

Answer to question on notice and in writing:

HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ECONOMICS

**AUSTRALIA'S FOUR MAJOR BANKS AND OTHER FINANCIAL INSTITUTIONS:
SUPERANNUATION SECTOR**

APRA-S03QON:

CHAIR: Ms Cole, let me ask you one last question. At any point did any of the legal advice that you took or any representations put forward to you—because we know you were talking to the trustees a lot and you had round tables with the trustees. With all these conversations going on between the regulators and the trustees who have benefited from this arrangement, did anyone at any point at any time in any court case go, 'Hey, should there be someone here making the argument for members?'

Ms Cole: There certainly were contradictors. Our members—

Dr LEIGH: There were contradictors in all these cases.

CHAIR: Ms Cole!

Ms Cole: I have to correct the premise, I'm afraid. In those roundtables, which were before my time, there were representatives from a complete range of people across the industry, including the FSC, who were fully informed, and others, across all different types of stakeholders.

CHAIR: Ms Cole, maybe you can provide us with the list of roundtables you had and who the stakeholders were and how many you had. The evidence in front of the committee—

Ms Cole: I'd certainly be happy to do that. CHAIR: That would be great. We are suffering under a misapprehension that the vast majority of the conversations that occurred between the regulators were between the regulators and the trustees. We've had confirmation here that APRA at no point made any submission to the court that a proper contradictor should be appointed in these cases, and we now have a situation where civil penalties will be paid by the very members who have suffered because of the actions. In fact, did anyone at APRA at any point speak to a fund member? Ms Cole: I would have to take that one on notice.

CHAIR: Thank you, Ms Cole. I do appreciate it

Answer:

Since January 2020, when the draft amendments to s. 56(2) and s. 57(2) of the *Superannuation Industry (Supervision) Act 1993* were first released for consultation by The Treasury, APRA has, with ASIC, facilitated two roundtable discussions.

1. A roundtable was held on 14 May 2021 and was attended by representatives from the Australian Institute of Superannuation Trustees (AIST), the Association of Superannuation Funds Australia (ASFA) and the Financial Services Council (FSC). The topics discussed included: the law and regulatory framework, key considerations for trustees and the impact of different trustee structures.
2. APRA and ASIC hosted a CEO Roundtable discussion on the amendments to s. 56(2) and s. 57(2) on 1 December 2021. The roundtable was attended by 11 CEOs representing the range of trustee structures in the superannuation industry. The outcomes from the roundtable, as well as the names of the CEO, ASIC and APRA attendees, were published and are available here: <https://www.apra.gov.au/apra-and-asic-host-superannuation-ceo-roundtable-december-2021>

Given APRA's objective as prudential regulator is the safety and stability of the financial system, APRA's focus is on the actions of trustees to deliver member outcomes consistent with their legal obligations. This focus does not typically necessitate formal consultation with individual fund members. Instead, APRA engages with a range of peak bodies and associations active in the superannuation industry, including those that represent member interests.

APRA participated as *amicus curiae* in each proceeding. Its obligation as *amicus curiae* was to assist the Court with the legal principles relevant to the exercise of the Court's decision to grant the judicial advice, and in the instance of the two South Australian Applications, the considerations relevant to whether the Court should exercise its power to authorise variations of the AustralianSuper and Host Plus trust deeds.

APRA did not make any submission about whether a contradictor ought to be appointed. This was ultimately a matter for individual trustees and the Court. However, where a contradictor was appointed, APRA did not oppose the appointment.

In the *Hesta* applications, the Court appointed a contradictor in *HESTA* and in *Care Super*, a second *amicus curiae*.

A member representative was joined in each of the Host Plus and AustralianSuper matters. This is because of the nature of the Host Plus and AustralianSuper applications, being an application for the Court to exercise its power to authorise variations of trust deeds under s59C(2) of the *Trustee Act 1936* (SA), as distinct from judicial advice.