



Australia's National Workplace
Relations Tribunal

2 April 2014

Senator Bridget McKenzie
P.O. Box 2047
Delivery Centre
BENDIGO VIC 3554

The Honourable
Justice Iain Ross AO
President

Dear Senator McKenzie,

AM2014/6 - review of default fund terms

I refer to your correspondence enclosing a copy of your adjournment speech to the Senate of 20 March 2014.

Your letter expresses two broad concerns regarding the above matter. Firstly, you are concerned as to the extent to which I have met the statutory obligations under ss.620(1A)(b) and 622(2)(a) of the *Fair Work Act 2009* (the Act). Secondly, you are concerned that Expert Panel Member Apted has a conflict of interest that I did not identify in my Statement of 7 March 2014.

In relation to your first concern, if any participant in the proceedings considers that the Expert Panel is not constituted in accordance with the Act, then there are legal processes through which it may pursue that view.

In relation to your second concern, if any participant in the proceedings considers that Expert Panel Member Apted or any other Member has a conflict of interest or is affected by bias, it is open to it to make an application that the Member not hear the matter. So far as I am aware, no participant in the proceedings to date has expressed such a concern about Expert Panel Member Apted.

It would not be appropriate for me to respond further to ex parte views about proceedings before the Commission.

Yours sincerely,

JUSTICE IAIN ROSS AO
President

Budget Estimates 2014-15

Education and Employment Senate Committee

Document No: 4

Pages: _____

Date and time: 2/6/14 5:00pm

Tabled by: Senator McKenzie



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SENATOR BRIDGET MCKENZIE
Senator for Victoria

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FILE

Justice Iain Ross AO
President
Fair Work Commission
11 Exhibition Street
Melbourne. VIC. 3000.

Dear Justice Ross,

On Thursday 20th March 2014, I delivered an adjournment speech to the Senate raising concerns about the appointment process in relation to the Expert Panel constituted for the 2014 Review of Default Fund terms (AM2014/6).

Broadly, my concerns related to:

1. The extent to which you have met the statutory obligations under section 620(1A)(b) and 622(2)(a): and
2. The conflict of interest of Mr Arthur Apted, in respect of whom you did not identify any interest that "would or could give rise to a conflict with the proper performance of his functions in relation to matter AM2014/6" (Statement, 2014 Review of Default Fund Terms (AM2014/6) at [10].

Please consider the issues I have raised and provide a written response.

A copy of the speech is attached for your reference.

I look forward to hearing from you shortly.

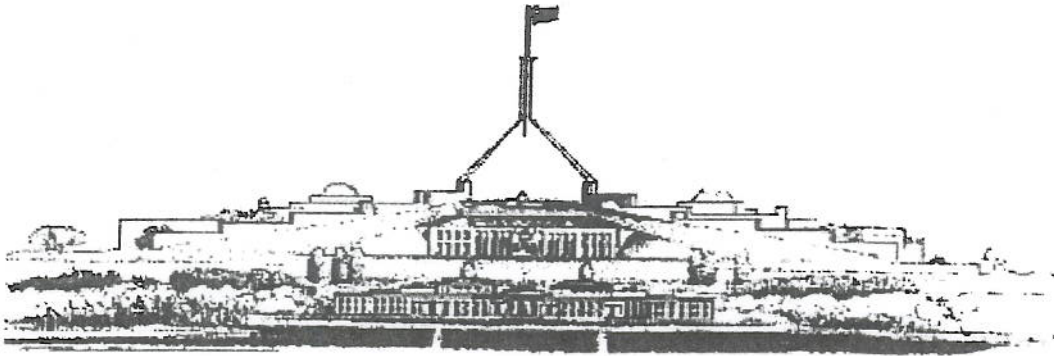
Yours sincerely,

Bridget McKenzie
Nationals Senator for Victoria



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE
PROOF
ADJOURNMENT
Superannuation
SPEECH

Thursday, 20 March 2014

BY AUTHORITY OF THE SENATE

SPEECH

Date Thursday, 20 March 2014	Source Senate
Page 105	Proof Yes
Questioner	Responder
Speaker McKenzie, Sen Bridget	Question No.

Senator McKENZIE (Victoria—Nationals Whip in the Senate) (18:39): During the last round of Senate estimates in the Education and Employment Legislation Committee, my colleague Senator Back asked a number of questions regarding the appointment of expert panel members for the Fair Work Commission's review of default superannuation funds in modern awards. The Financial Services Council had earlier raised concerns about potential conflicts of interest for two panel members.

On 7 March, the president, Justice Ross, removed Ms Vicki Allen and Mr Stephen Gibbs from the expert panel as a result of potential conflicts of interest due to their current directorships of superannuation funds under review. This, rather embarrassingly, left Mr Arthur Apted as the last member standing. The president has since reconstituted the panel by appointing Mr Tim Harcourt, who is a current panel member for the minimum wage review. However, I am concerned that the president may not have met his statutory obligations by appointing Mr Harcourt—who is arguably not sufficiently qualified to conduct the superannuation funds review—and replacing two expert members with just Mr Harcourt to join Mr Apted.

Mr Apted seems to have only recently disclosed that he is a member of AustralianSuper. Senators may be aware that AustralianSuper is named as a default fund in 73 of 109 modern awards that include superannuation provisions. It is unfortunate that this disclosure does not appear to have been forthcoming at the time of Mr Apted's appointment, but only at the direction of the president. So we have a situation where Mr Apted is reviewing default superannuation funds while he has his own superannuation with the single largest superannuation fund under review.

According to ASIC records, from 1992 to 2002 Mr Apted was also a director of AustralianSuper, in which—for the same period—he was also a non-beneficial shareholder. To be clear, this means that Mr Apted will be overseeing the review of default superannuation funds while a member of the fund which presently is a default fund for two-thirds of the modern award terms and having in the past been a director of this fund for a decade.

I am also concerned about perceptions of the cosiness of the new panel arrangements. Justice Ross, Mr Apted, Mr Harcourt and Senior Deputy President Acton were all comrades at the ACTU in the early 1990s at the time compulsory superannuation was first being implemented, as designed by the then Labor government and the ACTU. Justice Ross was the assistant secretary, Senior Deputy President Acton was a senior industrial officer, Mr Harcourt was a research officer and Mr Apted was an industrial and superannuation officer.

It is reported that then Secretary Bill Kelty and Justice Ross encouraged a young Mr Apted to take an interest in all things super. Talk about an IR club! But this is no ordinary IR club; it is the super IR club. Senators might be forgiven for thinking that the ACTU is having a super reunion on the Fair Work Commission's expert panel! Mr Apted has a long history of involvement in ACTU-affiliated superannuation funds. Most notably, Mr Apted headed ISPT, a trust established by former ACTU Assistant Secretary Garry Weaven as a vehicle for industry superannuation fund property investment.

The President and Mr Apted share a history of company directorships. In addition to AustralianSuper, throughout the 1990s they were, at various times, directors of Thales Australia Ltd, ACTU Financial Services Pty Ltd, ACTU-JCH Pty Ltd, Australian Investment Management Services Pty Ltd and ACTU Building Ltd. Given the continuing flaws in the appointments process, conflicts of interest and the tangled web of relationships here, I would invite Justice Ross to clarify what further steps he is taking to restore confidence and transparency in the default superannuation fund review process.

In passing, I note that one Arthur Apted appears to have been an active member of the Socialist Forum in the mid-1980s, while it was administered by none other than Julia Gillard. How many other persons might share the name of expert panel member, Mr Apted? How far these ACTU comrades have all come! This would be funny if it was not so serious.

The Fair Work Commission bears a heavy responsibility. The decisions it makes as part of this review have the potential to affect the retirement savings of millions of Australian workers. I will shortly be forwarding a copy of this adjournment speech to

Justice Ross and may request his attendance at the next round of Senate estimates in May. I look forward to receiving the President's response to what is a very serious issue.

Senate adjourned at 18:44