

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio
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Department/Agency: APRA
Question: BET 99-101
Topic: Industry Super Australia
Reference: written - 9 June 2015
Senator: Bushby, David

Question:

99. Is APRA aware that the lobby group representing funds known as 'industry funds', Industry Super Australia, is using funds it sources from members' accounts to finance a campaign against specific Federal Government Budget proposals relating to pensions and superannuation?
100. Would advocacy on such policy issues be contrary to the sole purpose test of a superannuation fund under SIS, if they were being conducted by an individual fund?
101. If so, as ISA is wholly owned by super funds and funded from levies ultimately sourced from members accounts, is such advocacy contrary to the sole purpose test applicable to the respective superannuation funds represented by ISA?

Answer:

99. The Australian Prudential Regulation Authority (APRA) notes that Industry Super Australia Pty Ltd (ISA) is not an APRA-regulated entity. ISA is a wholly owned subsidiary of Industry Super Holdings Pty Ltd (ISH), which in turn is owned by a number of Australia's industry superannuation funds.

As stated on its website, ISA's objective is to maximise the retirement savings of industry superannuation fund members. ISA manages collective projects on behalf of a number of Australia's industry superannuation funds. These projects include research, policy development, government relations and advocacy as well as the Joint Marketing Campaign to promote industry superannuation funds and their objectives. APRA notes that ISA's advocacy role is not unlike that of other industry bodies, including the Association of Superannuation Funds of Australia (ASFA), the Australian Institute of Superannuation Trustees (AIST) and the Financial Services Council (FSC).

APRA understands that ISA receives payments from a range of stakeholders including some industry superannuation funds. The payments from superannuation funds are generally sourced from administration fees that are charged by the trustee to members of these superannuation funds.

In supervising APRA regulated entities, APRA does not pre-vet expenditure, including for advertising or other campaigns. However, APRA does expect that trustees fully address two crucial areas in considering any such expenditure. One is the 'sole purpose' test to which funds must adhere and the other is the trustee's duty to act in the best interests of members.

100. & 101. The 'sole purpose test' as set out in section 62 of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) requires that superannuation funds be maintained

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solely for one or more of the specified core and ancillary purposes, that is, the provision of various types of benefits in the event of retirement, death or the sustaining of permanent incapacity for work (the superannuation purposes). A breach of section 62 attracts a civil penalty.

In the course of supervising trustees, APRA has considered the meaning of section 62 and how it applies to the specific activities that trustees carry out. APRA has publicly stated that the following activities may be permissible without breaching the 'sole purpose' test:

- (i) Expenditure - the purpose of which is directly related to the superannuation purposes on a member meeting a condition of release. A trustee must be able to demonstrate how the expenditure will result in the acquisition of superannuation benefits by the members of the fund who have paid the expense;
- (ii) Provision of services - which are necessary and reasonably incidental to the superannuation purposes, including legitimate administration expenses; and
- (iii) Investment of fund monies - provided that the relevant investment meets all the relevant requirements of the SIS Act, and there is a clear connection between the investment and the expected returns for members' superannuation benefits.

If an individual fund was to advocate on certain policy issues, and the cost of such advocacy was funded with members' monies, the issue of whether or not such an activity was in breach of the sole purpose test would require an assessment of the activity and its connection with the superannuation purposes. If the activity is characterised as an expenditure or investment made in good faith and the trustee puts forth cogent reasons for believing that this will result in an improved retirement income outcome for the members (or the protection of that retirement income), then the trustee's conduct would be unlikely to be in breach of the sole purpose test (even if others might disagree with the trustee's reasoning).