

Parliamentary Joint Committee on Corporations and Financial Services

ANSWERS TO QUESTIONS ON NOTICE FROM 29 NOVEMBER 2019 - TREASURY

Regulation of Auditing

1. QUESTION – At page 76 of the Hansard

Senator O'NEILL: Have you briefed the Treasurer on what's occurred in the UK audit inquiries?
Ms O'Rourke: To the best of my knowledge, Treasury has not briefed the Treasurer on the developments in the United Kingdom.
Senator O'NEILL: Or the Assistant Treasurer?
Ms O'Rourke: To the best of my knowledge, no, we have not.
Senator O'NEILL: In this parliament or the previous one?
Ms O'Rourke: Again, I believe not.
Senator O'NEILL: If you wanted to take that on notice and check that, that would be great.
Ms O'Rourke: Certainly.

ANSWER: On 4 October, the Treasury briefed the Treasurer and the Minister for Housing and Assistant Treasurer on this PJC inquiry and on Treasury's intention to make a submission to the inquiry. In this brief Treasury made reference to developments in relation to auditing in the United Kingdom.

2. QUESTION – At page 77 of the Hansard

Senator O'NEILL: ...How is the chair's part-time annual salary apportioned for the role—
Ms O'Rourke: I would need to take that on notice. Do you mean how many days per week?
Senator O'NEILL: Yes. It's part time—is it 0.6; is it 0.5?
Ms O'Rourke: No, I think it's lower than that, but may I please take that on notice?
Senator O'NEILL: Yes, I'd like the correct answer. And what is the total quantum?
Ms O'Rourke: It is \$102,560.

ANSWER: The salary of the FRC Chair was determined by the Remuneration Tribunal on the basis of approximately 1.5 days per week, and is outlined in the *Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination 2019*.

3. QUESTION – At page 79 of the Hansard

Senator O'NEILL: Was Treasury involved in establishing the shape and nature of the FRC and providing policy advice to the government about how such a body should be constituted?
Ms O'Rourke: It's a statutory body, so it's in the statute that the Financial Reporting Council is established. Its role, its composition and the appointment process are established there. That's all set out in the ASIC Act. I would be happy to take on notice how and when it got into the ASIC Act. It's obviously been around for a long time. I would need to take on notice who developed the idea that ended up as being this statutory body, but, yes, it's obviously set by the government or by parliament.

ANSWER: The Australian Securities and Investments Commission Bill 2001 established the ASIC Act 2001. This Bill was based on the discussion paper *CLERP Paper No. 1: Proposals for Reform – Accounting Standards* which was prepared by Treasury as part of the Government's Corporate Law Economic Reform Program.

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4. QUESTION – At page 80 of the Hansard

Senator O'NEILL: Did you provide information to the minister or the assistant minister in his selection of appointees to the board?

Ms O'Rourke: These are the requirements for information for any candidate to be considered by cabinet or a cabinet minister.

Senator O'NEILL: Let me be as clear as I possibly can. Did the minister choose the people on the board without consultation with you or did the minister have a list of people that was nominated by you and choose from that list?

Ms O'Rourke: Which board are you referring to?

Senator O'NEILL: All of them—the FRC, the AUSB and the AASB.

Ms O'Rourke: Over which period of time.

Senator O'NEILL: Over the last six or seven years. I would appreciate it if you take it on notice.

Ms O'Rourke: That's a long period of time and a lot of—

Mr GEORGANAS: We could start with just the last one.

Ms O'Rourke: So you are asking for the AASB chair, the AUSB chair and the FRC members?

Senator O'NEILL: Yes.

Ms O'Rourke: They are all the ones the minister appoints. Your question is about whether Treasury provided advice on those particular candidates?

Senator O'NEILL: Yes.

Ms O'Rourke: I'm very happy to take it on notice and confirm it for you. But what I was trying to say is that information on their background is required for those candidates to be considered regardless of where they came from—

ANSWER: Treasury provided advice to the relevant Ministers on appointments to the FRC, including the Chair, and on the Chairs of the AASB and AUASB.

5. QUESTION – At page 80 of the Hansard

Senator O'NEILL: With regard to conflict of interest, we heard this morning that Mr Edge did not declare to the government, until the media made it known, that he was receiving an ongoing financial payment from his former employee—one of the big four. It would seem, then, that there is no requirement for the declaration of potential conflicts of interest. If there is, there certainly seems to be no requirement to indicate the amount of that financial relationship with any of the big four.

CHAIR: But perhaps rather than relying on the senator's paraphrasing of the evidence you should consult the *Hansard* on the actual evidence and consider that in your answer.

Ms O'Rourke: Thank you. I'm happy to do that.

ANSWER: As per section 122 of the Cabinet Handbook, each proposed government appointment must be accompanied by supporting documentation. One of these documents is a completed and signed Private Interests Declaration (PID), signed no more than six months prior to the proposed appointment being considered. In the PID, the proposed appointee must declare any relevant financial and business interests and how any potential conflicts would be managed.

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6. QUESTION – At page 81 of the Hansard

Senator WHISH-WILSON: Senator O'Neill has asked a few of my questions, so I don't have many. Could you take this on notice, unless you know the answer off the bat. It may also be directed to the ATO; I'm sure the committee will ask. Our last witness said that, as to the general purpose accounts that have been put on the ASIC website that relate to the multinational anti-avoidance laws that we passed through the parliament, they haven't been or don't appear to have been audited. Could you check if that is the case for us?

Ms O'Rourke: I'm not sure if that's something Treasury can assist with. I think probably ASIC would be able to. Is your question whether there's a rule that they should have been and they weren't—

Senator WHISH-WILSON: Yes, because obviously you, as Treasury—

Ms O'Rourke: or is it a legal question?

Senator WHISH-WILSON: Correct. Well, it was a Treasury law, and we all worked hard to get it through parliament, and I'm glad we did. I remember debating hoarsely until three or four in the morning—which was unnecessary, in hindsight.

Ms O'Rourke: So your question is: is there a gap there, where they don't need to be audited?

Senator WHISH-WILSON: Could you check if there is anything in the legislation that says they do or don't need to be, or whether there are any expectations of whether they should be audited or not?

Ms O'Rourke: I'm happy to check that, yes.

ANSWER: General purpose financial statements lodged under section 3CA of the *Taxation Administration Act 1953* must be prepared in accordance with Australian Accounting Standards or Commercially Accepted Accounting Principles but are not required to be audited.

7. QUESTION – At page 82-83 of the Hansard

Mr GORMAN: We're talking a bit about availability of data and ability to see things. Are there any challenges that Treasury has in terms of the accessibility of data and being able to provide your policy advice? Among the things that were raised with us earlier was that machine-readable data, in terms of what is provided to ASIC and other things, is a bit of a challenge. Does that present any challenges for Treasury in being able to analyse policy?

Ms O'Rourke: I'm sorry. I'm not aware of the earlier evidence that was describing the particular data gaps, so it's hard to explain whether it's been a problem for Treasury.

Mr GORMAN: That's fine. I might ask in a different way. Can you tell us some of the sort of analysis that you do in your policy division and what sort of datasets you use. Do you have access to all the data you need to fully brief government in terms of providing policy advice?

Ms O'Rourke: I guess we make the best use of data that we have available. It's hard to say whether or not all information is available when you form policy. It's a very general question. If you could give me more information about the particular datasets that you think are missing or not available, that might guide me as to whether I can help you.

Mr GORMAN: It was coming out of the question about special purpose reporting entities, as opposed to reporting them as public interest entities, and whether that—

Ms O'Rourke: I guess in terms of advice that Treasury provides—

Mr GORMAN: Provides on taxation—

Ms O'Rourke: I think I might need to take that on notice, because parts of the department—

ANSWER: Treasury has access to a range of data sets, including internally generated data, data sources from regulatory and statutory agencies and publicly available data sets. The accessibility and ease of use of these data sets varies, and Treasury supports improvements to data collection and utilisation of the data by government departments and agencies.

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8. QUESTION – At page 83 of the Hansard

Mr GORMAN: I'm curious about the structure of the Corporations Act and the ASIC Act. Obviously, they were both introduced at the same time, in 2001. They've both, over the last 18 years, been amended. I've just gone and done the numbers—85 times for the Corporations Act and 69 times for the ASIC Act. They're becoming a little bit divergent from that unity of purpose when they first came in. Can you give us any context about why the decisions were made about that structural separation? Probably none of us will focus on any specific details, but I'm interested in any explanation about why that structural separation exists, and that particular structure here in Australia.

Ms O'Rourke: Do you mean why, in 2001, there was an ASIC Act and a Corporations Act and why particular pieces were included in each one?

Mr GORMAN: Yes.

Ms O'Rourke: I wasn't working on both in 2001, but I'd be happy to look and find out if there was a high level of description in the explanatory materials at the time, if that would assist you. I'm happy to see if I can get that background on the split.

ANSWER: The *Corporations Act 2001* and the *Australian Securities and Investments Commission Act 2001* were enacted as part of a package of reforms responding to High Court authority in 2000 which cast doubt on the constitutional foundations of important elements of the prior Corporations Law scheme.

The Corporations Act was designed to replace the *Corporations Act 1989* and the eight existing Corporations Laws of the Capital Territory, each State and the Northern Territory that applied separately to each jurisdiction. The Corporations Act largely comprised the text of the Corporations Law, amended so that it may operate as an Act of the Commonwealth Parliament throughout Australia. It comprises rules around the formation of companies, corporate regulation and the regulation of the securities and futures industries.

The *ASIC Act 2001* replaced the *Australian Securities and Investments Commission Act 1989*. It provides the Australian Securities and Investments Commission with the sole responsibility for the general administration of the Corporations Act.

9. QUESTION – At page 83 of the Hansard

Mr GORMAN: But there's no specific reference to ethical standards in the Corporations Act; it just references auditing standards, a subset of which are the ethical standards? I'm just trying to get my head around this public interest entity requirement—and this is, again, me on a fast self-education journey. Those 110 standards that you just referred to only apply to public interest entities; is that correct? They only apply to the auditing of—

Ms O'Rourke: I think you might be better placed checking in with the AUASB or the APESB. I'm happy to find that out.

Mr GORMAN: Would you mind taking that on notice.

Ms O'Rourke: Yes, of course.

ANSWER: The APES 110 Code of Ethics for Professional Accountants has a wide application, and applies to entities other than public interest entities.

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10. QUESTION – At page 84 of the Hansard

Senator O'NEILL: On the FRC website there's minutes from 6 November this year, quite recently. It says:

1b. Declarations of interest

Members confirmed their Declarations of Interest as recorded in the Register of Interests.

Is that document public?

Ms O'Rourke: I would direct that question to the Financial Reporting Council. I can take it on notice and make that inquiry for you.

ANSWER: The FRC's Register of Interests is not public.

11. QUESTION – At page 84 of the Hansard

Senator O'NEILL: The summary of the submissions that were provided by Treasury to the FRC—do you have that document that you could provide to us?

Ms O'Rourke: Treasury has prepared a summary of the submissions made to this inquiry. Are you asking to have that tabled?

Senator O'NEILL: Yes, I am, and any notes you could provide about the discussion of the themes that seem to be emerging from the submissions, as discussed by the FRC.

Ms O'Rourke: I'm happy to find the summary document and additional observations on the themes emerging.

ANSWER: The summary of submissions prepared by Treasury is an incomplete, draft document prepared for internal working purposes. Treasury did not prepare a document on the themes discussed at the FRC.