

**Senate Select Committee on COVID-19**  
**ANSWERS TO QUESTIONS ON NOTICE**

**Australian Taxation Office**

Public Hearing 14 August 2020

**Department/Agency:** ATO

**Question:** 1

**Topic:** ERS Fraud

**Reference:** Spoken – Hansard Page 42

**Senator:** Keneally

**Question:**

**Senator KENEALLY:** That seems a bit strange. We will leave that there. Mr Hirschhorn, you gave us evidence on 30 July that super funds are liable for fraud and that super funds are not required to pay out funds after receiving a declaration from the ATO. I'm just trying to understand how this evidence—that super funds are not required to pay out funds, having received a declaration from the ATO—is consistent with the APRA guidance to super funds in relation to the COVID-19 early access super scheme. I'm looking particularly at the frequently asked questions on the APRA website. They make clear that APRA expects the RSE to pay out within five days. They say, 'We understand there's automated checking and, if you identify a red flag, you can come back to the ATO.' It also makes clear that RSEs are exempt from undertaking upfront customer verification, as they would have been required to do prior to COVID-19. I'm trying to understand this sense that funds can disagree with the ATO direction and how likely that is to happen.

**Mr Hirschhorn:** I think we have tried to give you an answer to one of the questions on notice from the previous hearing. But I just say that this happens in reality. There is a percentage—I'm sorry; I don't have it at hand. We say that they look like they've met a condition of release. The super funds then have to judge whether they release the money under the rules of the fund. There are some dispensations from APRA in that they do not have to do all the things they would ordinarily do, but they can do all the things they ordinarily do—it's their choice. So it's to make it easier for the funds, but the funds still choose whether or not they do them. In reality, the funds, as I understand it, are holding back a percentage of applications that they feel need further review, and that is happening in reality. The funds do not automatically pay out on the basis of the declaration they receive from us.

**Senator KENEALLY:** So, can I ask you, Mr Hirschhorn: how many directions for release have super funds advised the ATO they have not completed due to suspected fraud or otherwise?

**Mr Hirschhorn:** I will take that on notice. I think it's a small percentage, but I will come back with the exact number.

**Senator KENEALLY:** Thank you.

**Answer:**

The ATO cannot quantify the number of occasions where a fund has determined not to make payment, as superannuation funds do not report payment information to the ATO.

Anecdotally, we are aware that, in some cases, funds have not acted on the determination issued by the Commissioner.

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**Department/Agency:** ATO

**Question:** 2

**Topic:** Applications for both ERS payments

**Reference:** Spoken – Hansard Page 54

**Senator:** Gallagher

**Question:**

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**CHAIR:** Thank you. While I have you there, Ms Brown, could you give me an update on JobKeeper—amount paid out, number of businesses, and employees covered—and on the cash flow boost and early access to super, if people have that information before them.

**Ms Brown:** On JobKeeper, as at 10 August there were about 989,000 eligible organisations, covering about 3.6 million employees.

**CHAIR:** That's up slightly, I think, from the last time we spoke.

**Ms Brown:** I believe so.

**CHAIR:** I think the previous figure was 3.5?

**Ms Brown:** Yes, I think it would've been 3.5.

**CHAIR:** So it's up 100,000.

**Ms Brown:** Yes. I think it's been creeping up slowly and has just tipped over to 3.6. We have paid out \$37 billion.

**CHAIR:** Do you have the figures for early access to super?

**Mr Jeremenko:** Yes.

**CHAIR:** We could've have you sitting there without contributing!

**Mr Jeremenko:** We can't have that! I'm happy to contribute. There's been \$33.3 billion, to date, approved by the tax office for payment to 2.72 million applicants. They're unique applicants, as in there are some people who have applied in the first tranche—

**CHAIR:** Do you know how many of the 2.72 have applied for both payments, as opposed to a single payment?

**Mr Jeremenko:** It's not actually of that number. Eighty-three per cent of applicants, since 1 July, have also applied in the first phase, before 1 July. Of those who have applied since 1 July, there have been 1.52 million people approved by the tax office.

**CHAIR:** That's the actual number of people, whereas 2.72 is the number of applications?

**Mr Jeremenko:** Well, 2.72 is the number of individual people who have accessed their super. That is the correct figure. What I'm breaking down with the 1.52 is how many of those, whether they are repeat applications or not, have happened since 1 July. Of that 1.52 million, there are 271,000 who are unique applicants since 1 July. Given it's a two-phase program, it sounds more complicated than it is. Maybe it's my explanation.

**Mr Hirschhorn:** To cut exactly the same numbers in a slightly different way, about two million people have applied twice, about 500,000 only applied in the first round, to date, and about 270,000 have only applied in the second round.

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**Mr Hirschhorn:** Chair, I just want to take the opportunity to say that I gave an incorrect answer before in clarifying some of Mr Jeremenko's evidence by applying 83 per cent to the wrong number. The short answer is that about 1.3 million people—and I'll get the exact numbers on notice—have applied twice. There were 1.2 million who applied just the first time and about 300,000 have applied for just the second time. My apologies.

**CHAIR:** You've totally confused me there, Mr Hirschhorn! We'll wait for you to come back with that in written form—there are so many different numbers and different explanations for those figures in breakdown. Senator Siewert, you have three minutes, my friend.

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**Answer:**

Applications under the COVID-19 early release of super program (as at 12 August 2020):

- around 3.97 million applications were approved for around 2.72 million unique individuals since the program commenced on 19 April 2020
- For the 2019-2020 year, approximately 2.45 million applications were approved
- Of these, as at 12 August 2020, around 1.2 million of the 2.45 million had applied for the 2019-20 year, but not for the 2020-21 year (not yet applied, but might in future).
- For the 2020-21 year, as at 12 August 2020, approximately 1.52 million applications have been approved, of which:
  - around 1.25 million (83%) of these applicants also applied in 2019-20.
  - around 0.27 million (17%) of these applicants are first time applicants in 2020-21.

**Senate Select Committee on COVID-19**  
**ANSWERS TO QUESTIONS ON NOTICE**

**Australian Taxation Office**  
Public Hearing 14 AUGUST 2020

**Department/Agency:** ATO

**Question:** 6

**Topic:** Number of JobKeeper penalties

**Reference:** Spoken – Hansard Page 46-47

**Senator:** Whish-Wilson

**Question:**

**Senator WHISH-WILSON:** Thank you, Chair. I have a question to Mr Hirschhorn. A few months ago I asked about a number of complaints that have been made to Fair Work by people who were eligible for JobKeeper but hadn't been paid by their employers. You stated that the preferred way forward was negotiations with those kinds of employers rather than any road towards prosecution. Fair Work, I understand, don't have the powers to prosecute employers for any breaches of JobKeeper at this point in time. I'm just wondering if you've reviewed that and if you've gone through a case list of employees who have missed out on JobKeeper and if there's been any progress on that front, particularly in light of the fact that it's now been extended and, of course, those who have missed out now will be looking at another three months, or potentially six months going into next year, where they won't have had any of the payments that they're eligible for.

**Mr Hirschhorn:** Maybe I can split that into two discrete issues. The first is those who are potentially eligible employees but were not included, in potential breach of the one-in all-in rule. The second category is those where the employer is claiming the \$1,500 and not passing that on to that employee. They are quite different in how they play out and in our response.

**Senator WHISH-WILSON:** Okay. In terms of the one-in all-in rule, Fair Work had established that a number of employees had been directly eligible but had missed out under that rule, but you indicated that you didn't think giving any kind of power to Fair Work to prosecute or enforce that rule was the way to go. Have you changed your tune on that or has there been any progress in negotiation with the employers who haven't done the right thing?

**Mr Hirschhorn:** On the first point, to clarify that, I certainly did not intend to suggest, if I did, that Fair Work should or should not have powers. I would only say that at the moment, under the current regime, the tax office has, in a sense, the call on eligibility and Fair Work has the call in relation to flow-on work conditions, which come once an employee is within JobKeeper. Under the one-in all-in, our advice remains the same: that, if you as an employee think you are eligible but you're not being supported under JobKeeper, you should speak to your employer in the first instance. If you do not have success on that route, you should come to us. When you come to us, we will approach your employer and make sure that they are fully aware of the one-in all-in rule and the eligibility conditions. So that is the route, and that route has been successful. Where there are employers who remain intransigent, our approach then is potentially to penalise the employer. At this stage—and I will take this on notice—I do not think we have seen the need to penalise any employers in that situation.

**Senator WHISH-WILSON:** Okay. If you can give us an idea of the number or any quantitative information around that, that would be useful.

**Mr Hirschhorn:** Yes, I will get what numbers I can.

**Answer:**

We know most employers do the right thing.

To date, we have considered penalties in those cases that display the most concerning of behaviours, where a suspicion of prima facie fraud has been identified or a matter has been referred for criminal investigation. There are 27 cases where administrative penalties are currently being actively considered.