

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio

Supplementary Budget Estimates, 2 - 3 November 2005

Question: SBT 10

Topic: APRA – Clearing Houses

Hansard Page: E118

Senator Sherry asked:

Senator SHERRY—Sure, but this is an unregulated area. The new system of super fund choice effectively forces funds to use clearing houses. There is little option for many employers; it is a reality. And yet we have got moneys being paid to unregulated bodies. As I say, they go bankrupt or the moneys are not on-transferred for whatever reason. This is a sort of intermediary, if you like, between the employer and the fund. It seems to me that this is an area that is wide open for potential problems.

Mr R Jones—I think it is an area of concern in the same way that many of the outsourced arrangements are; custodian arrangements as well.

Senator SHERRY—I appreciate the outsourcing concern, but in this particular instance outsourcing has increased dramatically on the back of this issue. Almost every employer has had to go to a clearing house. Many of them are in-house in that the fund has got them, and that is not a problem. Anyway, take it on notice, because I think it is another area of vulnerability that I have had raised with me. I think we have some potential problems ahead. You clearly believe you cannot regulate this area at the present time.

Mr R Jones—Yes.

Senator SHERRY—Who would regulate this area?

Answer:

Action taken by APRA

APRA has undertaken a review of the common clearing house arrangements used by employers for the payment of superannuation contributions. APRA has been liaising with ASIC and the ATO to improve its understanding of the operation of clearing houses in relation to both employers and superannuation trustees.

APRA issued an FAQ to industry on 16 September 2005, advising APRA's approach to the use of clearing houses. In particular, APRA confirmed that a superannuation contribution paid by an employer through a clearing house enters the 'superannuation system' when it is received by the trustee of the fund (not when it is received by the clearing house). (refer [FAQ 12.1](#) on the APRA website)

This is also reflected in the ATO's Superannuation Guarantee Determination issued on 16 November 2005 (and available on the ATO's website).

APRA will assess the trustee's risk management in relation to clearing house arrangements used or promoted by funds as part of the RSE licensing process and ongoing prudential supervision.

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates, 2 - 3 November 2005

Regulation of Clearing Houses

The majority of clearing house arrangements fall outside the outsourcing requirements of the SIS Regulations. From the information to hand it also appears unlikely that any trustees are directly operating a clearing house service.

APRA understands that ASIC is considering clearing houses in two contexts. The first is that the provision of a clearing house service by a trustee of a superannuation fund (or its associates) is an exception to the general prohibition on kickbacks in section 68A of the SIS Act. The second context is whether some clearing house facilities are 'non-cash payment facilities' and subject to ASIC's licensing regime (refer to the Attachment in IR05-60 available on ASIC's website). The regulatory issues relating to superannuation clearing houses are matters on which ASIC has been working closely with Treasury, the ATO and APRA

In APRA's view, it appears fraud by, or within, a clearing house operation is unlikely to be covered under the compensation provisions in Part 23 of the SIS Act. In APRA's view, liabilities arising from negligence by a clearing house operator is a contractual issue between the employer and the clearing house.