

Appendix 4

Senator Chapman's Adjournment speech, Industry Super Network's response and Questions on Notice to Industry Super Network and Mr Garry Weaven

Senator Chapman, Adjournment speech, Industry Funds Services Pty Ltd, Senate Hansard, 24 June 2004, p. 25079

Given the propensity of the Labor Party to demand full disclosure and transparency regarding fees and charges levied by for-profit managed and superannuation funds, it is appropriate to raise some issues concerning an organisation called Industry Funds Services Pty Ltd or IFS, a company that provides funds administration services for a large number of industry superannuation funds.

IFS' 2002-2003 "Report to Industry Superannuation Funds" carried an article on corporate governance. The article noted that recent corporate failures such as Enron, WorldCom, HIH and One.Tel had:

renewed interest in the adequacy of company information to the market, the veracity of company accounts as well as the excessive remuneration and rewards—with little or no correlation to company performance—afforded to directors and executives.

Then followed a paean to corporate campaigning.

This is ironic given the lack of transparency involved in the administration of Industry Funds Services, or IFS, itself.

IFS operates numerous financial services companies and says it manages over \$20 billion in superannuation assets on behalf of the 2.8 million members of IFS' shareholders. Other reports suggest it manages combined assets of over \$30 billion.

Despite controlling such vast amounts of money on behalf of so many workers, nowhere does IFS Pty Ltd's management fees, nor the cuts taken by other parts of its group, appear to be detailed for ordinary members.

IFS' reports to Industry Superannuation Funds are a mixture of self-promoting puff and amorphous financial information. Its actual income is impossible to ascertain.

Of particular concern is the amount of income derived by Industry Funds Services Staff Equity Trust, or IFS-SET Pty Ltd, which has been one of IFS' key shareholders.

IFS currently has 600 shares. Most are owned by large industry super funds, such as HESTA, C-BUS, CARE Super, Savings Australia and the Australian Retirement Fund.

However, 12.5% of IFS has been owned by IFS-SET Pty Ltd. IFS-SET has been in turn owned by just three people—Garry Weaven, Mavis Robertson and Graeme Grant and is the trustee for the IFS-SET which I have been told is a Superannuation Fund of which the major beneficiaries would be likely to include these three people.

Garry Weaven is well known as a former ACTU Assistant Secretary who has risen to dizzy heights with IFS.

Mavis Robertson is less well known. She was CEO of C-BUS until 1997.

A former communist party official, she “fell into” superannuation in the mid eighties when doing publicity for the ACTU.

Graeme Grant has been associated with a number of ACTU financial enterprises.

One may well ask, if this is a superannuation fund, how the 12.5%—and a greater percentage in earlier years—interest in IFS Pty Ltd held by the Staff Equity Trust fits the requirement that a superannuation fund have no more than 5 per cent of its assets in a beneficiary’s employer’s company?

It is not known what income IFS-SET Pty Ltd has derived from its interest in IFS.

It could quite easily run into many millions of dollars.

It is implausible that all IFS’ profits have gone to the members of the superannuation funds that use IFS.

Yet this was the theme of a major television advertising campaign, launched by IFS and featuring former Reserve Bank Governor, Bernie Fraser, that went to air in the latter part of last year.

Recently, Bernie Fraser, castigated bank executives’ “scandalous” salary packages.

In the February 2004 IFS Report, Garry Weaven, IFS Executive Chair says “no elaborate justifications of outrageous executive and director remuneration packages.”

Maybe. Maybe not.

It might comfort members of industry superannuation funds if they knew what income IFS-SET has derived from its extensive involvement in the administration of their superannuation savings.

They might then be able to determine whether or not the benefits to Mr Weaven and the very limited number of other beneficiaries of IFS-SET have been excessive.

These issues were raised in a paper by Mr Peter Johnston, Chief Executive Officer of the Association of Independently Owned Financial Planners, who said “most industry funds do not fully disclose the true cost of administration to their members and the market’s dominant player, Industry Funds Services Pty Ltd (IFS), has relationships we find difficult to understand.”

Recent Chant West research has confirmed his claims.

He then stated:

Many choose to only disclose \$1 or \$1.50 per week as ‘the only fee’ which we do not believe to be the case. A close look at the annual report and balance sheet of many high profile funds will reveal that the cost is substantially more, as high as 5%.

Let us hope that in fully complying with the spirit as well as the letter of the Howard Government’s new FSR Act, industry funds will fully disclose to members the cost of the services provided by Industry Funds Services Pty Ltd.

Peter Johnston’s paper seems to have prompted Garry Weaven and the Staff Equity Trust to capitulate rapidly to distribute its interest in IFS elsewhere. According to the Financial Review of 30 January 2004:

The deal, likely to be announced soon, may quieten some of the controversy which has swirled around IFS and its chairman, including recent criticism by....Adelaide-based....Association of Independently Owned Financial Planners.

Will IFS’ imminent transition from a superannuation fund administration business to a banking model provide a pretext for restructuring Mr Weaven and others’ interests in this lucrative business?

It is not the first time this has happened.

As I indicated earlier, IFS-SET has recently owned 12.5% of IFS. Between 1998 and 2001 it owned 15% and before this, 20%.

It thus has already had two sell-downs of capital from which its three principal beneficiaries presumably benefited. On these previous occasions, though, it is not known what consideration was received, and this is likely to be the case again.

Undoubtedly there is a lack of transparency at the moment.

Despite the “deal” to which Barrie Dunstan made reference in that AFR article and despite detailed investigations, I have been unable to find out what, if anything, has happened regarding IFS-SET Pty Ltd’s shareholding in IFS Pty Ltd or to the accumulated assets in the superannuation fund.

Certainly, IFS-SET Pty Ltd no longer appears as a shareholder in IFS Pty Ltd in the chart at the back of IFS' February 2004 Report.

Why has there been no public announcement as to exactly what has happened?

There are plenty of rumours around—one version in circulation is that the accumulated assets in Staff Equity Trust have been rolled over to other superannuation funds and that some of these assets have been allocated to other current or former employees of SES Pty Ltd who, according to this version of events, for years were promised but have been denied equitable membership of the Staff Equity Trust.

I have been told also that this recent allocation has occurred only because of considerable pressure and potential for political embarrassment being applied to Mr Weaven.

However, I am told further that the lion's share of the assets, amounting to many millions of dollars, has gone to the accounts of the three principal beneficiaries.

The question is: have a few people profited enormously from not-for-profit superannuation funds?

One thing is certain—a complete lack of transparency means that no-one knows the answer—and how much this has cost industry fund members.

It will also be interesting to see whether or not Mr Weaven and others re-emerge in the new Members Equity Bank with “scandalous” salary packages.

Transparency is one important issue in this saga. Conflict of interest is another.

As a shareholder of IFS-SET Pty Ltd and beneficiary of the Staff Equity Trust, Mavis Robertson obviously had an interest in C+BUS continuing to use Industry Funds Services Pty Ltd, while a Director of C+BUS.

Graeme Grant was recently appointed incoming fund secretary of C+BUS, yet he is still a director of IFS, which raises similar issues.

Such issues of corporate governance and transparency need to be addressed. Fund members need to be sure that their savings are invested on the basis of best return and administration.

I understand that some of the above issues have been referred to APRA.

They need to be examined fully, as does IFS' metamorphosis from superannuation administrator to bank.

Lately ASIC has been of the opinion that the practice of industry superannuation funds directing members' enquiries straight through to IFS—which picks up the calls without identifying that it is an entirely separate funds administration company—breaches the “holding out” provisions of the Corporations Act.

In other words, ASIC believes that IFS is “holding out” to be the super fund itself, rather than an administration company.

This is how perceived conflicts can arise.

The sooner ordinary workers get transparency of administration of their industry superannuation funds the better informed and better off they will be and more able to apply effectively the choice of fund provisions which, despite the best attempts of the Labor Party, has at long last been delivered to them by the Howard Government.

**Response to Speech of Senator Grant Chapman incorporated in Hansard:
1 .56 am, 24 June 2004**

The Senator's speech contains many falsehoods, inaccuracies and misleading statements. This submission seeks to deal with the more serious of those and is made on behalf of Garry Weaven, Executive Chair, Industry Fund Sendees Pty Ltd (IPS), Mr Sandy Grant, Managing Director of IPS and IPS Pty Ltd itself.

The Senator's speech has been informed by at least one commercial competitor of IPS and by the Government Members' Secretariat. The falsehoods and inaccuracies could easily have been avoided by basic examination of the public record, including Government records and/or by checking with the office of IPS itself. No attempt was made to contact that office. We are of the belief that the statement was made deliberately with the intent of being circulated to the press and thereby causing damage to us and to the reputation of industry superannuation funds that are vigorous competitors with the sales commission driven, commercially operated superannuation funds.

We therefore believe that the speech represents an abuse of Parliamentary privilege and have publicly invited the Senator to repeat outside of the protection of Parliamentary privilege the allegations he has made.

The Senator complains of lack of transparency in the dealings of IPS and states that IPS says it manages over \$20 billion in superannuation assets. IPS has never said it manages over \$20 billion in superannuation assets. Its current funds management business has slightly over \$5 billion in assets under management or advice. IPS is a proprietary limited company, owned by nine industry superannuation funds that have invested in it for both commercial and strategic reasons. It has been a successful company on both counts. All fees received by IPS are of course fully disclosed to both clients and shareholders. Its fees are widely recognised as being below market due to its lower cost structure. There is a degree of overlap between shareholders and clients. All shareholders are represented on the Board of IPS, which meets not less than five times per year. Company accounts and financial statements are presented to each meeting and the company is audited annually by PricewaterhouseCoopers. In addition, IPS publishes, on a six monthly basis, a report that, amongst other things, fully details IPS' lines of business. This report is circulated not only throughout the superannuation industry but also to media and opinion leaders. Industry superannuation funds are subject to the full force of the law and regulation governing the superannuation industry and have been leaders in accountability and disclosure. They are also leaders in low cost performance and high net benefit to members, a fact recognised by every independent study, including the one selectively quoted by Senator Chapman. Such funds are typically governed by trustee boards equally representing the nation's leading employer organisations and unions or their peak councils.

Senator Chapman says, "Of particular concern is the amount of income derived by Industry Fund Services Staff Equity Trust, or IPS SET Pty Ltd, which has been one of

IPS' key shareholders". IPS SET Pty Ltd was in fact a single purpose company which derived no income but simply acted as trustee for the former equity holding of IPS staff.

Senator Chapman says that he has been told that. IPS SET is a superannuation fund of which the major beneficiaries would be likely to include Garry Weaven, Mavis Robertson and Graeme Grant. As stated, IPS SET is not a superannuation fund. This would be an extremely simple fact to verify. It appears that many of the other alleged concerns of Senator Chapman flow from this basic misunderstanding,, if indeed it really is a misunderstanding. Mavis Robertson is not and never has been a beneficiary of the Staff Equity Trust as she has never been a staff member of IPS. Simply she has served on the trustee board of the Trust in an unpaid capacity on behalf of the Board of IPS itself.

Senator Chapman alleges that the Staff Equity Trust had two sell downs of capital prior to being sold out and states, "...it is not known what consideration was received...". Throughout his speech he makes a number of statements alleging or implying impropriety in dealing with staff equity.

There have been no such "sell downs" of capital. It is true, that Weaven was the largest unitholder in the Staff Equity Trust. This is hardly surprising given that he was the founding and sole employee over 10 years ago and that he arranged the seed funding by way of a capital injection from a subsidiary of the then Colonial Mutual (which was subsequently paid out from retained earnings). The company was restructured in late 1995 to be 20% owned by each of four major industry super funds and the Staff Equity Trust. Additional industry fund shareholders were added by injecting modest amounts of working capital and thus proportionately diluting existing shareholders. In 2001, two further capital injections totalling \$2 million were raised from shareholders. Weaven and Grant contributed to this raising but were unable to participate to the full extent of their holdings and were therefore further proportionately diluted at that time.

Prior to the final sale of the Staff Equity Trust units, no payments have been made to staff unitholders. All profits have been reinvested in the business. The Staff Equity Trust sale forms part of a series of restructurings which are intended to ultimately result in the integration of IPS and its various businesses into Members Equity, the bank 100% owned by 43 superannuation funds. This would then create a new mutually and wholly Australian, owned diversified financial institution. It is believed that the industry superannuation fund shareholders have achieved a higher return for their members from their investment in IPS than from any other investment or class of investments. The value of IPS for the purpose of the sale was independently determined at \$15.3 million. It is estimated that the total value of IPS would currently be somewhere in the vicinity of \$20 million and the business continues to grow quite rapidly. By agreement with APRA, IPS is valued every three years for the purpose of establishing a value in the books of its superannuation shareholders. The current value of Members Equity is somewhere in excess of \$300 million. We believe that it is currently Australia's most rapidly growing bank, albeit from a small base.

Senator Chapman poses the question, "Will IPS' imminent transition from a superannuation fund administration business to a banking model provide a pretext for restructuring Mr Weaven. and others' interests in this lucrative business?" IPS is not a superannuation fund administration business. Further, it is clear from the above, much of which has been previously placed on the public record, that it is not intended that staff will have an interest, in the business.

Senator Chapman states that he understands "that some of the above issues have been referred to APRA". Indeed, the entire restructuring plan involving IPS, Development Australia Fund, AUSfund and Members Equity was the subject of a briefing in advance to APRA initiated by IPS. IPS has recently been assured by APRA that it has no matters of concern in relation to IPS' activities.

Senator Chapman alleges that "ASIC has been of the opinion that the practice of industry superannuation funds directing members' enquiries straight through to IPS - which picks up the calls without identifying that it is an entirely separate funds administration company — breaches the "holding out" provisions of the Corporations Act". IPS does not act as a superannuation fund administrator and does not pick up any calls on behalf of superannuation funds. Mr Weaven is Chair of Superpartners Pty Ltd, which is an administration company owned by a number of its client funds. For many years the administration contracts between those superannuation funds and Superpartners have required Superpartners to have a team dedicated specifically to that superannuation fund and to identify itself to the members in the name of that fund. Because of the changing regulatory environment, the IPS Compliance Manager last year raised this matter with ASIC on behalf of Superpartners and its clients, seeking clarification as to whether any change in the practice would be required or any exemption from any regulation was needed. On 22 September 2003, ASIC replied to Freehills in relation to this matter in the following terms:

Thank you for your letter dated 29 August 2003 in connection with die practice of "silent administration" as conducted by your clients.

The general policy of the Australian Securities and Investments Commission ("ASIC") is not to provide legal advice in relation to how various provisions of the Corporations Act 2001 (the "Act") should be interpreted. However, we recognise that you would like an indication of ASIC's current views to facilitate compliance by your clients. In that regard, ASIC does not disagree with die conclusion that s 911C(c) of die Act is not breached if the trustee and its administrator each hold an Australian Financial Sendees Licence and the administrator acts on behalf of the trustee pursuant to the terms of the administration agreement as described in your letter.

This is a further example of Senator Chapman twisting events to suit an apparent ideological bias against IPS and the industry superannuation fund sector.

The industry superannuation fund network has consistently argued for maximum disclosure of fees and charges of superannuation funds and for the outlawing of sales commissions in the selling of compulsory superannuation as a precondition for a

successful choice of fund regime. This argument has not been successful and, as a consequence, the practice of financial planners (and others receiving commissions such as accountants) in directing people into superannuation funds that pay sales commissions, rather than into the funds which will deliver the greatest net benefit to the member (a practice incidentally which was recently confirmed by a joint study by ASIC and the Australian Consumers' Association), will apply to an expanded segment of the workforce. We will continue, to argue that this is not in the interests of working people nor the long; term interests of a successful retirement incomes policy.

Questions on Notice to Industry Super Network and Mr Gary Weaven arising from their appearance at the committee's public hearing in Melbourne on 6 March 2007

The following questions will assist the Committee towards a better understanding of the mutual structure and operations of superannuation funds within the Industry Super Network.

1. Members Equity Bank (MEB) is a significant financial institution
 - a. Identify subsidiary companies owned by MEB and describe their business functions and operations
 - b. What type of services does MEB provide to industry funds that are members of MEB?
2. Name the industry superannuation funds who are members of Members Equity Bank?
3. Do industry superannuation funds in MEB hold equal interests with the same rights? If not, what are the differences in security holdings and rights thereto?
4. In that context, the submission from Members Equity Bank says it *“is wholly owned by 40 participating industry superannuation funds (ISFs)...”* and that *“ME is currently in the process of merging with Industry Funds Services Pty Ltd (IFS).”*

However, according to the ASIC database at the time the Committees' public hearings commenced, Industry Funds Services Pty Ltd owned all 4,243,977 shares in Members Equity Bank Pty Ltd.

Also, according to the ASIC database, the 600 shares in Industry Funds Services Pty Ltd are owned by what appear to be 9 industry super funds.

Can you explain what, if any, capital reconstructions or transfers have occurred since the last filings with ASIC to expand this ownership to 40 industry super funds, or, otherwise the way in which it has been established that ownership is by 40, rather than 9, participating funds?

What is the context of 200,000 shares being issued to Industry Funds Services Pty Ltd by ME Bank in May 2006?

5. Do the related party provisions of the Corporations Act 2001 apply to:
 - a. MEB:
 - b. Trustee shareholders of MEB?

6. Public offer superannuation and non public offer industry funds operate for the benefit of millions of Australians. Why shouldn't the same standards of disclosure and accountability that apply to public companies also apply to industry superannuation fund trustees?
7. The ASIC company registers shows that MEB is a large proprietary company that is not a disclosing entity. Given your stated support for disclosure and transparency, does MEB disclose remuneration of its executive officers?
8. Why has MEB not converted to a public company in view of its stated support for transparency and disclosure?
9. In its provision of services to industry superannuation funds does MEB charge commercial rates?
10. It is understood that Industry Funds Services Pty Ltd (IFS), a diversified financial services company providing financial planning services, funds management services and various other trustee services, was purchased by MEB and its operations absorbed into the operations of the Bank. What was the acquisition cost to the Bank, how was it financed, and what amount was paid to each of the shareholder owners of IFS?
11. During Board discussions about the acquisition of, or merger of ME Bank with Industry Funds Services Pty Ltd, how have Mr Gary Weaven, as a Director of ME Bank and also Executive Chair of Industry Funds Services Pty Ltd and Mr Bernie Fraser as a Director of ME Bank and also of 3 (Australian Super Pty Ltd, United Super Pty Ltd and Australian Retirement Fund Pty Ltd) of the 9 superannuation funds which own Industry Funds Services Pty Ltd dealt with perceived conflicts of interest?
12. What factors led, only 11 days after a story in the Australian Financial Review, referring to controversy surrounding IFS-SET Pty Ltd, to its 75 shares, comprising a 12.5% stake in Industry Funds Services Pty Ltd, being transferred to a number of IFS's existing superannuation fund shareholders?
13. The ASIC filing states that the "*Total \$ paid on these shares*" is "\$25,500" and that this figure is given for all of the transfers, be they for as few as 4 shares or for the whole 75 shares.

What was the actual consideration paid for these shares?

14. In relation to the acquisition of IFS by MEB, have the details in Section C4 of ASIC Form 484 been corrected to show the "Total \$ paid on these shares"?
15. You state in the document provided to the Committee, titled 'Response to Speech of Senator Grant Chapman incorporated in Hansard – 1.56 am, 24 June

2004' that Industry superannuation funds "have been leaders in accountability and disclosure". How can that statement be valid when there has been no disclosure to industry superannuation fund members of related party arrangements or executive remuneration benefits?

16. IFS SET Pty Ltd as the trustee of the Staff Equity Trust did not derive any income. However, what income did the staff, being beneficiaries of the Staff Equity Trust derive through the interests held by IFS SET Pty Ltd in IFS?
17. In the speech to the Senate on 24 June 2004, a number of issues were raised to which no response was made in the document provided to the Committee. Please provide a response to the following questions:
 - a. What income did DIF-SET (as trustee for the Staff Equity Trust) derive from its extensive involvement in the administration and management of industry fund assets?
 - b. What benefits did Mr Weaven and the limited numbers of other beneficiaries of IFS-SET derive from its and their involvement with IFS?
 - c. Was the transition from a "diversified financial services company which provided financial planning services, funds management services and various trustee services" to a banking model, a means of restructuring means Mr Weaven and others' interest in this lucrative business? If not, why not?
 - d. Following the absorption of IFS within Members Equity, what are the salary packages of Mr Weaven and other individuals, previously with IFS-SET, and now representing Members Equity Bank?
18. What were the retirement benefits paid to the Directors who stood down following the ARF/STA Super Fund Merger?
19. Do financial planners employed by MEB advise on all superannuation funds in the market?
20. Do industry fund financial planners including the financial planning business advisers of MEB, provide limited advice? Has ASIC reviewed the records and practices of industry fund advisers where advice is sought directly or indirectly to switch funds?
21. How does Members Equity Bank provide incentives for its sales, marketing and adviser staff?
22. Do Members Equity Bank sales, marketing and adviser staff have sales targets?

23. What sponsorship or financial support has been given or is intended to be given to ACTU functions and events by IFS Pty Ltd and/or ME Bank?
24. What are the level of prudential reserves of each Industry Super Fund?
25. Do the 2005 and 2006 MEB Annual Reports comply fully with the requirements of the Corporations Act 2001?
26. Balanced funds have three objectives: moderate long-term growth of capital, moderate income and moderate stability. Do all balanced funds have the same risk/return profile? Is a person who is properly advised likely to get higher returns where they direct investments in to higher growth options?

