The combination of poor processes and oversight, and failure to take action when issues are identified, can lead to inappropriate costs being incurred that ultimately have negative outcomes for members.

APRA has begun the process of consulting with key stakeholders on proposed requirements for RSE licensees to meet minimum expectations when making decisions which require the use of fund assets, whether these decisions relate to expenditure incurred in running the fund, setting aside money in reserves or the setting of fees and costs policies to fund these decisions. These minimum expectations will include implementing appropriate policies and procedures to ensure there is adequate rigour in decision-making, monitoring and transparency related to the use of members' money.

APRA supports measures that reinforce the highest quality of governance and RSE licensees conducting their affairs with a high degree of transparency and integrity including maintaining an appropriate level of independent judgement and objective perspective on the board of an RSE licensee. This view is reflected in guidance provided to the superannuation industry regulated by APRA.

² Refer to *Prudential Standard SPS 520 Fit and Proper*