

Question No: 003
Topic: Member reserves paying fines
Committee Member: Senator Bragg
Reference: Hansard pages 7 and 8

Question

Senator BRAGG: Thank you for appearing this morning. I want to ask Commissioner Press about the use of reserves. At the last two hearings—I think one was a Senate estimates hearing—I asked about the use of reserves where member reserves had been used to pay a fine. There was a case where a fund called Hostplus was fined by ASIC and used member's retirement savings to pay the fine. In March, Commissioner Press said in response to my question:

We continue to work on the use of reserves, doing some work around what can and can't be paid out of reserves and how the disclosure should be made.

Given we've now seen cases of other funds using members' money to make political donations, I think this issue is more important than it was when we discussed it in March. Could you provide an update on that work, please?

Ms Press: We are continuing to look at the use of reserves and the disclosure of such. In the case of Hostplus that you raise, we note they made a disclosure to members in their annual statement around the fine that was paid, from their annual report, which we felt was appropriate. The use of reserves for political donations, and whether or not it meets the requirements of the sole purpose test, is very much an issue for APRA. We are working with APRA and continue to do that work around the appropriate use of reserves.

Senator BRAGG: I accept that it's been a busy time for ASIC, so I'm not wanting to labour the point too much, but we did discuss your work on reserves in October and also in March. **What is the product of that work going to be, and how far away do you think it is?**

Ms Press: As I think we discussed earlier, the work is predominantly in APRA's remit. We are working with them. I'm not sure on the timing of that, to be perfectly frank. I can come back to you after speaking with my colleagues at APRA. I note that there is law reform that will change the use of reserves; we are looking at what the effect of that is as well.

Senator BRAGG: If you could take that on notice, I would be grateful.

Answer

ASIC is aware that, following APRA's review of its superannuation prudential framework in 2018/2019, APRA will commence work to review and enhance the framework. We understand that this will include updates to the standard on Operational Risk Financial Requirement and undertaking a broader thematic review of RSE licensees' reserving practices.

The timing of this work is a matter for APRA. ASIC is aware that there has been some delay to its commencement due to COVID-19.

ASIC continues to work with APRA in relation to the appropriate use of reserves by RSE licensees.

ASIC is also conducting its own analysis of the current law in relation to indemnification of trustees from trust assets and proposed changes to sections 56 and 57 of the *Superannuation Industry Supervision Act 1993* (Cth).