

**Senate Economics Legislation Committee**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Budget Estimates

2014 - 2015

**Department/Agency:** APRA

**Question:** BET 195-204

**Topic:** Ualan fund

**Reference:** written - 15 June 2015

**Senator:** Dastyari, Sam

**Question:**

195. With respect to the Ualan fund: why did APRA advise ACT Trustees against lodging a Part 23 Application after two years of discussions, and after agreement on the definition of fraud had been reached?
196. Why did APRA terminate the process, rather than follow Part 23 of Superannuation Industry (Supervision) Act and submit an application to the Minister?
197. Why did APRA allow actions against the former Ualan fund managers to be dropped?
198. Is the Minister aware that Ualan fund managers were given enforceable undertakings by APRA?
199. Has APRA reviewed and considered testimony of Ualan managers, notably the comment by the examining barrister Beech Jones: "not a cent of this money went into digging dirt or banging in a nail"?
200. Is the Minister aware of the unique circumstances of this fraud, in that not only did investors lose 100% of their investment in Ualan, that their cash assets were used to pay two bank loans?
201. Is the Minister aware that Ualan manager Shawn Richards was convicted and sentenced (3 years, 9 months) for his role in the collapse of Trio?
202. Has the Minister reviewed the Ualan case?
203. Does the Minister agree that the only credible conclusion is that fraud was clearly committed?
204. In view of overwhelming evidence of fraudulent activity by Ualan managers, will the Minister instruct APRA to obtain the drafted Part 23 application for his consideration?

**Answer:**

195. Part 23 of the *Superannuation Industry Supervision Act 1993* (the **SIS Act**) enables the trustee of an Australian Prudential Regulation Authority (APRA)-regulated superannuation fund to make an application to the Minister for a grant of financial assistance.

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Pursuant to section 230A of the SIS Act, the Minister must make a written request to APRA for advice in relation to the application.

In August 2012 ACT Super Management Pty Ltd (ACT Super), as the Acting Trustee of the Trio Superannuation Entities, submitted to APRA a draft application for financial assistance pursuant to Part 23 of the SIS Act in relation to the losses in Ualan Property Holdings Pty Ltd (in liquidation) (known as Silverhall Residential Property Holdings Pty Limited from 17 November 2004 to 19 February 2009) (**Ualan**).

The draft Part 23 application was a lengthy document which raised complex factual and legal issues and was accompanied by many folders of source documents and the transcripts of the public examinations of numerous witnesses which proceeded over a lengthy period of hearings.

As a consequence of APRA's comments on that draft application, ACT Super sent a further draft Part 23 application to APRA in April 2014.

It was APRA's view that the draft applications did not demonstrate that the losses suffered by the Trio Superannuation Entities in the Ualan investment were as a result of fraudulent conduct. It was APRA's view that the losses appeared to have occurred for various reasons that were not fraudulent conduct, such as poor business decisions. Consequently, APRA informed the Acting Trustee of its view and confirmed that it would provide this view to the Minister if the application was lodged by the Acting Trustee.

196. APRA does not have the power to 'terminate' the Part 23 application process or to submit an application to the Minister on behalf of the Acting Trustee. Only the Acting Trustee could make a Part 23 application and the Acting Trustee made its own decision not to proceed with an application.
197. APRA did not allow actions against the former Ualan fund managers to be dropped. APRA progressed Enforceable Undertakings (EUs) from three former Trio directors who had also been directors of Ualan that effectively prevented these individuals from operating in the superannuation industry for a specified period of time. The details of the EU are summarised below and are publically available on APRA's website at: <http://www.apra.gov.au/CrossIndustry/Pages/EnforceableUndertakings.aspx>:

NAME OF TRIO DIRECTOR	PERIOD AS DIRECTOR OF TRIO	PERIOD AS DIRECTOR OF UALAN	EU DATE AND PERIOD OF EXCLUSION
Cameron Anderson	5 November 2003 to 15 November 2005	17 November 2004 to 26 March 2009	July 2013 12 years
Michael Anderson	24 March 2005 to 12 October 2005	17 November 2004 to 26 March 2009	July 2013 4 years

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Terrence Hallinan	5 November 2003 to 17 December 2004	17 November 2004 to 15 June 2005	June 2013 8 years
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APRA determined that the acceptance of EUs from these individuals adequately addressed APRA's concerns in relation to these former directors, including concerns about the Ualan investment.

Mr Shawn Richard was also a director of Ualan from 17 November 2004 to 15 June 2005. APRA did not need to seek an EU from Mr Richard as he was automatically disqualified from holding senior roles in the APRA-regulated industries due to his criminal conviction (refer to response to Questions BET 198 to 204).

199. ACT Super's draft application was accompanied by transcripts of the public examinations of numerous witnesses, including the former Trio directors who were also directors of Ualan. APRA reviewed and considered this testimony as part of its review of the draft application

198, 200. - 204. These questions are matters for the Minister. However, APRA notes the following:

- Details of APRA's EUs are available on APRA's public website, at: <http://www.apra.gov.au/CrossIndustry/Pages/EnforceableUndertakings.aspx>
- ACT Super has noted in its Significant Event Notice to members dated 24 November 2014 that secured financiers including St George and One Path suffered shortfalls from the sale of the underlying development properties. ACT Super has also noted that there will be no return to unsecured creditors or the shareholders of Ualan.
- The criminal charges brought by the Australian Securities and Investments Commission (ASIC) against Mr Richard related to transactions involving the Astarra Strategic Fund, see below a link to the sentencing judgment of Justice Garling of the New South Wales Supreme Court dated 12 August 2011: <http://www.austlii.edu.au/au/cases/nsw/NSWSC/2011/866.html>
- As the application was not lodged by the Acting Trustee, the Minister did not receive a copy of the draft applications that APRA reviewed.
- It was APRA's view that the losses appeared to have occurred for various reasons that were not fraudulent, including poor business decisions. Consequently, APRA informed the Acting Trustee of its view and confirmed that it was this view that it was likely to provide to the Minister if the application was lodged by the Acting Trustee.
- The statutory framework for applications for assistance under Part 23 of the SIS Act does not empower the Minister to instruct APRA to obtain applications for his

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consideration. It is the responsibility of the trustee of a regulated superannuation fund to apply to the Minister for compensation under Part 23.