

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates

19 – 20 October 2011

Question No: SBT 514

Topic: AFR Article 'Not so super policing'

Hansard Page: Written

Senator Bushy asked:

514. What were the errors of fact which were published in the Australian Financial Review article 'Not so super policing' of 7 July 2011?

Answer:

514. TRIO CAPITAL LIMITED

RESPONSE TO ISSUES RAISED IN AFR ARTICLE 7 JULY 2011

AFR ARTICLE EXTRACT	APRA RESPONSE
APRA's enforcement of the law in relation to super is inadequate because of a range of problems including inadequate funding ...	APRA was provided an extra \$45m during the global financial crisis to ensure it was appropriately funded to cope with the heightened risks facing the Australian financial system. Furthermore, as highlighted in the article, APRA has a contingency enforcement fund of \$6m that has not yet been called upon.
APRA'S enforcement of the law in relation to super is inadequate because of a range of problems including ... limitations imposed on its actions by the Administrative Appeals Tribunal	The AAT is empowered to conduct a merits review of decisions made by APRA. In that capacity it does not impose 'limitations' but reviews decisions made by APRA and either sets aside or affirms those decisions. Prior to 1 July 2008 this included decisions made by APRA to disqualify individuals from holding specified senior roles in APRA-regulated industries. From 1 July 2008, APRA has to apply to the Federal Court for orders for disqualification.

<p>APRA's enforcement of the law in relation to super is inadequate because of a range of problems including</p> <p>...</p> <p>lack of co-ordination with the Australian Securities and Investment Commission (ASIC).</p>	<p>APRA and ASIC have had a Memorandum of Understanding (MOU) since 2004 which sets out a framework for cooperation in areas of common interest where co-operation is essential for the effective and efficient performance of their respective financial regulation functions.</p> <p>APRA and ASIC have also entered into a number of Joint Protocols for Co-operation since 2001 which set out procedures to support cooperation in accordance with the MOU.</p> <p>Senior executives from APRA and ASIC meet regularly to discuss both regulatory/policy issues as well as enforcement/deterrence matters.</p> <p>In the Trio matter, APRA and ASIC have been conducting concurrent investigations and have been cooperating with each other with respect to their investigations so to ensure a coordinated approach.</p>
<p>While APRA is recognised as being a world-class prudential regulator of banks, its record on supervision and enforcement of super is poor, judging from several recent cases.</p> <p>Jones has been chairman of APRA's enforcement committee for the past eight years. During this time APRA has undertaken a wide range of enforcement activities, but it failed its biggest test in the super sector when the Trio scam came along.</p>	<p>Arising from its investigation APRA has now accepted Enforceable Undertakings from the five individuals who were on the Trio Board at the time of its collapse in December 2009. APRA is continuing its enforcement action to identify and take action against any other former Trio directors who have failed to meet the high standards expected of them as superannuation trustee directors and not acted in the best interests of members.</p> <p>Other recent superannuation enforcement actions can be found within APRA's annual report, which covers major issues in and APRA's observations of the superannuation industry.</p>
<p>But there is no explanation from APRA as to why, following its prudential review of Trio in August 2008, it did not take further action.</p>	<p>A full explanation is provided in the APRA Deputy Chairman's opening statement to the Trio inquiry on 30 August 2011.</p>
<p>It is believed APRA referred the Trio matter to ASIC. The regulator was fearful that a full-blooded investigation would harm the financial interests of member of the Trio-managed</p>	<p>ASIC had commenced an investigation of the Astarra Strategic Fund (ASF) on 2 October 2009 and informed APRA shortly thereafter.</p> <p>On 16 October 2009, ASIC had issued a stop order in relation to the product disclosure statements for a number</p>

<p>super funds.</p>	<p>of Trio managed investment schemes, including the ASF.</p> <p>Based on ASIC's actions and its own concerns surrounding the inability to obtain valuations of superannuation assets from the Trustee APRA commenced an investigation on 16 October 2009 in relation to the affairs of the Trio superannuation entities. On 21 October 2009 APRA issued directions freezing the assets of the Trio superannuation entities to minimise the risk that transactions with fund members would occur on unit prices that may not be reliable and protect the interest of members.</p>
<p>There are other examples of complaints being made to APRA about trustees of super funds over the past five years. These matters have gone before APRA's enforcement committee but have not resulted in any action. One difficulty APRA has is that it is prohibited from commenting in public on any regulated entity.</p>	<p>APRA's prudential supervision is based on a collaborative approach between the trustee and APRA to address issues. Enforcement action is therefore a last resort. The matters referred to the Enforcement Committee were resolved without the need to use formal enforcement action.</p>