

## Senate Economics Legislation Committee

### ANSWERS TO QUESTIONS ON NOTICE

#### Treasury Portfolio

Budget Estimates

2017 - 2018

**Division/Agency:** Australian Securities and Investment Commission

**Question No:** 119

**Topic:** Union owned Industry Superannuation Funds

**Reference:** Hansard page 29 (31 May 2017)

**Senator:** Bushby, David

#### Question:

Senator BUSHBY: I will ask a few questions, but it might be too early for you to be able to answer them and some of them might not be in your knowledge yet. But, once again, it might prompt you to think about a few things which, as you move forward, you look at. Do union owned industry superannuation funds currently have to report to ASIC on their status in industrial awards? For example, do they need to report if they are named in an enterprise agreement as a default fund?

Mr Fitzpatrick: I will have to take that on notice. I would think that that information is actually available publically.

Senator BUSHBY: I think it is publically available. Does it need to be notified to you?

Mr Fitzpatrick: That would be my understanding, but I would like to take that on notice.

#### Answer:

1. Information about superannuation fund status under industrial awards does not need to be reported to ASIC. Information about modern awards, and the trustees who are included under each award, is available on the Fair Work Commission's website at [www.fwc.gov.au](http://www.fwc.gov.au).

ASIC regulates the disclosure of superannuation trustees, in disclosure documents such as product disclosure statements, periodic statements, annual reports as well as disclosures made in promotional material. For example, if a trustee made a false statement in their disclosure material about their inclusion or otherwise on a relevant award, ASIC may be able to consider taking action.

ASIC currently has a project underway looking at Employers and Superannuation and a notice has been served on 47 trustees, asking questions about their relationship with employers and how those relationships were formed (for example, through advisers or other third parties). ASIC is interested in incentives offered, advice provided as well as disclosures made to employers.

2. ASIC would generally only become aware of whether trade unions receive money from superannuation funds as a result of public disclosures that a trustee may make. There is no specific requirement to notify ASIC if a payment is made to a union.

However, there are disclosure requirements which may be relevant in this area. As of 1 July 2014, there are requirements for trustees to disclose executive officer remuneration, as well as other key material on a fund website: see s29QB of the *Superannuation (Industry) Supervision Act 1993* (SIS Act). The information required to be disclosed under s29QB must be included on a fund website and must be kept up to date at all times. "Executive officers" includes directors, but also other senior managers (decision-making staff) at the trustee office.

In terms of executive officer remuneration, detailed information about benefits paid in the two most recently completed financial years must be provided – including short and long term employee benefits, performance bonuses, termination payments (if applicable) and details about matters such as share-based compensation arrangements: see the table in regulation 2.37(1) of the SIS Regulations. This follows the requirements of the relevant accounting standards: see reg 2.37(3).

If the executive officer receives a payment, benefit or compensation from a related entity of the trustee and some or all of the amount is for work performed for the trustee, then this amount needs to be disclosed as though it were paid by the trustee: see reg 2.37(2). In conglomerate groups, this means that the amount an executive officer is paid for their work for a trustee in the group must be apportioned appropriately.

If the relevant executive officer is not paid directly but an amount is paid to an organisation or entity rather than the executive officer, then this must also be noted as part of s29QB disclosures: see reg 2.37(1), table item 16. This might include situations where an employer, or a union, receives the payment rather than a particular director.

These disclosures are all in addition to the disclosures required for the purposes of financial reporting. Depending on the significance of the amount paid to the union, there may be a note to the financials for either the fund or the trustee.

Currently no Australian regulator undertakes surveillance of the financial reports of regulated superannuation funds, approved deposit funds and pooled superannuation trusts (“super entities”) or related audit firm inspections. These entities exclude self managed superannuation funds (“SMSFs”).

ASIC notes that financial reports for funds, or abridged financial reports, are required to be included with a fund annual report under s1017D of the Act and regulation 7.9.37 of the Corporations Regulations – and the annual report for a fund is required to be included on a fund website under s29QB of the SIS Act. In addition to this, the trustee must disclose their annual financial statement on the fund website for the previous financial year under s29QB.

In addition to the executive officer remuneration requirements under s29QB of the SIS Act, this provision also requires detailed disclosure of other information as part of the systemic transparency requirements. Of interest in this context is regulation 2.38 of the SIS Regulations which requires the disclosure of a summary of the trustee's conflicts management policy, as well as their register of relevant duties and interests (as referred to in APRA's SPS 521).

ASIC has issued guidance in the form of FAQs, as well as a Regulatory Guide (RG 252) and associated instrument *ASIC Superannuation (RSE Websites) Instrument 2017/570*. ASIC has also undertaken reviews of disclosures required under s29QB. In September 2015, ASIC issued guidance in MR 15-245 to assist industry in complying with the requirements in the coming financial year. While industry had made a good attempt to comply, there were a small number of trustees did not have websites at all. A further media release was issued by ASIC on 4 July 2017 about some further follow up work in this area (see MR 17- 222).