ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into Treasury Laws Amendment (Small Business and Charities and Other Measures) Bill 2023 [Provisions]

Department:	Department of the Treasury
Topic:	APRA regulated funds
Reference:	Spoken (13 Nov 23)
Senator:	Andrew Bragg

Question:

Senator BRAGG: I want to ask you about why this APRA regulated fund judgement was made. Why did you decide to separate the types of funds?
Mr Hawkins: The government's amendments aim to ensure that the degree of compliance costs that are imposed on funds is proportionate to the type of mischief that might be seen. APRA regulated funds, as stepped through earlier, don't face the same incentives to try to inflate the value of their funds, whereas, with self-managed super funds, as the trustee and the member are the same person, there is that incentive. For an APRA regulated fund, the compliance cost of having to document the arms-length nature of all of their transactions is quite a significant burden relative to self-managed funds because they have a much larger set of expenditure, which they'll have to justify or have documentation to prove is arms-length. So the exclusion of APRA regulated funds is consistent with that principle of proportionality in the rules.
Senator BRAGG: How many transactions have there been that have been subject to NALI?
Mr Hawkins: Taxpayers can self-report or self-assess if they have NALI transactions. I understand that some trustees do exactly that. I would need to take on notice the extent to which that's reported to the tax office.
Senator BRAGG: Do you think there are many?
Mr Thomson: The tax office has indicated that they do see that type of behaviour. But we can take on notice the exact magnitude.
Senator BRAGG: How much of a compliance burden is it? What's the cost? What sort of analysis did you do on the cost of the compliance burden?
Mr Hawkins: We've been provided some evidence from APRA regulated funds in relation to the scale of the compliance burden that they face. Self-managed funds have also provided some evidence in relation to their funds. It's very much a matter of comparing apples with oranges there, however, given the size of the funds.
Senator BRAGG: What's the compliance cost?
Mr Hawkins: Neither APRA regulated funds nor self-managed funds have attached a number to it. Each fund would face a different level of burden depending on their own practices.
Senator BRAGG: So it's just the vibe, is it?
Mr Hawkins: We'd only be able to calculate the cost per se if we looked at every single fund individually to determine the costs that they face.
Senator BRAGG: Who asked for this change? Was it Wayne Swan? Did he ask for it?
Mr Hawkins: Which change are you referring to?
Senator BRAGG: The NALI changes in this bill. Did Wayne Swan or Cbus ask for this change?
Mr Hawkins: No. In fact a lot of stakeholders across the superannuation industry have approached us with their concerns about how the current previsions have been operating

since 2019.
Senator BRAGG: So Cbus haven't asked for this?
Mr Hawkins: Not to my knowledge.
Senator BRAGG: Are you sure?
Mr Hawkins: I can take it on notice to find out if anyone else in the department has been approached by Cbus, but, to my knowledge, they haven't.
Senator BRAGG: So you'll be able to get me some more information about regulatory costs and how many transactions.

Answer:

1) **How many transactions have there been that have been subject to NALI?**

In 2022, 133 SMSFs reported NALI to a total net value of $4,821,232. This includes non-arm's length private company dividends, trust distributions and 'other NALI'. The ATO believe it is unlikely that funds would have self-reported general NALE amounts under 'other NALI' due to PCG 2020/5, which states there would be no compliance action in relation to general NALE for the 2018-19 to 2022-23 income years.

2) **How much of a compliance burden is it? What's the cost? What sort of analysis did you do on the cost of the compliance burden?**

The ATO's compliance approach to the NALE rules outlined in Law Companion Ruling 2021/2 requires large APRA-regulated funds to demonstrate that appropriate internal controls and processes are in place and that reasonable steps are taken to determine arm's length expenditure amounts (see paragraph 92 of the LCR). However, representatives from large APRA-regulated funds have expressed to Treasury that, in practice, the level of evidentiary requirements that would be required for a broad range of transactions, including with wholly-owned entities, would lead to substantial compliance costs. Those evidentiary steps would include undertaking extensive market-testing of transactions, particularly where there is not a clear public benchmark for that expense. Stakeholders argued that this level of compliance burden is disproportionate given the minimal scope or incentive for large APRA funds to seek to gain a tax advantage through non arm's length transactions.

3) **Did Wayne Swan or Cbus ask for this change?**

No. Treasury has not met with, or received representations or submissions from, Mr Wayne Swan or other representatives of Cbus Super in relation to either the Bill or the earlier consultation paper.